Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don J. Wood. My business address is 914 Stream Valley Trail, Alpharetta, Georgia 30022. I am employed as a Regional Director of Klick, Kent, and Allen, Inc., an economic and financial consulting firm. I provide economic and regulatory analysis of the telecommunications, cable, and related "convergence" industries, with an emphasis on economic policy, development of competitive markets, and cost of service issues.

Q. PLEASE DESCRIBE YOUR BACKGROUND AND EXPERIENCE.

A. I received a BBA in Finance with distinction from Emory University and an MBA with concentrations in Finance and Microeconomics from the College of William and Mary. My telecommunications experience includes employment at both a Regional Bell Operating Company ("RBOC") and an Interexchange Carrier ("IXC").

I was employed in the local exchange industry by BellSouth Services, Inc. in its Pricing and Economics, Service Cost Division. My responsibilities included performing cost analyses of new and existing services, preparing documentation for filings with state regulatory commissions and the Federal Communications Commission ("FCC"), developing methodology and computer models for use by other analysts, and performing special assembly cost studies. I was also employed in the interexchange industry by MCI Telecommunications Corporation, as Manager of Regulatory Analysis for the Southern Division. In this capacity I was responsible for the development and implementation of

regulatory policy for operations in the southern U. S. I then served as a Manager in the Economic Analysis and Regulatory Affairs Organization, where I participated in the development of regulatory policy for national issues.

Q. HAVE YOU PREVIOUSLY PRESENTED TESTIMONY BEFORE STATE REGULATORS?

A. Yes. I have testified on telecommunications issues before the regulatory commissions of twenty-six states, Puerto Rico, and the District of Columbia. I have also presented testimony regarding interconnection and cost of service issues in state, federal, and overseas courts and have presented comments to the FCC. A listing of my previous testimony is attached as Exhibit DJW-1.

Q. HAVE YOU PREVIOUSLY APPEARED BEFORE THIS AUTHORITY?

A. Yes. I have presented testimony before the Authority, and its predecessor the Tennessee Public Service Commission, on a number of occasions. My testimony has addressed topics such as cost of service, competition policy, interconnection agreements pursuant to § 251 of the Telecommunications Act of 1996 ("Act"), and universal service.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have been asked by the Southeastern Competitive Carriers Association ("SECCA") to respond to the direct testimony presented by the members of the Tennessee Small Local Exchange Company Coalition ("coalition") in support of the petition by member companies to be exempt from certain pro-competitive provisions of the Act. In Section 1 of my testimony, I will respond to the fact-based testimony presented by the individual companies as it applies to the standards for exemption set forth in the Act. In Section 2 of my testimony, I will respond to a number of assertions made by coalition witness Steven E. Watkins. Mr. Watkins' testimony does not present any information regarding the application of the standards in the Act to any of the coalition members, and as a result provides no information useful to the Directors or Staff in their efforts in this proceeding.

Section 1: Standards Set Forth by Congress and the FCC

Q. DOES THE ACT INCLUDE A STATEMENT OF CONGRESSIONAL INTENT?

A. Yes. The purpose of the Act, as set forth in the Conference Report, is to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." It is noteworthy that at no time did Congress state that this national framework was intended only for certain parts of the nation, and no language in this Act suggests that it was Congress' intent to make advanced telecommunications services

available only to those people living or working in urban areas. To the contrary, the Act refers explicitly to a goal of making these services available to "all Americans" by "opening all telecommunications markets to competition." The specific provisions of the Act are designed to put into place the mechanisms necessary to make this objective possible.

Of course, no legislative action can simply mandate that effective competition take place in markets that have previously been operated as a regulated monopoly. A law that simply stated that competition could now begin to take place in these markets would have done nothing to remove (or mitigate) the significant barriers to entry that exist. Instead, Congress attempted to set forth specific requirements that would serve to lower barriers to entry and, if successfully implemented, make competitive benefits available all consumers of telecommunications services. Congress also gave state regulators, who are charged with implementing most of the Act's provisions, the ability to limit or delay the implementation of some of the Act's requirements in specific circumstances if they found it to be "necessary" as that term is used in §251 (f) (1) or (f) (2). Such power should be exercised with discretion, however: the power to exempt certain ILECs from the pro-competitive provisions of the Act is also the power to eliminate the opportunity for telephone subscribers in rural areas to avail themselves of competitive options for basic and advanced telecommunications services. For this reason, the pro-competitive requirements of the Act are set forth as the rule to apply to ILECs that serve both rural

and urban areas, and the suspension of those requirements represents an exception to be applied only if necessary.

Q. PLEASE DESCRIBE THE PRO-COMPETITIVE REQUIREMENTS SET FORTH IN SECTION 251 OF THE ACT.

A. §251 of the Act, entitled Interconnection, sets forth three sets of requirements designed to make competitive alternatives available for local exchange service.

§251 (a) requires that all telecommunications carriers, including incumbent local exchange companies ("ILECs") and new entrants, interconnect their facilities and equipment. Such interconnection between networks will allow the end user customers of one carrier to call the end user customers of other carriers, providing ubiquitous coverage. While the imposition of §251 (a) does nothing to remove or mitigate the barriers to entry that stand in the way of the development of effective competition, it represents the minimum standard necessary for competitive alternatives of any kind to be possible.

§251 (b) sets forth an additional set of five obligations that apply today to all LECs, including the coalition members. While these requirements do not remove barriers to entry, they do require carriers to work together to provide quality service to all customers. In this sense, the §251 (b) requirements represent a minimum standard of civilized behavior between carriers.

1. **Resale.** LECs must permit competitors to resell their retail services at existing rates. This requirement provides an important market entry mechanism for the new entrants, and provides a financial windfall to the ILEC.
2. **Number Portability.** By making telephone numbers "portable" among service providers, customers do not have to give up their existing number when changing service providers. Both ILECs and new entrants must make the investments necessary to make this capability available so that customers are not inconvenienced.
3. **Dialing Parity.** This requirement ensures that no LEC can discriminate when providing access to telephone numbers, operator services, directory assistance, and directory listings. With this requirement in place, all LECs have a duty to treat all customers well, including those customers who purchase service from a competitor.
4. **Access to Rights of Way.** Because rights of way exist in limited amounts, and the creation of new rights of way (or the installation of duplicate structures in existing rights of way) would cause unnecessary public inconvenience, LECs are required to permit competitors to have access to rights of way and existing structures. Of course, the competitor pays for such access.

5. **Reciprocal Compensation.** Customers served by competing local carriers retain their desire for ubiquitous service (e.g. the ability to call any other telephone subscriber, regardless of which carrier provides service to that customer). For this reason, carriers must interconnect their networks and, at times, complete calls that are originated by the end user customer of another carrier. In such a scenario the terminating carrier incurs the cost of terminating the call, but receives no revenue from the calling party. A reciprocal compensation arrangement makes it possible for all end user customers to have ubiquitous service and for all carriers to recover their costs associated with providing such service.

§251 (c) sets forth six additional ILEC-specific obligations that will, upon the receipt of a bona fide request by a new entrant, apply to the coalition members unless they can demonstrate to the Authority that an exemption is *necessary*. Implementation of the §251 (c) requirements will mitigate a number of the barriers to entry that would cause new entrants to otherwise be unable to offer service in these areas.

1. **Duty to Negotiate.** This requirement merely requires that the ILECs negotiate in good faith with potential competitors regarding the implementation of the provisions of §251 (b) described above. It is difficult to understand the basis for opposition to good faith interaction. Clearly, such

good faith negotiation benefits the public and potentially limits the number of disputes brought before the Authority for resolution.

2. **Interconnection.** This requirement requires the ILEC to interconnect with a competing carrier at any technically feasible point and to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier o itself." Making interconnection available at the most efficient point that is technically feasible lowers the total cost of providing service to all consumers. A minimum quality standard prevents the ILEC from degrading the service received by the customers of a competitor.[1]

3. **Unbundled Access.** This provision requires the ILEC to make unbundled network elements ("UNEs") available. Pursuant to the applicable FCC Orders, the ILEC is permitted to recover its costs of providing those elements – including costs that are created by any relevant characteristics of the ILEC's service territory – as long as those costs are efficiently incurred. An ILEC that serves an area with low line density, for example, can recover in its rates for UNEs any costs that are incurred as a result of the fact that the area has low line density.

[1] It is important to point out that this requirement sets a minimum quality level only in relative, rather than absolute, terms. An ILEC that provides poor quality service to its own customers can provide poor quality service to a competitor and its customers. Implementation of this requirement does not, in and of itself, require the ILEC to invest in network upgrades; it merely prohibits discrimination.

4. **Resale.** This requirement removes the financial windfall received by ILECs who offer services for resale pursuant to §251 (b) by requiring that services sold on a wholesale basis be made available at wholesale rates. Specifically, the ILEC must discount the price of the retail service by the amount of its costs that are avoidable if the service is sold on a wholesale, rather than retail, basis. If this discount is calculated properly, ILECs should be indifferent to whether a service is sold on a retail or wholesale basis.

5. **Notice of Changes.** Interconnected carriers must rely upon each other for the quality of the service they provide to their customers. Network changes by one interconnected carrier can directly impact the ability of other carriers to operate their networks and the ability of customers to receive the service they expect (and pay for). This section simply codifies a requirement that should be understood by carriers who have interconnected in good faith: "the duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks."

6. **Collocation.** The existing local exchange networks connect end user customers to the network and aggregate lines at the first point of switching. By allowing both ILECs and new entrants to design their networks around

these natural traffic aggregation points, it becomes unnecessary for the new entrants to inefficiently duplicate the ILEC network. This requirement permits new entrants to collocate equipment where space is available in the ILEC central office (and of course requires the new entrant to pay for the use of such space). Without collocation, new entrants would be required to inefficiently duplicate central office buildings and establish new rights of way. Collocation lowers the total cost of service to all end users and permits ILECs to receive payment for the use of otherwise unused central office space.

In summary, the §251 (b) requirements represent a minimum standard for civilized interaction among competing carriers. Clearly, customers of all carriers benefit when this takes place. The provisions of §251 (c) place additional requirements on ILECs in an effort to remove, or at least reduce, certain barriers to entry into the markets for local telecommunications services. Certain of these requirements apply to all carriers, and each carrier must incur the cost of implementation. The requirements that apply only to ILECs each include the opportunity for the ILEC to recover the cost of what it is being asked to provide, *including those costs that are unique to that ILEC because of the nature of the geographic area that it serves*. If coalition members are to be exempted from the Act's pro-competitive provisions, it should not be because they currently provide service in a relatively costly area. If the Authority concludes that the cost to a coalition member to provide an unbundled loop, for example, pursuant to §251 (c) (3) is more costly

because of low line density or long loop lengths, the proper remedy is to establish a UNE loop rate that properly reflects those costs. In contrast, it is not the proper remedy to eliminate the possibility of competitive alternatives for end users living in that area by exempting the coalition member from the §251 requirements.

Q. UNDER WHAT SPECIFIC CIRCUMSTANCES CAN THE COALITION MEMBERS BE EXEMPTED FROM THESE OBLIGATIONS?

A. The Act sets forth two separate standards for the exemption of §251 (b) and §251 (c). Pursuant to §251 (f) (2), a rural LEC may petition a state regulator for "a suspension or modification of the application" of a requirement of subsection (b) or (c). The state regulator may grant such a suspension only "to the extent that, and for such duration as" it determines that such a suspension or modification is necessary to (1) avoid a significant adverse economic impact on users of telecommunications services generally, (2) avoid imposing a requirement that is unduly economically burdensome, or (3) avoid imposing a requirement that is technically infeasible. Any exemption must also be determined to be consistent with the public interest, convenience, and necessity. Until such an exemption is granted, the requirements of §251 (b) apply to all ILECs.

A rural LEC may also petition for an exemption from only the requirements of §251 (c). Once a potential competitor makes a bona fide request, the ILEC must comply with the provisions of §251 (c) whenever the state regulator determines that such a

request is not economically burdensome, is technically feasible, and consistent with the certain requirements of §254 of the Act (concerning universal service).

