BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

PETITION OF THE TENNESSEE SMALL LOCAL EXCHANGE COMPANY COALITION FOR TEMPORARY SUSPENSION OF 47 U.S.C. § 251(b) AND 251(c) PURSUANT TO 47 U.S.C. § 251(f) AND 47 U.S.C. § 253(b).

DOCKET NO. 99-00613

PETITION

Comes the Tennessee Small Local Exchange Company Coalition and petitions the Tennessee Regulatory Authority (the "Authority" or "TRA") pursuant to Setions 251(f)(2) and 253(b) of the Telecommunications Act of 1996 (the "1996 Act") for a temporary suspension of the requirements imposed under Sections 251(b)(1), (2), (4) and (5) and 251(c) of the 1996 Act and would respectfully show the Authority as follows:

1. The Tennessee Small Local Exchange Company Coalition (the "Coalition"), is comprised of and consists of the following member companies: (1) Ardmore Telephone Company, Inc.; (2) the Century Telephone Enterprises, Inc. Companies in Tennessee consisting of (a) CenturyTel of Adamsville, Inc.; (b) CenturyTel of Claiborne, Inc.; and (c) CenturyTel of Ooltewah-Collegedale, Inc,; (3) Loretto Telephone Company, Inc.; (4) Millington Telephone Company, Inc.; (5) the TDS TELECOM Companies in Tennessee consisting of (a) Concord Telephone Exchange, Inc.; (b) Humphreys County Telephone Company; (c) Tellico Telephone Company; and (d) Tennessee Telephone Company; (6) the Telephone Electronics Corp. ("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc.; (b) Peoples

CK# 171113

Telephone Company, Inc.; and (c) West Tennessee Telephone Company, Inc.; and (7) United Telephone Company, Inc.

2. The members of the Coalition are all small local exchange telephone companies regulated by the Authority pursuant to T.C.A. § 65-4-101 et. seq. Each of the companies is considered a rural telephone company by the qualifying criteria provided in 47 U.S.C. § 153(37). Each of the Companies is a company entitled to suspensions and modifications for rural carriers and entitled to petition the Authority under 47 U.S.C. § 251(f)(2).

3. At the present time the Authority is considering state universal service issues in a universal service generic contested case, Docket No. 97-00888. Also, the Federal Communications Commission is considering modification to the federal universal service mechanisms in FCC Docket No. 96-45. In the Matter of Federal State Joint Board on Universal Service.

4. That the Tennessee Legislature, by enacting Chapter 408 of the Acts of 1995, and in particular T.C.A. § 65-4-201(d), attempted to restrict competition in the territory of the small rural telephone companies until such time as certain events occurred. It also attempted to insure that Universal Service would be maintained. T.C.A. § 65-5-207.

5. Hyperion of Tennessee, L.P., a facilities-based competitive local exchange carrier filed a Petition seeking to extend services into an area served by Tennessee Telephone Company, one of the members of the Coalition in this matter. The Authority in that case, Docket 98-0001, by Order dated April 9, 1998, denied Hyperion's Petition based upon T.C.A. § 65-4-201(d) and on T.C.A. § 65-5-207 the universal service statute.

6. Hyperion of Tennessee, L.P. filed a Petition for Preemption of Tennessee Code Annotated (T.C.A.) 65-4-201(d) with the FCC. In a decision released May 27, 1999, the FCC preempted T.C.A. 65-4-201(d) but declined to grant Hyperion's request to direct the Authority to grant Hyperion's application. The four TDS companies and the Tennessee Regulatory Authority filed separate Petitions for Reconsideration of the Memorandum Opinion and Order with the FCC. The Tennessee Regulatory Authority has also filed a Motion for Stay of Enforcement. The Motions for Reconsideration and the Motion to Stay are now pending before the FCC.

7. The Coalition does not seek a suspension of 251(b)(3) because all of the Petitioners have or are in the process of implementing IntraLATA Dialing Parity Plans. Pursuant to an Order of the TRA the Petitioners have submited their Plans for IntraLATA Dialing Parity and have received TRA approval. The individual implementation of each Plan has been or will be at a considerable cost to the Petitioners.

8. The Coalition does seek a suspension of 251(b)(1), (2), (4) and (5) and 251(c) of the 1996 Act until such time as the regulatory policies tailored to preserving universal service and maintaining affordable rates in rural service areas can be finally developed and implemented at the State and Federal levels.

9. Petitioners will show that the suspension requested is necessary: (a) to avoid a significant adverse economic impact on users of telecommunication services generally; (b) to avoid imposing a requirement that is unduly economically burdensome; or (c) to avoid imposing a requirement that is technically infeasible; and (d) is consistent with the public interest, convenience and necessity.

PREMISES CONSIDERED, Petitioner prays:

(1) That pursuant to Sections 253(b) and 251(f)(2) of the Telecommunications Act of 1996 [47 U.S.C. §§ 253(b) and 251(f)(2)] the Tennessee Regulatory Authority suspend Sections 251(b)(1), (2), (4) and (5) and 251(c) interconnection requirements of the Petitioners until regulatory policies tailored to preserving universal service and maintaining the affordable rates in rural service areas can be developed and implemented at the state and federal levels.

(2) That the Tennessee Regulatory Authority suspend all Section 251(b)(1), (2), (4) and (5) and Section 251(c) interconnection requirements to which Petitioners are, or, are potentially, subject until final action is taken with regard to this Petition.

(3) That Petitioners have such other and further relief as they may be entitled to in this cause.

Respectfully submitted,

THE TENNESSEE SMALL LOCAL
EXCHANGE COMPANY COALITION

By _____

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CERTIFICATE OF SERVICE

I hereby certify that on August 18th, 1999, a copy of the foregoing documents (letter, Petition and Brief) was served on the following persons, via U. S. Mail, postage pre-paid, addressed as follows:

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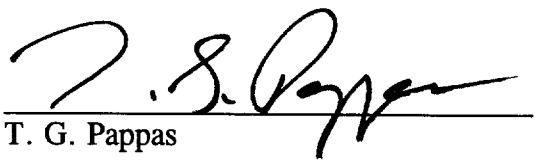

T. G. Pappas

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

PETITION OF THE TENNESSEE SMALL LOCAL EXCHANGE COMPANY COALITION FOR TEMPORARY SUSPENSION OF 47 U.S.C. § 251(b) AND 251(c) PURSUANT TO 47 U.S.C. § 251(f)(2) AND 47 U.S.C. § 253(b).	)))))	**DOCKET NO. 99-00613**

BRIEF IN SUPPORT OF PETITION

The Tennessee Small Local Exchange Company Coalition, consisting of the following member companies: (1) Ardmore Telephone Company, Inc.; (2) the Century Telephone Enterprises, Inc. Companies in Tennessee consisting of (a) CenturyTel of Adamsville, Inc.; (b) CenturyTel of Claiborne, Inc.; and (c) CenturyTel of Ooltewah-Collegedale, Inc.; (3) Loretto Telephone Company, Inc.; (4) Millington Telephone Company, Inc.; (5) the TDS TELECOM Companies in Tennessee consisting of (a) Concord Telephone Exchange, Inc.; (b) Humphreys County Telephone Company; (c) Tellico Telephone Company; and (d) Tennessee Telephone Company; (6) the Telephone Electronics Corp.("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc.; (b) Peoples Telephone Company, Inc.; and (c) West Tennessee Telephone Company, Inc.; and (7) United Telephone Company, Inc. (hereafter, collectively referred to as "Petitioners"), by their attorneys, file this brief with and in support of their petition for relief pursuant to Sections 251(f)(2) and 253(b) of the Telecommunications Act of 1996 ("1996 Act"), in which they seek approval of a temporary suspension of the requirements imposed under Sections 251(b)(1), (2), (4) and (5) and 251(c) of the 1996 Act until the issuance

and implementation, at both the federal and state levels, of a universal service plan for rural carriers which will ensure the continued availability of comparable services at affordable rates to customers in rural service areas in Tennessee.

Section 253(b) of the Telecommunications Act of 1996 authorizes the TRA to impose measures "necessary to preserve the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." Likewise, Tennessee law requires that "universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable."[1] The Petitioners submit that the requested relief is necessary, in keeping with federal and state law, to ensure the continued availability of comparable telecommunications rates and services in rural areas of Tennessee.

I. The 1996 Act Recognizes that the Uncontrolled Introduction of Local Exchange Competition Could Harm Users in Areas Served by Rural Carriers, and Accordingly Provides for Necessary Suspensions and Modifications Of, and Exemptions From, Interconnection Obligations.

The 1996 Act requires interconnection and other actions among carriers to encourage and foster competition in the telecommunications industry. Nevertheless, the 1996 Act incorporates provisions that recognize that the public interest may not be served by competitive entry in areas served by rural telephone companies.[2] The 1996 Act encourages competition by establishing general interconnection obligations for all local exchange carriers ("LECs"), including new entrants.[3] The 1996 Act also sets forth additional interconnection obligations for incumbent

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[1]Tenn. Code Ann. § 65-4-123.

[2]Each of the Petitioners is considered a rural telephone company by the qualifying criteria provided in 47 USC § 153 (37).

[3]47 USC § 251(b)

LECS.[4] However, after establishing these interconnection obligations, the 1996 Act recognizes that exemption from the additional interconnection obligations and/or suspension or modification of both the general and additional interconnection obligations is appropriate for rural LECs.[5]

The 1996 Act specifically exempts the rural LECs from the additional interconnection obligations otherwise imposed on other incumbent LECS. These additional obligations include the duty to negotiate interconnection at any technically feasible point in the incumbent LEC's network, unbundled access, resale at a discounted rate, notice of network changes, and physical collocation. The "rural exemption" from these obligations cannot be removed until there is a *bona fide* request for these services and the TRA determines that the request is technically feasible; will not be economically harmful; and is consistent with the universal service requirements of 47 USC §254.[6]

In addition to the rural exemption, Congress also recognized, any requirements appropriate to balance the market in areas served by larger LECs are generally inappropriate in areas served by rural LECS. Rural LECs do not exhibit the same degree of market dominant dimensions that pose the same potential impact on telecommunications markets as do larger LECS. The relative size of rural LECs makes it much less likely that they can impact market entry by new, competitive providers. Many of the new, competitive providers, which may be interested in

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[4]47 USC § 251(c)

[5]47 USC § 251(f)

[6]47 USC § 254(b)(1) and (3) specify affordability and comparability of rates as primary goals of federal policy particularly for rural, insular and high cost areas. Competitive entry directly implicates the issues of affordability and comparability because it undermines the existing nature of implicit subsidies by which affordability and comparability have been historically maintained.

competitive entry into rural LEC's areas, are hundreds and thousands times larger financially than the rural incumbent LECs with which they may compete. In short, onerous interconnection requirements, potentially harmful to the customers served by the LECs to which the requirements are applied, are inappropriate for rural LECs because of their relative overall market position. In recognition of this, the 1996 Act provides state regulatory agencies with the tools and flexibility to moderate the interconnection requirements to balance the marketplace; to recognize the competitive risk to the investment already committed to serve rural service territories; to achieve the proper results in a competitive world; and to ensure the continued provision of universal service in areas served by rural carriers.

In this regard, the 1996 Act provides rural LECs with the opportunity to seek a suspension or modification of the obligations of interconnection that are otherwise imposed on all LECS, as well as those imposed only on incumbent LECs[7]. These obligations include the duty to offer resale, number portability, dialing parity, access to rights of way, and reciprocal compensation arrangements for transport and termination of traffic.[8] The 1996 Act provides that the TRA must grant a petition to suspend or modify these obligations, as well as any of the additional obligations for incumbent LECS, when the suspension or modification is

> necessary to avoid a significant adverse economic impact on users of telecommunications services ... to avoid imposing a requirement that is unduly economically burdensome; or ... to avoid imposing a requirement

[7]47 USC § 251(f)(2)

[8]47 USC § 251(b)

that is technically infeasible; and... is consistent with the public interest, convenience and necessity.[9]

II. The TRA Should Suspend the Requirements of 251(b)(1), (2), (4) and (5) and 251(c) for Rural Companies Until Federal and State USF Rules Have Been Issued and Implemented.

The Petitioners are not seeking a permanent exemption from the 1996 Act's interconnection requirements. In fact, Petitioners do not oppose expanded competition in the telecommunications marketplace and fully support the national policy framework to be implemented under the 1996 Act. However, at the present time, the TRA and the Federal Communications Commission ("FCC") are addressing regulatory policies for Universal Service that will establish a new regulatory environment designed to balance the policy goals of local exchange competition and the universal availability of quality telecommunications services at affordable rates.[10] The resolution of universal service mechanisms for rural carriers at both the federal and state level prior to the advent of competition in rural service areas is vital if we are to reach that balance in Tennessee. Petitioners respectfully submit that the requested suspension should remain effective at least until the issuance and implementation of USF rules for rural companies at both the state and federal levels. Following this initial period, the need for further suspension and/or modifications can be revisited by both the Petitioners and the TRA in the context of greater certainty regarding the

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[9] 47 USC § 251 (f)(2). Under the Federal Act, the TRA is required to act upon any such petition within one hundred and eighty (180) days after receiving such petition. Moreover, pending such action, the TRA may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning rural LECs.

[10] The TRA is currently considering state universal service issues in Universal Service Generic Contested Case, Docket No. 97-00888. The FCC is considering modifications to Federal Universal Service mechanisms in the following proceeding- CC Docket No. 96-45 In the Matter of Federal-State Joint Board on Universal Service.

potential impact of the new rules on competitive entry, and the provision of universal service in the areas served by the Petitioners.

The Petitioners do not seek a suspension of 251(b)(3) because all of them have or are in the process of implementing an IntraLATA Dialing Parity Plan. They have submitted their plans for and received TRA approval. The individual implementation of each plan has been and will be at considerable cost to each Petitioner.

A. Rural LECs Encounter Market Conditions Different From Those Faced by Carriers in Urban Markets.

The TRA's deferral of the introduction of competitive local exchange service in rural areas is consistent with Section 253(b) of the 1996 Act, which authorizes the TRA to take action necessary to preserve universal service. A deferral until the completion of state and federal USF rules and the implementation of appropriate universal service mechanisms will provide the TRA with the opportunity to observe the effects of competition in urban markets, and to utilize those experiences in the formulation of regulatory policies designed for rural markets. Without such policies, the structure of universal service will be placed at risk. As recognized by the 1996 Act, regulatory standards developed solely for rural markets are necessary because the rural telephone industry operates under vastly different market conditions than urban carriers.

Rural LECs have historically balanced obligations to maintain comparable rates with consumer demand for high-quality service delivered via state-of-the-art equipment through reliance on existing rate design and cost recovery mechanisms. By making investment decisions based on the existing regulatory framework of rate establishment and appropriate cost-recovery

mechanisms, the Petitioners have been able to meet the universal service challenges within rural Tennessee.

It is a historical fact that the challenges of providing affordable service in rural areas were recognized by larger carriers who refused to enter those markets. The Petitioners, by contrast, faced and met these challenges and have provided rural customers with access to high-quality service at comparable rates.[11] The introduction of competition to the rural areas served by the Petitioners, however, will threaten both the ubiquitous provision of service and the comparable rates at which service is provided.

B. Unmanaged Competition Undermines Existing, Implicit Universal Service Support Structure.

The introduction of competition must be carefully constructed in order to maintain universal service and ensure the availability of comparable facilities and advanced services in rural service areas. The characteristics of generally higher costs, lower volume service users, and the resulting limited revenue opportunities expose capital committed to existing networks and current network upgrades to higher risk of recovery. This heightened risk creates a disincentive for future capital investment which, without proper balancing of competitive entry conditions and other carrier requirements, may lead to deteriorating service in rural areas.

Introduction of competition to any market can lead toward three results:

1) If both businesses can stimulate significant demand for their service or product, then both may succeed; or

2) One business may thrive, to the detriment of the other; or

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[11]For example, in July 1990, the Tennessee Public Service Commission developed a 10-year master plan to upgrade the networks of all telephone companies serving in Tennessee. This plan is referred to as FYI-Tennessee.

3) The introduction of competition could split the market, leaving each firm with a number of customers insufficient to support the respective business, with both firms faltering, and, ultimately failing.

Rural areas will likely suffer one of the two latter results, as the population, economy, and other demographic factors of rural markets are such that rural markets are generally insufficient to support true, universally available competition. As stated herein, the affordability of the service provided by the Petitioners is clearly placed at risk by the introduction of competition at this time. Unlike a carrier in an urban market that can establish affordable rates by offsetting high-cost areas with low-cost areas, a rural LEC must contend with a majority of higher-cost customers, and few economically lucrative customers.

