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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In the Matter of the Application of ELECTRIC LIGHTWAVE, INC. for an Order Authorizing Registration of Applicant as a Telecommunications Company. | ) | DOCKET NO. UT-901029<br><br>THIRD SUPPLEMENTAL ORDER GRANTING REGISTRATION APPLICATION IN PART |

PROCEEDINGS: On September 18, 1990, Electric Lightwave, Inc. filed an application with the Commission pursuant to the provisions of RCW 80.36.350 requesting an order to approve its registration as a telecommunications company authorized to provide service to the public in this state. The Commission suspended the application for the purpose of determining whether registration is consistent with the public interest.

HEARINGS: The Commission held hearings on November 26, 1990, and January 17, March 1, July 30 and 31, and August 1 and 2, 1991. The hearings were held before Chairman Sharon L. Nelson, Commissioner Richard D. Casad, Commissioner A.J. Pardini, and Administrative Law Judge Heather L. Ballash of the Office of Administrative Hearings. The Commission gave proper notice to all interested parties.

APPEARANCES: Applicant Electric Lightwave, Inc. ("ELI" or "applicant") was represented by Arthur A. Butler, Attorney at Law, Seattle, and L. Russell Mitten, Attorney at Law, Stamford, Connecticut. The staff of the Washington Utilities and Transportation Commission ("Commission staff") was represented by Donald Trotter, Assistant Attorney General, Olympia. The public was represented by William Garling, Jr., Assistant Attorney General, Public Counsel Section, Seattle. Intervenor Pacific Northwest Bell Telephone Company d/b/a U.S. WEST Communications ("US WEST") was represented by Edward T. Shaw and Mark Roellig, Attorneys at Law, Seattle. Intervenor GTE Northwest Inc. ("GTE") was represented by Richard A. Potter and Judith A. Endejan, Attorneys at Law, Everett. Intervenor Washington Telecommunications Ratepayers Association for Cost-based and Equitable Rates ("TRACER") was represented by Stephen J. Kennedy, Attorney at Law, Seattle. Intervenors Washington Independent Telephone Association ("WITA") and Contel of the Northwest ("Contel") were represented by Richard A. Finnigan, Attorney at Law, Tacoma. Intervenor GCI FiberNet, Inc. and its successor in interest, Digital Direct of Seattle, Inc. ("DDS"), were represented by Robert Greening, Attorney at Law, Portland, Oregon, and Daniel Waggoner, Attorney at Law, Seattle. Whidbey Telephone Company ("Whidbey") was represented by Robert S. Snyder, Attorney at Law, Seattle. MCI Telecommunications Corporation (MCI) was represented by Clyde H. MacIver, Attorney at Law, Seattle. United Telephone of the Northwest ("United") was represented by Tim J. Bonansinga, Attorney at Law, Hood River, Oregon. The United States Department of Defense and all other Federal Executive Agencies (DOD) were represented by James E. Armstrong, Chief, Regulatory Law Office, Office of the Judge Advocate General, Arlington, Virginia.

SUMMARY: The Commission grants in part ELI's application for registration as a telecommunications company, limited to interexchange private line or special access services and to intraexchange dark fiber services in US WEST exchanges.

MEMORANDUM

I. PROCEDURAL HISTORY

On September 18, 1990, Electric Lightwave, Inc. filed an application with the Commission pursuant to the provisions of RCW 80.36.350 requesting an order to approve its registration as a telecommunications company authorized to provide service to the public in this state. The Commission suspended the application for the purpose of determining whether registration is consistent with the public interest.

Hearings on the application were scheduled for March 12, 13, and 14, 1991. On or about March 5, 1991, ELI filed a motion to continue the hearing in order to reevaluate its service proposal. The hearing was continued to and held on July 30 and 31, and August 1 and 2, 1991. The public was given an opportunity to testify on August 1, 1991. No one appeared to testify at the public hearing.

II. BACKGROUND

Applicant ELI is a Delaware corporation and a subsidiary of Citizens Utilities Capital Corporation (CCUC), which, in turn, is owned by Citizens Utility Company (Citizens). Citizens, based in Stamford, Connecticut, is a diversified utility with holdings in gas, water, waste water, electric, and telecommunications utilities.

Once registered as a telecommunications company, ELI plans to construct a fiber optic digital Metropolitan Area Network (MAN). The services to be provided would consist of (1) private line or special access services with "self-healing" network technology (including SONET, or Synchronous Optical Network) and (2) dark fiber. John Warta, president and chief executive officer of ELI, testified that the private line or special access services ELI would offer consist of "point-to-point, dedicated, non-switched, voice-grade and high capacity digital transmission services in a variety of data speeds . . . and formats depending on particular customer applications." (Exhibit T-1, p.9, lines 1-8) "Dark fiber" was defined in ELI's application as "[i]ndividual or multiple optical fibers to which no optronics are connected by the Company. All optronics are supplied by the customer." (Exhibit 2, Appendix G, p. 2) "The Company will lease or sell the indefeasible right of use of some or all of the capacity of a fiber optic cable." (Exhibit 2, Appendix G, p. 7)

ELI specifically proposed to offer (1) circuits between interexchange carriers (IXCs); (2) circuits between end users and IXCs; and (3) circuits between end user locations. The customers primarily targeted by ELI would include interexchange carriers, large businesses, and governmental entities.