Q. HAS THE FCC INTERPRETED THE PURPOSE OF THE ACT AS IT APPLIES TO RURAL CARRIERS?

A. Yes. In an Order issued in 1996, the FCC offered "our interpretation" of section 251(f) to "assist" state commissions in ruling upon exemption requests of the type made by the Coalition.[2] The FCC concluded (paragraphs 1262 and 1263):

> 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 LECs from competition, and

[2] *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)*, paragraph 1262.

thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.

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 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. Moreover, the party seeking exemption, suspension,

> or modification is in control of the relevant information necessary for the state to make a determination regarding the request. 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, services, 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). For example, we will not rule in this proceeding on the universal service duties of requesting carriers that seek to compete with rural LECs. We may offer guidance on these matters at a later date, if we believe it is necessary and appropriate.

Q. DO THE FCC RULES PROVIDE FURTHER CLARIFICATION OF THE SPECIFIC CIRCUMSTANCES UNDER WHICH AN EXEMPTION CAN BE GRANTED?

A. Yes. Subpart E of the FCC's section 51 rules addresses this issue and provides three points of clarification regarding the burden of proof and the standard to be applied. First, §51.405 makes it clear that a rural telephone company seeking an exemption of either the requirements of §254 (b) or (c) "must prove to the state commission" that such an exemption is necessary. Second, this rule provides clarification of what must be shown

in order to demonstrate that a specific provision is "unduly economically burdensome": the rural LEC must show that "the application of the requirements of section 251(b) or 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*" (emphasis added). Third, §51.401 gives the state regulators the authority to grant exemptions, but requires that such decisions be made "on a case-by-case basis."

In order to receive an exemption pursuant to the FCC's section 51 rules, therefore, each member company of the coalition must individually prove to the Authority that if the pro-competitive provisions of §251 (b) or (c) are implemented, it will experience an economic burden beyond the economic burden that is typically associated with efficient competitive entry. Absent such proof, I am aware of no legal basis for the Authority to grant the exemptions requested in the coalition petition.

Q. HAVE THE COALITION MEMBERS MADE A DEMONSTRATION CONSISTENT WITH EITHER §251 (f) (1) or §251 (f) (2) (AND THE APPLICABLE FCC RULES) IN THEIR DIRECT TESTIMONY IN THIS PROCEEDING?

A. No. The direct testimony of each of the ILECs consistently presents the following information regarding their operations: the form of interstate settlements (cost based or average schedule), the number of access lines (residence and business), the number of exchanges, the number of square miles in their service territory, a summary of revenues, a

statement of local exchange rates. All of this information is relevant to a determination of whether the coalition member in question meets the definition of rural carrier as set forth in the Act (necessary to apply for an exemption pursuant to §251 (f) (1)) or has less than two percent of the nation's subscriber lines (necessary to apply for an exemption pursuant to §251 (f) (2)). None of the information provided, however, addresses either of the Act's set of standards for an exemption. None of the information represents a demonstration or quantification (or even an unsupported claim) that the implementation of the requirements of §251 (c) will be unduly economically burdensome, technically infeasible, or be inconsistent with §254. Likewise, none of the information represents a demonstration or quantification (or even an unsupported claim) that the implementation of the requirements of §251 (b) and (c) will created a significant adverse impact on users of telecommunications services generally, will be economically burdensome, or will technically infeasible.

To be clear, I am not suggesting that each of the coalition members has attempted, but failed, make an effective demonstration that they should be exempted from the implementation of either §251 (b) or (c) for any of the potential reasons set forth in §251 (f) (1) or (f) (2). In reality, the coalition members have made no effort at all to make such a demonstration; their testimony contains no information that purports to demonstrate significant adverse impact on users, undue economic burden, or technical infeasibility. There can be no serious suggestion that each coalition member has produced the

information necessary to prove to the Authority that it will experience an economic impact beyond the economic burden that is typically associated with efficient competitive entry as required by §51.401 and §51.405. Based on the information provided, the Authority has no basis on which to grant an exemption pursuant to either in §251 (f) (1) or (f) (2).

Q. TDS TELECOM, INC. AND UNITED TELEPHONE COMPANY HAVE FILED PROPRIETARY DIRECT TESTIMONY. DOES THIS PROPRIETARY TESTIMONY PROVIDE A DEMONSTRATION THAT AN EXEMPTION SHOULD BE GRANTED PURSUANT TO EITHER §251 (f) (1) or (f) (2)?

A. No. Both TDS and United present an estimate of the cost that they would incur to implement a long term solution for number portability. The testimony does not describe the method by which number portability will be provided and the cost estimates are unsupported by supporting documentation of any kind. Even assuming that the cost estimates are conceptually and factually accurate, however, they represent incomplete information that is of little use to the Authority. TDS and United do not claim (and certainly do not demonstrate) that incurring these costs will cause an undue economic burden, even if they are incurred with no corresponding benefit.[3] It is also instructive that

[3] It is likely that the investments made by TDS and United to provide number portability will provide other benefits to the companies, including cost savings associated with the operation of their networks and the ability to offer new services. As a result, the stated costs, even if actually incurred, may be fully or partially offset and should not

at least these two coalition members are not claiming that implementing the number portability requirement is technically infeasible, since they have costed a process for doing so.

TDS also presents revenue data for what it characterizes as its "top 100 business customers," and suggests that these revenues will likely be lost if barriers to competition are lessened. This is pure speculation, of course, and implies that each of these "top 100" business customers has some dissatisfaction with the service it currently receives and would choose a competitive alternative immediately if given the option to do so. But even if the speculation were accurate, there is nothing in the testimony demonstrating the net revenue impact on TDS if these customers were to leave, en mass, for a competitor. These purported revenue losses would be offset, in whole or in part, by reductions in operating costs and increased revenues from resale, UNEs, and collocation. A statement (even if properly supported) of the revenues associated with a group of business customers is not a substitute for an analysis of the likely economic impact of the ILEC when all impacts from competitive entry are considered as part of the equation.

Q. THE COALITION HAS ALSO PRESENTED THE DIRECT TESTIMONY OF STEVEN E. WATKINS. DOES THE TESTIMONY OF MR. WATKINS PROVIDE A

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simply be viewed in isolation.

DEMONSTRATION THAT AN EXCEPTION SHOULD BE GRANTED FOR ANY OF THE COALITION MEMBERS PURSUANT TO EITHER §251 (f) (1) or (f) (2)?

A. No. Mr. Watkins' testimony contains no company-specific information that could be used to demonstrate that an exemption is justified. He attempts to explain away this lack of information by arguing at page 13 of his testimony that the impact of alternative outcomes "cannot be determined precisely by quantitative measures or empirical evidence." Such a position is difficult to understand. While it may not be possible to calculate to the penny what the impact of each of the Act's provisions will be for a given ILEC, it is certainly possible to develop a reasonable estimate.

Mr. Watkins' assertion that the impact on coalition members of complying with the pro-competitive requirements of the Act is contradicted by his own testimony. When discussing the purported vulnerability of the coalition members to a loss of revenue from competitive entry, Mr. Watkins states that "I have reviewed several studies in recent years that examine the economic impact of this effect." While Mr. Watkins provides no citation to the referenced studies, two conclusions can be drawn from his statement: (1) it is possible (and apparently meaningful in Mr. Watkins' view) to conduct a study of the economic impact on an ILEC of compliance with the provisions of the Act, and (2) the coalition members could have, if they had so chosen, produced such a study in this proceeding. Because they did not, the Authority is left with the task of determining whether it is necessary to exempt the coalition members from the pro-competitive

requirements of the Act in order to "avoid imposing a requirement that is unduly economically burdensome," *and it must do so without the benefit of any facts upon which to base such a determination.* In order to receive an exemption pursuant to either §251 (f) (1) or (f) (2), the ILEC must present evidence to prove that implementation of these provisions of the Act will be unduly economically burdensome.[4] As Mr. Watkins correctly points out, the coalition members could have produced such studies in an effort to make their case. When scrutinized by the Directors, Staff, and interveners, such studies may or may not have been found to demonstrate undue economic burden beyond the economic burden that is typically associated with efficient competitive entry. In this case, the Authority will never know the outcome of that process because no studies were produced.

Q. ARE YOU AWARE OF OTHER STATES THAT HAVE GRANTED EXEMPTIONS OF THIS KIND?

A. No. Not since the enactment of the FCC's rules requiring company-specific proof of an "undue economic burden." I have been asked over the past few months to review claims for §251 (c) exemptions made by ILECs in several states. It is perhaps noteworthy that in none of those states have the ILECs claimed an exemption for the requirements of §251

[4] The ILECs may also apply for an exemption based on "technical infeasibility." My review of the testimony reveals no argument by any of the coalition members that this is the case.

(b), as the Coalition is requesting here. Since the enactment of the FCC rules, each one of the requests for exemptions from §251 (c) that I am aware of has been withdrawn or has been denied by the state regulator reviewing the petition.

For example, the Iowa Utilities Board ("IUB") denied the separate petitions of three rural ILECs for an exemption from the requirements of §251 (c). (Attached to my testimony as Exhibt DJW-2 are copies of the three Iowa decisions.) In its Final Decision and Order in Docket No. RET-97-1, the IUB noted at pages 5-6 that "[e]xemption from the requirements of 251(c) is only justified when a carrier will experience economic burden beyond the expected economic burdens associated with competitive entry." After reviewing the information presented, the IUB concluded that the rural LECs had failed to demonstrate that such a burden was likely. The IUB found "no evidence of infeasibility," and also concluded that "[w]hen the burden of making its system accessible to competitors is weighed with the financial resources available to [the ILEC], it is clear that terminating the exemption should not cause a result inconsistent with the universal service principles set out in §254."[5]

The IUB also concluded that claims by the ILEC that all of its desirable customers would likely be lost were without merit and ignored the existing relationship between the ILEC and its

[5] Specifically, the IUB concluded that the level of retained earnings of the ILEC's requesting exemptions appeared to be "more than adequate" to offset the costs of complying with §251 (c). The Authority may find it noteworthy that the ILECs that presented financial arguments in this proceeding have the following levels of retained earnings (as shown in their most recent financial reports on file at the TRA): United Telephone (13,000 access lines) $6.7 million in retained earnings; Humphreys County (2,000 access lines) $1.2 million in retained earnings; Tellico Telephone (8,900 access lines) $7 million in retained earnings; Concord Telephone (23,000 access lines) $21.3 million in retained earnings; Tennessee Telephone (64,000 access lines) $52 million in retained earnings.

customers: "The goal of the Act and Iowa Code §476.95 (1997) is to further the development of competition. Exemption from the §251 requirements should be the exception rather than the rule. [ILEC] has an excellent reputation for providing quality service at affordable rates and appears to be well positioned in the competitive market."

The Authority is not, of course, bound by the decision – or basis for that decision – made by another state regulator. It is important to note, however, that the IUB reached these conclusions after being presented with testimony and supporting economic analysis from the petitioning rural ILEC. The coalition is asking the Authority to reach the opposite conclusion without the benefit of company-specific economic analysis and with no supporting studies.

Section 2: Response to the Direct Testimony of Steven E. Watkins

Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE MAJOR POINTS IN MR. WATKINS' TESTIMONY.

A. Mr. Watkins provides general, non company-specific arguments regarding the potential for economic harm to the coalition members if they are required to comply with the pro-competitive provisions of the Act. Generally speaking, the scenarios outlined by Mr. Watkins are theoretically possible outcomes. The question before the Authority, however, is not whether some particular scenario (however extreme) *could* happen, but rather whether the outcomes that represent undue economic harm have sufficient likelihood of occurrence that it is necessary for the Authority to grant an exemption in order to avoid the undue economic harm. In order to

make such a determination, the Authority needs two pieces of information: (1) a study showing the net effect (after proper consideration of any and all offsetting or mitigating factors) of competitive entry made possible because of the §251 requirements, and (2) a reasoned estimate of the likelihood that a given net effect will occur with efficient competitive entry as contemplated by the FCC in §51.405. Neither piece of information has been presented. The considerable effort undertaken by Mr. Watkins to apprise the Authority of every possible negative (yet unquantified) outcome is no substitute for this information.

