(text box: 1)BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

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| IN THE MATTER OF A RURAL TELEPHONE COMPANY EXEMPTION FOR GTE NORTHWEST INCORPORATED’S IDAHO OPERATIONS | )  )  )  )  )  ) | CASE NO. GTE-T-97-4  ORDER NO.  26914 |

This case was initiated by the Commission to determine whether GTE Northwest Incorporated (GTE) or its Idaho operations is a rural telephone company under Subpart (D) of the definition as set forth in the Telecommunications Act of 1996 (Act). We conclude it is not.

BACKGROUND

AT&T Communications of the Mountain States, Inc. (AT&T) filed a Petition for Arbitration to resolve interconnection issues with GTE (Case No. GTE-T-97-3; ATT-T-97-1). The filing of that Petition for Arbitration brought to the Commission’s attention prior correspondence from GTE claiming it is a rural telephone company.   Accordingly, the Commission issued Order No. 26812 to initiate this case and determine whether the rural telephone exemption provided in the Act  applies to GTE’s Idaho operations.

Following the issuance of Order No. 26812, Petitions to Intervene were filed by Idaho Telephone Association (ITA), MCI Telecommunications (MCI), Century Telephone of Idaho and TDS Telecom (Century), Citizens Utilities Company (Citizens), and U S WEST Communications (U S WEST).  All of the Petitions to Intervene were granted by the Commission.  AT&T was made a party to the case by Order No. 26812.

On March 14, 1997, a Joint Motion for a Declaratory Order was filed by AT&T and the Commission Staff.  AT&T filed a Memorandum in Support of the Joint Motion arguing that GTE does not qualify as a rural company under the Act and that GTE had waived any claim to an exemption by its willingness to enter into negotiations for an interconnection agreement with AT&T.  GTE filed a Reply Memorandum on April 3, 1997.  An evidentiary hearing scheduled for April 8, 1997 was, by agreement of the parties, subsequently moved to April 11, 1997.  Following the presentation of evidence at the hearing on April 11, oral argument by the parties was presented on the motion in combination with closing arguments.  Finally, post hearing briefs were filed on April 25, 1997, by GTE and by MCI and AT&T.

PROVISIONS OF THE ACT

Section 3 (a)(2)(47) of the Telecommunications Act of 1996 (Act) defines a rural telephone company as

a local exchange carrier operating entity to the extent that such entity—

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

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

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

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

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

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

In this proceeding, GTE claimed that it satisfies the definition of a rural telephone company under Subpart (D), contending that  on the date the Act was enacted less than 15 percent of its access lines were in communities of more than 50,000.  Some words or phrases that are not defined in the Act became the focus in this case. First, “local exchange carrier operating entity” is not further defined by the Act. Nor is the term “communities” in Subpart (D) given specific meaning by the terms of the Act.

A local telephone provider that is a rural company is entitled to relief from many of the Act’s requirements.  Section 251(f) of the Act provides an exemption for rural telephone companies from the Act’s interconnection and resale requirements.  Specifically, those requirements “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 [universal service provisions of the Act].”

Subparagraph (1)(B) of Section 251(f) requires a state commission to terminate the exemption under certain circumstances.  After a party makes a request of a rural telephone company for interconnection and submits a notice of  its request to a state commission, the commission is required to conduct an inquiry to determine whether to terminate the exemption.  The commission must terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service section of the Act.

SUMMARY OF THE PARTIES’ POSITIONS

GTE argued that the Commission should focus on only its Idaho operations to determine whether the terms of Subpart (D) are satisfied.  In both its memorandum in reply to the motion for declaratory order and its post-hearing brief, GTE contended that “the proper focus should be its operations in Idaho.”  GTE Post-Hearing Brief, p. 6.  In his testimony, GTE witness Meade Seaman stated that “GTE Northwest’s Idaho operating entity is an RTC [rural telephone company] because it has ‘less than 15% of [its] access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.’ ” Tr. p. 9. Thus GTE initially argued, at least implicitly, that its Idaho operations alone constitute “a local exchange carrier operating entity” within the definition of a rural telephone company.

The definition of “communities” in Subpart (D) became the focal point for GTE’s second argument.  GTE maintained as an alternative to focusing on its Idaho operations that its entire operations in the Northwest states satisfies Subpart (D). GTE witness Seaman identified only four communities that GTE serves in Oregon and Washington that are larger than 50,000 residents—Everett and Bellevue in Washington, and Beaverton and Gresham in Oregon.  Tr. p. 22.  Seaman testified that of GTE’s 1,254,979 total access lines, only 151,675--or 12.1%-- are within those four communities.  Seaman also explained that, because  “communities” is not defined in the Act, GTE identified the applicable community as defined by the borders of a “political subdivision,” and thus comprising only the legal boundaries of the city limits of an incorporated city.  Tr. p. 19; 105.  By this definition, GTE maintained that fewer than 15% of its access lines are within communities larger than 50,000, and thus satisfies the definition of a rural telephone company under Subpart (D).

Each of the other parties that presented evidence or argument contended that GTE does not qualify as a rural telephone company.  AT&T also maintained that the exemption should be terminated pursuant to Section 251 (f) of the ACT, even if GTE met the standards of Subpart (D).  AT&T averred that its interconnection with GTE would not be unduly burdensome, is technically feasible  and is consistent with the Act’s universal service provisions.

