

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF GTE SOUTH)	
INCORPORATED FOR THE RURAL)	
TELEPHONE COMPANY EXEMPTION)	CASE NO. 96-313
FROM CERTAIN REQUIREMENTS OF)	
THE TELECOMMUNICATIONS ACT OF)	
1996)	

O R D E R

On July 10, 1996, the Commission issued its Order stating that, on the basis of the information submitted in a letter filed on June 20, 1996, GTE South Incorporated ("GTE South") is not entitled to the rural exemption from certain obligations imposed upon incumbent local exchange carriers by the Telecommunications Act of 1996 ("the Act"). GTE South filed, on August 1, 1996, a Motion for Reconsideration ("Motion"), contending that, despite the merger of Contel into GTE South in 1994 -- a merger which Contel did not survive -- GTE South is entitled to claim the exemption because the old Contel study area now owned by GTE South serves fewer than 100,000 access lines. See 47 U.S.C. Section 153(37)(C)(1996) (one definition of a rural telephone company entitled to the exemption until termination is one which "provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines"); Affidavit of Jeffrey B. Hunt, Director - Regulatory Planning and Management for GTE Telephone Operations, Tab A to GTE South Motion. Contel no longer exists in any form

as a separate entity. Nevertheless, GTE South claims it should be exempt from certain interconnection and unbundling obligations imposed under the Act because it has not consolidated into its Kentucky study area the new territory it acquired in Kentucky pursuant to the merger with Contel.

In its Motion, GTE South cites 47 C.R.F. Section 36 app. ("[s]tudy area boundaries shall be frozen as they are on November 15, 1984"). Pursuant to this rule, GTE South claims, "the Contel and GTE Study Areas must by regulation, be treated separately." Petition at 4. GTE South overstates the effect of this rule. It does not prohibit consolidation of study areas within a single state. Not even a waiver of the freeze is required for such consolidation. Request for Clarification Filed by the National Exchange Carrier Ass'n, Inc., Memorandum Opinion and Order (FCC, DA 96-1129, July 16, 1996). As the FCC stated, the freeze rule is not intended to prevent consolidation of existing study areas. Instead, it is intended to prevent "disaggregation" of study areas. Id. at 4.

The policy underlying the 1984 freeze explains why no waiver is needed to consolidate: the freeze rule is intended to "ensure that ILECs do not place high-cost exchanges within their existing service territories in separate study areas to maximize payments from the Universal Service Fund ("USF") support program." Id. at 2. The rule does not prevent or discourage consolidation of existing study areas, since consolidation does not enable a company to gain an advantage under the USF rules. Id. at 4.

However, although the FCC has proposed requiring carriers to consolidate study areas within a state, see Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking

and Notice of Inquiry, 60 Fed. Reg. 46903 (Sept. 8, 1995), no such rule has been issued. Consequently, GTE South appears to have been free to decide whether it would consolidate its two study areas in Kentucky. According to its Motion, it has decided not to do so. It therefore appears that, under the plain meaning of the Act, GTE South is entitled to claim the exemption for its study area once served by Contel.

This finding, however, raises a new question: whether the exemption should be terminated. The driving force behind the Telecommunications Act of 1996 was Congress's determination to open telecommunications markets to competition. Therefore, even a rural telephone company entitled to the exemption may retain that exemption only until (1) it has received a bona fide request for interconnection, services, or network elements and (2) this Commission finds that the request is not unduly economically burdensome, technically unfeasible, or inconsistent with universal service goals found in Section 254 of the Act. 47 U.S.C. Section 251(f)(1). By letter dated May 14, 1996, AT&T requested negotiations pursuant to Section 251 and 252 regarding GTE South's markets in Alabama and Kentucky, including the "Contel" area.¹ AT&T notified this Commission of this request by letter filed July 11, 1996. Thus, the first condition for terminating the exemption has already occurred.

Pursuant to 47 U.S.C. Section 251(f)(1), the Commission has only 120 days from July 11, 1996, the date it was notified of AT&T's request, to decide whether the

¹ May 14, 1996 letter from R. Reed Harrison III of AT&T to Donald W. McLeod of GTE South, Appendix A hereto. The letter states that interconnection negotiations are proposed for all GTE telephone companies in Alabama and Kentucky, "including CONTEL."

exemption should be terminated. The Commission will therefore incorporate the inquiry into this proceeding, join AT&T as an indispensable party, and implement a procedural schedule whereby the necessary determinations regarding economic burden, technical feasibility, and universal service concerns shall be made. Time is of the essence in this proceeding, and the Commission anticipates that a written record will be sufficient to enable it to make the necessary findings. However, if either party desires a hearing, it should file a motion to that effect within 10 days of the date of this Order.