While he makes several specific points in his testimony, Mr. Watkins' conclusions rest of a foundation of four main assumptions:

1. The coalition members are ill-prepared to compete if certain barriers to entry are removed, making it likely that customers will chose competitive alternatives whenever given the chance.

2. The provisions of §251 (b) and (c) fail to consider the specific characteristics of a rural service territory.

3. The provisions of §251 (c) were designed to arbitrarily punish ILECs and artificially rebalance market shares rather than to remove or lower barriers to entry.

4. The networks of ILECs consist primarily of customer-dedicated, fixed costs that would be unrecoverable and unavoidable if competitive entry is permitted.

Fortunately for the residential and business subscribers to the services offered by coalition members, Mr. Watkins' assumptions lack a factual foundation. First, none of the coalition members have presented evidence that they are currently providing poor service or that their relationship with their customers is so poor that it is reasonable to

expect that the majority of customers will immediately choose a competitive alternative if one is available. Assuming that this is the case, however, such a scenario would still not justify an exemption: the possibility that customers will choose to receive service from a competitor is a "burden that is typically associated with efficient competitive entry." The coalition members must prove the existence of an economic burden beyond the loss of retail customers.

Second, the requirements of §251 (b) and (c) do not have a disproportionate impact on an ILEC merely because it serves an area with lower than average line density and greater than average distances from its central office to its customers. The cost and pricing standard applicable to UNEs, if properly implemented, fully reflects the cost impact of serving a rural. Similarly, the avoidable cost calculation associated with the resale requirement of §251 (c) is based on the cost structure of the ILEC in question, and would reflect any unique characteristics of a small company operation. The collocation requirement of §251 (c) likewise depends on space available in the ILEC's central office and ILEC-specific costs of providing such space. As a result, the fact that a given ILEC provides service in a predominantly rural area will not cause it to be disproportionately impacted by the application of the pro-competitive requirements of the Act. The §251 requirements (and the FCC rules regarding their implementation) are designed to reflect the relevant characteristics of each ILEC, thereby significantly reducing (or eliminating) the likelihood of any undue economic burden.

Third, there is no language in the Act or corresponding FCC rules to support Mr. Watkins' oft-asserted belief that the purpose of the §251 (c) requirements is to artificially handicap the ILECs in some way that will lead to an arbitrary reallocation of market share. To the contrary, the Act, FCC rules, and related FCC orders are clear that these requirements are designed to remove barriers to entry while maintaining the ability of the ILECs to recover any efficiently incurred costs. Costs in excess of the levels permitted by the FCC rules would not be recoverable in a competitive marketplace, and as a result the failure to recover such costs would not be beyond "the economic burden that is typically associated with efficient competitive entry."

Fourth, Mr. Watkins' assumption that the ILEC networks consist primarily of customer-dedicated, fixed costs is at odds with all of the cost information that has been presented to the Authority (by both ILECs and potential competitors) since the Act took effect. Each of the cost studies that I have reviewed[6] reveal that switching, interoffice transport, and network operation costs are variable rather than fixed. These studies also reveal that at least the feeder portion of the local loop is not dedicated to a given customer and will not represent stranded investment if a customer receives service from a competitor. Mr. Watkins also ignores the important fact that if a competitor serves a customer via resale, UNEs, or collocation, the ILEC's network facilities will continue to

[6] This review has included studies produced in individual arbitrations, the generic cost proceeding, and in the universal service proceeding.

utilized at (at least) the same level as they are currently. As a result, a requirement that an ILEC offer resale, UNEs, and collocation to competitors is likely to increase the likelihood that the ILEC's network facilities will continue to be utilized and decrease the likelihood of those facilities being stranded.

Finally, it is clear from Mr. Watkins' testimony that he believes that a regulated monopoly is preferable to a competitive marketplace for telecommunications services, at least in rural areas. His language at several points in his testimony appears to reveal that he is both sincere and passionate in this belief. But while Mr. Watkins may wish otherwise, the relative merits of competitive markets vs. regulated monopolies are not at issue in this proceeding. Congress has, through the Act, adopted a "pro-competitive, deregulatory national policy framework" designed to make competitive alternatives for telecommunications services available to "all Americans" by opening "all telecommunications markets to competition." Exemptions from this national framework can only be granted under specific circumstances, and each ILEC requesting such an exemption must prove to the state regulator that such an exemption is necessary, as that term is used in §251 (f) (1) and (f) (2). The coalition member companies have not done so in this case.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

Exhibit DJW-1

Vita of Don J. Wood
914 Stream Valley Trail, Alpharetta, Georgia 30022 ■ 770.475.9971, FAX 770.475.9972

CURRENT EMPLOYMENT

Don J. Wood is a Regional Director in the firm of Klick, Kent, and Allen/FTI Consulting, Inc. He provides economic and regulatory analysis services in telecommunications, cable, and related "convergence" industries, specializing in economic policy related to the development of competitive markets and cost of service issues. In addition, Mr. Wood advises industry associations on regulatory and economic policy, and assists investors in their evaluation of investment opportunities in the telecommunications industry. The scope of his work has included both landline and wireless voice communications, data services, and emerging technologies.

Prior to joining KK&A/FTI, Mr. Wood was a founding partner of the firm of Wood & Wood, where he assisted his clients in responding to the challenges and business opportunities of the industry both before and subsequent to the Telecommunications Act of 1996. Prior to his work as a consultant, Mr. Wood was employed in a management capacity at a major Local Exchange Company and an Interexchange Carrier. In each capacity he has been directly involved in both the development and implementation of regulatory policy.

As a part of his regulatory practice, Mr. Wood has presented testimony before the administrative regulatory bodies of twenty-six states, the District of Columbia, Puerto Rico, and has prepared comments for filing with the Federal Communications Commission. The subject matter of his testimony has ranged from broad policy issues to detailed cost analysis.

Mr. Wood has also presented testimony in state, federal, and overseas courts regarding business plans and strategies, competition policy, and cost of service issues, and has presented studies of the damages incurred by plaintiffs in a number of these proceedings.

PREVIOUS INDUSTRY EMPLOYMENT

Wood & Wood
Founding Principal.

MCI Telecommunications Corporation
Manager of Regulatory Analysis, Southeast Division.
Manager, Corporate Economic Analysis and Regulatory Affairs.

BellSouth Services, Inc.
Staff Manager.

EDUCATION

Emory University, Atlanta, Ga.
BBA in Finance, with Distinction.

College of William and Mary, Williamsburg, Va.
MBA, with concentrations in Finance and Microeconomics.

SELECTED TESTIMONY - STATE REGULATORY COMMISSIONS:

Alabama Public Service Commission

Docket No. 19356, Phase III: Alabama Public Service Commission vs. All Telephone Companies Operating in Alabama, and Docket 21455: AT&T Communications of the South Central States, Inc., Applicant, Application for a Certificate of Public Convenience and Necessity to Provide Limited IntraLATA Telecommunications Service in the State of Alabama.

Docket No. 20895: In Re: Petition for Approval to Introduce Business Line Termination for MCI's 800 Service.

Docket No. 21071: In Re: Petition by South Central Bell for Introduction of Bidirectional Measured Service.

Docket No. 21067: In Re: Petition by South Central Bell to Offer Dial Back-Up Service and 2400 BPS Central Office Data Set for Use with PulseLink Public Packet Switching Network Service.

Docket No. 21378: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. 21865: In Re: Petition by South Central Bell for Approval of Tariff Revisions to Introduce Network Services to be Offered as a Part of Open Network Architecture.

Docket No. 25703: In Re: In the Matter of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 25704: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated and CONTEL of the South, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996.

Docket No. 25835: In Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a §271 Petition for In-Region InterLATA Authority with the Federal Communications Commission Pursuant to the Telecommunications Act of 1996.

Docket No. 26029: In Re: Generic Proceeding - Consideration of TELRIC Studies.

Docket No. 25980: Implementation of the Universal Support Requirements of Section 254 of the Telecommunications Act of 1996.

Docket No. 27091: Petition for Arbitration by ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Arkansas Public Service Commission

Docket No. 92-337-R: In the Matter of the Application for a Rule Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Public Utilities Commission of the State of Colorado

Docket No. 96A-345T: In the Matter of the Interconnection Contract Negotiations Between AT&T Communications of the Mountain States, Inc., and US West Communications, Inc., Pursuant to 47 U.S.C. Section 252. Docket No. 96A-366T: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with US West Communications, Inc. (consolidated).

Docket No. 96S-257T: In Re: The Investigation and Suspension of Tariff Sheets Filed by US West Communications, Inc., with Advice Letter No. 2608 Regarding Proposed Rate Changes.

Docket No. 98F-146T: Colorado Payphone Association, Complainant, v. US West Communications, Inc., Respondent.

State of Connecticut, Department of Utility Control

Docket 91-12-19: DPUC Review of Intrastate Telecommunications Services Open to Competition (Comments).

Docket No. 94-07-02: Development of the Assumptions, Tests, Analysis, and Review to Govern Telecommunications Service Reclassifications in Light of the Eight Criteria Set Forth in Section 6 of Public Act 94-83 (Comments).

Delaware Public Service Commission

Docket No. 93-31T: In the Matter of the Application of The Diamond State Telephone Company for Establishment of Rules and Rates for the Provision of IntelliLinQ-PRI and IntelliLinQ-BRI.

Docket No. 41: In the Matter of the Development of Regulations for the Implementation of the Telecommunications Technology Investment Act.

Florida Public Service Commission

Docket No. 881257-TL: In Re: Proposed Tariff by Southern Bell to Introduce New Features for Digital ESSX Service, and to Provide Structural Changes for both ESSX Service and Digital ESSX Service.

Docket No. 880812-TP: In Re: Investigation into Equal Access Exchange Areas (EAEAs), Toll Monopoly Areas (TMAs), 1+ Restriction to the Local Exchange Companies (LECs), and Elimination of the Access Discount.

Docket No. 890183-TL: In Re: Generic Investigation into the Operations of Alternate Access Vendors.

Docket No. 870347-TI: In Re: Petition of AT&T Communications of the Southern States for Commission Forbearance from Earnings Regulation and Waiver of Rule 25-4.495(1) and 25-24.480 (1) (b), F.A.C., for a trial period.

Docket No. 900708-TL: In Re: Investigation of Methodology to Account for Access Charges in Local Exchange Company (LEC) Toll Pricing.
Docket No. 900633-TL: In Re: Development of Local Exchange Company Cost of Service Study Methodology.

Docket No. 910757-TP: In Re: Investigation into the Regulatory Safeguards Required to Prevent Cross-Subsidization by Telephone Companies.

Docket No. 920260-TL: In Re: Petition of Southern Bell Telephone and Telegraph Company for Rate Stabilization, Implementation Orders, and Other Relief.

Docket No. 950985-TP: In Re: Resolution of Petitions to establish 1995 rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes.

Docket No. 960846-TP: In Re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a proposed agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 and Docket No. 960833-TP: In Re: Petition by AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 960847-TP and 960980-TP: In Re: Petition by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Service, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Incorporated Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 961230-TP: In Re: Petition by MCI Telecommunications Corporation for Arbitration with United Telephone Company of Florida and Central Telephone Company of Florida Concerning Interconnection Rates, Terms, and Conditions, Pursuant to the Federal Telecommunications Act of 1996.

Docket No. 960786-TL: In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996.

Docket Nos. 960833-TP, 960846-TP, 960757-TP, and 971140-TP: Investigation to develop permanent rates for certain unbundled network elements.

Docket No. 980696-TP: In Re: Determination of the cost of basic local telecommunications service, pursuant to Section 364.025 Florida Statutes.