A competitive entrant to a rural area could disrupt the rural LEC's ability to provide universal service at comparable rates. The competitive entrant, behaving as any rational business entity would, is likely to seek out only the few economically lucrative customers within the incumbent LEC's customer base. Known as "cream skimming", this destructive strategy robs the rural LEC of a significant revenue source from which it has historically offset the rates of its higher-cost to serve customers. From the standpoint of rural LECs, the loss of a few key customers through interconnection could result in a disproportionate loss of toll, access and local revenues. With this scenario, the rural carrier loses customers and revenue but has no significant reduction in the costs it incurs to provide service throughout its service area and fulfill its carrier of last resort obligations. As a result, the rural LEC will be forced to shift the burden of those costs to its remaining customers by way of increased charges.

Without question, "cream skimming" within an incumbent rural LEC's service area will jeopardize the provision of universal service and place significant upward pressure on local rate

levels. The adverse effects of cream skimming are precisely the harm Congress envisioned when promulgating Section 251(f)(2) of the 1996 Act. Section 251(f)(2) of the 1996 Act requires the TRA to grant a petition for suspension or modification of interconnection requirements if such action is necessary to avoid a significant adverse economic impact on users of telecommunications services, or to avoid an unduly economically burdensome result; additionally, the suspension or modification must be in the public interest.[12]

"Cream skimming", as described above, forces the rural LEC to charge higher rates, which constitute a significant adverse economic impact on the users of telecommunications services. An unduly economically burdensome requirement is visited upon the incumbent carrier as it is forced to recover a steady, unchanging level of costs from a continuously shrinking customer base. As neither result is in the public interest, the TRA is obligated by the 1996 Act to grant a petition to suspend or modify the interconnection requirements to which the Petitioners would otherwise be required to submit.[13]

C. The Result of Permitting Resale, On a Bundled or Unbundled Basis, of the Rural LECs' Networks is Inequitable and Adverse to the Public Interest.

The concerns regarding competitive market entry in the service areas of rural LECs are not limited to instances where a competitor utilizes its own facilities to serve select high-volume customers. Similar concerns and problems will arise with respect to the resale of the rural LECs'

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[12] 47 U.S.C. 251(f)(2)

[13] "The State commission shall grant such a petition to the extent that... the State commission determines that such suspension or modification is necessary" to avoid adverse economic impact on the rate-payers and unduly economically burdensome results, and is consistent with the public interest. 47 U.S.C. 25(f)(2) (emphasis added).

networks on either a bundled or unbundled basis. These concerns are not at all alleviated by the fact that the competitor will pay the rural LEC for the use of its network.

In a rural area, a competitor could utilize resale as a means of conducting free market research. Permitting this abuse will severely impair the rural LEC's ability to forecast technical network requirements since the competitor utilizing resale would have no limitation on its ability to move the customer base it develops to its own facilities without notice. Under this circumstance, the rural LEC will continue to incur the risk of investment in facilities to provide universal service. Concurrently, the competitor will utilize the rural LEC's network to determine where it will be most lucrative for the competitor to deploy its own facilities to serve the most lucrative customers.

The result of permitting either bundled or unbundled resale of the rural LEC's network leads inevitably to the same result described above: the rural LEC will lose its most lucrative customers and be left with the costs of providing universal service to be borne by a shrinking customer base.

Permitting the resale of the Petitioners' networks will provide no new facility or service to the public. Resale in the rural areas served by the Petitioners constitutes for the new entrant, an investment-free opportunity to determine where to deploy facilities or arbitrage tariff offerings in a manner that benefits the new entrant and a few high-volume customers at the expense of the general rate-payers served by the Petitioners. This result is clearly adverse to the public interest and warrants a suspension of the Petitioner's interconnection obligations pursuant to Section 251 (f)(2).

III. The TRA Should Not Consider Requests for Section 251(c) Interconnection During the Temporary Suspension Period.

Although Petitioners, as rural LECs, are already exempt from Section 251 (c) requirements,[14] the temporary suspension of both the 251(b)(1), (2), (4) and (5) and 251(c) requirements, afforded by action under 251(f)(2), will ensure that the TRA is not required to engage in redundant analyses of competition in these rural markets. Accordingly, if this Petition is granted, the TRA will not be unnecessarily burdened with consideration of potentially numerous requests for termination of Petitioners' rural exemptions during the course of the suspension.

In the absence of the grant of Petitioners' request for suspension of the Section 251(c) obligations, the TRA and each Petitioner would be required to expend significant resources to determine whether each Petitioner's exemption from the Section 251(c) obligations should be terminated each time that a potential competitor makes a "bona fide" interconnection request pursuant to Section 251(c). See §251(f)(1). By granting this Petition, the TRA will ensure that unnecessary repetitious reconsideration of the same question is avoided. The public interest will be further served by avoiding this unnecessary administrative burden while the TRA fully maintains authority to subsequently modify or remove the temporary suspension if and when it becomes appropriate to do so. See §251 (f)(2). Only upon the removal of this suspension, should Petitioners be subjected to Section 251(c) interconnection requests and determination by the TRA as to the possible termination of their rural exemptions under Section 251(f)(1)(B).

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[14] See 47 U.S.C. §251(f)(1).

IV. The TRA Should Suspend Enforcement of Interconnection Requirements Pending Resolution of This Petition.

Petitioners respectfully request that the TRA also (i) suspend enforcement of their Section 251(b)(1), (2), (4) and (5) and Section 251(c) interconnection requirements pending final resolution of the merits of this Petition and (ii) hold in abeyance, and withhold TRA action in, any proceeding with respect to a Section 251(f)(1) bona fide request involving any of the Petitioners until this Petition is resolved. As before noted, Section 251(f)(2) of the 1996 Act provides that the TRA act on this Petition within 180 days. Also, pursuant to this statutory provision, Congress specifically contemplated the reasonableness of suspending interconnection obligations while a request for suspension is pending, and authorized the TRA to suspend enforcement of interconnection obligations during the 180 day period.

Petitioners respectfully submit that if the obligations are not suspended, Petitioners may expend time and resources negotiating and/or litigating interconnection arrangements and implementing network modifications that may be incompatible with a final TRA order in this proceeding and the final resolution of the Universal Service proceedings. Negotiations where the obligations of the parties are subject to imminent change would be frustrated by the uncertainty surrounding the very basis for negotiation. Moreover, the prospect of a carrier implementing costly network upgrades or modifications to operations support systems in order to meet interconnection obligations that may be modified or suspended is unreasonable for all potential parties. In addition, suspension of the interconnection obligations pending action on this Petition will enable the Petitioners, potential competitors, and the TRA to avoid incurring administrative costs associated with mediation, arbitration and/or regulatory proceedings to determine the terms

of interconnection obligations which, in accordance with the 1996 Act, should subsequently be determined to be suspended.

At least four state regulatory agencies have acted on similar Petitions seeking temporary suspension enforcement of Section 251(b) and (c) and have granted relief: Alabama Public Service Commission, In re: All Telephone Companies Operating in Alabama, Docket 24472; the Indiana Utility Regulatory Commission, In re: Bloomingdale Home Telephone Company, Inc., et al., Cause No. 40626; the Mississippi Public Service Commission, In re: Petition of the Mississippi Independent Group, etc., Docket No. 96-UA-298; and the Pennsylvania Public Utility Commission, Petition of Rural and Small Incumbent Local Exchange Carriers, Docket No. P-00971177. A copy of the Opinions in these four cases are attached hereto.

V. CONCLUSION

An unrefined policy of competitive entry in rural areas will threaten universal service, jeopardize the continued quality and availability of telecommunications services, and disregard the rights of consumers. Additionally, unmanaged competitive entry places rational investment decisions on the deployment and maintenance of network at risk. Without grant of this petition, the Petitioners will be denied a reasonable opportunity to recover the costs of the infrastructure they deploy to provide comparable services in their rural service areas. The Authority should, therefore, grant the relief prayed for in the Petition.

Respectfully submitted,

THE TENNESSEE SMALL LOCAL
EXCHANGE COMPANY COALITION

By _____

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held July 10, 1997

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
John Hanger
David W. Rolka, Statement attached
Nora Mead Brownell

Petition of Rural and Small Incumbent Local Exchange Carriers for Commission Action pursuant to Section 251(f)(2) and 253(b) of the Telecommunications Act of 1996. — Docket No. P-00971177

Petition of Citizens Telephone Company of Kecksburg to Intervene in PUC Docket No. P-00971177 and to suspend the Interconnection Requirements of the Telecommunications Act of 1996 pursuant to Sections 251(f)(2) and 253(b) — Docket No. P-00971188

BY THE COMMISSION:

OPINION AND ORDER

History of the Proceeding

On February 20, 1997, the Petitioners,[1] all small incumbent local exchange carriers serving rural portions of

[1]The Petitioners consist of Yukon Waltz Telephone Company, Venus Telephone Company, South Canaan Telephone Company, Pymatuning Independent Telephone Company, Pennsylvania Telephone Company, Palmerton Telephone Company, North Pittsburg Telephone Company, North Penn Telephone Company, the North-Eastern Pennsylvania Telephone Company, Marianna & Scenery Hill Telephone Company, Lackawaxen Telephone Company, Ironton Telephone Company, Hickory Telephone Company, Denver and Ephrata Telephone and Telegraph Company, the Bentleyville Telephone Company, Armstrong Telephone Company-Pennsylvania, Armstrong Telephone Company-North, and ALLTEL Pennsylvania, Inc. They are referred to collectively as the Petitioners hereafter.

Pennsylvania, filed a Petition under Sections 251(f)(2)[2] and 253(b)[3] of the Telecommunications Act of 1996 (TA-96)(Petition). The Petition wants the Commission to temporarily suspend the interconnection requirements imposed under Sections 251(b) and (c) of the TA-96.[4] The Petition also wants the Commission to temporarily suspend the certification of any facilities-based carriers within the respective service territories of any Petitioner that has a modernization plan approved under Chapter 30. The Petition was not served on any competitive local exchange carrier (CLECs). The Petition was docketed at P-00971177.

On March 13, 1997 Citizens Telephone Company of Kecksberg[5] filed a Petition to intervene. Citizens wants

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[2]Section 251(f)(2) of TA-96 allows a suspension or modification of the interconnection obligations set forth in Sections 251(b) or (c) of TA-96. In addition, Section 251(f)(1) of TA-96 provides an exemption from the interconnection obligations set forth in Section 251(c) although there is an exception to that exemption involving video programming service providers. We discuss our rules and these provisions of TA-96 in detail below.

[3]Section 253(b) of TA-96 allows a state to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

[4]Section 251 of TA-96 governs the interconnection requirements under the federal act. Section 251(a) imposes general duties on telecommunications carriers. Section 251(b) imposes specific duties regarding resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. Section 251(c) imposes additional duties regarding negotiation, interconnection, unbundling, resale, changes and collocation. Section 251(f) provides for exemption, suspension, and modifications of these Section 251(b) and (c) duties. The Petition implicates all these sections, with the exception of Section 251(a) which is not disputed. They are discussed in more detail below.

[5]Citizens is litigating with Armstrong Communications over Section 251(f)(1). See Comments and Reply Comments; Re: Armstrong Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. P-00961127 (Opinion and Order adopted June 12, 1997), slip op. 4-5.

suspension or modification of its interconnection obligations under Section 251(f)(2) and 253(b) of the TA-96. The Citizens Petition was not served on any current CLECs. The Citizens Petition was docketed at P-00971188. Docket No. P-00971177 and P-00971188 are hereby consolidated for purposes of consideration in this Opinion and Order.

On April 5, 1997, the Commission published a notice in 27 Pa. B. 14 notifying the public and soliciting comments on the Petitions. The deadline for comments was April 14, 1997. The deadline for reply comments was April 21, 1997.

On April 14, 1997, comments were filed by AT&T Communications of Pennsylvania, Inc. (AT&T), MCI Telecommunications Corporation (MCI), Armstrong Communications, Inc. (Armstrong), Bentleyville Telephone Company (Bentleyville), Helicon Telephone Company (Helicon),[6] Yukon Waltz Telephone Company (Yukon), and the Pennsylvania Cable & Television Communications Association (PCTA). On April 21, 1997 reply comments were filed by the PCTA, Citizens, and Helicon Telephone. Late Reply Comments were filed by Petitioners and, on May 21, 1997, by Sprint Spectrum L.P. d/b/a Sprint PCS.[7]

On July 8, 1997, Vanguard Cellular Systems, Inc. filed comments in opposition to the Petition. Vanguard claimed that lack of service prevented the earlier filing of comments.

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[6]Helicon and Bentleyville are currently litigating the scope of Section 251(f)(1) of TA-96 in a separate proceeding. Comments of Helicon and Bentleyville; Application of Helicon, PUC Docket No. A-310519.

[7]Sprint PCS allegedly has an interconnection request pending with North Pittsburgh Telephone Company. See Sprint PCS Comments, p. 4. North Pittsburgh Telephone Company qualifies as a rural telephone company under TCA 1996. In Re: Implementation of the Telecommunications Act of 1996, PUC Docket No. 00960799 (Opinion and Order entered June 3, 1997), p. 15.

Analysis and Disposition

Summary of Disposition. We must address two issues in this consolidated proceeding. The first is whether to grant the Intervention Petitions of Citizens and Helicon. Section 5.72 generally allows for intervention by persons pursuant to right, if they have an interest which might be affected by the proceeding, or if they have an interest of such nature that their participation is in the public interest.[8] We conclude that intervention is warranted given the questions the intervenors raise concerning the interplay of Section 251(f)(2) relief with Section 251(f)(1).

The second issue is whether any of the Petitioners warrant any Section 251(f)(2) suspension or modification of the interconnection obligations imposed on them under Section 251(b) or (c) of TA-96.

We conclude that a limited 2-year suspension, with an option to secure up to three additional 1-year extensions, is appropriate for all Petitioners except ALLTEL, Bentleyville, and Citizens. We deny ALLTEL's request, without prejudice, in light of ALLTEL's size and customer service territory compared to the other Petitioners. We also deny, without prejudice, Bentleyville and Citizens' request because their request raises questions about the interplay of Section 251(f)(1) and 251(f)(2) that are beyond the narrow scope of the relief requested by all the other Petitioners.

We reject the Petitioners' request for relief from facilities-based competition under Section 253(b). Section 253(b) relief is beyond that needed under Section 251(f)(2). The request is also premised on Petitioners' promise to perform an obligation already required under state law.

[8] See 52 Pa.Code §5.72.

In order to prevent unnecessary and duplicative litigation, we will stay any pending Section 251(b) or (c) interconnection requests involving ALLTEL, Bentleyville, and Citizens, as permitted by Section 251(f)(2), pending final resolution of their Section 251(f)(2) status. However, ALLTEL, Bentleyville and Citizens must initiate a proceeding seeking Section 251(f)(2) relief within 30 days from entry of this Order in order to secure that temporary stay.

We believe this decision is consistent with TA-96. We further believe that our decision avoids challenges to Chapter 30 as a barrier to competition under Section 253(a) of TA-96. However, any Section 251(f)(2) relief is premised on Petitioners' filing alternative regulation and network modernization plans under Chapter 30 and deployment of an advanced telecommunications network available to the public schools, libraries, and other public facilities in rural Pennsylvania. The Petitioners' failure to comply with these conditions may result in revocation of any Section 251(f)(2) relief provided by this Commission. Our reasoning is set forth in more detail below.

The Intervention Petitions. Both Helicon and Citizens want to intervene for similar reasons. Helicon is concerned that any Section 251(f)(2) relief provided to Bentleyville will directly impact Helicon's interest in pending litigation.[9] Citizens wants

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[9]Helicon is a video programming service provider in portions of Bentleyville's service territory. Helicon claims that Bentleyville's expansion of its video programming operations into Helicon's service territory after enactment of TA-96 removes Bentleyville's Section 251(f)(1) rural exemption. Bentleyville differs. See Comments and Reply Comments of Bentleyville and Helicon; Application of Helicon Telephone Company LLC for Authority to Provide Competitive Local Exchange Communications Services in the Service Territory of the Bentleyville Telephone Company, Docket No. A-310519 (Formerly at A-310351, F0002) (Application of Helicon).

to secure Section 251(f)(2) relief even as it litigates interconnection requests with Armstrong Communications.[10]

Bentleyville opposes Helicon's intervention. Bentleyville claims that Helicon raises video programming questions outside the requested relief, that Bentleyville is entitled to Section 251(f)(2) relief notwithstanding any video programming questions, and that Helicon's questions concerning Bentleyville's video programming operations are better addressed in another proceeding.[11]

Armstrong opposes Citizens intervention. Armstrong claims that Citizens commenced its video programming service operations after enactment of TA-96 and that Citizens request violates Sections 251(f)(1)(C) and 252(b)(5) of TA-96.[12]

The Petitioners oppose the intervention petitions.[13] The Petitioners claim that Citizens is wrongfully using this proceeding to press its Section 251(f)(1) claims. The Petitioners also claim

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[10]Armstrong Communications is a video programming service provider in Citizens' service territory. Armstrong claims that Citizens lacks any Section 251(f)(1) rural exemption under TA-96 and that Armstrong is entitled to interconnection. Citizens differs. See Armstrong and Citizens Comments and Reply Comments; In Re: Armstrong Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. P-00961127 (Opinion and Order adopted June 12, 1997) (Citizens-Armstrong Litigation).

