MEMORANDUM

TO:COMMISSIONER HANSEN

COMMISSIONER NELSON

COMMISSIONER SMITH

FROM:WELDON STUTZMAN

DATE:JUNE 16, 1997

RE:RURAL TELEPHONE COMPANY EXEMPTION FOR GTE NORTHWEST, PETITION FOR RECONSIDERATION, CASE NO. GTE-T-97-4

On June 2, 1997, GTE Northwest Incorporated (GTE) filed a Petition for Reconsideration of Commission Order No. 26914 issued May 12, 1997.  The Commission in Order No. 26914 concluded that GTE is not entitled to an exemption as a rural telephone company as defined by the Telecommunications Act of 1996.  GTE claimed it is a rural telephone company under Subpart D of the definition.

In its Petition, GTE contends that the Commission erred by not focusing solely on GTE’s Idaho operations to determine whether the exemption applies.  GTE also argues that the Commission’s conclusion that the definition of “community” can be as large as a local exchange is without adequate support in the record.  According to GTE, if the Commission is going to make determinations of local exchanges outside the state of Idaho, it must consider a variety of factors, such as the fact that the Beaverton, Oregon exchange includes parts of two incorporated communities.  Finally, GTE contends that the Commission’s conclusion that the Company admitted that it did not meet the terms of a rural telephone company under Subpart D was in error.  GTE characterizes the admission of its counsel as “argument” rather than an allegation of inconsistent facts.  According to GTE, this was no more than a party making arguments or pleadings in the alternative.

MCI and AT&T on June  9, 1997, filed an Answer to Petition for Reconsideration and Cross-petition for Reconsideration.  In addition to responding to GTE’s Petition, MCI and AT&T “affirmatively request that the Commission consider and rule upon other reasons presented at hearing for which GTE’s claim of rural exemption should be denied.”  Thus, while agreeing with the analysis and conclusion of the Commission’s Order, AT&T and MCI request that the Commission provide additional conclusions to deny a rural exemption to GTE.

According to MCI and AT&T, evidence is in the record to support a conclusion that GTE Northwest does not meet the subpart D standards even for its operations in Idaho.  According to AT&T witness Howard Bell, the Coeur d’Alene community could properly be viewed as the Coeur d’Alene and Bayview exchanges, which would mean GTE has more than 15% of its lines in communities of 50,000 or more in Idaho.  Alternatively, MCI and AT&T urge the Commission to conclude that the GTE Corporation holding company is the appropriate “operating entity” for purposes of the rural telephone exemption.  AT&T and MCI argue that GTE’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 of its equity from GTE Corporations; all profit and dividends from the Idaho operations flow to GTE Corporation; financial and operational decisions are subject to approval of GTE Corporation.

Finally, AT&T and MCI state that even if GTE is a rural telephone company its exemption should be terminated under § 251(f)(1)(b) of the Act.

AT&T and MCI did not ask for an additional hearing.  GTE stated that “the matter can be adequately addressed on the record established, but only if the Commission concludes that its examination must be limited to the state of Idaho.”  GTE recommends that an additional hearing be held if the Commission “intends to make conclusions of fact and law regarding exchanges (or communities) in Oregon and Washington.”

Weldon Stutzman

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