Docket No. 990750-TP: Petition by ITC^DeltaCom Communications, Inc., d/b/a/ ITC^DeltaCom, for arbitration of certain unresolved issues in interconnection negotiations between ITC^DeltaCom and BellSouth Telecommunications, Inc.

Docket No. 991605-TP: Petition of BellSouth Telecommunications, Inc. for Arbitration of the Interconnection Agreement Between Time Warner Telecom of Florida, L.P., pursuant to Section 252 (b) of the Telecommunications Act of 1996.

Georgia Public Service Commission

Docket No. 3882-U: In Re: Investigation into Incentive Telephone Regulation in Georgia.

Docket No. 3883-U: In Re: Investigation into the Level and Structure of Intrastate Access Charges.

Docket No. 3921-U: In Re: Compliance and Implementation of Senate Bill 524.
Docket No. 3905-U: In Re: Southern Bell Rule Nisi.

Docket No. 3995-U: In Re: IntraLATA Toll Competition.

Docket No. 4018-U: In Re: Review of Open Network Architecture (ONA) (Comments).

Docket No. 5258-U: In Re: Petition of BellSouth Telecommunications for Consideration and Approval of its "Georgians FIRST" (Price Caps) Proposal.

Docket No. 5825-U: In Re: The Creation of a Universal Access Fund as Required by the Telecommunications Competition and Development Act of 1995.

Docket No. 6801-U: In Re: Interconnection Negotiations Between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., Pursuant to Sections 251-252 and 271 of the Telecommunications Act of 1996.

Docket No. 6865-U: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Docket No. 7253-U: In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996.

Docket No. 7061-U: In Re: Review of Cost Studies and Methodologies for Interconnection and Unbundling of BellSouth Telecommunications Services.

Docket No. 10692-U: In Re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements.

Docket No. 10854-U: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996

Iowa Utilities Board

Docket No. RPU-95-10.

Docket No. RPU-95-11.

Kentucky Public Service Commission

Administrative Case No. 10321: In the Matter of the Tariff Filing of South Central Bell Telephone Company to Establish and Offer Pulselink Service.

Administrative Case No. 323: In the Matter of An Inquiry into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

- Phase IA: Determination of whether intraLATA toll competition is in the public interest.
- Phase IB: Determination of a method of implementing intraLATA competition.
- Rehearing on issue of Imputation.

Administrative Case No. 90-256, Phase II: In the Matter of A Review of the Rates and Charges and Incentive Regulation Plan of South Central Bell Telephone Company.

Administrative Case No. 336: In the Matter of an Investigation into the Elimination of Switched Access Service Discounts and Adoption of Time of Day Switch Access Service Rates.

Administrative Case No. 91-250: In the Matter of South Central Bell Telephone Company's Proposed Area Calling Service Tariff.

Administrative Case No. 96-431: In Re: Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-478: In Re: The Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996.

Administrative Case No. 96-482: In Re: The Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Administrative Case No. 360: In the Matter of: An Inquiry Into Universal Service and Funding Issues.

Administrative Case No. 96-608: In the Matter of: Investigation Concerning the Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Louisiana Public Service Commission

Docket No. 17970: In Re: Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of AT&T Communications of the South Central States, Inc., in its Louisiana Operations.

Docket No. U-17949: In the Matter of an Investigation of the Revenue Requirements, Rate Structures, Charges, Services, Rate of Return, and Construction Program of South Central Bell Telephone Company, Its Louisiana Intrastate Operations, The Appropriate Level of Access Charges, and All Matters Relevant to the Rates and Service Rendered by the Company.

- Subdocket A (SCB Earnings Phase)

- Subdocket B (Generic Competition Phase)

Docket No. 18913-U: In Re: South Central Bell's Request for Approval of Tariff Revisions to Restructure ESSX and Digital ESSX Service.

Docket No. U-18851: In Re: Petition for Elimination of Disparity in Access Tariff Rates.
Docket No. U-22022: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost Based Tariffed Rates and Docket No. U-22093: In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms and Conditions for Such Service Offerings (consolidated).

Docket No. U-22145: In the Matter of Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. U-22252: In Re: Consideration and Review of BST's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271 (c) (2) (b) in order to verify compliance with section 271 and provide a recommendation to the FCC regarding BST's application to provide interLATA services originating in-region.

Docket No. U-20883 Subdocket A: In Re: Submission of the Louisiana Public Service Commission's Forward Looking Cost Study to the FCC for Purposes of Calculating Federal Universal Service Support.

Docket No. U-24206: In Re: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Public Service Commission of Maryland

Case 8584, Phase II: In the Matter of the Application of MFS Intelenet of Maryland, Inc. for Authority to Provide and Resell Local Exchange and Intrastate Telecommunications Services in Areas Served by C&P Telephone Company of Maryland.

Case 8715: In the Matter of the Inquiry into Alternative Forms of Regulating Telephone Companies.

Case 8731: In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996.

Massachusetts Department of Telecommunications and Energy

D.P.U./D.T.E. 97088/97-18 (Phase II): Investigation by the Department of Telecommunications & Energy on its own motion regarding (1) implementation of section 276 of the Telecommunications Act of 1996 relative to public interest payphones, (2) Entry and Exit Barriers for the Payphone Marketplace, (3) New

England Telephone and Telegraph Compnay d/b/a NYNEX's Public Access Smart-Pay Service, and (4) the rate policy for operator service providers.

Mississippi Public Service Commission

Docket No. U-5086: In Re: MCI Telecommunications Corporation's Metered Use Service Option D (Prism I) and Option E (Prism II).

Docket No. U-5112: In Re: MCI Telecommunications Corporation's Metered Use Option H (800 Service).

Docket No. U-5318: In Re: Petition of MCI for Approval of MCI's Provision of Service to a Specific Commercial Banking Customers for Intrastate Interexchange Telecommunications Service.

Docket 89-UN-5453: In Re: Notice and Application of South Central Bell Telephone Company for Adoption and Implementation of a Rate Stabilization Plan for its Mississippi Operations.

Docket No. 90-UA-0280: In Re: Order of the Mississippi Public Service Commission Initiating Hearings Concerning (1) IntraLATA Competition in the Telecommunications Industry and (2) Payment of Compensation by Interexchange Carriers and Resellers to Local Exchange Companies in Addition to Access Charges.

Docket No. 92-UA-0227: In Re: Order Implementing IntraLATA Competition.

Docket No. 96-AD-0559: In Re: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 98-AD-035: Universal Service.

Docket No. 97-AD-544: In Re: Generic Proceeding to Establish Permanent Prices for BellSouth Interconnection and Unbundled Network Elements.

Nebraska Public Service Commission

Docket No. C-1385: In the Matter of a Petition for Arbitration of an Interconnection Agreement Between AT&T Communications of the Midwest, Inc., and US West Communications, Inc.

New York Public Service Commission

Case No. 28425: Proceeding on Motion of the Commission as to the Impact of the Modification of Final Judgement and the Federal Communications Commission's Docket 78-72 on the Provision of Toll Service in New York State.

North Carolina Public Utilities Commission

Docket No. P-100, Sub 72: In the Matter of the Petition of AT&T to Amend Commission Rules Governing Regulation of Interexchange Carriers (Comments).

Docket No. P-141, Sub 19: In the Matter of the Application of MCI Telecommunications Corporation to Provide InterLATA Facilities-Based Telecommunications Services (Comments).

Docket No. P-55, Sub 1013: In the Matter of Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation.

Docket Nos. P-7, Sub 825 and P-10, Sub 479: In the Matter of Petition of Carolina Telephone and Telegraph and Central Telephone Company for Approval of a Price Regulation Plan Pursuant to G.S. 62-133.5.

Docket No. P-19, Sub 277: In the Matter of Application of GTE South Incorporated for and Election of, Price Regulation.

Docket No. P-141, Sub 29: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with BellSouth Telecommunications, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc. (consolidated).

Docket No. P-141, Sub 30: In the Matter of: Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc., Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with General Telephone Company of North Carolina, Inc. (consolidated).

Docket No. P-100, Sub 133b: Re: In the Matter of Establishment of Universal Support Mechanisms Pursuant to Section 254 of the Telecommunications Act of 1996.

Docket No. P-100, Sub 133d: Re: Proceeding to Determine Permanent Pricing for Unbundled Network Elements.

Docket No. P-100, Sub 84b: Re: In the Matter of Petition of North Carolina Payphone Association for Review of Local Exchange Company Tariffs for Basic Payphone Services (Comments).

Docket No. P-561, Sub 10: BellSouth Telecommunications, Inc., Complainant, v. US LEC of North Carolina, LLC, and Metacomm, LLC, Respondents.

Docket No. P-472, Sub 15: In the Matter of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Time Warner Telecom of North Carolina, L.P. Pursuant to Section 252(b) of the Telecommunications Act of 1996.

Public Utilities Commission of Ohio

Case No. 93-487-TP-ALT: In the Matter of the Application of The Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation.

Oklahoma Corporation Commission

Cause No. PUD 01448: In the Matter of the Application for an Order Limiting Collocation for Special Access to Virtual or Physical Collocation at the Option of the Local Exchange Carrier.

Public Utility Commission of Oregon

Docket No. UT 119: In the Matter of an Investigation into Tariffs Filed by US West Communications, Inc., United Telephone of the Northwest, Pacific Telecom, Inc., and GTE Northwest, Inc. in Accordance with ORS 759.185(4).

Docket No. ARB 3: In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996. Docket No. ARB 6: In the Matter of the Petition of MCIMetro Access Transmission Services, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (consolidated).

Docket No. ARB 9: In the Matter of the Petition of an Interconnection Agreement Between MCIMetro Access Transportation Services, Inc. and GTE Northwest Incorporated, Pursuant to 47 U.S.C. Section 252

Pennsylvania Public Utilities Commission

Docket No. I-00910010: In Re: Generic Investigation into the Current Provision of InterLATA Toll Service.

Docket No. P-00930715: In Re: The Bell Telephone Company of Pennsylvania's Petition and Plan for Alternative Form of Regulation under Chapter 30.

Docket No. R-00943008: In Re: Pennsylvania Public Utility Commission v. Bell Atlantic-Pennsylvania, Inc. (Investigation of Proposed Promotional Offerings Tariff).

Docket No. M-00940587: In Re: Investigation pursuant to Section 3005 of the Public Utility Code, 66 Pa. C. S. §3005, and the Commission's Opinion and Order at Docket No. P-930715, to establish standards and safeguards for competitive services, with particular emphasis in the areas of cost allocations, cost studies, unbundling, and imputation, and to consider generic issues for future rulemaking.

South Carolina Public Service Commission

Docket No. 90-626-C: In Re: Generic Proceeding to Consider Intrastate Incentive Regulation.

Docket No. 90-321-C: In Re: Petition of Southern Bell Telephone and Telegraph Company for Revisions to its Access Service Tariff Nos. E2 and E16.

Docket No. 88-472-C: In Re: Petition of AT&T of the Southern States, Inc., Requesting the Commission to Initiate an Investigation Concerning the Level and Structure of Intrastate Carrier Common Line (CCL) Access Charges.

Docket No. 92-163-C: In Re: Position of Certain Participating South Carolina Local Exchange Companies for Approval of an Expanded Area Calling (EAC) Plan.

Docket No. 92-182-C: In Re: Application of MCI Telecommunications Corporation, AT&T Communications of the Southern States, Inc., and Sprint Communications Company, L.P., to Provide IntraLATA Telecommunications Services.

Docket No. 95-720-C: In Re: Application of BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company for Approval of an Alternative Regulation Plan.

Docket No. 96-358-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252.

Docket No. 96-375-C: In Re: Interconnection Agreement Negotiations Between AT&T Communications of the Southern States, Inc. and GTE South Incorporated Pursuant to 47 U.S.C. § 252.

Docket No. 97-101-C: In Re: Entry of BellSouth Telecommunications, Inc. into the InterLATA Toll Market.