[11]Petitioners Answer to Helicon Petition, pp. 1-3; Petitioners Answer to Citizens Petition, pp. 1-3; Bentleyville Answer to Helicon Petition, pp. 1-3.

[12]Armstrong Comments, pp. 1-3; Armstrong Answer to Citizens Intervention Petition;, pp. 1-7. Armstrong is not a party to this proceeding nor was Helicon until today's decision. Both parties, however, submitted extensive comments on their claims.

[13]Petitioner Answer to Helicon Intervention Petition, pp. 1-3; Petitioner Answer to Citizens Intervention Petition, pp. 1-4.

that Helicon's intervention is wrongfully premised on a misreading of TA-96 and the facts as they pertain to Bentleyville.[14]

The Commission's rules at 52 Pa.Code §5.72 provide, in relevant part, as follows:

> **§5.72 Eligibility to Intervene.**
>
> **(a) Persons.** A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be of the following:
>
> (1) A right conferred by statute of the United States or of the Commonwealth.
>
> (2) An interest which may be directly affected and which is not adequately represented by existing participants and as to which the petitioner may be bound by the actions of the Commission in the proceeding.
>
> (3) Another interest of such nature that participation of the petitioner may be in the public interest.

Helicon has a direct interest to the extent that any decision concerning Bentleyville directly impacts current litigation. Helicon's concerns also raise questions involving the public interest. Consequently, Helicon's intervention is granted.

Citizens' intervention petition comes within Section 5.72(a)(1) through (3). Citizens has a right under TA-96 to request Section 251(f)(2) relief. Citizens also has a direct interest to the extent that any Section 251(f)(2) relief in this case could directly impact Citizens' request for similar relief. Citizens' questions about Section 251(f)(1) and (f)(2) of TA-96 are

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[14]Petitioners Reply Comments, pp. 12-13.

matters of public interest. Consequently, Citizens' intervention is granted.

The Petition. Section 251 of TA-96 governs interconnection. Section 251(a) imposes general duties on telecommunications carriers.[15] Section 251(b) imposes specific duties regarding resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. Section 251(c) imposes additional duties regarding negotiation, interconnection, unbundling, resale, changes and collocation. Section 251(f) provides for exemption, suspension, and modifications of these Section 251(b) and (c) duties.[16]

Section 251(f)(1) provides an exemption from the Section 251(c) obligations for rural local exchange companies (LECs). There is, however, an exception to the exemption for rural video programming service providers. The first sentence of Section 251(f)(1)(C) removes the exemption for rural video programming service providers; the second sentence then renders that exception invalid if a rural LEC was providing video programming services on the date of enactment of TA-96.

Section 251(f)(2) allows a state commission to suspend or modify the Section 251(b) or (c) obligations for any LEC with less than 2% of the nation's access lines in the aggregate nationwide. The Petitioners seek a Section 251(f)(2) suspension.

The Federal Communications Commission (FCC) has since issued three final Report and Orders implementing the TA-96. These FCC Orders, collectively referred to as the Federal Trilogy, focus

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[15]These are not at issue in this proceeding. They will not be discussed further.

[16]Sections 251(b), (c), and (f) are involved in this proceeding. They are discussed in more detail below.

on the interconnection requirements of Sections 251(b) and (c), universal service, and access charge and reform.[17]

The Petitioners want the Commission: (i) to suspend the interconnection requirements of Sections 251(b) and 251(c) of the TA-96; and (ii) to suspend the certification of facilities-based carriers within their respective service territories upon approval of a Chapter 30 network modernization plan.[18]

Section 251(f)(2) of TA-96 provides, in complete part, as follows:

> (2) Suspensions and Modifications For Rural Carriers. A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification --
>
> (A) is necessary --
>
> (i) to avoid a significant adverse economic impact on users of telecommunications services generally;

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[17]In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Report and Order, CC Docket Nos. 96-98 and 95-185, FCC 96-325 (August 8, 1996)(Interconnection Order); In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997) ("Universal Service Order"); In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, Docket Nos. 96-262, 94-1, 91-213, 95-72 (May 16,1997)("Access").

[18]Petition, pp. 1-2.

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

The Petitioners allege that competition in their less densely populated service areas, given the higher per-unit costs and lower volume users, makes high-volume rural customers especially vulnerable to "cream-skimming." The Petitioners also allege that cream skimming will cause those high-volume rural customers to abandon the Petitioners' networks. The end result will be higher prices and negative impacts to universal service.[19]

The Petitioners also allege that favorable action by the Commission enables everyone to avoid significant litigation costs associated with TA-96. They further claim that an immediate move to competition will result in higher prices, a lessened quality of service, and little deployment of the advanced telecommunications network envisioned by TA-96 and Chapter 30. Finally, they claim that denial of any relief is contrary to the purposes of the TA-96, maintenance of universal service and ensuring the availability of advanced services and facilities through competition.[20]

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[19]Petition, pp. 11-13.

[20]Petition, pp. 2-3.

The Petitioners ask the Commission to: 1) immediately suspend, pursuant to Section 251(f)(2), the interconnection requirements of Sections 251(b) and 251(c) pending final action on the Petition; and 2) temporarily suspend for at least 24 months, pending final action in the Federal Trilogy on Universal Service rules and access charge reform, the interconnection requirements of Sections 251(b) and (c).[21]

The Petitioners further promise, if the Commission grants the requested relief, to make Chapter 30 filings pursuant to Sections 3003 and 3006 of the Public Utility Code on or before July 8, 1998. In the alternative, Petitioners promise to file statements with supporting documentation showing why it is not in the best interest of the respective LEC to pursue a Chapter 30 network modernization plan. In exchange, Petitioners seek a 5-year suspension from the certification of any facilities-based local exchange competition in the service territories of LECs that are pursuing network modernization plans.[22]

The Petitioners conclude that the relief they seek is sustainable under Section 253(b) of the TA-96. The Petitioners claim that Section 253(b) allows the states to refuse to certify additional carriers in order to provide some protection to those incumbent LECs willing to invest in network modernization programs under Chapter 30.[23]

Comments and Reply Comments. The Petitioners filed Comments and Reply Comments to their Petition. They claim that Section 251(f)(2) relief is warranted because no Petitioner provides Section 251(f)(1) video programming services, that any

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[21]Petition, pp. 22-23.

[22]Petition, pp. 26-28.

[23]Petition, pp. 23-28.

Petitioner providing Section 251(f)(1) video programming services should not get Section 251(f)(2) relief, and that relief is necessary to prevent harm to rural LECs.

The Petitioners' Reply Comments claim that competition is not an end in itself but is a means to promoting deployment of an advanced telecommunications network. The Petitioners also claim that the Commission's denial of any Section 251(f)(2) relief will promote cream skimming and harm universal service. The Petitioners further claim that providing Section 251(f)(2) relief will free up resources that would otherwise be devoted to case-by-case proceedings. Finally, the Petitioners claim that other states have already granted the requested relief, that Petitioners' pleading demonstrate an evidentiary basis to grant a Section 251(f)(2) suspension, and that AT&T misreads the legislative intent of Chapter 30.[24]

Bentleyville filed supplemental comments. Bentleyville claims that it is a rural LEC providing video programming as of the date of enactment of the TA-96. Bentleyville also claims that it is entitled to the Section 251(f)(2) relief even if it expands its video programming services.[25]

AT&T and Helicon's comments oppose the Petition. They claim that competition should be available to all local exchange customers under TA-96 and Chapter 30. AT&T goes on to claim that the Petitioners already have all the relief they need in the Section 251(f)(1) exemption. AT&T also claims that the Commission's own procedures implementing TA-96 go well beyond the statutory minimum and that further relief is unnecessary. In addition, AT&T claims that no evidence exists to justify

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[24]Petitioner Reply Comments, pp. 1-14.

[25]Bentleyville Comments, pp. 1-10.

Section 251(f)(2) relief. Finally, AT&T protests the attempt to use Chapter 30 as a shield against competition.[26]

Helicon's comments focus on Section 251(f)(2) relief in light of Section 251(f)(1). Helicon claims that any rural LEC which provides new or expanded video programming should lose any protection afforded under Section 251(f)(1). Helicon's reply comments claim that no suspension is necessary, that on-the-record proceedings for CLEC applications are unnecessary, and that it might agree to Bentleyville's suggestion about not opposing Helicon's attempt to provide facilities-based competition.[27] Sprint PCS agrees with AT&T that the Petitioners have failed to provide the evidence required under Section 251(f)(2) to justify suspension of the Section 251(b) or (c) requirements.

Citizens' reply comments claim that it is entitled to intervene and seek Section 251(f)(2) relief. Citizens also claims that its video programming services are consistent with Section 251(f)(1)(c) of the TA-96.[28]

MCI does not object to the Petition so long as the requirements of Section 251(a) are not altered. MCI also claims that no relief should be greater than two years.[29]

The OCA opposes the Section 251(f)(2) request. The OCA claims that relief is unnecessary, unwarranted by the evidence, and opens up the possibility that Chapter 30 could be pre-empted as a barrier to competition under Section 253(a) of TA-96. The OCA also

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[26]AT&T Comments, pp. 1-12.

[27]Helicon Comments, pp. 1-8; Reply Comments, pp. 1-3.

[28]Citizens Reply Comments, pp. 1-13.

[29]MCI Comments, pp. 1-3.

claims that the Chapter 30 offer adds nothing to those obligations already required by Chapter 30.[30]

The PCTA opposes the Section 251(f)(2) suspension for many of the same reasons as the OCA. The PCTA is particularly concerned about the relationship between the rural exemption provisions of Section 251(f)(1) and the suspension request under Section 251(f)(2). The PCTA believes that any rural LEC providing or expanding video programming after February 8, 1996 should lose the Section 251(f)(1) exemption.[31]

Finally, Vanguard's comments oppose the Petition. Vanguard claims that Petitioners have not provided the evidence needed to justify relief, that Vanguard's pending arbitration request with the Commission will be impacted by today's decision, and that the harm Vanguard is experiencing because of Denver & Ephrata's refusal to resolve Vanguard's compensation request may be compounded by Denver & Ephrata's investment in competing mobile telecommunications services.[32]

Disposition of the Petition. There are really four discrete classes of Petitioners. They are as follows:

> (1) First Class Petitioners -- Rural LECs as defined under TA-96 and eligible for streamlined regulation because they have less than 50,000 access lines under Chapter 30. This class includes all petitioners except ALLTEL, Bentleyville, Citizens, Denver & Ephrata and North Pittsburgh.[33]

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[30]OCA Comments, pp. 1-14.

[31]PCTA Comments, pp. 1-14; PCTA Reply Comments, pp. 1-8.

[32]Vanguard Comments, pp. 1-5, especially pp. 2-4.

[33]Denver & Ephrata and North Pittsburgh have historically been rural LECs with less than 50,000 access lines. Their access line growth, although small when compared to Pennsylvania's largest LEC,

(2) Second Class Petitioners -- A subset of the First Class Petitioners with less than 50,000 access lines whose petition also raises issues about the scope of their Section 251(f)(1) exemption. This class includes only Bentleyville and Citizens.

(3) Third Class Petitioners - Rural LECs as defined under TA-96 and not eligible for streamlined regulations because they have more than 50,000 access lines under Chapter 30. This class includes ALLTEL, Denver & Ephrata, and North Pittsburgh.

(4) Fourth Class Petitioners - A subset of the Third Class Petitioners who have more than 50,000 access lines but also have interconnection requests. This class currently includes North Pittsburgh.

First Class Petitioners. The First Class Petitioners consist of all the rural LECs with less than 50,000 access lines with the exception of Bentleyville and Citizens. We think that the First Class Petitioners provided the evidence necessary to sustain Section 251(f)(2) relief under TA-96. They have established the requisite showings of significant adverse economic harm, avoidance of a requirement that is unduly economically burdensome, avoidance of technically infeasible requirements, and that the relief is in the public interest.

Section 251(f)(2)(A)(i) requires a showing of significant adverse economic impact. We think the First Class Petitioners have made that claim in several respects. The First Class Petitioners

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now places them in the class of LECs with more than 50,000 access lines. Compare 1995 Access Line Report, p. 1 and 1996 Access Line Summary Report For All Incumbent Pennsylvania Local Exchange Carriers, Pennsylvania Public Utility Commission, Bureau of Fixed Utility Services, p. 1 (1996 Incumbent Access Line Report). ALLTEL is not a LEC with less than 50,000 access lines. LECs similar to ALLTEL have, however, obtained the streamlined regulatory treatment reserved for LECs with less than 50,000 access lines. Compare 1995 Access Line Report, p. 1 and 1996 Incumbent Access Line Report, p. 1 with Petition of Commonwealth Telephone Company for a Streamlined Form of Regulation under Chapter 30, Docket No. P-00961081 (Opinion and Order entered January 17, 1997), slip op. pp. 93-100.

need additional time to facilitate competition and network deployment because, given the resource constraints they face, significant adverse economic harm will result if we immediately subject them to competition. The First Class Petitioners simply need more time to facilitate competition when compared to the larger LECs. In addition, the denial of relief will require the rural LECs to devote their scarce resources addressing complex matters that are more easily addressed by the larger LECs. Finally, the rural LECs' more limited resources, based on our experience with these LECs, are better spent focused on promoting competition and network deployment instead of litigating uncertain legal requirements before appellate review has established those requirements' parameters.

Section 251(f)(2)(A)(ii) requires a showing that relief is necessary to avoid imposing an unduly economically burdensome requirement. We think the Petitioners have established that in several ways. The rural LECs must, based on our experience, often choose between litigation and network deployment because of their limited resources. The resources they devote to litigating uncertain federal requirements are resources that are unavailable to facilitate competition and network deployment as envisioned by Chapter 30 and TA-96. Our denial of any Section 251(f)(2) relief will require the rural LECs to engage in costly litigation at the same pace as the larger LECs.

We do not think that either Congress or the General Assembly imposed compliance requirements at the same time and at the same pace for rural and non-rural LECs given the reasoned distinction, in TA-96 and Chapter 30, between rural and non-rural LECs. We do not think that either Congress or the General Assembly intended to mandate that the rural LECs' participate in complex proceedings at the time and at the same pace given the fact, drawn from regulatory experience, that rural LECs do not have the same resource base and typically implement requirements only after they

have been litigated by the larger LECs. Moreover, the costs they face are significantly more than the normal costs incidental to competition.[34]

Section 251(f)(2)(A)(iii) requires a showing that relief is necessary to avoid imposing a requirement that is technically infeasible. We believe the Petitioners have made that showing in several respects.

For one thing, the larger LECs are engaged in expensive and time consuming litigation regarding the technical requirements for pricing unbundled network elements, number portability, database access, and billing and collection services. The Petitioners, however, generally lack the resources to address the technical feasibility of solving such problems. We think that the reasoned distinction between rural and non-rural LECs made in Chapter 30 and TA-96 was made for this obvious reason.

Moreover, the denial of Section 251(f)(2) relief would not be consistent with Chapter 30. The rural LECs can take the time provided by this relief and proceed apace to compliance with the alternative regulation and network deployment requirements of Chapter 30.

Finally, Section 251(f)(2)(B) requires a showing that any Section 251(f)(2) relief be consistent with the public interest, convenience, and necessity. We conclude that the Petitioners have shown the need for Section 251(f)(2) relief in order to comply with the competitive choice and network deployment goals of TA-96 and

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[34]By the same token, the First Class Petitioners will not be heard to complain, two years hence, that the final solution regarding their requirements are untenable because they did not participate in the underlying proceedings where those requirements are developed. A party that does not participate in proceedings on matters concerning it is hard pressed to establish that the result is an affront to due process.

Chapter 30. However, we do not agree with Petitioners that the absolute 5-year prohibition on competition is consistent with Section 251(f)(2)(b). We believe that the more-limited relief we provide is a better fit with the public interest, convenience, and necessity because it narrows the time frame necessary to facilitate competition and network deployment.

A further fact supporting our Section 251(f)(2) relief is the fact that MCI, a major competitor in the local exchange market, does not oppose a limited-duration 2-year suspension under Section 251(f)(2). However, MCI rightly opposes relaxation of any Section 251(a) requirements or any blanket 5-year prohibition on competition.[35]

Second Class Petitioners. The Second Class Petitioners consist of those rural LECs with less than 50,000 access lines whose video programming operations raise Section 251(f)(1) issues. This class consists of Bentleyville and Citizens. We think the Second Class Petitioners have raised questions sufficient to warrant intervention but insufficient to justify Section 251(f)(2) relief. We take this position for several reasons.

