

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

On August 13, 1996, the Commission issued its Order finding that, pursuant to the Telecommunications Act of 1996 ("the Act"), GTE South Incorporated ("GTE South") had legitimately claimed for its Contel study area the rural exemption from certain obligations imposed by the Act upon incumbent local exchange carriers. 47 U.S.C. Section 153 (37)(C)(1996). Accordingly, the Commission issued a procedural schedule to investigate whether the exemption should be terminated pursuant to 47 U.S.C. Section 251(f)(1). Two events must precede termination of the exemption: [1] receipt by GTE South of a bona fide request for interconnection, services, or network elements; and [2] a finding by this Commission that the request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of the Act. Id. AT&T Communications of the South Central States, Inc. ("AT&T") requested negotiations with GTE South pursuant to Sections 251 and 252 of the Act regarding GTE South's markets in Alabama and Kentucky, including the Contel study area, by letter dated May 14, 1996. This Commission has found, in its Order dated August 13, 1996, that AT&T's request is bona fide. AT&T has, in fact, requested that this Commission arbitrate the unresolved

issues in its negotiations with GTE South on October 10, 1996. A hearing is scheduled for January 6, 1997 in that matter.¹

MCI Telecommunications Corporation ("MCI") also has requested interconnection and services from GTE South pursuant to the Act and has requested that the Commission arbitrate its current disagreements with GTE South regarding appropriate terms and conditions.² This request also is bona fide. The hearing in that matter is scheduled for November 11, 1996. Accordingly, MCI requested, and was granted, intervention in this proceeding.

The Commission's August 13, 1996 Order required any requests for a formal hearing in this matter to be made by August 23, 1996. No such request has been filed. However, all parties have filed briefs on the issues.

Both MCI and AT&T assert that GTE South has failed to meet its burden of proof pursuant to the Act and to the Federal Communications Commission's guidelines issued pursuant to the Act in its Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (August 8, 1996) ("FCC Order"). For the following reasons, this Commission

¹ Case No. 96-478, 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.

² Case No. 96-440, Petition by MCI 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.

agrees, and finds that GTE South's rural exemption for its Contel study area in Kentucky should be terminated.

GTE South argues that AT&T's request is unduly economically burdensome, technically infeasible, and inconsistent with Section 254 of the Act.³ In support of its argument, GTE South cites arguments made by AT&T in other jurisdictions, disputes the pricing guidelines of the FCC Order, and generally makes contentions which should be addressed in its arbitrations with AT&T and MCI, respectively, which are now before the Commission. GTE South's arguments regarding technical feasibility focus on the substantial costs GTE South allegedly will incur to provide switches which can perform routing in the manner requested by AT&T. GTE South also argues that "if" the FCC's default proxy rates and Total Service Long Run Incremental Cost pricing methodology are adopted, it will be unduly economically burdensome for GTE South to provide interconnection and resale in Kentucky.⁴ Once again, the argument addresses how competition in areas it serves should be implemented. It does not establish that there should be no competition in its Contel study area.

GTE South seems to presume that it will not be permitted to recover its costs pursuant to agreements arbitrated by this Commission. However, the Commission has not stated that incumbent LECs may not recover their costs. Furthermore, the pricing requirements of the FCC Order have been stayed by the United States Court of Appeals for the Eighth Circuit. Appropriate terms and conditions for the agreements between new

³ GTE South does not discuss MCI's interconnection request.

⁴ Brief of GTE South Incorporated, dated October 14 ("GTE Brief"), at 6.

entrants and GTE South will be fully considered by this Commission in the arbitration cases now pending.

Nor does GTE South's argument regarding the interrelationship between its Contel area and the Lexington-Fayette County MSA show that the exemption should continue. GTE South states that its Lexington-Fayette County MSA area has traditionally subsidized its other service areas in Kentucky, including the Contel study area. GTE South then states that it must lower its prices in the Lexington-Fayette County MSA to remain competitive. It does not, however, follow that the Contel area's remaining exempt would protect the ratepayers in that area from any impact resulting from a reduction of rates in Fayette County.

The Commission's September 26, 1996 Order in Administrative Case No. 355⁵ emphasizes the Commission's commitment to furthering universal service goals in Kentucky. Relevant issues will be explored in detail in workshops, and will focus particularly upon Kentucky's rural areas, including those served by GTE South. GTE South makes no showing that exemption from competition will further universal service goals in the Contel study area, or that termination of the exemption will have an adverse impact on these goals before universal service issues are resolved.

This Commission agrees with the FCC that Congress intended exemptions to be "the exception rather than the rule." FCC Order, Para. 1262. GTE South is a large company with tremendous financial, legal, and technical resources. It is fully capable

⁵ Administrative Case No. 355, An Inquiry into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate.

of negotiating on an even basis with AT&T and MCI and of making its case to the Commission in the arbitration proceedings currently pending. The record offers no reason why the exemption initially accorded to GTE South by the Act should not be terminated.


The Commission having been sufficiently advised, IT IS THEREFORE ORDERED that the rural exemption initially accorded to GTE South pursuant to the Telecommunications Act of 1996 is terminated as of the date of this Order.

Done at Frankfort, Kentucky, this 6th day of November, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director