(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.  27030 |

BACKGROUND

On June 2, 1997, GTE Northwest Incorporated (GTE-NW) filed a Petition for Reconsideration of Commission Order No. 26914 issued May 12, 1997.  The Commission in that Order concluded that GTE-NW is not entitled to an exemption as a rural telephone company as defined by the Telecommunications Act of 1996 (Act).   An Answer to GTE-NW’s Petition and a Cross-Petition for Reconsideration was filed by MCI Communications and AT&T Communications of the Mountain States, Inc. on June 9, 1997.  By this Order, the Commission denies GTE-NW’s  Petition for Reconsideration and also declines, as urged in the MCI and AT&T Petition, to include an alternative finding regarding GTE-NW’s claim to be a rural telephone company.

SUMMARY OF ORDER NO. 26914

In Order No. 26914, the Commission quoted the definition of a rural telephone company as set forth in Section 3(a)(2)(47) of the Act, codified at 47 U.S.C.153(37).  We also noted that Section 251(f) of the Act provides relief to a rural telephone company from many of the Act’s competitive requirements.  Order No. 26914 at p. 2.  For example, a rural telephone company does not have the same duty as other local exchange carriers (LECs) to negotiate and interconnect with potential competitors.  Id.

GTE-NW claimed it is a rural telephone company under Subpart (D) of the definition. Under that Subpart, a “local telephone carrier operating entity” is a rural telephone company “to the extent that such entity” had less than 15 percent of its access lines in “communities” of more than 50,000 on the date of enactment of the Act. Two key terms of the definition, “local telephone carrier operating entity” and “communities,” are not themselves defined in the Act.

In Order No. 26914, we agreed with GTE-NW’s argument that an operating entity must be an identifiable, legally recognized structure, such as a corporation.  No separate GTE-NW operating entity exists to provide service to its customers in Idaho, and thus we rejected GTE-NW’s inconsistent contention that Subpart (D) requires a review solely of its Idaho operations to determine whether it satisfies the terms of the definition. Regarding the term “communities,” the Commission in Order No. 26914 did not finally determine whether the narrow definition proffered by GTE-NW or a broader definition advocated by the other parties was the appropriate definition.   An admission by GTE-NW that it did not make a Subpart (D) claim to the Washington state commission because it did not qualify made unnecessary further consideration of that issue. Finally, because the Commission determined that neither GTE-NW nor its Idaho operations qualify as a rural telephone company, the Commission did not specifically address a claim by MCI and AT&T that GTE-NW cannot be separated from its parent corporation for purposes of the exemption. After addressing the issues raised by GTE-NW in its Petition for Reconsideration, the Commission will address this issue to clarify its view of GTE-NW’s claim to the rural telephone company exemption.

DISCUSSION OF THE ISSUES PRESENTED BY GTE-NW’S

PETITION FOR RECONSIDERATION

The Commission concluded in Order No. 26914 that neither GTE-NW nor its Idaho operations in isolation are entitled to the rural telephone company exemption.  In its Petition for Reconsideration, GTE-NW argues that the Commission erred by not focusing solely on GTE-NW’s Idaho operations to determine whether Subpart (D) applies.  GTE-NW asserts that the phrase “to the extent that” within the definition justifies examination of isolated activities within a state, regardless of the scope of activites of the operating entity.

This first issue presented by GTE-NW is readily answered by the language of Subpart (D).  The entire definition of rural telephone company in Subpart (D) is as follows:

The term ‘rural telephone company’ means a local exchange carrier operating entity to the extent that such entity—(D) has less than 15% of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

As discussed in Order No. 26914, the Commission agreed with GTE-NW’s contention that an “operating entity” must be a legally organized structure.  We thus concluded that GTE-NW’s Idaho operations could not be an “operating entity” because it is not an identifiable, legally organized entity.  GTE-NW does not dispute that part of the analysis, but argues that the phrase “to the extent that” in Subpart (D) requires the Commission to look only at its Idaho operations. GTE made the same argument in its post-hearing brief.   Although it is difficult to summarize with precision, GTE-NW’s argument is that the phrase “to the extent that”is a limitation on a state commission’s ability to consider the entire operations of an operating entity.

GTE-NW’s argument on this point is no more than creative statutory interpretation that is not justified by the language of the statute.  There simply is no justification to conclude that the phrase “to the extent that” is a reference to specific activities within a state. The complete phrase is “to the extent that such entity,” which clearly refers to the “local exchange carrier operating entity” that precedes the phrase. Additionally, it is the language of the subparagraphs in the definition that directs attention to particular activities of the operating entity.  Two of the subparagraphs, Subpart (A) and Subpart (C), call for examination of activities within an operating entity’s individual study area, which may be contained within the borders of a single state.  Subpart (D) has no such limitation.  GTE-NW has provided no new argument or analysis on this point and thus we decline to grant reconsideration on this issue.