The comments provided an extensive rumination on the interplay of Section 251(f)(1)'s exemption and Section 251(f)(2)'s suspension or modification provisions. However, the parties providing those comments did not provide adequate evidence supporting any conclusive determination in this proceeding. In addition, the comments were far more developed with regard to rural LECs without video programming operations than with regard to rural LECs with those operations. The vast majority of the Petitioners have no video programming operations. Their Section 251(f)(2) relief should not be delayed because of complex Section 251(f)(1) concerns unrelated to their situation.

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[35]MCI Comments, pp. 1-2.

We think the parties most concerned with the complex issues surrounding Section 251(f)(1) and 251(f)(2) should resolve those concerns in another proceeding. Consequently, we are denying both Bentleyville and Citizens any relief in this proceeding although that denial is without prejudice. Our action allows Bentleyville and Citizens to address their Section 251(f)(2) relief in more appropriate proceedings,

Moreover, Bentleyville and Citizens can secure a temporary stay with regard to any interconnection requests under Section 251(b) or (c), as permitted under Section 251(f)(2), pending resolution of their Section 251(f)(2) requests by filing a Section 251(f)(2) request within 30 days of entry of this Opinion and Order. We think this action is warranted in order to resolve the Section 251(f)(1) and 251(f)(2) questions without being diverted by other interconnection matters.[36]

The Third Class Petitioners. The Third Class Petitioners consist of those rural LECs with more than 50,000 access lines who have no video programming services. The Third Class Petitioners consist of ALLTEL, Denver & Ephrata, and North Pittsburgh.

We think that Denver & Ephrata and North Pittsburgh, but not ALLTEL, warrant Section 251(f)(2) relief. North Pittsburgh and

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[36]We note the proceedings in Application of Helicon, PUC Docket A-310351 as well as our recent decision at the June 12, 1996 Public Meeting in Re: Armstrong Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. P-00961127 (Regarding appeal from a staff determination). Either proceeding or even a consolidated proceeding may be an appropriate place to file a Section 251(f)(2) petition. The parties might also file a separate Section 251(f)(2) request that would stay these proceedings. In addition, the parties could also explore their concerns in this proceeding provided they stipulated to a willingness to go beyond the 180-day rule required by Section 251(f)(2) of the TA-96. The point is that there are a myriad of ways to resolve these complex questions even if the narrow focus of the Petition is not one of them.

Denver & Ephrata, however, are discussed separately because they have pending interconnection or arbitration requests.

We must resolve two ancillary issues involving the Third Class Petitioners' request for Section 251(f)(2) relief. These two questions are 1) the rationale used to evaluate the request for Section 251(f)(2) relief; and 2) what the scope of the interconnection requirements should be for Third Class Petitioners.

We must develop a rationale for addressing the Third Class Petitioners request because, unlike the First and Second Class Petitioners, they all have access lines above 50,000. Our TA-96 Implementation Order, however, was largely confined to the interconnection requirements for rural LECs with less than 50,000 access lines.[37] Moreover, in our Commonwealth Chapter 30 decision, we applied the reasoning for LECs with less than 50,000 access lines under Chapter 30 on behalf of a LEC with more than 50,000 access lies.[38]

We think that the rationale used in our TA-96 Implementation Order and the Commonwealth Chapter 30 decisions is relevant here. The Third Class Petitioners, even if they nominally have access lines greater than 50,000, have operations and resources more akin to a rural LEC with less than 50,000 access liens.

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[37]In Re: Implementation of the Telecommunications Act of 1996, Docket No. M-00960799, (Opinion and Order entered June 3, 1996) (TCA 1996 Implementation Order).

[38]Petition of Commonwealth Telephone For an Alternative Regulation and Network Modernization Plan; Petition of Commonwealth Telephone Company for Exemption and/or Suspension of the Interconnection Requirements of Section 251 of the Telecommunications Act of 1996, PUC Docket Nos. P-00961024 and P-00961081, (Opinion and Order entered January 17, 1997), slip op. pp. 93-100 and 161-162 (Commonwealth Chapter 30).

For example, ALLTEL has 211,563 access lines, North Pittsburgh has 62,107 access lines and Denver & Ephrata has 51,289 access lines. They collectively provide service to 324,959 access lines out of Pennsylvania's 7,661,632 access lines. Moreover, the entire class of rural LECs provides service to 1,687,010 access lines. That figure pales compared to Pennsylvania's largest LEC which has 5,975,019 of the Commonwealth's 7,661,632 access lines. The Third Class Petitioners are much smaller than Pennsylvania's largest LEC and are also smaller than most of the largest LECs in the class of LECs with more than 50,000 access lines.[39]

Denver & Ephrata and North Pittsburgh are even smaller than ALLTEL. They serve none of the counties serving the Commonwealth's major metropolitan centers. They are minute when contrasted with Pennsylvania's largest LEC -- which has 5,975,019 of the Commonwealth's 7,661,632 access lines. Their minute size does not translate into having the resources to respond as effectively to legislative changes as the larger LECs in their class.[40]

The second question is what the scope of any interconnection requirement should be for rural LECs with more than 50,000 access lines. We must address that question here because, in our TA-96 Implementation Order, we only required use of the consolidated application process for rural LECs with less than 50,000 access lines. The TA-96 Implementation Order left open the question of whether the consolidated procedure should apply to LECs with more than 50,000 access lines and our Commonwealth Chapter 30

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[39]1996 Incumbent Access Line Report, p. 1; Compare also, 1996 Access Line Report, p. 1 for Bell Atlantic - Pennsylvania, Inc. and third class petitioners North Pittsburgh and Denver & Ephrata.

[40]1996 Incumbent Access Line Report, p. 1.

decision applied streamlined LEC concepts to a larger LEC even though we denied a similar Section 251(f)(2) request.[41]

We conclude that requiring the consolidated procedures for interconnection should be extended to the rural LECs with more than 50,000 access lines in this proceeding. These rural LECs share similar concerns with universal service to the extent that the migration of high-volume users from their sparsely populated service territory could mean significantly higher prices for the remaining customers. Higher prices would have a negative impact on universal service in rural areas.

In addition, these Third Class Petitioners are more similar to rural LECs with less than 50,000 access lines. Their operations necessitate some of the considerations normally reserved for small LECs under Chapter 30. That is because the implementation and development of an extensive network modernization plan and compliance with the pro-competitive policies of TA-96 are far more demanding and difficult for a LEC with access lines that are several magnitudes smaller than Pennsylvania's largest LEC with over 5,000,000 access lines.

Finally, the Third Class Petitioners do not serve the same population areas as Pennsylvania's largest LEC. The service territory of Pennsylvania's largest LEC encompasses two of the Commonwealth's largest municipalities and many other more numerous, even if less densely concentrated, population centers. The Third Class Petitioners collectively serve about 324,959 access lines --

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[41]See TCA 1996 Implementation Order, Docket No. M-00960799, (Opinion and Order entered June 3, 1996), slip op. pp. 7-9, 10-18; Commonwealth Chapter 30 Order, pp. 93-100.

a figure barely larger than the 309,616 growth in access lines experienced by Pennsylvania's largest LEC in 1996.[42]

Consequently, we shall require use of the consolidated process set forth in our TA-96 Implementation Order for the rural LECs in this Petition. This requirement, however, does not mean that every Third Class Petitioner before us has automatically established a need for Section 251(f)(2) relief.

That brings us to our final question: whether the Third Class Petitioners have made the case for Section 251(f)(2) relief. We conclude that Denver & Ephrata and North Pittsburgh, but not ALLTEL, warrant Section 251(f)(2) relief although North Pittsburgh and Denver & Ephrata are discussed separately below.

We reach our different conclusion for ALLTEL for several reasons. ALLTEL is a larger rural LEC with many of the characteristics of the LEC in the Commonwealth Chapter 30 case. ALLTEL is similar to the other Third Class Petitioners because a part of its service territory is rural. These considerations, while sufficient to warrant requiring use of the consolidated process for ALLTEL, do not justify Section 251(f)(2) relief.

ALLTEL is unlike the other Petitioners because ALLTEL is similar to Pennsylvania's largest LEC. ALLTEL does provide service to the county serving Pennsylvania's third largest municipality i.e., Erie. The other Third Class Petitioners do not provide service to urban counties nor do they have access line totals anywhere near ALLTEL. ALLTEL's 211,563 access lines are several times larger than Denver & Ephrata's or North Pittsburgh's.

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[42] 1996 Incumbent Access Line Report, p. 1; Compare 1995 Access Line Report, p. 1 with 1996 Incumbent Access Line Report, p. 1.

We believe that a rural LEC of ALLTEL's size and resources can be expected to provide additional evidence on its need for Section 251(f)(2) relief when compared to other rural LECs. We also think more evidence is needed in view of the fact that both the TA-96 and the FCC suggest that the purpose of Section 251(f)(2) relief is not to insulate rural LECs or inhibit competition.

Consequently, we are denying ALLTEL's request for Section 251(f)(2) relief because it is difficult to sustain on the evidence in this proceeding given ALLTEL's size compared to the other petitioners in this proceeding.[43] Our denial, however, is without prejudice. That allows ALLTEL to present a better case with more evidence on the need for Section 251(f)(2) relief, in light of its size, resources, and service territory, in another proceeding.

In addition, ALLTEL can obtain a temporary stay of interconnection requests under Section 251(b) or (c), as permitted under Section 251(f)(2), if it files a Section 251(f)(2) request within 30 days of entry of this Opinion and Order.

Fourth Class Petitioners. The fourth class consists of those rural LECs with more than 50,000 access lines, no video programming services, and pending interconnection or arbitration requests.

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[43]Our determination must not be read in any way to be a conclusive determination regarding ALLTEL's request. What we are saying here is that the quantum of evidence the other rural LECs have presented to justify Section 251(f)(2) relief is not sufficient for ALLTEL in light of ALLTEL's different size and service territory characteristics. That does not mean, however, that ALLTEL cannot make such a case in another proceeding. It does mean that ALLTEL has not made that case in this proceeding.

North Pittsburgh is a rural LEC with more than 50,000 access lines and a pending interconnection request. We think North Pittsburgh warrants relief for the same reasons set forth in our discussion of the First and Third Class Petitioners. We also think that the comments opposing relief for North Pittsburgh have not provided sufficient argument stating why North Pittsburg does not need any additional time to secure the resources to facilitate competition and advance network deployment.

North Pittsburgh has 62,107 access lines. The comments have not shown that a 12,107 difference in access lines between LECs with less than 50,000 access lines and North Pittsburgh somehow translates into having the time and resources to proceed to facilitate competition in the same manner as larger LECs with far more resources.[44] We conclude that North Pittsburgh warrants Section 251(f)(2) relief consistent with our discussion above.

We also believe that Denver & Ephrata warrants relief for the same reasons set forth in our discussion of the First Class Petitioners. Denver & Ephrata warrants relief because it serves none of the Commonwealth's major metropolitan centers. Denver & Ephrata has but 51,289 access lines -- only 1,289 access lines more than the 50,000 access line cut-off to qualify as a streamlined LEC. Moreover, Denver & Ephrata was eligible for treatment as a streamlined LEC last year. This minor 1,289 difference in access lines does not translate into having the additional time, resources, and sophistication needed to facilitate competition as quickly and as easily as a LEC with over 5,000,000 access lines or 200,000 access lines.[45]

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[44]Compare 1995 Access Line Report, p. 1 and 1996 Access Line Report, p. 1 for LECs with more than 50,000 access lines.

[45]1995 Access Line Report, p. 1; 1996 Incumbent Access Line Report, p. 1.

Vanguard's comments to the contrary are not persuasive. Vanguard's opposition is not based on any pending interconnection request to provide competitive services -- a major goal of Sections 251(b) and (c) of TA-96 and Chapter 30. Vanguard's opposition is premised on an inability to resolve an outstanding compensation dispute it has with Denver & Ephrata for services provided to Denver & Ephrata's customers.[46] Vanguard's compensation dispute is not, in our view, a sufficient reason for denying Denver & Ephrata the relief it needs to facilitate the competition and network modernization envisioned by TA-96 and Chapter 30.

Moreover, we have denied the Petitioners' request for suspension of any facilities-based competition under Section 253(b) in light of the filed comments. Our denial effectively allows facilities-based competition to proceed apace and will, we think, allow Vanguard to meet any putative challenge from any wireless joint ventures being developed by Denver & Ephrata. Also, Vanguard can monitor subsequent developments with Denver & Ephrata, including compliance with this Opinion and Order, and urge different Commission action based on those developments.

Finally, Denver & Ephrata is not being relieved of all fundamental obligations under TA-96 in perpetuity. Denver & Ephrata is only being given a limited relief similar to that suggested by MCI -- a major competitor in the local exchange markets. Denver & Ephrata is not being insulated from competition nor is our relief inconsistent with the FCC's Interconnection Order.

Nature of the Relief. We must now determine the Section 251(f)(2) relief best suited for the Petitioners. We conclude that a 2-year suspension from the requirements of

[46]Vanguard Comments, p. 2, n. 1 and p. 3.

Section 251(b) or (c) is reasonable and consistent with TA-96 and Chapter 30. We further determine that the rural LECs should be given the opportunity to seek, at the expiration of that 2-year period, up to three discrete 1-year extensions.

We believe that our relief, as set forth above, facilitates customer choice in rural Pennsylvania. By granting relief, we are giving Petitioners' an opportunity to promote competitive choice by using an advanced telecommunications network. Such a network, we think, would be far better for competitive choice than the existing network.

Our Section 251(f)(2) relief is consistent with TA-96. It does not permanently ban competition in rural Pennsylvania. Our Section 251(f)(2) relief merely suspends the Section 251(b) or (c) interconnection obligations with a 2-year limited-duration stay and an option for up to three 1-year extensions. A temporary suspension is not a permanent prohibition on competition in rural Pennsylvania.

Our Section 251(f)(2) relief is sustainable under TA-96. It does not provide the absolute 5-year prohibition on all forms of competition requested by the Petitioners. Our relief provides a limited 2-year stay and minor extension options based on MCI's suggestion, as a major potential competitor in the local exchange markets, that a 2-year suspension may be warranted. Our relief is also fashioned with a view to the FCC's concern, expressed in its Interconnection Order at paragraph 1262, that Section 251(f)(2) relief not insulate rural LECs from competition. Our relief strikes a balance between the needs of rural LECs for time to facilitate competition and network deployment under TA-1996 and Chapter 30 with the competing and equally legitimate concerns of competitors for access to rural Pennsylvania customers.

Our Section 251(f)(2) relief is reasonable under TA-96. It facilitates competition and deployment of an advanced telecommunications network -- goals envisioned by TA-96 and Chapter 30. Our Section 251(f)(2) relief only provides the rural LECs with minimum time they need to facilitate competition over an advanced telecommunications network developed during this suspension period. We do not think that an approach which meshes state requirements with federal obligations, in this case Petitioners' Chapter 30 obligations with our Section 251(f)(2) relief, is inconsistent. That is because Petitioners are expected to use this federal suspension to proceed apace with alternative regulation, network modernization, and deployment of an advanced telecommunications network to the public schools, libraries, and other public facilities serving rural Pennsylvania.[47]

Moreover, our Section 251(f)(2) relief is in the public interest. It does not insulate rural LECs from competition forever nor does it inhibit facilities-based competition. We have provided a very limited suspension because rural residents have as much a right to competitive choices as their more numerous urban compatriots even if, to be sure, a LEC's resources in rural Pennsylvania is a factor that impacts our approach. This suspension allows the rural LECs to facilitate competition over an advanced communications network in the same manner, and at roughly the same pace, as any urban LEC after taking into account the LECs' differences in size and service territory.

As an additional caution, we note that any subsequent relief sought by a Petitioner pursuant to this Opinion and Order must present competent evidence that such relief is necessary under Section 251(f)(2). A Petitioner requesting additional relief must

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[47]We note here that failure to comply with these express obligations will expose any nonconforming Petitioner to possible revocation of the Section 251(f)(2) relief provided today.

demonstrate why it needs any additional time to secure the resources to meet the goals of TA-96 and Chapter 30. A Petitioner must also demonstrate what action it has taken to comply with Chapter 30's mandate regarding alternative regulation and network deployment. A Petitioner must further demonstrate what progress a Petitioner has made in deploying an advanced telecommunications network to the public schools, libraries, and other public facilities serving rural Pennsylvania.

Also, we are requiring that a Petitioner seeking additional relief file a notice with the Commission and the commenting parties in this proceeding not less than six months before expiration of any then-effective Section 251(f)(2) relief. We want these parties to participate in any subsequent proceedings, monitor the Petitioners' progress, and report any slippage to the Commission. The Commission could then, depending on the circumstances, revoke any Section 251(f)(2) relief if we are convinced that our Section 251(f)(2) relief is being used to prohibit, as opposed to facilitate, competition and deployment of an advanced telecommunications network in rural Pennsylvania.