Docket No. 97-374-C: In Re: Proceeding to Review BellSouth Telecommunications, Inc. Cost for Unbundled Network Elements.

Docket No. 97-239-C: Intrastate Universal Service Fund.

Docket No. 97-124-C: BellSouth Telecommunications, Inc. Revisions to its General Subscriber Services Tariff and Access Service Tariff to Comply with the FCC's Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

Docket No. 1999-268-C: Petition of Myrtle Beach Telephone, LLC, for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Horry Telephone Cooperative, Inc.

Docket No. 1999-259-C: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Tennessee Public Service Commission

Docket No. 90-05953: In Re: Earnings Investigation of South Central Bell Telephone Company.

Docket Nos. 89-11065, 89-11735, 89-12677: AT&T Communications of the South Central States, MCI Telecommunications Corporation, US Sprint Communications Company -- Application for Limited IntraLATA Telecommunications Certificate of Public Convenience and Necessity.

Docket No. 91-07501: South Central Bell Telephone Company's Application to Reflect Changes in its Switched Access Service Tariff to Limit Use of the 700 Access Code.

Tennessee Regulatory Authority

Docket No. 96-01152: In Re: Petition by AT&T Communications of the South Central States, Inc. for Arbitration under the Telecommunications Act of 1996 and Docket No. 96-01271: In Re: Petition by MCI Telecommunications Corporation for Arbitration of Certain Terms and Conditions of a Proposed

Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996 (consolidated).

Docket No. 96-01262: In Re: Interconnection Agreement Negotiations Between AT&T of the South Central States, Inc. and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. § 252.

Docket No. 97-01262: Proceeding to Establish Permanent Prices for Interconnection and Unbundled Network Elements.

Docket No. 97-00888: Universal Service Generic Contested Case.

Docket No. 99-00430: Petition for Arbitration of ITC^DeltaCom Communications, Inc. with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.

Public Utility Commission of Texas

Docket No. 12879: Application of Southwestern Bell Telephone Company for Expanded Interconnection for Special Access Services and Switched Transport Services and Unbundling of Special Access DS1 and DS3 Services Pursuant to P. U. C. Subst. R. 23.26.

Docket No. 18082: Complaint of Time Warner Communications against Southwestern Bell Telephone Company.

Virginia State Corporation Commission

Case No. PUC920043: Application of Virginia Metrotel, Inc. for a Certificate of Public Convenience and Necessity to Provide InterLATA Interexchange Telecommunications Services.

Case No. PUC920029: Ex Parte: In the Matter of Evaluating the Experimental Plan for Alternative Regulation of Virginia Telephone Companies.

Case No. PUC930035: Application of Contel of Virginia, Inc. d/b/a GTE Virginia to implement community calling plans in various GTE Virginia exchanges within the Richmond and Lynchburg LATAs.

Case No. PUC930036: Ex Parte: In the Matter of Investigating Telephone Regulatory Methods Pursuant to Virginia Code § 56-235.5, & Etc.

Washington Utilities and Transportation Commission

Docket Nos. UT-941464, UT-941465, UT-950146, and UT-950265 (Consolidated): Washington Utilities and Transportation Commission, Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle and Digital Direct of Seattle, Inc., Complainant, vs. US West Communications, Inc., Respondent; TCG Seattle, Complainant, vs. GTE Northwest Inc., Respondent; Electric Lightwave, Inc., vs. GTE Northwest, Inc., Respondent.

Docket No. UT-950200: In the Matter of the Request of US West Communications, Inc. for an Increase in its Rates and Charges.

Public Service Commission of Wyoming

Docket No. 70000-TR-95-238: In the Matter of the General Rate/Price Case Application of US West Communications, Inc. (Phase I).

Docket No. PSC-96-32: In the Matter of Proposed Rule Regarding Total Service Long Run Incremental Cost (TSLRIC) Studies.

Docket No. 70000-TR-98-420: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase III).

Docket No. 70000-TR-99-480: In the Matter of the Application of US West Communications, Inc. for authority to implement price ceilings in conjunction with its proposed Wyoming Price Regulation Plan for essential and noncompetitive telecommunications services (Phase IV).

Public Service Commission of the District of Columbia

Formal Case No. 814, Phase IV: In the Matter of the Investigation into the Impact of the AT&T Divestiture and Decisions of the Federal Communications Commission on Bell Atlantic - Washington, D. C. Inc.'s Jurisdictional Rates.

Puerto Rico Telecommunications Regulatory Board

Case No. 98-Q-0001: In Re: Payphone Tariffs.

COMMENTS - FEDERAL COMMUNICATIONS COMMISSION

CC Docket No. 92-91: In the Matter of Open Network Architecture Tariffs of Bell Operating Companies.

CC Docket No. 93-162: Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access.

CC Docket No. 91-141: Common Carrier Bureau Inquiry into Local Exchange Company Term and Volume Discount Plans for Special Access.

CC Docket No. 94-97: Review of Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 94-128: Open Network Architecture Tariffs of US West Communications, Inc.

CC Docket No. 94-97, Phase II: Investigation of Cost Issues, Virtual Expanded Interconnection Service Tariffs.

CC Docket No. 97-231: Application by BellSouth to Provide In-Region InterLATA Services

CC Docket No. 98-121: Application by BellSouth to Provide In-Region InterLATA Services

CCB/CPD No. 99-27: In the Matter of Petition of North Carolina Payphone Association for Expedited Review of, and/or Declaratory Ruling Concerning, Local Exchange Company Tariffs for Basic Payphone Services.

CC Docket No. 96-128: In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CCB/CPD No. 99-31: Oklahoma Independent Telephone Companies Petition for Declaratory Ruling (consolidated).

REPRESENTATIVE TESTIMONY – STATE, FEDERAL, AND OVERSEAS COURTS

Court of Common Pleas, Philadelphia County, Pennsylvania

Shared Communications Services of 1800-80 JFK Boulevard, Inc., Plaintiff, v. Bell Atlantic Properties, Inc., Defendant.

United States District Court for the District of South Carolina, Columbia Division

Brian Wesley Jeffcoat, on behalf of himself and others similarly situated, Plaintiffs, v. Time Warner Entertainment - Advance/Newhouse Partnership, Defendant.

High Court of the Hong Kong Special Administrative Region, Court of First Instance

Commercial List No. 229 of 1999: Cable and Wireless HKT International Limited, Plaintiff v. New World Telephone Limited, Defendant

EXHIBIT DJW-2

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: SOUTH SLOPE COOPERATIVE TELEPHONE COMPANY	DOCKET NO. RET-97-1

FINAL DECISION AND ORDER

(Issued December 24, 1997)

I. STATUTORY BACKGROUND

The Telecommunications Act of 1996 (Act) provides rural telephone companies with protection from some of the burdens associated with competitive entry. In this case, the protection asserted by South Slope Cooperative Telephone Company (South Slope) exempts rural companies from the obligations imposed on incumbent companies under § 251(c) of the Act. 42 U.S.C.§ 251(f)(1)(A). That provision provides that in addition to the duties contained in § 251(b) of the Act, a local exchange carrier has the duty to negotiate in good faith; provide for interconnection with any requesting carrier for routing at any technically feasible point and provide service of equal quality at rates and terms which are reasonable and nondiscriminatory; provide unbundled access; provide for resale at wholesale; provide public notice of changes; and, provide for physical collocation or virtual collocation if physical collocation is not practical.

In § 251(f)(1)(B), the Act provides that a carrier's rural exempt status shall be terminated by the state commission if, after receiving a notice of a bona fide request for interconnection, services, or network elements, the commission finds the request is not unduly economically burdensome, is technically feasible, and is consistent with § 254, other than subsections (b)(7) and (c)(1)(D) thereof. [1] The commission is directed to conduct an inquiry for the purpose of making this determination and to set an implementation schedule for compliance.

II. PROCEDURAL HISTORY

On August 26, 1997, U S West Communications, Inc. (U S West), filed notice with the Utilities Board (Board) of a letter dated August 22, 1997, from U S West to South Slope requesting to negotiate terms and conditions of an agreement for interconnection by purchase or resale of South Slope's facilities. U S West stated the letter should be considered a bona fide request pursuant to § 251 of the Act . On September 11, 1997, South Slope filed a copy of a letter it had sent to U S West. In

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[1] Section 254(b)(7) states:

> ADDITIONAL PRINCIPLES.—Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience and necessity and are consistent with the Act.

Section 254(c)(1)(D) states in recommending and establishing the definition of services supported by universal service the extent to which such telecommunications services "are consistent with the public interest, convenience, and necessity" must be considered.

that letter, South Slope stated that U S West's letter did not constitute a bona fide request and, also, stated it is exempt from the requirements of § 251 of the Act. After the parties filed briefs, the Board determined the letter was a bona fide request under the Act . Pursuant to § 251(f)(1)(B) of the Act, on October 22, 1997, the Board issued an order setting a procedural schedule for determining whether to terminate South Slope's exemption from § 251(c) of the Act. The parties filed direct and rebuttal testimony and on November 17, 1997, a hearing was held. The parties filed briefs on November 24, 1997.

III. DISCUSSION

A. Does South Slope Qualify as a Rural Telephone Company under §153(37) of the Act?

Pursuant to the Act, South Slope must first show that it qualifies as a rural telephone company under § 153(37) of the Act. The statute defines a rural telephone company as one that provides local exchange service to any local exchange service area that does not include either an incorporated place of 10,000 inhabitants or an urbanized area; provides exchange service to fewer than 50,000 access lines; provides exchange service to any local study area with fewer than 100,000 access lines; or has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Act.

U S West stated that because South Slope provides service to Cedar Rapids and Coralville, Iowa, cities with population of more than 10,000 inhabitants, it does not fit the definition of a rural telephone company. According to South Slope, it satisfies at least three of the standards under the Act and it is only necessary that it satisfy one of the standards.

The Board finds South Slope is a rural telephone company under § 153(37)B of the Act. The statute presents the standards as alternatives. The conjunction "or" separates the standards, rather than the conjunction "and." Thus, if a carrier meets any one of the standards, it qualifies as a rural telephone company. See, "Order Denying Motion," issued December 11, 1996, Docket No. M-263. South Slope has satisfied at least one, and probably three, of the criteria and, therefore, qualifies as rural telephone company under the Act.

B. Should the Exempt Status be Terminated?

Since the Board has determined South Slope is exempt as a rural telephone company, the next issue to consider is whether the exemption should be terminated. Pursuant to § 251(f)(1)(B) of the Act, the Board must consider whether the request is unduly economically burdensome to South Slope, whether the request is technically feasible, and whether the request is consistent with § 254 of the Act.

1. Is the request unduly economically burdensome?

South Slope estimated that the cost of losing its rural exempt status would be approximately $250,000 to $300,000. (Tr. 12). This amount includes the cost of record keeping for leased lines, additional computer disk storage, software and maintenance, accounting costs for billing, collecting payments, and increased regulatory requirements. (Tr. 11). South Slope estimated an unbundling study would cost an additional $90,000. (Tr. 12). In addition, South Slope stated that if it is required to hire additional employees, this could raise the cost significantly.

U S West countered that the $390,000 estimated costs of complying with § 251(c) constitute less than 2 percent of South Slope's retained earnings of approximately $22 million. In addition, Consumer Advocate pointed out that even if South Slope retained its rural exempt status, it would be subject to the requirements of 251(a) and (b) and, therefore, would have to incur expense to comply with those provisions. (Tr. 152).

The Board has considered the testimony of the parties and finds South Slope would not be unduly economically burdened by complying with U S West's request. All carriers will experience some economic burden associated with efficient competitive entry. Exemption from the requirements of 251(c) is only justified when

a carrier will experience economic burden beyond the expected economic burdens associated with competitive entry. South Slope is subject to the requirements of §§ 251(a) and (b) of the Act. Among other things, those subsections require a carrier to interconnect, allow resale, provide number portability and parity, provide access to poles, ducts, conduits and rights of way, and establish reciprocal compensation for transport and termination. South Slope must expend resources in order to comply with those sections and ready itself for competition. With the exception of the $90,000 for the unbundling study, many of the costs claimed by South Slope will be incurred to comply with subsections (a) and (b). In addition, the record shows South Slope's retained earnings are approximately $22 million. (Tr. 25). This appears to be more than adequate to offset these costs without endangering South Slope's financial viability.