The second and third issues urged for reconsideration by GTE-NW are related in Order No. 26914.  GTE-NW argues that the Commission erroneously concluded that the definition of “community” can be as large as a local exchange.  According to GTE-NW, additional evidence should be presented if the Commission wants to make determinations of communities or local exchanges outside the state of Idaho. As an example, GTE-NW attached a map to show that the Beaverton, Oregon exchange includes parts of two incorporated communities.  Finally, GTE-NW contends that the Commission’s conclusion that the Company admitted it did not meet the terms of a rural telephone company under Subpart (D) is in error.  GTE-NW characterizes the admission of its counsel as “argument” rather than an allegation of inconsistent facts.  According to GTE-NW, this is no more than a party making arguments or pleadings in the alternative.

The Commission in its Order noted that the term “communities” in Subpart (D) is not defined. The Commission did not adopt a specific definition of “community” in Order No. 26914, although it characterized GTE-NW’s definition of community as overly restrictive.   By limiting the definition of a community to the legal boundaries of the city limits of an incorporated city, GTE-NW presented evidence that 12.1% of its access lines were in communities larger than 50,000.  The upper limit for an entity to qualify for the Subpart (D) exemption is less than 15% of its access lines in communities larger than 50,000.  Thus, if GTE-NW’s very narrow definition of “communities” is used, and GTE-NW’s operations are isolated from GTE, GTE-NW could qualify as a rural telephone company under Subpart (D).  However, as the Commission noted in Order No. 26914, GTE-NW’s witness agreed “that residents in suburban areas adjacent to or near the borders of cities could be included in the definition of a community.”  Order No. 26914 at p. 5.  The Order also noted that, on cross-examination, “the GTE-NW 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.”  Order No. 26914 at p. 5.  With over 40% of its access lines in just six local exchanges, not many residents living near the communities identified by GTE-NW as larger than 50,000 would need to be included within the community to disqualify GTE-NW for the Subpart (D) exemption. On this record, it seems clear that GTE-NW selected the narrowest possible definition of community in order to fall below the 15% limit of Subpart (D).  GTE-NW in its Petition does not dispute the accuracy of these figures, but is dissatisfied with the use of that evidence in the Commission’s analysis.

The Commission did not determine in Order No. 26914 that “community” is defined by the boundaries of a local exchange calling area, although support for that conclusion is in the record.  Order No. 26914 at p. 5. Specifically defining “community” became unnecessary after (1) the Commission rejected GTE-NW’s contention that its Idaho operations should be isolated for Subpart (D) protection, and (2) GTE-NW admitted it did not pursue a Subpart (D) claim in Washington because its access line counts exceeded the Subpart (D) limit. Because the Commission rejected the argument that Subpart (D) could apply only to GTE-NW’s Idaho operations, the focus became all operations, or at least all of the access lines, of GTE-NW.  If GTE-NW determined it could not qualify for Subpart (D) protection by its line count in Washington, neither could it qualify before this Commission.  GTE-NW makes no offer of evidence showing it meets the Subpart (D) standards on a company wide basis other than by its narrow definition of “community”.

Almost any definition of “community” broader than the one advocated by GTE-NW likely would disqualify it for the Subpart (D) exemption. The Company’s admission that it did not make a Subpart (D) claim before the Washington commission because it did not qualify arguably makes its contention before this Commission disengenuous. GTE-NW offers no new evidence or analysis to alter this view, and so the Commission denies its Petition for Reconsideration.

GTE CORPORATION IS THE OPERATING ENTITY

We next turn to MCI and AT&T’s request that the Commission make an alternative finding regarding the rural exemption claim by GTE-NW.  In their Answer and Petition for Reconsideration, MCI and AT&T urge the Commission to conclude, as an alternative basis for denying GTE-NW’s claim, that GTE Corporation (GTE), the parent corporation of GTE-NW, is the appropriate “operating entity” for purposes of determining the rural company exemption under Subpart (D).  AT&T and MCI argue that GTE-NW’s Idaho operations

cannot in this case be considered separate from its parent company’s national domestic operations since GTE has failed to demonstrate that its subsidiary operates independently from the national operating entity.  There are strong operational ties between the two; GTE Northwest obtains all its equity from GTE Corporation; all profit and dividends from the Idaho operations flow to GTE Corporation; financial and operational decisions are subject to approval of GTE Corporation.

MCI and AT&T Answer and Cross-Petition, p. 7.

