

Case No. 96-612-TP-UNC

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The legislative history of the 1996 Act reveals that Congress recognized that certain ILECs which also qualify as rural telephone companies³ could face competition from large global or nationwide entities that have financial or technological resources that are significantly greater than the resources of the RLECs. In order to obviate this concern, Congress built in an automatic exemption mechanism that applies to RLECs until a state commission determines to terminate the exemption pursuant to a bona fide request for interconnection, services, or network elements made to the RLEC.

In order to terminate the RLEC exemption, Section 251(f)(1)(B) of the 1996 Act directs the state commission to conduct an inquiry within 120 days after receiving notice that a bona fide request for interconnection, services, or network elements has been made to an RLEC. Section 251(f)(1)(B) also clearly contemplates that the state commission shall terminate the exemption if the bona fide request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 (universal service principles) of the 1996 Act. Upon termination of the exemption, the state commission is directed to establish an implementation schedule for the compliance with the bona fide request.

- (4) Time Warner Communications of Ohio (Time Warner) and AT&T Communications of Ohio, Inc. (AT&T) submitted to this Commission on March 1 and March 11, 1996, respectively, notices that bona fide requests for interconnection, services, or network elements had been made to GTE North Incorporated (GTE) under the provisions of the 1996 Act.
- (5) On June 21, 1996, GTE by letter asserted for the first time to the Commission its belief that GTE service areas within Ohio fall under the RLEC exemption provided by Section 251(f)(1) of the 1996 Act. While GTE asserted that it was relieved of certain interconnection and unbundling obligations, the company also noted that it would continue to negotiate in good faith with those carriers making a bona fide request for interconnection, unbundled services, and resale. As a final matter, GTE acknowledged that this RLEC exemption could be terminated once this Commission receives notice that a bona

³ In Case No. 95-845-TP-COI, the Commission used the term rural local exchange carrier (RLEC) in lieu of rural telephone company. Hereafter, we will use the acronym RLEC to refer to rural telephone companies under the 1996 Act.

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vide request for interconnection, resale of services, or unbundling has been submitted to GTE and after the Commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 of the 1996 Act.

- (6) We are thoroughly displeased with GTE's actions in this matter. The company has had to have known for some time that it would be asserting this RLEC exemption yet the company chose to withhold this vital information from potential competitors and from this Commission until late in the negotiation process with Time Warner and AT&T. Such posturing certainly causes us to step back and ponder the company's intentions including whether the company is positioning itself to act in an anti-competitive fashion going into the emerging local competitive era. We are equally concerned that GTE has failed to provide any documentation to us to substantiate its position that it qualifies as a RLEC under Section 251(f)(1) of the 1996 Act even though the company must have known that such a position would be controversial.⁴ The legislative history of Section 251(f)(1) suggests that Congress, in adopting an exemption for carriers serving primarily rural areas, was most concerned with those companies facing competition from large nationwide entities having financial and technological resources significantly greater than the rural carrier. Few people would argue that GTE, as a regional operating company which is a part of the mammoth GTE Corporation, was meant to qualify as a RLEC under the provisions of the 1996 Act.

Assuming arguendo that GTE qualified as an RLEC in Ohio upon the date of enactment, an assumption the Commission is unwilling to make, the pro-competitive aspects of the 1996 Act are clear. In the absence of an affirmative determination by this Commission that GTE's RLEC exemption ought to be continued based upon undue economic burden, technical feasibility, and universal service principles, the exemption shall be terminated. GTE provided no documentation through which this Commission could evaluate whether to continue GTE's RLEC exemption under the aforementioned principles. Therefore, we find that the RLEC exemption afforded GTE on the date of enactment of the 1996 Act is hereby terminated and GTE is instructed to implement the request in the time and manner proscribed in the

⁴ In fact, GTE acknowledged that it serves 790,000 access lines in Ohio.

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Commission's June 12, 1996, Finding and Order in Case No. 95-845-TP-COI.

(7) As a final matter, the Commission wishes to make clear that to date we have received bona fide requests for interconnection, services, or network elements pertaining to Ameritech Ohio, GTE, and United Telephone Company of Ohio. If any other bona fide requests for interconnection, services, or network elements have been made to other ILECs operating in Ohio, the requesting party is directed to submit immediately a copy of the bona fide request to the chief of the telecommunications division of the Commission. Any ILEC which has been the recipient of a bona fide request for interconnection, services, or network elements and that intends on asserting a RLEC exemption is directed to do so with adequate supporting documentation within 15 days of this entry. The Commission clarifies that nothing herein affects the procedures or time frames set forth in Case No. 95-845-TP-COI regarding the filing by RLECs and rural carriers of plans filed in response to a bona fide request for interconnection under the provisions of Case No. 95-845-TP-COI, Section II A.2.b.

It is, therefore,

ORDERED, That GTE's rural telephone company exemption is terminated in accordance with Finding (6). It is, further,

ORDERED, That any entity affected by a bona fide request for interconnection, services, or network elements comply with Finding (7). It is, further,

ORDERED, That a copy of this entry be served upon GTE North Incorporated and its counsel, all local exchange carriers, all applicants for authority to provide local exchange service, all other parties submitting comments in Case No. 95-845-TP-COI, and upon all other interested parties of record.

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THE PUBLIC UTILITIES COMMISSION OF OHIO

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Entered in the Journal

JUN 27 1996

A True Copy

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Gary E. Vigorito

Secretary

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