2. Is the request technically feasible?

The next inquiry is whether the request is technically feasible. Since U S West did not specify a specific point of interconnection, South Slope assumed the most likely area would originate from U S West's Iowa City and Cedar Rapids exchanges. In order to achieve this interconnection, it would be necessary for U S West to collocate in South Slope's North Liberty office. South Slope stated that if

U S West required collocation in this office, it would need to construct a new building. In response, U S West testified it would pay for the cost of adding such space and "conditioned air or power or other such requirements." (Tr. 105).

The Board finds no evidence of technical infeasibility. Even if it is assumed that interconnection would require collocation at the North Liberty office, the fact that the North Liberty office is at maximum capacity does not constitute technical infeasiblity. U S West has agreed to pay the costs of building new space. (Tr. 105). Finally, if U S West decided to resell South Slope's retail services, there would be no additional space demands and no question of technical infeasibility.

3. **Is the request consistent with §254 of the Act?**

The third prong of the analysis is whether the request is consistent with § 254 of the Act, with the exception of subsections (b)(7) and (c)(1)(D). South Slope stated that universal service would be jeopardized if South Slope loses its exemption because quality services would be difficult to maintain. South Slope also stated that "just, reasonable, and affordable rates" would also be difficult to maintain because of the necessity to recover the costs of interconnection. Finally, South Slope claimed advanced telecommunications services offered to schools and libraries at discounted rates could be terminated if it is forced to absorb additional expense. Both U S West and Consumer Advocate maintained that compliance with § 251(c) should not warrant any reduction in spending which would jeopardize universal service. U S

West reiterated that South Slope would be compensated for most of its costs of complying with § 251(c).

The Board has reviewed the testimony regarding universal service and finds the request is consistent with § 254. The Board agrees that the costs of compliance with § 251(c) should not have a significant economic impact on South Slope. When the burden of making its system accessible to competitors is weighed with the financial resources available to South Slope, it is clear that terminating the exemption should not cause a result inconsistent with the universal service principles set out in § 254.

IV. CONCLUSION

The Board has carefully considered each prong of the analysis mandated by the Act and finds South Slope's rural exemption must be terminated. The costs claimed by South Slope do not appear to exceed the costs of efficient competitive entry. Those costs will, for the most part, be incurred under § 251(a) and (b) regardless of the rural exemption. There does not appear to be an interconnection point which could be deemed technically infeasible. Finally, the additional costs should not affect the provision of universal service in the area.

The goal of the Act and IOWA CODE § 476.95 (1997) is to further the development of competition. Exemption from the § 251 requirements should be the exception rather than the rule. South Slope has an excellent reputation for providing

quality service at affordable rates and appears to be well positioned in the competitive market. The Board 's decision to terminate its exempt status will not create a playing field which is not level. To the contrary, the Board's decision will further the development of competition in the market and further the goal of making communications services available throughout the state at just, reasonable, and affordable rates from a variety of providers.

V. IMPLEMENTATION SCHEDULE

The Act directs the Board to establish an implementation schedule for compliance with the request. Negotiations shall begin with the date of this order. During the period from the 135th to the 160th day (inclusive) after the date of this order, any party to the negotiation may petition the Board to arbitrate any open issues.

VI. FINDINGS OF FACT

1. South Slope Cooperative Telephone Company is a rural telephone company as defined by § 153(37) of the Telecommunications Act of 1996.

2. The bona fide request by U S West Communications, Inc., is not unduly economically burdensome.

3. The bona fide request by U S West Communications, Inc., is technically feasible.

4. The bona fide request by U S West Communications, Inc., is consistent with § 254 of the Telecommunications Act of 1996.

5. It is reasonable to establish an implementation schedule which corresponds to the schedule set in § 252 of the Telecommunications Act of 1996.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction of the parties and the subject matter of this proceeding, pursuant to § 251(f)(1)(B) of the Telecommunications Act of 1996 and IOWA CODE § 476.1(1997).

2. South Slope Cooperative Telephone Company is a rural telephone company pursuant to § 153(37) of the Telecommunications Act of 1996.

3. South Slope Cooperative Telephone Company's exemption under § 251(f)(1)(A) must be terminated.

VIII. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. South Slope Cooperative Telephone Company's rural telephone company exemption under § 251(f)(1)(A) is terminated.

2. The parties shall commence voluntary negotiations as of the date of this order.

3. The remainder of the implementation schedule shall continue as described in the body of this order.

4. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the briefs not specifically addressed in this order is rejected as either not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

UTILITIES BOARD

ATTEST:

Executive Secretary

Dated at Des Moines, Iowa, this 24th day of December, 1997.

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: HEARTLAND TELECOMMUNICATIONS COMPANY OF IOWA	DOCKET NO. RET-98-1

FINAL DECISION AND ORDER

(Issued April 10, 1998)

I. PROCEDURAL HISTORY

On December 12, 1997, the City of Hawarden (Hawarden) filed a complaint identified as Docket No. FCU-97-8 against Heartland Telecommunications Company of Iowa (Heartland) for failure to negotiate interconnection terms. Hawarden attached a copy of an August 22, 1997, letter to the complaint. On February 2, 1998, Heartland filed an answer to the complaint claiming that it is a rural telephone company pursuant to § 153(37) of the Telecommunications Act of 1996 (Act), and exempt from the requirements of § 251(c) of the Act. Heartland also alleged the August 22, 1997, letter was not a bona fide request under the Act. On February 18, 1998, a conference of the parties was conducted by the Administrative Law Judge. On February 25, 1998, the Board issued an order directing the parties to file briefs addressing the question of whether the August 22, 1997, letter from Hawarden to Heartland was a "bona fide request for interconnection, services, or network elements" under § 251(f)(1)(A) of the Act. On March 12, 1998, the Board issued an order finding that the August 22, 1997, letter was a bona fide request under the Act

and setting a procedural schedule for an inquiry concerning whether Heartland's exemption as a rural telephone company should be terminated.

II. STATUTORY BACKGROUND

The Act provides rural telephone companies with protection from some of the burdens associated with competitive entry. In this case, the protection asserted by Heartland exempts rural telephone companies from the obligations imposed on incumbent companies under § 251(c) of the Act. 47 U.S.C. § 251(f)(1)(A). Subsection (c) provides that in addition to the duties contained in § 251(b) of the Act, a local exchange carrier has the duty (1) to negotiate in good faith; (2) to provide for interconnection with any requesting carrier at any technically feasible point, of quality equal to that the carrier provides to itself, and at rates and terms which are reasonable and nondiscriminatory; (3) to provide access to unbundled network elements; (4) to provide for resale at wholesale rates; (5) to provide public notice of changes; and, (6) to provide for collocation.

In § 251(f)(1)(B), the Act provides that a carrier's rural exempt status shall be terminated by the state commission if, after receiving notice of a bona fide request for interconnection, services, or network elements, the commission finds the request is not unduly economically burdensome, is technically feasible, and is consistent with § 254, other than subsections (b)(7) and (c)(1)(D) thereof. The Act directs the Board to conduct an inquiry for the purpose of determining whether the rural

exemption should be terminated and, if it is, to set an implementation schedule for compliance.

III. DISCUSSION

A. Did Hawarden Make a Bona Fide Request for Interconnection?

On August 22, 1997, Hawarden sent a letter to Hickory Tech Corporation (Hickory Tech), the parent corporation of Heartland, in which it stated that it was writing to inquire about the interconnection of "HITEC's frame with the Heartland frame, as well as other interconnection issues." (Ex. 2). The parties filed briefs addressing the issue of whether that letter constituted a bona fide request under the Act. On March 12, 1998, the Board issued an "Order Setting Procedural Schedule to Consider Rural Exemption and Discussing Petition for Arbitration Without Prejudice." In that order, the Board ruled the August 22 letter was a bona fide request for interconnection. The Board affirms its earlier decision.

B. Does Heartland Qualify as a Rural Telephone Company under § 153(37) of the Act?

Pursuant to the Act, Heartland must first show that it qualifies as a rural telephone company under § 153(37) of the Act. If it is not a rural telephone company under the Act, it is not entitled to an exemption from the obligations in 251(c). The statute defines a rural telephone company as an entity that provides common carrier service to any local exchange study area that does not include either an incorporated place of 10,000 inhabitants or more or an "urbanized area," provides exchange service to fewer than 50,000 access lines; provides exchange service to any local

study area with fewer than 100,000 access lines; or has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Act. In the "Final Decision and Order," in South Slope Cooperative Telephone Company, the Board stated that if a carrier meets any one of the standards, it qualifies as a rural telephone company. Docket No. RET-97-1, issued December 24, 1997, p. 4. Hawarden states that because Heartland is a wholly-owned subsidiary of Hickory Tech Corporation (Hickory Tech), the Board should consider whether the national operating entity fits the definition of a rural telephone company.

A review of the evidence shows that either Heartland or Hickory Tech would qualify as a rural telephone company. Heartland provides service to 12,993 access lines in 11 exchanges and its local exchange service areas do not include any incorporated place of 10,000 inhabitants or any urbanized area. (Tr. 9, 78-9). Heartland provides exchange service to a local study area with fewer than 100,000 access lines and has never had any access lines in communities of more than 50,000. (Tr. 9). Hickory Tech qualifies under subparagraphs 153(37)(C) and (D) of the Act. All of Hickory Tech's exchange study areas have fewer than 100,000 access lines and there is no community of more than 50,000 served by Hickory Tech. (Tr. 19-20). Pursuant to §153(37), Heartland is a rural telephone company under the Act.

C. Should the Exempt Status be Terminated?

Since the Board has determined Heartland is exempt as a rural telephone company and reaffirmed its decision that the August 22, 1997, letter is a bona fide request for interconnection under the Act, the next issue to consider is whether the exemption should be terminated. Pursuant to § 251(f)(1)(B) of the Act, the Board must consider whether the request is unduly economically burdensome to Heartland, whether the request is technically feasible, and whether the request is consistent with § 254 of the Act.

1. Who Has the Burden of Proof?

Heartland contends it has the burden to prove it is a rural telephone company and Hawarden has the burden of proving Heartland's exemption should be terminated. Heartland cited authority stating the burden rests upon the party who has "the affirmative of the issue" or who would suffer loss if the issue were not established. Heartland also cited authority holding that the party who relies upon an exception to a general rule has the burden of establishing facts which bring the matter within the exception. Heartland argues Hawarden has the burden to prove Heartland's exemption should be terminated because Hawarden would suffer loss if Heartland's rural exemption is not terminated and because termination is an "exception to a general rule."

Hawarden and the Consumer Advocate state the burden of proof is on Heartland to establish that it should retain the rural exemption. The parties state it is

difficult for anyone but the rural telephone company to access the rural telephone company's proprietary information related to economic burden and technical feasibility and those desiring to delay competition should have the burden to show why the exemption should continue.

The Board finds it is reasonable to place the burden on the rural telephone company asserting the exemption. A party having the affirmative of a proposition is required to prove it. Race v. Iowa Electric Light and Power Company, 134 N.W.2d 335 (Iowa 1965). Heartland asserted it is exempt from certain requirements of the Act and has the burden of proving it is entitled to continued exemption from § 251(c). In order to justify continued exemption, it must show that Hawarden's request is unduly economically burdensome, technically infeasible, or inconsistent with § 254 of the Act.