Finally, we are denying Petitioners' request for a 5-year prohibition on facilities-based competition. We do not agree with Petitioners that an absolute prohibition on facilities-based competition is necessary to facilitate competition and deployment of an advanced telecommunications network. In fact, Bentleyville Telephone has itself suggested that it might not be opposed to facilities-based competition.

We also do not agree with Petitioners that relief from the facilities-based competition envisioned by TA-96 and Chapter 30 enhances a rural LEC's ability to comply with TA-96 and Chapter 30. A competitor willing to provide alternative service over distinctly independent networks, as opposed to interconnection with the Petitioners' network, is not directly related to any

Section 251(f)(2) relief. Any rural LEC which thinks it needs that relief can make such a case in its Chapter 30 filings.

Taken in toto, we conclude that our Section 251(f)(2) relief is in the public interest and consistent with the requirements of Section 251(f)(2)(A) and (B) because it strikes a fair balance between the need to facilitate choice with the delivery capacity of the rural LEC. We do so in light of the fact that rural LECs do need more time to secure the resources needed to implement any telecommunications policy. That reality, based on our considerable experience with Pennsylvania's rural LECs, also extends to implementing the policies of TA-96 and Chapter 30.

Miscellaneous Issues. The comments and reply comments also raise several other issues. The first issue concerns the impact of the Petitioners' Chapter 30 offer. The Petitioners offer to file their Chapter 30 proceeding by July 1997 or otherwise explain why they are unnecessary in exchange for Section 251(f)(2) relief. We do not think that offer sufficient under Section 251(f)(2) or 253(b). An offer to perform an obligation already required under state law does not justify federal relief.

The second issue concerns whether the Section 251(f)(2) relief is a barrier to entry under Section 253(a).[48] We conclude that it is not.

Section 253(a) and (b) of TA-96 provides as follows:

> **Section 253. Removal of Barriers to Entry.**
>
> **(a) In General.** No state or local statute may prohibit or have the effect of prohibiting the ability of any entity to provide for any interstate or intrastate telecommunications service.

[48]See, especially, AT&T Comments, pp. 4-11.

(b) State Regulatory Authority. Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, and ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Emphasis Added.

The FCC's Interconnection Order also provides as follows:

1262. Congress generally intended the requirements in Section 251 to apply to carriers across the country, but Congress recognized that in some cases, it might be unfair or inappropriate to apply all of the requirements to smaller or rural telephone companies. We believe that Congress intended exemption, suspension, or modification of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LEC communities from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service.

1263. Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide interconnection request has been made, and that smaller companies must prove to the state commission, pursuant to section 251(f)(2), that a suspension or modification of requirements of sections 251(b) or (c) should be granted. We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. A rural company that falls within section 251(f)(1) is not required to make any showing until it receives a bona fide request for interconnection, service, or network elements. We decline at this time to establish guidelines regarding what constitutes a bona fide request. We also decline in this Report and Order

to adopt national rules or guidelines regarding other aspects of section 251(f).

FCC Interconnection Order, pp. 634-635, emphasis added.

Our Section 251(f)(2) relief is limited in scope and duration. Our Section 251(f)(2) relief does not insulate rural LECs from competition or prohibit competition. We denied the Petitioners' request, for a 5-year prohibition, in order to facilitate competition in rural Pennsylvania. Our Section 251(f)(2) relief imposes notice requirements so that competitors can monitor a Petitioners' progress and provide advance comment on any Petitioners' request for relief subsequent to this Opinion and Order.

Also, our Section 251(f)(2) relief does not prohibit competitive choice for rural customers. Our relief only modifies the timeline for facilitating competitive choice. Pennsylvania's rural LECs collectively provide service only to 1,686,613 out of 7,661,632 access lines.[49] A limited suspension that allows them to facilitate competition is not an isolating or prohibitive-barrier to entry. Moreover, our Section 251(f)(2) relief advances universal service by requiring that the consolidated process used in the TA-96 Implementation Order will govern these rural LECs.

Finally, our Section 251(f)(2) relief requires the submission of evidence sufficient to justify any extension of our Section 251(f)(2) relief. We expect additional evidence to include, but not be limited to, network modernization plans when requesting any subsequent relief upon expiration of the 2-year period provided today. That includes the actual progress made in deploying an

[49]1996 Incumbent Access Line Report, p. 1; Compare also, 1996 Access Line Report, p. 1 for Bell Atlantic - Pennsylvania, Inc. and third class petitioners North Pittsburgh and Denver & Ephrata.

advanced telecommunications network to the public schools, libraries, and other public facilities serving rural Pennsylvania.

We conclude, based on the comments and our discussion above, that the burden of establishing the need for Section 251(f)(2) relief has been made and that our decision is consistent with the public interest and Sections 251(f)(2)(A) and (B) of TA-96, the FCC's Interconnection Order, and Chapter 30.[50] We reject other comments or positions to the contrary; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Intervention of Helicon Telephone Pennsylvania, LLC is granted.

2. That the Petition for Intervention of Citizens Telephone Company of Kecksberg is granted.

3. That the Petitions of Bentleyville Telephone Company and Citizens Telephone Company of Kecksberg for relief pursuant to Sections 251(f)(2) and 253(b) of the Telecommunications Act of 1996 are denied without prejudice.

4. That the Petition of ALLTEL Pennsylvania, Inc. for relief pursuant to Sections 251(f)(2) and 253(b) of the Telecommunications Act of 1996 is denied without prejudice.

5. That the other Petitioners' request for a 5-year stay of the requirements of Section 251(b) or (c) of the Telecommunications Act of 1996 and a suspension of facilities-based competition, which is requested pursuant to Sections 251(f)(2) and

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[50] See Section 253(a) of TA-96, ¶1262 of the FCC's Interconnection Order, and 66 Pa.C.S. §3001(1), (4) and (7).

253(b) of the Telecommunications Act of 1996 and 66 Pa.C.S. §§3002 and 3006 is denied.

6. That the Petitioners, other than ALLTEL Pennsylvania, Inc., Bentleyville Telephone Company, and Citizens Telephone Company of Kecksberg, are granted a 2-year suspension, dating from the date of entry of this Opinion and Order, from the requirements of Section 251(b) or (c) of the Telecommunications Act of 1996.

7. That the Petitioners, other than ALLTEL Pennsylvania, Inc., Bentleyville Telephone Company, and Citizens Telephone Company of Kecksberg can petition for up to three one-year extension periods, dating from expiration of the initial 2-year suspension period set forth in Ordering Paragraph No. 6 above, from the requirements of Section 251(b) or (c) of the Telecommunications Act of 1996.

8. That any Petitioner subsequently seeking additional Section 251(f)(2) relief be required to serve notice no later than six months before expiration of any then-effective Section 251(f)(2) relief upon the Commission, and all parties submitting comments in this proceeding, after consultation with Commission staff.

9. That Petitioners ALLTEL Pennsylvania, Inc., Bentleyville Telephone, and Citizens Telephone Company of Kecksberg are granted a temporary stay from the interconnection requirements of Section 251(b) or (c), as permitted by Section 251(f)(2) of the TA-96, pending resolution of any outstanding interconnection requests involving Section 251(f)(2) provided they initiate another Section 251(f)(2) proceeding within 30 days of entry of this Opinion and Order.

10. That the availability of any Section 251(f)(2) relief provided by this Commission be conditioned on compliance with 66 Pa.C.S. §3003(d) and deployment of an advanced telecommunications network in rural Pennsylvania -- especially with regard to the public schools, libraries, and other public facilities serving rural Pennsylvania.

11. That a Petitioner's failure to comply with Ordering Paragraph No. 10 be deemed grounds for revocation of any Section 251(f)(2) relief provided by this Commission.

BY THE COMMISSION

John G. Alford,
Secretary

(SEAL)

DATE ADOPTED: July 10, 1997

DATE ENTERED: JUL 10 1997

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

PETITION OF RURAL AND SMALL INCUMBENT CARRIERS FOR COMMISSION ACTION PURSUANT TO SECTION 251(f)(2) and 253(b) OF THE TELECOMMUNICATIONS ACT OF 1996

PUBLIC MEETING-
JULY 10, 1997
JUNE-97-L-69*
DOCKET NO. P-971177

PETITION OF CITIZENS TELEPHONE COMPANY OF KECKSBURG TO INTERVENE IN PUC DOCKET NO. P-971177 AND TO SUSPEND THE INTERCONNECTION REQUIREMENTS OF THE TELECOMMUNICATIONS ACT OF 1996 PURSUANT TO SECTIONS 251(f)(2) AND 253(b)

DOCKET NO. P-971188

STATEMENT OF COMMISSIONER DAVID W. ROLKA

This Opinion and Order is a key document for implementation of The Telecommunications Act of 1996 as the law pertains to rural telephone companies. The staff recommendation appropriately balances the various public policy concerns underlying the evolution of the local exchange telecommunications market from a monopoly-based to a competitive-based market. The evolution will not occur evenly throughout the Commonwealth. The 1996 Act recognized the evolutionary nature of competition by implementing special rules to govern rural telephone companies. This Opinion and Order acknowledges that rural telephone companies need more time than the companies serving urban markets to get ready for competition, and at the same time, the Order acknowledges that local exchange competition will first occur in urban areas.

By providing a two year window, subject to one year renewals, during which rural companies are not required to provide interconnection to other companies, the rural ILECs have committed to modernize their networks so that at the end of the window period, they will be better positioned to compete for customers in the local exchange market. At the same time, I support the denial of the request that the PUC refrain from providing authority to competitive local exchange companies that may seek to enter the markets of rural companies during the two year window period. In other words, if CLECs want to invest their own capital and build their own networks in areas served by rural companies, this agency will do nothing to discourage such investment. On the other hand, this agency will not undertake to erode the investment opportunities of rural incumbent carriers to modernize their own networks by requiring them to open up their own networks to their competitors.

I was particularly concerned about the impacts of this Petition on our state's schools and libraries who are busily preparing to take advantage of the federal universal service support E-Rate discount program for telecommunications services, access to Internet and internal connections. The E-Rate program is based on a competitive bidding platform. If, however, there are no competitors

available to bid for services, then the incumbent's commercially available rates for similarly situated customers forms the basis of the price against which the discounts are computed. I do not believe that granting this Petition will at all undermine the E-Rate program. That is because most competitive local exchange companies currently do not have the authority to serve the areas currently served by rural telephone companies. There are, therefore, few competitive opportunities from other local exchange companies besides the incumbents that schools and libraries may pursue. Other types of service providers such as cable companies, Internet service providers and the like may still submit competitive bids to serve schools and libraries. Granting this Petition does not adversely impact that process.

At the same time, if the representations in the Petition prove out to be true, rural telephone companies will use this two year to modernize their networks, and increase the quality and range of services to be available to schools and libraries. The Opinion reinforces this obligation for all rural companies, and specifically conditions the relief granted on the compliance with network modernization requirements prescribed in our state law at Chapter 30, and states that failure to comply with network modernization is grounds for revoking the relief set forth in the Opinion and Order.

For these reasons, I support the staff's recommendation and believe that it appropriately serves the public interest.

July 10 1997
DATED

DAVID W. ROLKA, COMMISSIONER

BEFORE THE

MISSISSIPPI PUBLIC SERVICE COMMISSION

In Re:

PETITION OF THE MISSISSIPPI INDEPENDENT GROUP FOR COMMISSION ACTION PURSUANT TO SECTION 253(b) OF THE TELECOMMUNICATIONS ACT OF 1996

Docket No. 96-UA-298

CLARIFICATION ORDER

COMES NOW, the Mississippi Public Service Commission (Commission) *sua sponte* and provides clarification of the Final Order issued in this proceeding on December 31, 1996. In the Final Order, the Commission granted a group of petitioning local exchange carriers (referred to herein-below as the "Independents"), pursuant to Section 251(f) (2) of the Telecommunications Act of 1996 (TA96), a suspension from the interconnection requirements of Sections 251(b) and 251(c) of TA96.

In the Final Order, the Commission specifically determined that:

> The Independents are granted a suspension, pursuant to Section 251(f) (2) from the requirements of Section 251(b) and 251(c), until such time as the Independent receives a bona fide request, but under no circumstances earlier than twelve (12) months following the FCC's promulgation of the aforementioned 'trilogy'.

The Commission determined that the need for the suspension requested by the Independents resulted largely from the uncertainty that existed in the implementation of TA 96. We concluded that "This uncertainty will not be alleviated until the Federal Communications Commission ("FCC") completes its consideration of the 'trilogy'".

The "trilogy" referenced by the Commission is the collective

term

which identifies several proceedings pending before the Federal Communications Commission ("FCC") which address various aspects of the implementation of the Telecommunications Act of 1996 ("TA96"). These proceedings include: 1) the determination of interconnection rules in CC Docket No. 96-98; 2) revisions to the federal Universal Service Fund ("USF") rules; and 3) the restructuring of interstate access charges.

Although the FCC has issued initial orders in each of the trilogy proceedings, the FCC decisions demonstrate that the promulgation of the trilogy is far from complete for the Independents and other rural telephone companies throughout the nation. The FCC's orders in both the USF and access structure proceedings specifically address the continuing uncertainty that exists for companies like the Independents. The determination and promulgation of these proceedings with regard to the rural Independents has been deferred to the future.

Other than the issuance of the initial orders in the USF and access proceedings, there has been no change of fact or circumstance subsequent to our issuance of the Final Order in the Suspension proceeding. The very basis upon which we issued the Final Order essentially remains unchanged. We are concerned that a party or parties may misinterpret our Final Order and conclude that the issuance of initial decisions by the FCC in the trilogy proceedings constitutes the promulgation of the trilogy. As discussed above, the public record clearly demonstrates that the trilogy has not been promulgated. This clarification of our Final Order in this proceeding is, accordingly, warranted, in order to avoid any otherwise unnecessary confusion and potential for additional burden on our administrative processes.

IT IS THEREFORE ORDERED, as follows that the Final Order in this proceeding is clarified to provide, in accordance with the Commission's findings, that the

trilogy has not been promulgated with respect to the Independents and that the suspension issued by the Commission in the Final Order remains in effect until such time as the Independents receive a bona fide request, but under no circumstances earlier than twelve (12) months following that date subsequently determined by the Commission to be the date upon which the promulgation of the aforementioned "trilogy" has been effected. The Final Order remains intact and in effect in all other respects. This Order shall take effect immediately upon the date set out below.

Chairman Bo Robinson voted Aye; Vice-Chairman George Byars voted Aye; Commissioner Nielsen Cochran voted Aye.

SO ORDERED on this the 2nd day of June 1998.

MISSISSIPPI PUBLIC SERVICE COMMISSION

Indiana PSC Order

On September 23, 1996, Bloomingdale Home Telephone Company, Inc., Camden Telephone Company, Inc. d/b/a TDS TELECOM Camden Telephone Company, Inc., Century Telephone of Central Indiana, Inc., Century Telephone of Odon, Inc., Citizens Telephone Corporation, Communications Corporation of Indiana, Inc. d/b/a TDS TELECOM Communications Corporation of Indiana, Inc., Communications Corporation of Southern Indiana, Inc. d/b/a TDS TELECOM Communications Corporation of Southern Indiana, Inc., Craigville Telephone Company, Inc., Daviess-Martin County Rural Telephone Corporation, Frontier Communications of Indiana, Inc., Frontier Communications of Thorntown, Inc., Geetingsville Telephone Company, Inc., Hancock Rural Telephone Corporation, The Home Telephone Company of Pittsboro, Inc. d/b/a TDS TELECOM The Home Telephone Company of Pittsboro, Inc., Home Telephone Company, Inc. d/b/a TDS TELECOM Home Telephone Company, Inc., Ligonier Telephone Company, Inc., Merchants and Farmers Telephone Company, Monon Telephone Company, Inc., Mulberry Cooperative Telephone Company, Inc., New Lisbon Telephone Company, Inc., New Paris Telephone, Inc., Perry-Spencer Rural Telephone Cooperative, Inc., Pulaski-White Rural Telephone Cooperative, Inc., Rochester Telephone Company, Inc., S & W Telephone Company, Inc., Southeastern Indiana Rural Telephone Cooperative, Sunman Telephone Company, Inc., Tipton Telephone Company, Inc. d/b/a TDS TELCOM Tipton Telephone Company, Inc., Tri-County Telephone Company, Inc., Washington County Rural Telephone Cooperative, West Point Telephone Company, Inc., and Yeoman Telephone Company, Inc. ("Joint Petitioners," or, individually, "Petitioner"),[1] collectively and individually, filed a Petition in this Cause with the Indiana Utility Regulatory Commission ("Commission") seeking suspension of certain requirements imposed by the Telecommunications Act of 1996, see Pub. L. No. 104-104, 110 Stat 56 (1996) ("the Act").