At numerous points in the record, evidence is presented to show the nexus between GTE and its GTE-NW subsidiary. Additionally, testimony and briefing were provided to explain the legislative intent behind the rural company exemption.  MCI witness Rebecca Bennett testified that “Congress was concerned that small local exchange companies could be at an unfair disadvantage if they faced competition from global or nationwide carriers that have significantly greater financial resources than the small, truly rural, local company.”  Tr. p. 158.  AT&T and MCI provided a quote from a Congressional joint conference committee  explaining that the purpose of the rural exemption is to “provide a level playing field, particularly where a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than the resources of the [incumbent] company or carrier.”  MCI and AT&T Answer and Petition for Reconsideration, p. 9; Tr. p. 158.

The claim to rural telephone company protection was made in this case by GTE-NW, one of several subsidiaries through which GTE provides local telecommunication services throughout 28 states. In addition, GTE provides various telecommunications services and products throughout the entire world.  According to exhibits and testimony presented in this case, GTE,

with annual revenues and sales exceeding $21 billion, is one of the largest publicly held telecommunications companies in the world.  It also is the largest US based local telephone company and leading cellular service provider—with wireline and wireless operations in markets encompassing about a third of the country’s population.  Outside the United States, where GTE has operated for more than 40 years, the Company services over 6 million wireline and wireless customers.  GTE is also a leader in government and defense communications systems and equipment, aircraft passenger telecommunications, directory and telecommunication-based information services and systems.

Exhibit 402.

Evidence was also presented of the close operational connection between GTE-NW and GTE.  For example, GTE-NW has access to the employee base and other resources of GTE, and GTE is entering interconnection negotiations and arbitrations on a nationwide, or company wide, basis.  Tr. p. 162.  GTE provides the legal team and technical witnesses in arbitration proceedings, and GTE annually files reports with the Securities and Exchange Commission for its subsidiaries indicating a close relationship between GTE and its subsidiaries.  Tr. pp. 183-84.  The profit or dividend flow from GTE-NW’s Idaho operations is to the parent GTE Corporation, Tr. p. 112, and GTE plays an instrumental if not definitive role in establishing financial policies for GTE-NW.  Tr. pp. 112-14.  GTE-NW does not dispute this and other evidence in the record of the close operational nexus between GTE-NW and GTE.

The Commission in Order No. 26914 did not specifically state that GTE rather than GTE-NW should be the operating entity for determining its claim to be a rural telephone company.  Other state commissions that have considered such claims have determined that the blended operational ties between GTE and its local subsidiaries make it inappropriate to consider a rural company claim apart from GTE.  For example, the Minnesota Public Utilities Commission refused to separate a claim by GTE’s Minnesota subsidiary from GTE, as indicated by the following in its Order:

After review of the evidence in the record, the Commission concluded that the close operational ties between GTE and its subsidiaries make it inappropriate to apply the rural telephone company test to GTE’s Minnesota subsidiary in isolation.  The Commission’s conclusion fulfills Congress’ purpose for promoting local competition except where the resources of the would-be competitors would be significantly greater than the resources of the incumbent LEC.

Tr. p. 184, quoting Minnesota PUC Order Denying Reconsideration in Docket No. P-442, 407/M-96-939.  In fact, GTE’s witness admitted that no state commission has yet approved the rural telephone company exemption under Subpart (D) for GTE or its subsidiaries.  Tr. p. 99.

The close connection between GTE and GTE-NW may make it inappropriate to apply the rural telephone company test to GTE-NW rather than to GTE.  In light of the blended operations of GTE-NW with GTE, as well as the purpose of the rural company exemption, there is merit to MCI’s and AT&T’s claim that GTE should be the “operating entity” for evaluating GTE-NW’s claim under Subpart (D).  With vast resources available to GTE-NW through GTE, that conclusion would seem consistent with the purpose and intent of the rural telephone company exemption. We decline, however, to make a specific finding that a Subpart (D) claim by GTE-NW cannot be considered in isolation from GTE.   Our conclusion that GTE-NW by itself is not entitled to the rural telephone company exemption makes it unnecessary to make the additional finding urged by MCI and AT&T.

For the reasons stated in Order No. 26914, we find that GTE-NW and its Idaho operations do not qualify for a Subpart (D) exemption. Because it is not necessary for resolution of this case, we decline to include a finding that, for the purpose of evaluating GTE-NW’s claim to be a rural telephone company under Subpart (D),  the operations of GTE-NW should not be isolated from GTE Corporation.

O R D E R

IT IS HEREBY ORDERED that the Petition for Reconsideration filed by GTE-NW is denied.  The Petition of MCI and AT&T also is denied.

THIS IS A FINAL ORDER ON RECONSIDERATION.  Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. GTE-T-97-4 may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules.  See Idaho Code § 61-627.

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

                                                                                                                                      DENNIS S. HANSEN, PRESIDENT

                                                                                           RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Jean Jewell

Assistant Commission Secretary

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**COMMENTS AND ANNOTATIONS**

Text Box 1:

**TEXT BOXES**

Office of the Secretary

Service Date

June 30, 1997