This is consistent with the Federal Communications Commission's (FCC) rules. *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 96-325, CC Docket No. 96-98, First Report and Order at 604, ¶1263 (FCC Aug. 8, 1996). Those rules were vacated by the Eighth Circuit on jurisdictional grounds. Iowa Utilities Board v. FCC, 120 F3d 753, 802-3 (8th Cir. 1997), cert. granted, 118 S.Ct. 879 (1998). The reasoning in the FCC's decision is sound. Finally, the Board notes this case has not been decided on a burden of proof analysis. The parties have provided significant evidence for and

against termination and the Board has weighed that evidence in reaching its decision.

2. Is the request not unduly economically burdensome, technically feasible and consistent with § 254?

a. Unduly economically burdensome. Heartland stated termination of its exemption would place an undue economic burden upon Heartland. According to Heartland, it is a new telephone company and its resources would be better used upgrading its facilities. Heartland identified five costs which it stated would be incurred in complying with a § 251(c) request: $100,000 for the unbundled loop study; $350,000 for the recordkeeping and billing system; $250,000 to provide E911 capabilities; $200,000 to $400,000 for subloop interconnection; and, $150,000 for an optical system. (Tr. 23-24).

Hawarden provided testimony showing that the E911 costs will not be expended, subloop interconnection is not being requested and, if required, the cost of implementing an optical system will be borne by Hawarden. (Tr. 24, 40, 172, 174). Hawarden stated the only applicable costs, the cost of the unbundled loop study and the recordkeeping/billing system, are part of the costs of competition. Consumer Advocate stated any costs identified are either not necessary or costs which Heartland would have to incur to comply with other provisions of federal or state law from which it is not exempt.

The Board has stated that exemption from the requirements of § 251(c) is only justified when a carrier will experience economic burden beyond the expected

economic burdens associated with competitive entry. "Final Decision and Order," South Slope, issued December 24, 1997, Docket No. RET-97-1 at 5-6. All utilities must comply with 251(a) and (b) which require interconnection, resale, number portability and dialing parity, access to poles, ducts, conduits and rights of way, and reciprocal compensation. The costs related to billing and bookkeeping will be incurred for any interconnection regardless of Heartland's status as a rural telephone company. An unbundled loop study must be performed in order to make the unbundled loop available, as required by § 251(c). Therefore, these billing, bookkeeping, and loop study costs are not beyond the expected and required economic burdens associated with competitive entry. When looking at the burden of these costs, the Board will look to the finances of the company as a whole. These costs, totaling an estimated $450,000, are not unduly economically burdensome in light of Heartland's $1.4 million in retained earnings and $1.7 million in net operating revenue. (Ex. 3; Tr. 22).

b. **Technical Feasibility**. Heartland identified some interconnection situations which could potentially be technically infeasible. (Tr. 15-17). However none of those situations are present in the interconnection requested by Hawarden. Therefore, there is no evidence in the record that Hawarden's request is not technically feasible.

c. **Consistency with § 254.** Heartland stated complying with the request would be inconsistent with the requirements of § 254 because of the economic

burden associated with complying with § 251(c). Heartland stated it has expended approximately $3.9 million in capital additions in 1997 on a company-wide basis. (Tr. 22). That expenditure upgraded Heartland's exchanges to company standards. (Tr. 37). If the costs of complying with § 251(c) are compounded with the costs of upgrading the exchanges, Heartland argued this economic burden would be inconsistent with § 254. Consumer Advocate stated Heartland purchased U S West's exchanges knowing it would need to invest capital to bring it up to standards. Hawarden contended competition between facilities-based providers should promote just, reasonable, and affordable rates and advanced services in the rural area.

The Board has reviewed the record and finds there is nothing inconsistent with universal service principles in requiring Heartland to comply with § 251(c). The goal of universal service is to make affordable telephone service available in all areas. The fact that there will be competition in the exchange will tend to improve the quality of services and drive rates downward.

Heartland also argued there are additional economic burdens which are dependent upon access charge reform and universal service support mechanisms. According to Heartland, the Board should not make a finding regarding undue economic burden and consistency with § 254 of the Act until those issues are resolved. The Board finds that it would be inconsistent with the goals of the Act and IOWA CODE § 476.95 to delay the benefits of competitive local exchange service pending resolution of these issues. There is no compelling reason to delay

competition while those issues are being resolved. It is expected that the burdens associated with those issues will be allocated in a manner which is fair and equitable.

IV. Conclusion and Scope of the Board's Decision.

After considering each prong of the analysis mandated by the Act and carefully reviewing the record, the Board finds Heartland's rural exemption should be terminated. The goal of the Act and IOWA CODE § 476.95 is to further the development of competition.

Requiring Heartland to comply with the provisions of § 251(c) will not be unduly economically burdensome to Heartland. The costs attributable to interconnection with Hawarden do not exceed the costs of efficient competitive entry. All of the costs identified by Heartland, with the exception of the $100,000 estimated cost of the unbundling study, will either not be required or will be incurred regardless of the rural exemption. There is no evidence of technical infeasibility in the record. Finally, these additional costs should not affect the provision of universal service in the area. The fact that there will be competition in the exchange will improve services and make rates competitive. The Board's decision to terminate Heartland's exempt status will further the development of competition and the goal of making communications services available throughout the state at just, reasonable, and affordable rates from a variety of providers.

In its brief, Heartland stated termination of the exemption should be limited to the particular bona fide request which initiated the termination proceedings.

Heartland stated the removal of the exemption could depend on the timing of a burdensome request. According to Heartland, if an unduly burdensome request occurred first, the rural exemption would not be removed. If a non-burdensome request removed the exemption on a company-wide basis, the rural telephone company would have no protection from a subsequent burdensome request.

The Board has carefully considered this argument and finds the rural exemption must be removed on a company-wide basis. Although §§ 251(f)(1)(A) and (B) require the Board to conduct its analysis on the basis of a bona fide request, § 251(1)(A) states:

> Subsection (c) of this section shall not apply to a *rural telephone company* until (I) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly econcomically burdensome, is technically feasible, and is consistent with section 254 (other than Subsections (b)(7) and (c)(1)(D) therof). (emphasis provided)

The particular bona fide request is merely the trigger showing competitive interest that causes the termination analysis to be made, as well as providing a context for analysis. The Act makes the exemption applicable to the company and the exemption must be terminated on a company-wide basis.

This interpretation does not have the arbitrary effect claimed by Heartland because the small telephone company has another avenue for seeking protection from the requirements of § 251(b) and (c). In § 251(f)(2) of the Act, Congress set

out a procedure for suspensions and modifications for rural carriers. This relief is available to Heartland, pursuant to subsequent requests, if the application of the specific requirements of subsections (b) and (c) to its telephone exchange service facilities is economically burdensome, technically infeasible or threatens adverse economic impact on users. Heartland's rural exemption will be terminated.

V. IMPLEMENTATION SCHEDULE

The Act directs the Board to establish an implementation schedule for compliance with the request. Accordingly, good faith negotiations regarding interconnection, services, or network elements desired by Hawarden shall begin with the date of this order. During the period from the 135th day to the 160th day (inclusive) after the date of this order, any party may petition the Board to arbitrate any open issues.

Hawarden attempted to initiate negotiations in August of 1997 and no negotiations have taken place. The Board expects the negotiations to be fruitful in a fairly short time frame and notes that under IOWA CODE § 476.11, the Board has complaint authority to determine just, reasonable, and nondiscriminatory arrangements for interconnection. Similarly, the Board has the complaint authority to determine compliance with IOWA CODE §§ 476.96 through 476.102 under IOWA CODE § 476.101(8).

VI. FINDINGS OF FACT

1. Heartland Telecommunications Company of Iowa is a rural telephone company as defined by § 153(37) of the Telecommunications Act of 1996.

2. The bona fide request for interconnection made by the City of Hawarden is not unduly economically burdensome.

3. The bona fide request for interconnection made by the City of Hawarden is technically feasible.

4. The bona fide request for interconnection made by the City of Hawarden is consistent with § 254 of the Telecommunications Act of 1996.

5. It is reasonable to establish an implementation schedule which corresponds to the schedule set in § 252 of the Telecommunications Act of 1996.

VII. CONCLUSIONS OF LAW

1. The Board has jurisdiction of the parties and the subject matter of this proceeding, pursuant to § 251(f)(1)(B) of the Telecommunications Act of 1996 and IOWA CODE chapter 476 (1997).

2. Heartland Telecommunications Company of Iowa is a rural telephone company pursuant to § 153(37) of the Telecommunications Act of 1996.

3. Heartland's exemption under § 251(f)(1)(A) should be terminated.

VIII. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Heartland Telecommunications Company of Iowa's rural telephone company exemption under § 251(f)(1)(A) is terminated.

2. The parties shall commence negotiations regarding interconnection, services, or network elements desired by Hawarden as of the date of this order. The remainder of the implementation schedule shall continue as described in the body of this order.

3. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the briefs not specifically addressed in this order is rejected as either not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

UTILITIES BOARD

ATTEST:

Executive Secretary

Dated at Des Moines, Iowa, this 10th day of April, 1998.

STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: WINNEBAGO COOPERATIVE TELEPHONE ASSOCIATION	DOCKET NO. RET-98-2

FINAL DECISION AND ORDER

(Issued September 14, 1998)

I. PROCEDURAL HISTORY

On May 20, 1998, GTE Midwest Incorporated (GTE) filed with the Utilities Board (Board) a copy of its letter to Winnebago Cooperative Telephone Association (Winnebago) requesting interconnection. GTE requested the Board open a docket to determine whether Winnebago's rural exemption should be terminated pursuant to 47 U.S.C. § 251(f)(1)(B). On June 23, 1998, Winnebago filed a response with the Board requesting the Board cease further proceedings or uphold the rural exemption if it chose to adjudicate the case. On June 24, 1998, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an appearance. On June 26, 1998, the Board issued an order setting a procedural schedule for an inquiry concerning whether Winnebago's exemption should be terminated.

On July 21, 1998, Winnebago filed a motion for reconsideration of the order dated June 26, 1998, in which the Board determined GTE's letter was sufficient to

constitute a bona fide request for interconnection. On July 28, 1998, GTE and Consumer Advocate filed a response to the motion for reconsideration. On August 12, 1998, the Board issued an order denying the motion for reconsideration. Winnebago and GTE filed prepared direct and rebuttal testimony and exhibits pursuant to the procedural schedule. A hearing was held on August 18, 1998, and the parties filed briefs on August 25, 1998.

II. STATUTORY BACKGROUND

Pursuant to 47 U.S.C. § 251(f)(1)(A), a rural incumbent local exchange carrier (ILEC) is exempt from the § 251(c) duties ILECs must meet unless the Board terminates its rural exemption:

> (1) Exemption for certain rural telephone companies.--
> (A) Exemption.--Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

If Winnebago is a "rural telephone company" pursuant to 47 U.S.C. § 153(47), and if GTE has made a bona fide request for interconnection, the Board determines whether Winnebago's rural exemption should continue under the procedure described in 47 U.S.C. § 251(f)(1)(B).

It is not disputed that Winnebago is a rural telephone company within the meaning of 47 U.S.C. § 153(47). Therefore, the issues before the Board are whether GTE has made a bona fide request for interconnection, whether GTE's request for interconnection is unduly economically burdensome, whether the request for interconnection is technically infeasible, and whether the request is consistent with 47 U.S.C. § 254, other than subsections 254(b)(7) and 254(c)(1)(D).

III. ANALYSIS

A. Did GTE Make A Bona Fide Request For Interconnection?

The Board has ruled GTE made a bona fide request for interconnection in orders issued June 26, 1998, and August 12, 1998. While Winnebago continues to pursue this claim, its arguments do not warrant a different conclusion.