On October 16, 1996, Indiana Bell Telephone Company, Inc., d/b/a Ameritech ("Ameritech"), filed its Petition to Intervene, and on or about October 21, 1996, AT&T Communications of Indiana, Inc. ("AT&T"), filed its Petition to Intervene. Pursuant to notice duly given and published as required by law, a prehearing conference and preliminary hearing was convened on October 24, 1996, at 10:30 a.m. in Room TC10 of Indiana Government Center South, Indianapolis, Indiana, at which the respective Petitions to Intervene of Ameritech and AT&T were granted without objection, and at which counsel for Joint Petitioners, the OUCC, and Intervenors Ameritech and AT&T appeared, participated, and reached agreement concerning procedural issues and on the procedural schedule submitted by the Joint Petitioners and the OUCC in the their Report of Attorneys' Conference, filed October 4, 1996. To ensure proper notice as required by law, the prehearing conference and preliminary hearing was continued to November 14, 1996, at 1:00 p.m. in the Law Library of the Commission's offices located at Room E306, Indiana Government Center South, Indianapolis, Indiana, and notice thereof was duly published. On November 14, 1996, the preliminary hearing and prehearing conference, originally convened on October 24, 1996, continued, and no party or other persons offered evidence or opposed the procedural schedule and resolution of other procedural issues. No member of the general public appeared at either prehearing conference. On November 26, 1996, the Commission entered a Finding and Order that established the procedural schedule for this Cause.

On October 29, 1996, Intervenor Ameritech filed a Motion to Consolidate proceedings in Cause Nos. 40620, 40621, and this Cause No. 40626. Cause No. 40602, involving Northwestern Indiana Telephone Company, Inc., and Cause No. 40621, involving Clay County Rural Telephone Cooperative, Inc., are two proceedings in which the movants seek somewhat differing relief under Section 251(f)(2)

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[1] The terms "rural telephone company," "rural LECs," "Petitioners," and "Petitioner" are used interchangeably within this Order.

of the Act. Ameritech argued that the only distinct difference between this Cause and the other Causes was the duration of the period of relief that each set of Petitioners seeks, and that consolidation of the Causes would reduce the administrative burdens on all parties to the proceedings, as well as conserve this Commission's resources. The Joint Petitioners filed a Response to the Motion of Ameritech on November 4, 1996, suggesting that, while they would not oppose consolidation, they would oppose different hearing dates than those previously agreed to due to scheduling of witnesses and the availability of representatives of the Joint Petitioners. Ameritech filed a Reply to the Response of the Joint Petitioners on November 8, 1996. We denied Ameritech's motion on November 13, 1996.

On November 7, 1996, the OUCC filed a Motion to Dismiss or Sever the Petition of the Joint Petitioners. Specifically, the OUCC requested that we dismiss the Petition with regard to the cooperative corporations that have withdrawn from Commission jurisdiction and I.C. 8-17-22.5, or, in the alternative, sever proceedings regarding those local cooperative corporations for the purpose of ascertaining cost of service, quality of service, and compliance with universal service objectives. On November 22, 1996, the Joint Petitioners collectively filed a response to the OUCC Motion. On December 2, 1996, the presiding officers denied the OUCC Motion in its entirety.

Pursuant to the previously agreed to procedural schedule, Joint Petitioners submitted prefiled testimony of Bruce Schoonover, Sr., on November 15, 1996. On December 18, 1996, the OUCC submitted a Motion for Extension of time to prefile testimony. The Motion was granted on December 20. Thereafter, as discussed herein, the OUCC reached a settlement agreement with the Joint Petitioners. On December 20, 1996, Ameritech submitted prefiled testimony of Bruce L. Hazelett. On January 7, 1997, the Joint Petitioners filed rebuttal testimony of Bruce Schoonover; Hancock Rural Telephone Corporation ("Hancock"), one of the Joint Petitioners, filed individually rebuttal testimony on January 8, 1997.

On December 17, 1996, the Commission gave notice that a public evidentiary hearing in this Cause would be held on January 15, 1997, at 9:30 a.m. in Room TC10, Indiana Government Center South, Indianapolis, Indiana. The Evidentiary Hearing was held on January 15, 1997, at which time a settlement agreement entered into on January 8 between the OUCC and the Joint Petitioners was offered into evidence. On the record at the hearing, the presiding officers informed the parties that a docket entry concerning the settlement agreement would be forthcoming, and the parties would then be afforded an opportunity to address any remaining issues. All prefiled testimony and/or rebuttals of the Joint Petitioners, Ameritech, and Hancock were placed in the record, and cross-examination of witnesses was waived by all parties, with the understanding that parties could address any and all outstanding issues in post-hearing filings. As a result of the parties' agreement, the Commission ordered the procedural schedule be modified to permit parties one week to reply to post-hearing Orders or briefs. Accordingly, the hearing was continued to January 27, 1997, at 10:00 a.m. in Room TC10, Indiana Government Center South, Indianapolis, Indiana. In response to a January 17, 1997, docket entry regarding the settlement agreement, the Joint Petitioners and the OUCC revised and jointly filed on the record on January 27, 1997, a revised settlement agreement ("Revised Settlement Agreement"). We continued the Evidentiary Hearing until February 3, but thereafter informed the parties that additional evidence would not be necessary. On February 3, 1997, the evidentiary record was closed.

Pursuant to the procedural schedule established by the Prehearing Conference Order dated November 26, 1996, the parties submitted their proposed forms of order on February 24, 1997.

The Commission, having examined all the evidence of record and being duly advised in the premises, now finds:

1. **Jurisdiction.** Proper legal notice of the filing of the Petition in this Cause was given and published by the Joint Petitioners as required by law. Due, legal, and timely notices of the Prehearing Conference and of the commencement of the public hearings herein were given and published by the Commission as required by law. Each Petitioner is a "Public Utility" within the meaning of the Public Service Commission Act, as amended. Each Petitioner is a telephone company as that term is used in I.C. 8-1-2.6. The Commission, therefore, has jurisdiction over the parties and the subject matter of this Cause through a combination of Sections 251(f)(2) of the Act and I.C. 8-1-1-5 .

We find that this proceeding will promote the regulation of telephone service in Indiana, consistent with the increasingly competitive environment. Therefore, the Commission finds that we have jurisdiction over each Joint Petitioner concerning the subject matter of the Petition and all other parties appearing in this Cause, and over the subject matter herein.

2. **Relief Requested.** Through their Petition and subsequent supporting testimony, the Joint Petitioners and the OUCC request that the Commission adopt by approval the Revised Settlement Agreement. In support of this request, they have incorporated by reference the prefiled testimony of the Joint Petitioners. The OUCC and the Joint Petitioners noted in their post hearing filing that, due to an inadvertent oversight, a paragraph was deleted in the Revised Settlement Agreement which was previously included in the initial Settlement Agreement, filed January 8, 1997. Moreover, the parties noted that the paragraph was not the subject of any of the concerns expressed in the January 17, 1997 docket entry noted above. We find the language should be added to the Revised Settlement Agreement. While the relief requested in the Petition is substantially the same as that contained in the Revised Settlement Agreement, it is clear that the Joint Petitioners now request that we first consider the relief requested in the Revised Settlement Agreement, as modified herein, and only if it is not approved and adopted do we need to consider the relief requested in the Petition. Accordingly, our discussion here will focus on the Revised Settlement Agreement, the major points of which are as follows:

1. Each of the Joint Petitioners shall render telephone service in compliance with the Rules, Regulations, and Standards of Service as promulgated by the Commission now existing, or as modified by the Commission during the term of the Revised Settlement Agreement.

2. Any Joint Petitioner that is a local cooperative corporation formed under I.C. 8-1-17 shall make the following annual filings with the Commission and the OUCC during the term of the Revised Settlement Agreement:

   (a) RUS479 Reports (or equivalent reports) on or before April 30 of each year;

   (b) Trouble Reports per 100 stations/Held orders for over thirty days, on or before April 30 of each year;

(c) Information needed to implement the Act, as determined by the Commission; and,

(d) Informational tariffs, or price lists, by April 30 of each year.

3. Any Joint Petitioner subject to the Commission's jurisdiction which petitions or elects to reduce or eliminate such regulation under I.C. 8-1-2-88.5 or other applicable statutes shall have its suspension and/or modification deemed terminated without further action by the Commission.

4. In addition to the reporting/information requirements agreed to by the local cooperatives/Petitioners noted above, the parties agree that the jurisdiction of the Commission over each local cooperative/Petitioner is retained as follows:

(a) Those items stated specifically in I.C. 8-1-17-22.5;

(b) The jurisdiction of the Commission to the extent that the customers/owners of such local cooperative/ Petitioners elect to reenter such jurisdiction pursuant to I.C. 8-1-17-22.5(1);

(c) The jurisdiction of the Commission over all interconnection related matters involving each of the local cooperative/Petitioners, including EAS arrangements and those matters arising as a result of the concurrence of such local cooperatives/ Petitioners in the intrastate access tariff utilized by the other Joint Petitioners for the provision of intrastate access services to intrastate toll carriers; and,

(d) The jurisdiction of the Commission regarding the implementation of the Act, including Sections 251(f)(1) and (f)(2).

5. Each Joint Petitioner, by itself or through representatives, agrees to participate in any technical conferences or workshops, or both, established by the Commission to address issues arising from the implementation of the Act to the extent such issues are relevant to the operations of such Joint Petitioner. IURC staff shall participate as necessary.

6. Upon approval and adjudication by the Commission of the Revised Settlement Agreement, the interconnection obligations of Sections 251(b) and (c) of the Act would be suspended or modified as follows for each of the Joint Petitioners:

(a) Section 251(b)(1) - Resale: Each Joint Petitioner's obligations under this Section of the Act shall be suspended in their entirety.

(b) Section 251(b)(2) - Number Portability: Each Joint Petitioner's obligations under this Section of the Act concerning number portability shall be suspended in their

entirety, except that call forwarding or direct inward (DID) may be used for interim number portability if and as provided in a Joint Petitioner's tariff. Such suspension from permanent number portability obligations shall remain in effect until permanent number portability becomes technically and economically feasible. Each Joint Petitioner, by itself or through representatives, agrees to participate in any technical conferences or workshops, or both, established by the Commission to address number portability.

(c) Section 251(b)(3) - Dialing Parity: Each Joint Petitioner shall implement intraLATA toll dialing parity in accordance with the Commission's Findings and Order of November 26, 1996, in Cause No. 40284.

(d) Section 251(b)(4) - Access to Rights of Way: Each Joint Petitioner's obligations under this Section of the Act shall be suspended only with respect to its obligations to provide access to used duct and vacant duct.

(e) Section 251(b)(5) - Reciprocal Compensation: Each Joint Petitioner's obligations to establish reciprocal compensation for the mutual and reciprocal recovery of costs associated with transport and termination of interchanged local traffic between alternate local exchange carriers' networks shall be suspended. Each Joint Petitioner shall provide reciprocal compensation with each telecommunications carrier in a non-discriminatory and competitively neutral manner, i.e., upon the same terms and conditions that it provides interconnection to any other telecommunications carrier, including any other local exchange carrier or alternative local exchange carrier. Each Joint Petitioner acknowledges and agrees that the Commission's Orders in Cause Nos. 39983 and 40097 and any subsequent Commission Orders, and its jurisdiction regarding incumbent Local Exchange Carrier EAS Arrangements, shall not be affected by the grant of this relief.

(f) Section 251(c) Relief: No specific modification or suspension of their additional interconnection obligations was sought by the Joint Petitioners, given that each of the Joint Petitioners is a "rural telephone company" operating within the state of Indiana, and each has a complete exemption from these obligations under Section 251(f)(1) of the Act. This exemption will not be removed prior to twelve (12) months following the date of the promulgation by the Federal Communications Commission ("FCC") of the Access Charge Reform and Universal Service Rules.

7. Each Joint Petitioner's suspension or modification, or both, from obligations under Section 251(b) of the Act, as herein provided for, shall remain in effect for twelve (12) months following the promulgation by the FCC of the Access Charge Reform and Universal Service Rules. Furthermore, until this twelve month period has elapsed, the Commission will not grant a request under Section 251(f)(1)(B) to remove a Joint Petitioner's exemption from the obligations specified by Section 251(c).

Finally, we note that the OUCC and the Joint Petitioners have also agreed that the relief provided under the terms of the Revised Settlement Agreement is necessary for each Joint Petitioner in order to avoid a significant adverse economic impact on its end users of telecommunications services generally, and is consistent with the public interest, convenience and necessity. The parties to the Revised Settlement Agreement have stipulated that nothing contained within the Revised Settlement Agreement shall preclude any of the parties from exercising any legal remedy available under Federal or state laws, or FCC or IURC rules or regulations.

The basis for the Revised Settlement Agreement, the Section 251(f)(2) and Section 253(b) requests, and the record evidence in support of the Revised Settlement Agreement produced in this proceeding are discussed below.

3. **The Act.** The Act allows local phone companies, long distance carriers, and cable television companies to compete against each other, subject to conditions set forth in the Act. The Joint Petitioners seek suspension or modification of the duties imposed upon local exchange carriers ("LECs") and ILECs to provide interconnection and resale of telecommunications services. The Joint Petitioners proceed under Section 251(f)(2), which allows LECs with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide to petition a state commission for suspension or modification of the duties imposed by Sections 251(b) and (c).

Section 251(b) imposes upon all LECs the duty not to prohibit the resale of telecommunications services; the duty to provide number portability; to provide dialing parity and non-discriminatory access to telephone numbers; to afford access to poles, ducts, and rights-of-way; and to establish reciprocal compensation arrangements for termination and transport of telecommunications traffic. Section 252(c) imposes additional duties on ILECs, after receipt of a bona fide request, to negotiate in good faith agreements that will fulfill the requirements of Sections 252(b) and (c); to provide for interconnection at any technically feasible point on a basis equal to that which it gives itself or any other party on rates, terms, and conditions that are just, reasonable, and non-discriminatory; upon receipt of a bona fide request, to provide non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and non-discriminatory; to offer for resale at wholesale rates telecommunications services that the ILEC provides at retail to subscribers who are not telecommunications carriers; to provide reasonable public notice of changes in the information necessary for the transmission and routing of telecommunications services; and to provide either physical or virtual collocation on rates, terms, and conditions that are just, reasonable, and non-discriminatory.

Section 251(f) provides a means for rural and smaller LECs to suspend or modify the duties imposed by Sections 251(b) and (c). Section 251(f)(1) exempts all rural telephone companies[2] from the

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[2] A rural telephone company is defined by the Act as follows:

RURAL TELEPHONE COMPANY - The term "rural telephone company" means a local exchange

duties imposed by Section 251(c) until that company receives a bona fide request for interconnection, services, or network elements, and the state commission determines that the request is not unduly economically burdensome, is technically feasible, and is consistent with the provisions of the Act relating to Universal Service. Section 251(f)(2) provides that a LEC "with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a state commission for a suspension or modification of the application of a requirement or requirements of subsections (b) or (c) to telephone exchange service facilities specified in such petition." A Section 251(f)(2) petition must be granted by a state commission if it finds that the requested suspension or modification:

(A) is necessary –

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.[3]

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carrier operating entity to the extent that such entity --

(A) provides common carrier service to any local exchange rural carrier study area that does not include either –

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census, or;

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines, or;

(D) has less than 15% of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 U.S.C. § 153(37).

[3] 47 U.S.C. § 251(f)(2).

A state commission receiving a Section 251(f)(2) petition for suspension must act upon the petition within 180 days after receiving the petition.

On August 1, 1996, the FCC adopted initial rules amending Title 47 of the Code of Federal Regulations ("CFR") to facilitate the implementation of the Act at the Federal and state levels. Among the provisions of the initial rules pertinent to this Cause is subpart E, which contains at Section 51.405 the burden of proof which a qualifying LEC must meet under Section 251(f)(2)(A)(ii) to justify a suspension or modification of Sections 251(b) or (c) of the Act. This portion of the initial rules is brief, and appears as follows:

> § 51.405 Burden of Proof.
>
> (a) Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled, pursuant to Section 251(f)(1) of the Act, to continued exemption from the requirements of Section 251(c) of the Act.
>
> (b) A LEC with fewer than two percent of the Nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to Section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of Section 251(b) of 251(c) of the Act.
>
> (c) In order to justify continued exemption under Section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of Section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.
>
> (d) In order to justify a suspension or modification under Section 251(f)(2) of the Act, a LEC must offer evidence that the application of Section 251(b) or Section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

It is noteworthy that the FCC views these initial rules as one part of a trilogy of telecommunications reform. The initial rules are designed to open the local exchange and exchange access markets to competition. The other two parts of the trilogy, access reform and universal service, are in the rulemaking stage at the FCC. This Order will address both the Act and the relevant portions of the initial rule with respect to the elaboration the FCC has supplied regarding an ILEC's burden of proof under Section 251(f)(2)(A)(ii).