AT&T, MCI, and the ITA argued that in determining the “operating entity” referred to in the rural telephone company definition, the Commission should look to GTE at the holding company level.  The parties noted that GTE’s case was presented by a witness employed by GTE Telephone Operations based in Irving, Texas.  According to MCI witness Rebecca Bennett, “GTE is a large global and nationwide entity that has financial and technological resources greater than many companies that seek to enter local markets and request interconnection with GTE.”  Tr. p. 159-60.  In response to the claim that the larger GTE entity is the “operating entity” within the meaning of the definition, GTE pointed out that GTE Telephone Operations is not a legal entity at all, but is merely “an administrative grouping of the GTE Telephone Operating Companies.”  Tr. p. 46.

THE COMMISSION’S DECISION

Our review of the rural telephone company exemption turns first to the words of the statute.  For this case, the key provision of the definition is “local exchange carrier operating entity” that had less than 15% of its access lines in communities of more than 50,000 on the date the Act was enacted.  Neither “local exchange carrier operating entity” nor “communities” are defined in the Act.  We believe the appropriate decision in this case is derived from GTE’s own arguments and admissions presented to the Commission.

In response to the argument that GTE Telephone Operations should be considered the local exchange carrier operating entity, GTE testified that the telephone operations unit is not a legal entity and that the definition requires analysis of the activities of an operating entity.  In its Reply Memorandum, GTE argued that “GTE Telephone Operations is not an entity at all,” and that “the most important portion of the definition is ‘operating entity.’ ” Reply Memorandum, pp. 4-5.  Thus, GTE maintained that the telephone operations unit could not be a  “local exchange carrier operating entity” as contemplated by the statute.

The same argument applies to GTE’s claim that the operating entity is GTE’s separate  operations in Idaho.  There is no GTE entity that provides local exchange service in Idaho other than GTE Northwest.  GTE did not contend that a separate legal entity is a provider in Idaho.  In fact, on page 3 of its Reply Memorandum, GTE identifies its operating entity for Idaho as GTE Northwest Incorporated.  For the purpose of determining GTE’s claim in this case, we accept GTE’s position that local exchange carrier operating entity means an identifiable, legal entity.  Because there is no separate entity by which GTE provides service in Idaho, the only possible entities for the Subpart (D) exemption are GTE Northwest or the GTE corporation at the holding company level.

GTE does not contend that the Company is a rural telephone company at the holding company level, but does argue that GTE Northwest meets the definition in Subpart (D).  Assuming that GTE Northwest is a local exchange carrier operating entity, GTE Northwest would qualify as a rural company if it had less than 15% of its access lines in communities larger than 50,000 on the date the Act was enacted.  GTE, using its definition of community, presented evidence that only 12% of it access lines are in communities larger than 50,000.  GTE restricted its definition to the legal borders of an incorporated city.  GTE’s witness conceded, however, that residents in suburban areas adjacent  to or near the borders of cities could be included in the definition of a community.  Tr. p. 107.  Thus, although GTE presented testimony that only 151,675 of its access lines are in large communities, the GTE witness conceded that the Company has more than 500,000 access lines, well over 15% of its total of 1,254,979, in six local exchanges in Oregon and Washington.  Tr. p. 107-09.  Staff witness Joe Cusick and AT&T witness Howard Bell testified that the boundaries of an exchange could be the appropriate definition of community.  Tr. p. 149 and 219-20.

GTE’s overly restrictive definition of “communities” leaves a clear impression it was selected solely because it is the only one by which GTE could meet the requirements of the statute. However, we need not finally determine whether GTE’s restricted definition or the borders of a local exchange best defines “communities” as used in Subpart (D).  GTE’s legal representative conceded that GTE Northwest does not qualify under Subpart (D) as a rural telephone company.  In response to questions from the Commission, GTE’s counsel stated that GTE did not claim the exemption under Subpart (D) in the state of Washington, but instead claimed an exemption under Subpart (C).  Tr. p. 244-45.  Subpart (C) focuses on a company’s study areas within a single state rather than the entire activities of the operating entity.  The following colloquy then occurred:

Commissioner Smith: Could it have been the circumstance that you did not request a waiver under Sub (D) for the GTE telephone exchanges in Washington because you didn’t believe it met the test?

Mr. O’Connell: I completely agree, ....

Tr. p. 245.  Legal counsel went on to explain that it was GTE’s position that the information should be looked at on a state specific basis.  Of course, that argument is contrary to the position previously taken by GTE that the focus of the statute in Subpart (D) is on the activities of an “operating entity”, which must be a legal entity, and not merely isolated activities within a state.

Based on the foregoing, we conclude that GTE Northwest is not a rural telephone company as defined by Subpart (D). Because we determine that GTE is not a rural telephone company, there is no exemption to be considered.

O R D E R

IT IS HEREBY ORDERED that the claim by GTE Northwest to be a rural telephone company as defined by the Telecommunications Act of 1996 is denied.

THIS IS A FINAL ORDER.  Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GTE-T-97-4  may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. GTE-T-97-4 .  Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration.  See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this                  day of May 1997.

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

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**COMMENTS AND ANNOTATIONS**

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**TEXT BOXES**

Office of the Secretary

Service Date

May 12, 1997