On May 15, 1998, GTE sent a letter to Winnebago asking "for a comprehensive interconnection agreement" to:

> [A]ddress the terms and conditions for reciprocal compensation for the transport and termination of local service area traffic, resale of Winnebago telecommunication services at a wholesale discount, access to Winnebago's network elements on an unbundled basis and all other pertinent matters relating to GTE Midwest's offer of competitive local telecommunications services... (Exs. 3, 101)

The Telecommunications Act does not define the elements of a "bona fide request." On its face, GTE's letter to Winnebago is a good faith request to interconnect. The Board has held where a request to interconnect appears to be

made in good faith on its face, this is sufficient to initiate the negotiations process notwithstanding the lack of details in the request or a firm commitment to provide service. South Slope Cooperative Telephone Company, "Order Setting Procedural Schedule and Denying Request For Intervention," Docket No. RET-97-1, p. 3, issued October 22, 1998. Winnebago argues the evidentiary record shows GTE's request was not a bona fide request, but the evidence supporting its argument is not persuasive. Winnebago asserts GTE's letter of request for interconnection was its first to a rural telephone company in Iowa, but this makes it neither less probable nor more probable that GTE's request was made in good faith. Winnebago also asserts GTE has not developed a business or marketing plan to compete with Winnebago, but this too makes it neither less probable nor more probable that GTE's request was made in good faith. Indeed, Winnebago's refusal to negotiate may partly explain GTE's lack of a business or marketing plan. (Tr. 95). Finally, Winnebago asserts GTE has requested interconnection because its own subsidiary (Forest City Telecom) will be competing with GTE in the Forest City exchange. This evidence does not make it less probable GTE's request for interconnection was made in good faith. Consistent with its previous orders, the Board finds GTE's letter of request for interconnection was a bona fide request under the Telecommunications Act.

B. Should Winnebago's Exempt Status Be Terminated?

Since Winnebago is a rural telephone company and GTE's letter requesting interconnection was a bona fide request, the Board will determine whether

Winnebago's rural exemption may be terminated. In doing so, the Board must consider whether the request for interconnection is unduly economically burdensome to Winnebago, whether the request is technically feasible, and whether the request is consistent with 47 U.S.C. § 254.

1. Is GTE's Request Unduly Economically Burdensome upon Winnebago?

Winnebago stated termination of its rural exemption would place an undue economic burden on it. Winnebago believes the economic burdens of competition become undue when it incurs expenses that do not generate a benefit to its member-consumers and when it loses member-consumers to competitors who can help defray that expense. (Tr. 12). Winnebago believes the potential additional expenses and potential revenue losses will jeopardize its ability to obtain financing for its network improvements plan, which would cause higher rates and decrease in services. (Tr. 13). Winnebago also believes this may delay or thwart its planned system upgrades. (Tr. 15). GTE responded Winnebago has not quantified these expenses and has not shown they are significant. (Tr. 88).

All carriers will experience some economic burden associated with efficient competitive entry. Pursuant to 47 U.S.C. § 251(a) and (b), Winnebago must interconnect with other carriers, provide resale, provide number portability, provide dialing parity to competing carriers, provide access to poles, ducts, conduits and rights of way, and establish reciprocal compensation arrangements. The additional

duties of incumbent local exchange carriers under 47 U.S.C. § 251(c) are: to negotiate in good faith for interconnection, services, or network elements pursuant to § 252; to provide for interconnection; to provide unbundled access to its network elements; to offer for resale at wholesale rates retail services; to give reasonable notice to the public of changes in service; and to provide for collocation as necessary for interconnection or access to its unbundled network elements.

Winnebago states if its rural exemption is terminated, it will incur costs of $90,000 for an unbundled loop cost study and $200,000 to $250,000 for operating system software, and costs for additional employees. (Tr. 14, 20). Many of these costs, however, would be incurred under subsections 251(a) and (b) even if Winnebago's rural exemption was not terminated. (Tr. 51-2). Winnebago also asserted it would have costs to build new facilities to house GTE's equipment. However, GTE will pay the costs associated with the facilities or equipment necessary to interconnect. (Tr. 49, 109-10). See also 47 U.S.C. § 252(d)(1).

The Board has previously stated exemption from the requirements of subsection 251(c) is only justified when a carrier will experience economic burden beyond the expected economic burdens associated with competitive entry. The burdens listed by Winnebago do not satisfy this test. In looking at the burden of these costs, the Board will examine the finances of the company as a whole. South Slope, "Final Decision and Order" issued December 24, 1997, Docket No. RET-97-1, pp. 5-6. The record shows Winnebago has $21.9 million in retained earnings

comprised of $17.3 million in deferred patronage dividends and a reserve account of $4.7 million. (Tr. 81; Ex. 7). Winnebago's net income in 1997 was $2.7 million and it has invested $1 million in Forest City Telecom, its local exchange service provider subsidiary company that will be competing with GTE in the Forest City exchange. (Tr. 21, 43-4, 53, 81). Winnebago notes its revenues may not remain at $2,700,000 because the bulk of the revenue came from access charges which may be reduced in the future. Winnebago asserts its local network revenues were $829,108, which is only a fraction of its net income. (Tr. 22). Pursuant to South Slope, these revenues must be compared against estimated costs of between approximately $290,000 and $340,000 for a cost study and software, and the additional costs Winnebago did not estimate. These costs are not unduly economically burdensome in light of Winnebago's $21.9 million in retained earnings and $2.7 million in net operating revenue. See Heartland Telecommunications Company of Iowa, "Final Decision and Order," issued April 10, 1998, in Docket No. RET-98-1, p. 8.

2. Is GTE's Request Technically Feasible?

Winnebago asserts GTE's request for interconnection is technically infeasible because it has one remote switch unit and because there is no land adjacent to its dial offices to accommodate physical collocation. (Tr. 14, 106, 114). Neither obstacle, however, prevents interconnection with GTE. GTE has made comparable connections with the kinds of switches Winnebago uses, and where Winnebago uses a remote switch, interconnection can be accomplished at the host switch. (Tr.

90, 114, 121). Moreover, collocation does not require interconnection in Winnebago's physical central office space. (Tr. 89). GTE's request for interconnection appears to be technically feasible.

3. Is GTE's Request Consistent with 47 U.S.C. § 254?

The next issue is whether GTE's request for interconnection is consistent with section 254 of the Telecommunications Act, with the exception of subsections (b)(7) and (c)(1)(D). Winnebago asserts interconnection with GTE would be inconsistent with universal service requirements because it expects GTE will target a small number of its high-volume customers. Winnebago speculates the loss of the high-volume customers will leave remaining customers with higher rates and reduced service, contrary to 47 U.S.C. § 254(b)(1). (Tr. 15, 20, 118). Winnebago also notes removal of the rural exemption may jeopardize its ability to proceed with planned system upgrades. (Tr. 15).

The argument Winnebago's customers will pay higher rates is unpersuasive. The Board has already found the loss of the exemption from the duties imposed by section 251(c) would not be unduly economically burdensome to Winnebago. Winnebago points out GTE's witness stated competition might result in higher rural rates because of the loss of implicit subsidies and universal service funds. (Tr. 117). GTE's witness, however, uttered that statement in a general rather than specific sense. The evidence does not establish a specific correlation between the proposed interconnection and higher rates to Winnebago customers. Indeed,

universal service support mechanisms continue to be available to advance universal service in rural and high cost service areas. (Tr. 90). The record contains no estimated probable impact of the loss of Winnebago's high-volume customers on its remaining customers. The Board continues to believe competition in the local exchange will tend to improve the quality of service and drive rates downward. Heartland, "Final Decision and Order," p. 9.

Winnebago's second argument, that removal of the rural exemption may jeopardize its ability to proceed with planned system upgrades, is likewise unpersuasive. Winnebago states system upgrades may have to be delayed if its costs increase and if its staff must undertake additional responsibilities. (Tr. 15). The Board, however, has already concluded interconnection would not be unduly economically burdensome for Winnebago in light of its retained earnings and net income. Winnebago has also acknowledged additional employees will have to be hired. In short, Winnebago has the resources to overcome the revenue and staffing problems. It does not appear interconnection between GTE and Winnebago will frustrate the goals of universal service to make affordable telephone service available in all areas. 47 U.S.C. §§ 254(b)(1), (2), and (3).

The analysis of the three factors identified in 47 U.S.C. § 251(f)(1)(A) indicate Winnebago's rural exemption should be terminated. The exemption will be terminated on a company-wide basis. 47 U.S.C. § 251(f)(1)(A); see also Heartland

Telecommunications Company of Iowa, "Final Decision and Order," Docket No. RET-98-1, issued on April 10, 1998, pp. 11-12.

C. Should Conditions be Placed on the Termination of Winnebago's Exempt Status?

If the Board removes its rural exemption, Winnebago requests GTE be required to provide local service to the entire Winnebago service area, charge the same rates to rural and urban customers, and advertise its rates throughout the entire service area. (Tr. 20). Consumer Advocate does not support Winnebago's request as to the advertisement of rates, but agrees with imposition of the other two conditions.

The conditions raised by Winnebago do not properly belong in a proceeding involving the termination of a rural exemption under 47 U.S.C. § 251(f). The extent of GTE's entry into Winnebago territory and the nature of GTE's rate structure will be considered when, in the future, GTE submits its tariffs and map to receive a certificate. See GTE Midwest Incorporated, "Order Granting Application," Docket No. TCU-98-7, issued July 22, 1998, pp. 3-4. The question of GTE's advertising practices will be considered if GTE applies to the Board for a determination it is an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e).

To the extent Winnebago can show at some future date it would be harmed by complying with the requirements of 47 U.S.C. § 251(b) or (c), it may seek

suspension or modification of the particular duties imposed by those provisions pursuant to section 251(f)(2):

> (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;
>
> (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.

IV. IMPLEMENTATION SCHEDULE

The Board is directed pursuant to 47 U.S.C. § 251(f)(1)(B) to establish an implementation schedule for compliance with GTE's request to terminate Winnebago's rural exemption:

> (B) State termination of exemption and implementation schedule.--The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

Accordingly, GTE and Winnebago shall enter into good faith negotiations beginning from the date of this order pursuant to 47 U.S.C. § 251(c)(1). During the period from the 135th through 160th day (inclusive) after the date of this order, any party may petition the Board to arbitrate any open issues. The Board also has complaint authority to determine just, reasonable, and nondiscriminatory arrangements for interconnection pursuant to IOWA CODE § 476.11 (1997), and complaint authority to determine compliance with §§ 476.96 through 476.102. IOWA CODE § 476.101(8) (1997).

V. FINDINGS OF FACT

1. Winnebago Cooperative Telephone Association is a rural telephone company within the meaning of 47 U.S.C. § 153(37).

2. GTE Midwest Incorporated made a bona fide request for interconnection with Winnebago Cooperative Telephone Association.

3. The bona fide request for interconnection made by GTE Midwest Incorporated is not unduly economically burdensome.

4. The bona fide request for interconnection made by GTE Midwest Incorporated is technically feasible.

5. The bona fide request for interconnection made by GTE Midwest Incorporated is consistent with 47 U.S.C. § 254.

6. No conditions should be imposed upon GTE Midwest Incorporated pursuant to the termination of the rural exemption of Winnebago Cooperative Telephone Association.

7. It is reasonable to establish an implementation schedule which corresponds to the schedule established in 47 U.S.C. § 252.

VI. CONCLUSIONS OF LAW

1. The Utilities Board has jurisdiction over the parties and the subject matter of this proceeding pursuant to 47 U.S.C. § 251(f) and IOWA CODE chapter 476 (1997).

2. The rural exemption of Winnebago Cooperative Telephone Association should be terminated pursuant to 47 U.S.C. § 251(f)(1)(A).

VII. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The rural exemption of Winnebago Cooperative Telephone Association is terminated.

2. GTE Midwest Incorporated and Winnebago Cooperative Telephone Association shall commence negotiations regarding interconnection, services, or network elements desired by GTE as of the date of this order. The remainder of the implementation schedule shall continue as described in the body of this order.

3. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the briefs not specifically addressed in this order is rejected as either not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

UTILITIES BOARD

ATTEST:

Judi K. Cooper

Executive Secretary, Deputy

Dated at Des Moines, Iowa, this 14th day of September, 1998.