4. **Summary of Evidence Presented.** The Joint Petitioners offered the prefiled testimony of Bruce Schoonover, Sr., in support of their Petition and the Revised Settlement Agreement. ("Joint Petitioners Exhibit No. 1"). The Joint Petitioners demonstrated that they have unique operating characteristics, owing to their relative size and the areas they serve. Id. at 9. For example, Mr. Schoonover testified that the Joint Petitioners rely heavily on tolls and access for revenue; cost allocation procedures and high-cost recovery mechanisms have allowed these carriers to maintain lower local

service rates. Id. at 18. He also testified that some of the Joint Petitioners are permitted to earn their respective revenue requirement in exchange for being a monopoly service provider with an obligation to serve everyone. Id. at 18. Mr. Schoonover testified that currently, these carriers generally subtract revenues from intrastate access and other intrastate regulated sources from the company's intrastate revenue requirement. The remainder, or residual, is the company's "local revenue requirement." He also testified that that portion of costs is then recovered from customers on a "value of service" basis, e.g., those customers who value the service most, such as business customers, pay the highest rate. Id. at 19, 20. He further testified that however, the prospective introduction of competition to local markets, and the corollary requirement to have market-driven cost-based rates, may be incompatible with the continued use of the above-described "residual" local rate-making. Id. at 19.

Further, the testimony stated each of the Joint Petitioners concur in the same access tariffs, and all of the Joint Petitioners rely heavily on access revenues. Id. at 20. The Joint Petitioners submitted that the same universal service criteria apply to each of them, and that a change in cost allocation procedures and high-cost recovery mechanisms would affect both basic exchange rates and the universal service goals of all of the Joint Petitioners. Id. at 21. While the exact nature and extent of the change in universal service funding is uncertain, its impact on the Joint Petitioners is inevitable. Id. at 22, 23. For example, access charges and a move to a competitively neutral universal service mechanism are likely to occur, yet the FCC has no deadline for the actual implementation of the rules to be adopted by May 1997. Accordingly, Mr. Schoonover testified, time will be needed after the rules are effective to quantify their effect on carriers. Id. at 25. Therefore, a suspension period of the interconnection obligations is necessary. Id. at 26. This suspension will help ensure the continuation of reasonable rates, and the recovery of network investment costs during this period of uncertainty. Id. at 27.

Mr. Schoonover also addressed the Commission's jurisdiction over the local cooperative corporations, which, individually, have withdrawn from the Commission's jurisdiction over rates. Nonetheless, Mr. Schoonover asserted that the Commission continues to have jurisdiction over those entities with regard to certificates of public convenience and necessity relating to territory. Further, those entities have followed Commission Orders relating to certain service offerings, intercompany access, and settlement/cost recovery matters. Id. at 3, 4, 5.

With regard to the specific requests for suspension, the Joint Petitioners indicated that resale can be used as a "risk-free" trial entry into a market, and that bundled resale can be used as a "stepping stone" to cream skimming competitive entry. Id. at 29, 30. Therefore, it would be only reasonable that carriers may question the value of continued investment into the network infrastructure. Id. at 30. Mr. Schoonover stated that a suspension of number portability is warranted due to the cost of deploying and operating such functions within the respective networks of the Joint Petitioners. Id. at 31. (With regard to dialing parity, the Joint Petitioners, as indicated above, modified their position to adopt the timing for intraLATA dialing parity adopted by this Commission in Cause No. 40284.) To support its request under Section 251(b)(4) of the Act, the Joint Petitioners indicated that carriers have "generally sized and placed the duct for their own use." Accordingly, Mr. Schoonover testified that a suspension of obligation to provide access to those spaces was reasonable, based upon space constraints. Id. at 33.

Mr. Schoonover next addressed reciprocal compensation. He stated that the term describes the mutual and reciprocal recovery of costs associated with the transport and termination of interchanged

local traffic, and that it contemplates that the carrier that originates the call is responsible for compensating the carrier that terminates the call. Id. at 33. Mr. Schoonover noted difficulties in identifying what will constitute local traffic, as well as the effect usage-sensitive reciprocal compensation, as contemplated by the Act, could have on flat-rate local service offerings. Id. at 33, 34. Further, a competitor could designate large areas as local, and require a Joint Petitioner to terminate a large volume of traffic at a local rate. Id. at 35. For these reasons, the Joint Petitioners concluded that their requested suspension was warranted.

The Joint Petitioners stated that they are not seeking an exemption from EAS arrangements. Id. at 36. The Joint Petitioners are also not seeking any modification or suspension of the additional interconnection obligations of Section 251(c) of the Act, because each of the Joint Petitioners, as a rural telephone company, is automatically exempt from the Section 251(c) requirements pursuant to Section 251(f)(1) of the Act. Id. at 36.

Bruce Hazelett testified on behalf of Ameritech, and articulated two concerns. Testimony of Bruce Hazelett on Behalf of Ameritech, Cause No. 40626 (Dec. 20, 1996) ("Ameritech Exhibit No. 1"). One concern was the duration of the requested suspension. Id. at 9. The other concern was that, while protected from competition, a Joint Petitioner may compete with other carriers outside of its service area. Id. at 9. Ameritech objected to the grant of any suspension to Hancock, and contended that Hancock provides a Centrex-like service (which is resold by another telecommunications carrier) within the service territory of Ameritech. Id. at 13. A need to clarify the applicability of reciprocal compensation to EAS arrangements was also noted. Id. at 9.

Mr. Hazelett pointed to this Commission's Order in the Smithville proceeding,[4] and noted the grant there of a 12-month suspension. Ameritech Exhibit No. 1 at 11. Mr. Hazelett also noted that while no objection is raised to the requested suspensions and modifications, the Joint Petitioners should have a duty to prepare for competition. Id. at 12. Ameritech also contended that the use of a rural carrier's capital and management resources for competitive purposes is inconsistent with the purposes for which a suspension or modification is granted. Thus, it is reasonable, according to Ameritech, to impose a condition upon a grant of the relief requested herein that no Joint Petitioner compete outside of its territory during the suspension period. Id. at 15, 16.

Mr. Hazelett summarized his testimony by stating the core elements of the Ameritech position: a limitation of any suspension to twelve (12) months after the completion of the FCC trilogy; an agreement that the Joint Petitioners not compete outside their service areas during the term of the suspension, and; an exclusion of Hancock from the relief accorded by a suspension. Id. at 15, 16.

Brief rebuttal testimony was filed by the Joint Petitioners. Rebuttal Testimony of Bruce Schoonover on Behalf of the Joint Petitioners, Cause No. 40626 (Jan. 7, 1997) ("Joint Petitioners Exhibit No. 2"). In their rebuttal, the Joint Petitioners reiterated that any suspension of reciprocal

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[4] In the Matter of Smithville Telephone Company's Request for Suspension Pursuant to Section 251(f)(2) of the Telecommunications Act of 1996: Order (Sep. 3, 1996) ("Smithville Order").

compensation obligations would not affect the Commission's Order in Cause No. 40097, and its jurisdiction with regard to ILEC EAS arrangements. Id. at 1. The Joint Petitioners also indicated that the purpose of the suspension is not to maintain monopolies, but to ensure universal service at affordable rates, that Section 251(f)(2) is premised on the nature of rural areas, not the business activities of small LECs, and that any concerns over misallocations of resources can be addressed by either the owners of a cooperative or the Commission, in cases dealing with other companies. Id. at 2, 3.

Hancock filed a portion of former Commission filings which emphasize that Hancock provides Centrex-like service in its territory for resale, and that it is MCI Telecommunications Corporation, pursuant to a CTA granted by the Commission, that resells the service in Ameritech's territory. Rebuttal Testimony of Hancock Rural Telephone Company, Cause No. 40626 (Jan. 8, 1997), citing *Petition of Hancock Rural Telephone Corporation for a Certificate of Territorial Authority if and to the Extent Required by Law for Hancock Rural Telephone Corporation to Provide Centrex-Like Telephone Service to MCI Telecommunications Corporation within Hancock Rural Telephone Company's Presently Certificated Service Territory for Resale by MCI Telecommunications Corporation in the Indianapolis LATA within and without Hancock Rural Telephone Corporation's Presently Certificated Local Exchange Service Areas Subject and Pursuant to Issuance to MCI Telecommunications Corporation of a Certificate of Territorial Authority for Such Resale*, Cause No. 40130 (Jan. 31, 1995), at 2.

5. **Discussion and Findings.** The Joint Petitioners request that the Commission, pursuant to Section 251(f)(2) of the Act, suspend or modify all of the duties imposed by Section 251(b) and (c). To obtain that relief, each of the Joint Petitioners must demonstrate that (1) it is a LEC with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide, (2) that the suspensions or modifications that it seeks are necessary (a) to avoid a significant adverse impact on users of telecommunications services generally, (b) to avoid imposing a requirement that is unduly economically burdensome, or (c) to avoid imposing a requirement that is technically infeasible, and (3) is consistent with the public interest, convenience, and necessity.

(a) Joint Petitioners' Status as Small LECs. Under Section 251(f)(1) of the Act, a "rural telephone company" (as defined by the Act) has an automatic exemption from the duties imposed by Section 251(c) until such a time as the "rural telephone company" receives a bona fide request for interconnection and the Commission determines that such "automatic" exemption should be terminated. Under Section 251(f)(2), a LEC with fewer than 2 percent of the "[n]ation's subscriber lines installed in the aggregate nationwide" may seek a suspension or modification of the requirements of Section 251(b) or (c). The Joint Petitioners' request in this Cause is made pursuant to Section 251(f)(2).

However, to avoid any confusion as to whether each of the Joint Petitioners is a "rural telephone company," and when we will need to follow procedures stated in Section 251(f)(1), we make the following findings. Based on the record before us, each of the Joint Petitioners operates fewer than 50,000 access lines in the state of Indiana, and therefore has fewer than 100,000 access lines in their Indiana study area. See 47 U.S.C. §153(37); see also Joint Petitioners Exhibit No. 1, at Exhibit 1. Accordingly, we do not anticipate that any of the Joint Petitioners is likely to exceed these thresholds in the foreseeable future, and therefore Section 251(f)(1) is applicable to each of them.

Moreover, Joint Petitioners submitted evidence that they are eligible to seek relief under Section 251(f)(2), as each is a LEC with fewer than 2 percent of the aggregate subscriber lines in the nation. Id. The Joint Petitioners have produced evidence testifying to the number of lines each company serves, as compared to the number of access lines installed in the aggregate. Therefore, the Joint Petitioners have met their burden with respect to the number of subscriber lines under Section 251(f)(2) of the Act.

The Act provides specific directives regarding the treatment of the Joint Petitioners' requests. Each of the Joint Petitioners has the ability to seek the relief of the Commission pursuant to the directives of Section 251(f)(2) of the Act, and the Commission's review of the Petition is governed by this Federal statutory provision.

(b) Public Interest, Convenience and Necessity. The Smithville Order was cited in Ameritech testimony offered in this Cause. The Smithville Order is significant because it was a case of first impression before the Commission, and the Commission's findings there will guide the establishment of the determinations in this Cause.

The Smithville Order explained the challenge in restructuring a monopolistic market to a competitive framework. Smithville Order at 14. The technical aspect of this effort involves the removal of government-induced operational and economic structures which are not consistent with competition, while avoiding continued governmental mandates of transactions which are not economically efficient. In some circumstances, this is more difficult than in others. A substantial impediment to the reasonable removal of regulatory, operational, and economic barriers to entry in the service territories of LECs qualifying for suspensions and modifications is the presence of certain rate design methods which do not use the type of cost allocation among certain customer classes which would likely arise sensibly in a competitive environment. This feature of retail pricing is directly a result of both rate of return regulation and the associated monopoly protections existing under state regulation. It is also to a substantial degree a response to regulatory concerns that universal service be maintained in such service territories. In that connection, the FCC, in its First Report and Order, indicated that it had largely left the determination to the relevant state commissions in a manner that minimizes regulatory burdens and economic impact on small LECs. Further, the FCC in its First Report and Order anticipates such inquiries will be fact specific. (First Report and Order, at p. 646) In sum, we believe through its initial rule the FCC intends that the states should look for opportunities to remove regulatory burdens impeding the efficient entry of economic competition while recognizing those fact specific situations which argue that competitive entry is neither economically efficient nor operationally feasible and then grant appropriate suspensions or modifications, based upon fact specific showings, if they are in the public interest.

While we appreciate our duty to avoid impediments to the maintenance of universal service and to recognize Petitioners' obligations as a carrier of last resort, we believe there is also a duty upon small ILECs to prepare for competition while any suspension or modifications are in effect, or, indeed, from this point forward, even in the absence of state regulatory interventions which would suspend or modify the new duties TA96 places upon all ILECs. We believe that it is the intent of Congress to bring competition in the local telecommunications industry to every part of the country while at the same time recognizing transitional limitations. Thus, no small ILEC should enjoy a presumption that it need not address the potential of competition in the future. Clearly, the denial of a requested exemption or

modification would send an appropriate signal in that regard to the involved small ILEC. However, even in the instance where suspensions or modifications are granted, it would seem financially chancy and possibly contrary to the obvious public interest benefit of a competitive environment, for a small ILEC to fail to prepare for potential competition.

This is fundamentally a case of speculation. No potential competitor has submitted a bona fide request to any of the Petitioners. Essentially, we have been requested to consider the relief sought based upon a hypothetical situation. However, such future requests are subject to our review and it would seem, given specific facts, that the Petitioners could better support the point at an appropriate time after the bona fide request has been made.

We found in the Smithville Order that it was a case surrounded by economic and regulatory uncertainty. Similarly, this Cause requires the Commission to ensure universal service at reasonable rates in the face of inevitable, yet uncertain, regulatory change. To the extent that some of the Joint Petitioners are under the same general Commission oversight as Smithville Telephone Company ("Smithville"), the principles that guided us in the Smithville Order should be adopted here. However, the Commission believes there is a critical difference for those Petitioners whose rates are not regulated by the Commission. Joint Petitioners argued in their response to the OUCC Motion to Dismiss that the owners/customers of the local cooperatives/Joint Petitioners exercise specific control over their local rates and rate designs, and, if the management of the local cooperative/Joint Petitioners alter such rates and designs in a manner inconsistent with the public interest, the owners/customers can change such decisions, including their option to return local rate jurisdiction to the Commission. Thus, Petitioners argued the ownership structure of the local cooperatives/Joint Petitioners effectively ensures the same result as this Commission's oversight of other companies -- the assurance of reasonably affordable local rates. We do not agree with Petitioners' arguments. As stated in Smithville, the bases for the suspensions and modifications granted therein were predicated upon the rate design and cost support underlying Smithville's current rates and charges. The Commission found those elements exist because Smithville is under rate of return regulation, combined with its monopoly status. The Commission found in Smithville that it is the Commission's oversight which has caused Smithville's rates and charges to be in place, and it is that nature of those rates and charges which led to the Commission's finding that suspensions and modifications were necessary. Therefore, we find it is inconsistent with the public interest, convenience and necessity for a LEC which has removed itself from this Commission's oversight to also be allowed to remove itself from the mandates of TA96 by being granted suspensions and modifications. The continuation of an unregulated monopoly is inconsistent with the purpose of TA96 and the elimination of barriers to competition. Therefore, we find the relief requested by those Joint Petitioners whose rates are not regulated by this Commission to be inconsistent with the public interest standard set forth in Section 251(F)(2)(B) of TA96.

(c) Approval of the Revised Settlement Agreement. We find that based upon the evidence of record and the Revised Settlement Agreement that Joint Petitioners have met the burdens necessary to justify the relief requested for those Petitioners whose rates are regulated by this Commission. We now must determine the extent of appropriate relief. It is clear that Congress, by including Section 251(f)(2) in the Act, recognized that mandated introduction of competition into telephone markets would have a different, and potentially adverse, effect on some small LECs, and certain of their customers. Thus, Congress left to state commissions the authority to allow LECs that meet the criteria set forth in Section

251(f)(2) to temporarily delay the changes required by Sections 251(b) and (c). The structure of the Act gives the Commission broad flexibility to attempt to foster in areas served by small LECs the same advances in technology and potential benefits of competition likely to be seen in larger, competitive LEC markets.