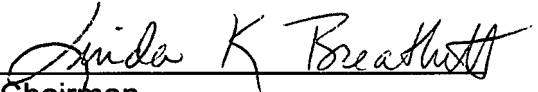
The Commission notes, as a final matter, that GTE South bears the burden of proving that the exemption should continue. CC Docket Nos. 96-98 and 95-185, First Report and Order, released August 8, 1996, at paragraph 1263.

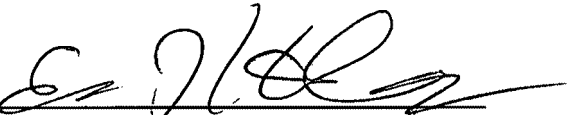
The Commission being sufficiently advised, IT IS HEREBY ORDERED that:

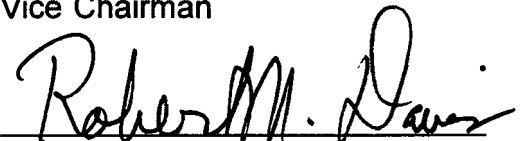
1. GTE South's Motion is granted, and GTE South's status as a rural exchange carrier under the Act is hereby recognized.
2. AT&T is joined as a party to this proceeding.
3. If either party wishes to request a hearing, it shall file with the Commission a motion to that effect within 10 days from the date of this Order.
4. Data requests to parties shall be filed with the Commission within 20 days of the date of this Order.
5. Responses to data requests shall be filed with the Commission within 40 days of the date of this Order.
6. Briefs shall be filed within 60 days of the date of this Order.

Done at Frankfort, Kentucky, this 13th day of August, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION
IN CASE NO. 96-313 DATED AUGUST 13, 1996

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RECEIVED



AT&T

Edward H. Hancock

JUL 11 3 49 PM '96

245 West Main Street
Frankfort, KY 40601

PUBLIC SERVICE
COMMISSION

July 11, 1996

Mr. Don Mills, Executive Director
Kentucky Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40602

RECEIVED

JUL 12 1996

GENERAL COUNSEL

Dear Mr. Mills:

Attached for your information is a copy of the letter sent by AT&T to GTE notifying them of the start of interconnection negotiations for Kentucky.

If you have any questions please give me a call.

Very Truly Yours,

Edward H. Hancock

Edward H. Hancock

Attachment



R. Reed Harrison III
Vice President
Local Infrastructure & Access Management
Regional Operations

Room 4ED103
One Oak Way
Berkeley Heights, NJ 07922
908 771-2700
FAX 908 771-2219
AT&T Mail atmail!rrharrison

May 14, 1996

Mr. Donald W. McLeod
Vice President
Regulatory and Government Affairs - East
Local Competition/Interconnection Program Office
HQE01E63
P.O. Box 152092
Irving, Texas 75015-2092

Dear Mr. McLeod,

AT&T requests the commencement of negotiations under Section 252 of the Telecommunications Act of 1996 for the states of Alabama and Kentucky. This request includes all interconnection issues enumerated in Sections 251 and 252, including prices and terms for network elements used for the origination and completion of interexchange services traffic. My expectation is that our companies can come to a mutually acceptable arrangement through negotiations as envisioned by the Act.

In accordance with the Telecommunications Act, the formal date for commencement of the negotiations for Alabama & Kentucky would be the day after receipt of this letter. I propose that our negotiations for all of these states include all GTE telephone companies including CONTEL. Consistent with the ongoing national negotiations for the first twenty states notified, we propose that the negotiations be held on a combined basis and at a corporate level.

We realize there are a significant number of issues to resolve. We are confident that with a concerted and cooperative spirit, we can resolve these issues in a mutually agreeable manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Reed Harrison III" with a stylized flourish at the end.

Copy to:

GTE

M. Billings
F. Compton
J. Peterson
C. Nichols
M. Seaman

AT&T

J. J. Beasley
W. J. Carroll
R. H. Shurter