We note that in this Cause, the Revised Settlement Agreement was not signed by all of the parties; only the Joint Petitioners and the OUCC have agreed to the terms and conditions. Because the positions taken by Ameritech were not addressed in the Revised Settlement Agreement, the record reflects the possibility that this is a contested agreement. That does not mean, though, that we should not consider the Revised Settlement Agreement. Our previous consideration of a similarly contested settlement agreement is instructive here:

> Although there is no precedent in Indiana concerning non-unanimous settlement agreements, there is nothing in the Commission's regulatory framework which would preclude the approval of the terms and conditions of the Settlement Agreement in this Cause, especially in light of the public policy in favor of settlement. According to the judicial and regulatory decisions in other jurisdictions, it is clear that the Commission has the authority to adopt the terms of a contested settlement proposal as a resolution of issues on the merits, provided that the Commission undertakes an independent inquiry to determine whether adoption of the terms of the contested settlement proposal on its merits and based on evidence of record, would be in the public interest. Here, the parties have had ample opportunity to investigate the issues. They participated in the hearings on the case-in-chief and participated in this hearing on the Settlement Agreement, cross-examining witnesses concerning the terms and conditions of such agreement. The parties cannot argue a denial of due process. Furthermore, the Settlement Agreement clearly does not operate of its own force. It does, however, reflect the position of the OUCC and PSI and should be considered by this Commission in light of all the record evidence. Because the OUCC is a party to the proposed Settlement Agreement, the Commission has an increased responsibility to carefully consider the merits of the Agreement. The Utility Consumer Counselor is mandated by statute to "have charge of the interests of the ratepayers and consumers of the utility . . ." I.C. 8-1-1.1-5(e). He represents all 5.4 million consumers of utility services in Indiana. His representation encompasses the interests even of those who have elected to be independently represented in these proceedings. Given his statutory mandate, this Commission must carefully consider the merits of any proposed settlement which the UCC supports as being in the interests of his constituency, the consumers.

Public Service Company of Indiana. Final Order, Cause No. 37414, at 22 (Mar. 7, 1986).

The parties have demonstrated on the record that they have endeavored to adopt the specific directives of the Smithville Order. In light of these findings, we believe that there is no rational basis to treat the Joint Petitioners who are under the continuing jurisdiction of the Commission related to their rates and charges differently than Smithville. Except for the issues raised by Ameritech, which are discussed below, each of the other parties has not posed objection to a grant of the suspensions and modifications described in the Revised Settlement Agreement.

We conclude, based upon our independent review of the terms and conditions contained in the Revised Settlement Agreement and the record to support those terms and conditions, that the Revised Settlement Agreement is reasonable, and is consistent with the extent of the relief we granted in the Smithville Order. We find, as we did in the Smithville Order, that the Joint Petitioners whose rates are regulated by this Commission have each sustained their burden that the relief requested in the Revised Settlement Agreement is necessary "to avoid a significant adverse impact on users of telecommunications services generally,"[5] and so find that the public interest, convenience, and necessity will be furthered by and is consistent with the relief we hereby grant.

Accordingly, consistent with the Revised Settlement Agreement, we approve and adopt the Revised Settlement Agreement as filed. We find that the requested suspensions and modifications should be granted for those Petitioners whose rates are regulated by this Commission until such time as each receives a bona fide request, but under no circumstances earlier than twelve (12) months following the FCC's promulgation of the Access Reform and Universal Service Fund Rules which we have referred to in the Smithville Order and which the Joint Petitioners reference in Joint Petitioners Exhibit No. 1. AT&T has suggested that the use of the term promulgate could lead to confusion and requests the Commission to clarify the meaning. To resolve this ambiguity, we find the provision of the Revised Settlement Agreement should be interpreted as the suspensions and modifications granted herein should remain in effect for 12 months following the latter of 1) the date the FCC deems effective its order and rules in the Access Change Reform proceeding, CC Docket 96-262 or 2) the date the FCC deems effective its order and rules in the Universal Fund proceeding, CC Docket 96-045. To the extent a bona fide request might otherwise be entertained during this initial period, the requested modification should be granted. Once the FCC completes the trilogy, referred to earlier, through the rulemakings, and a reasonable period of twelve (12) months has subsequently elapsed, bona fide requests should be entertained. At such time, the regulatory context within which competition may occur in a Joint Petitioner's territory will be better defined, and this Commission will be better positioned to make a reasonable determination as to whether the exemptions and/or suspensions should be modified or terminated. This approach allows the Commission to retain the flexibility necessary for the transition to competition in the respective territory of a Petitioner, while still protecting that Petitioner from adverse inefficient economic impact and burden. First, it entitles a Petitioner to the suspensions for as long as it qualifies under the Act and subject to the terms of the Agreement. To the extent that the introduction of competition may affect adversely a Petitioner and its customers, the impact will be lessened by the delay allowed, and will allow a Petitioner to restructure and plan for such a possibility. It also allows a Petitioner the continued opportunity to maintain its current status. Upon receipt of a bona fide request after the conclusion of the initial period, a Petitioner may request a continuation of the suspensions of the duties imposed by Section 251(c) of the Act granted herein. The Commission will act upon the bona fide request within 120 days.

(d) Other Issues. Ameritech has stated that it objects to a petition for suspension or modification filed under Section 251(f)(2) of the Act if the requesting ILEC is competing outside of its existing service area in an area of another ILEC that cannot seek similar relief. Ameritech further contends that the use of a rural carrier's capital and management resources for competitive purposes is inconsistent

[5] 47 U.S.C. § 251(f)(2)(A)(i)

with the purposes for which a suspension or modification is granted. Ameritech further argues that Hancock Rural Telephone Corporation ("Hancock") has already taken the steps necessary to provide competitive telecommunications services in another ILEC's territory. Specifically, Ameritech cites to Consolidated Cause Nos. 39948 and 40130 on which the Commission stated it is appropriate to require Hancock to obtain a CTA from this Commission. In that case, Hancock is making available for resale to MCI its centrex-like services. However, MCI is offering those services. Further, that case is still in the testing phase and is subject to many terms and conditions. However, since Hancock is one of those Petitioners who have withdrawn from the Commission's jurisdiction, Ameritech's arguments are moot. Ameritech's arguments as to the other Petitioners may have merit; however, we find them to be premature. The appropriate time for this Commission to address those arguments is when one of the Petitioners who are granted suspensions and modifications herein files for a CTA to operate outside of its franchised service area.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Petition of the Joint Petitioners is granted in part and denied in part, consistent with the foregoing findings of this Order specifically contained in Section 5, above. The Commission suspends, in the manner contained within and consistent in all respects with the Revised Settlement Agreement, the duties Section 251(b) of the Act imposed upon the Joint Petitioners whose rates and charges are regulated by this Commission.

2. The Joint Petitioners shall each comply with all of the terms and conditions set forth in the Revised Settlement Agreement.

3. The Joint Petitioners, pursuant to Section 251(a) of the Act, shall provide reciprocal compensation with each telecommunications carrier in a non-discriminatory and competitively neutral manner, i.e., upon the same terms and conditions that it provides interconnection to any other telecommunications carrier, including any other LEC or ILEC.

4. This Order shall be effective on and after the date of its approval.

MORTELL, HUFFMAN, KLEIN AND ZIEGNER CONCUR; SWANSON-HULL NOT PARTICIPATING:
APPROVED:

MAR 20 1997

I hereby certify that the above is a true and correct copy of the Order as approved.

Brian J. Cohee

Brian J. Cohee
Executive Secretary to the Commission

Alabama Public Service Commission

Orders

IN RE: ALL TELEPHONE COMPANIES DOCKET 24472

OPERATING IN ALABAMA

ORDER

BY THE COMMISSION:

On or about May 8, 1998 the Commission received a request from Alabama's small local exchange carriers (defined in the Petition as the non-BellSouth, GTE/Contel LECs and hereafter referred to as the Arural LECs@), pursuant to APSC Rule T29(B), requesting an extension of the suspension of certain requirements of '251(b) and (c) of the 1996 Telecom Act granted by the APSC on October 8, 1996, to allow for further time to consider cost methodology for rural telephone companies and to resolve technical issues associated with interconnection and other services. The petition was amended on May 20, 1998 for distribution to the Commission=s updated service list as provided for under APSC Rule T29(B). No comments have been received in opposition to the Petition.

On September 20, 1995, this Commission issued an Order in Docket 24472 which provided for the certification of competitive carriers in Alabama and established a mechanism for the resolution of various issues associated with the introduction of competition. The September 20, 1995 Order recognized that a transition period was required for small LECs serving rural areas, due to the characteristics of their service areas and historic pricing differences. Part of the transition involved a five-year rate rebalancing plan, designed to bring retail service rates to greater parity across the state and reduce access charges paid by interexchange carriers in rural areas served by small companies. This plan allows rural LECs to reduce access charges and to offset such reductions with increases to local service rates, subject to a residential rate cap of $16.30. Small LECs with rates above $16.30 were required to reduce their rates over a three-year period. The Rural LECs are in the third year of this five-year rebalancing plan.

On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 (the ATelecom Act@) into law. The Telecom Act in general prohibits absolute legal barriers to competitive entry, however, it automatically exempts rural LECs from some of the interconnection and unbundling requirements applicable to the Bell Operating Companies under Section 251(c) and allows state commissions, upon petition, to also exempt small LECs serving less than @2% of the nation=s subscribers lines installed in the aggregate nationally@ from all or part of the requirements of Subsection 251(b) of the Telecom Act dealing with dialing parity, number portability,

interconnection and resale or to otherwise suspend or modify such requirements.

The Telecom Act states that a state commission shall grant the aforementioned exemption to companies meeting such criteria to the extent that such action:

A(A) is necessary -

> *(I) to avoid a significant adverse economic impact on users of telecommunications services generally;*
>
> *(ii) to avoid imposing a requirement that is unduly economically burdensome; or*
>
> *(iii) to avoid imposing a requirement that is technically infeasible; and*

(B) is consistent with the public interest, convenience, and necessity.@

Section 251(f) (2).

On April 29, 1996, the Rural LECs filed a petition seeking a limited exemption from the requirements of Subsection 251(b) and (c) of the Telecom Act, to the extent necessary to implement the provisions of the September 20, 1995 Order. On October 8, 1996, the Commission granted a limited modification of the Telecom Act requirements through September 20, 1998, stating in part:

> AThe Commission's September 20, 1995 local competition order recognized that a transition period was required for small LECs serving rural areas (all LECs other than BellSouth and GTE/Contel) due to the characteristics of their service areas and historic pricing differences. Part of the transition involved a five-year rate rebalancing plan designed to bring retail service rates to greater parity across the state and reduce access charges paid by interexchange carriers in rural areas served by small companiesY
>
> '253 of the 1996 Act clearly prohibits >absolute barriers to competitive entry= including arguably, the local competition order's three-year prohibition on the certification of competitive carriers in small LEC service areas. '251(f)(1) of the 1996 Act does, however, provide an exemption for small LECs from some of the interconnection and unbundling requirements applicable to the Bell operating companies under '251(c) of the 1996 Act. Further, '251(f)(2) of the 1996 Act allows state Commissions to, upon the receipt of an appropriate petition, impose a suspension or modification for LECs serving less than 2 percent of the access lines nationwide from all or part of the requirements of '251(b) and (c) of the 1996 Act dealing with dialing parity, number portability, interconnection and resale requirements.
>
> ***
>
> The Commission's September 20, 1995 local competition order specifically discusses the financial and technical limitations of small LECs and the need for a transition period to rebalance rates and allow the Commission to consider what interconnection and resale requirements should be applied to rural areas. Recognizing such limitations, the Commission required that small LECs submit a plan by December 31, 1996 to substantially meet the interconnection and resale requirements by the end of the three-year limited protection period granted in the local competition orderY
>
> The Commission is cognizant of the assessment of the Federal Communications Commission ("FCC") in its First Report and Order issued August 8,1996, in Joint Dockets 96-98 and 95-185 (the FCC's Interconnection Order) that state Commissions

should evaluate LEC petitions for suspension under Section 251(f)(2) of the 1996 Act on a case-by-case basis. Notwithstanding the existing temporary stay of the FCC's Interconnection Order by the U.S. Court of Appeals for the Eighth Circuit, it is the opinion of this Commission that the "rules" established by the FCC for state Commission reviews of request for suspension and modification under Section 251(f)(2) were merely intended as "guidelines" to "assist" the state Commissions in making determinations that the FCC properly recognized were within the sole authority of the states. (See FCC Interconnection Order &1249 - 1265) To view the FCC's "rules" as strictly requiring a case-by-case analysis of all LEC petitions for 251(f)(2) suspensions and modifications would yield a result totally inconsistent with '252(g) of the 1996 Act which allows state Commissions to consolidate proceedings under '251(f) in order to reduce administrative burdens on telecommunications carriers, other parties to such proceedings, and the state Commissions, in carrying out their responsibilities under the 1996 Act.

The suspension herein granted Alabama's small LECs is largely predicated on the uncontroverted findings which came to light during the Commission's generic local competition proceedings at which all segments of the telecommunications industry were represented. Those findings strongly indicated that each of Alabama's small LECs were entitled to the same type relief which is being granted herein. Accordingly, the Commission finds that it would be unnecessary and, in fact, counterproductive to insist on the filing of individual petitions for '251 (f)(2) suspensions by all of the small LECs. To impose such a requirement would result in exactly the unnecessary duplicative-type proceedings that '252(g)'s consolidation language seeks to avoid.@

As required in the September 20, 1995 Order, by December 31, 1996 each rural LEC filed a plan to Asubstantially meet the interconnection and resale requirements@ contained therein. Although the Plans were varied, they each stated that a further modification and suspension of certain of Telecom Act provisions would be required after the original three year period to avoid a significant adverse economic impact on rural users of telecommunications services and to avoid imposing requirements that are unduly economically burdensome on the LEC.

On June 9, 1997, this Commission initiated Docket No. 25980 to consider issues germane to the establishment of an intrastate universal service fund. In its order establishing this proceeding, the Commission recognized that under FCC rules, while non-rural carriers will begin to receive support based on forward-looking economic costs on January 1, 1999, rural carriers will begin using a forward-looking model at a date to be set later, but in no event earlier than January 1, 2001, three years after a proxy model is adopted for large carriers. Rural LECs will, with only slight variations, continue to receive current levels of universal service funding during this interim period. For this reason, this Commission postponed consideration of forward-looking cost methodology for rural carriers, recognizing that the FCC will not even commence a proceeding to determine a forward-looking economic cost mechanism for such carriers until October of 1998 at the earliest.

As recognized by the FCC and this Commission, there is presently no accepted cost-based methodology for use with rural LECs. Uncertainties regarding federal universal service methodology, coupled with the need to complete the current rate rebalancing plan, make it impossible at the present time to adopt for small rural LECs the type of costing methodology required for the non-rural LECs. There also remain serious unresolved technical issues associated with the interconnection in rural areas and the imposition of certain federal mandates, such as number portability and dialing parity.

The factors which justified the grant of the original modification remain in effect today. The Commission believes that the imposition of the '251(b) and (c) Telecom Act terms for rural LECs should occur only after there is more investigation by this Commission of fundamental issues

involved in costing methodology, universal service and additional insight as to the type of methodology that will be employed at a federal level. Based on the aforementioned findings, prior orders of the Commission and the record in this docket to date, the Commission hereby suspends the applicability of the requirements of '251(b) and (c) of the 1996 Act to all of Alabama's incumbent non-BellSouth, GTE/Contel local exchange carriers. The extension will allow completion of the current five-year rebalancing plan and will roughly coincide with the earliest possible date for a change to cost-based universal service funding. The Commission finds that said modification and suspension is necessary to avoid a significant, adverse economic impact on users of telecommunications services generally and to avoid imposing a requirement that is unduly, economically burdensome. Further, the Commission finds that the suspension recognized herein is consistent with the public interest, convenience and necessity.

The suspension granted herein shall expire on June 1, 2001, or earlier, if so ordered by the Commission.

The Commission reserves the right to continue to review all of the requirements of the 1996 Telecom Act and the September 20, 1995 local competition order and to issue such further orders, including orders rescinding all or part of the modification and suspension granted herein, based on its continuing review. It is the Commission's intent to encourage the extension of effective competition to all parts of the state subject to such provisions as are needed to protect the interest of the consuming public.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That, pursuant to '251(f)(2) of the Telecommunications Act of 1996, a suspension of the requirements of '251(b) and (c) of the Telecommunications Act of 1996 is hereby recognized for all Alabama local exchange carriers with the exception of BellSouth Telecommunications, Inc.; GTE South, Inc.; and Contel of the South, Inc., d/b/a GTE Systems of the South.

IT IS FURTHER ORDERED BY THE COMMISSION, That the suspension recognized herein shall expire on June 1, 2001, or earlier, if specifically ordered by the Commission.

IT IS FURTHER ORDERED BY THE COMMISSION, that the suspension herein granted shall not apply to requests for interconnection from cable operators providing cable programming who seek to provide telecommunications service in an area in which a rural LEC began video programming after the passage of the Telecommunications Act of 1996, nor to LECs offering local exchange service outside of their previously-certificated service areas.

IT IS FURTHER ORDERED BY THE COMMISSION, That the Commission's September 20, 1995 Order in this proceeding is hereby amended to reflect the action of the Commission herein.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of further orders as may be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 25th day of June, 1998.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President