SONET technology is still in the development stage, making it difficult to ascertain to extent to which LECs are offering satisfactory service. GTE now has a self-healing fiber optic ring and will employ SONET in the ring when standards have been established. GTE also is offering dark fiber service to its customers on an individual case basis.

No tariff rates were included with the filing. ELI proposed to offer all services by contract on an individual case basis. The geographic areas for service provision were described in the tariff as wherever technically and economically feasible and where customer demand exists. However, the company's witness, John Warta, stated that it was the company's current plan to construct its MAN in U S WEST and GTE-Northwest exchanges in the Seattle metropolitan area. ELI was also in the process of constructing a MAN in the Portland metropolitan area, according to Mr Warta.

## III. ISSUES

The issues set forth in the Commission's November 5, 1990 notice of hearing were:

A. Whether the applicant can meet its burden of demonstrating it meets the prerequisites of registration contained in RCW 80.36.350, including whether the applicant is technically and financially able to provide the proposed service.

B. Whether allowing the proposed service would unlawfully interfere with rights of local exchange companies currently operating in the area of the proposed service.

## IV. DID THE APPLICANT SATISFY ITS BURDEN OF DEMONSTRATING IT MEETS THE PREREQUISITES OF REGISTRATION CONTAINED IN RCW 80.36.350?

ELI asserted that it has shown itself to be financially and technically able to conduct the proposed operations. With respect to ELI's financial resources, Citizens Utilities Company has pledged up to $10 million to ELI's Washington and Oregon operations. Citizens is the only public utility in the country with a "AAA" rating from Moody's Investor Services. ELI has also obtained an $11.4 million line of credit from AT&T Credit Corporation. The security of customer advances to ELI has been assured through a trust account arrangement with SeaFirst Bank. The form of the trust agreement was recommended by Commission staff.

With respect to ELI's technical competency, ELI's president and three vice presidents each have many years of experience in the telecommunications industry. Citizens has had over 40 years of experience in the operation of local exchange companies (LECs).

Commission staff's position was that ELI is financially and technically capable of providing the proposed services: ELI had met the prerequisites of registration pursuant to RCW 80.36.350. Staff noted that ELI only proposed to operate in U S WEST and GTE exchanges and did not propose to offer switched services. If the Commission deemed it proper, staff believed that ELI's registration could reflect those limitations.

Public Counsel, U S WEST, DDS, and TRACER contended that ELI met the financial and technical prerequisites of registration contained in RCW 81.36.350.

GTE contended that ELI had not proven it meets the financial prerequisites for registration. GTE claimed that staff did not review the soundness of ELI's financing arrangements. GTE asserted Citizen's Utilities financial commitment was conditional and AT&T's financing was not guaranteed.

WITA and Contel argued that ELI had not met the burden of proving its financial ability to conduct the proposed service. They contended that ELI's resources are not sufficient to undertake the construction of the proposed network and to provide the proposed services. WITA and Contel asserted that the obligations of Citizen's Utilities are contingent. The contingency should be removed before the application is granted.

WITA and Contel also contended that ELI has filed a proposed tariff which does not comport with Commission regulation. ELI's tariff should be rejected because it does not comply with the WAC 480-80-040 requirement that a tariff contain schedules showing "all rates, charges, tolls, rentals, rules and regulations, privileges and facilities established by that utility for the service rendered or commodity furnished."

Whidbey agreed with WITA and Contel's position. Whidbey also contended that ELI failed to accurately delineate the route of its proposed transmission network.

The Commission finds ELI technically and financially competent to provide the proposed services. The Commission believes that ELI has met the requirements of RCW 80.36.350 for registration as a telecommunications company. In the context of the statute, staff performed a reasonable review of the financial condition of ELI and found it to be adequate for entry.

V. WOULD ALLOWING THE PROPOSED SERVICE UNLAWFULLY INTERFERE WITH RIGHTS OF LOCAL EXCHANGE COMPANIES CURRENTLY OPERATING IN THE AREA OF PROPOSED SERVICE?

A. ELI'S POSITION

ELI asserted that its application did not interfere with the rights of LECs because the LECs have no exclusive rights. ELI contended that the Commission has no express authority from the legislature to grant exclusive local exchange boundaries. RCW 80.36.230 grants the Commission power to prescribe exchange area boundaries, but does not specifically address exclusivity.[1] There is no other statute that purports to authorize the Commission to grant exclusive rights or provides that exchange areas are to be exclusive. ELI argued that exclusiveness cannot be implied, but must be express. Where the legislature has intended there to be exclusive rights, it has so provided.

ELI claimed that the Commission did not address the issue of exclusivity in Prescott Telephone and Telegraph Company v. Pacific Northwest Bell Telephone Company, Cause No. U-77-40 (Commission Proposed Order Denying Complaint, dated June 12, 1978, adopted by Commission Final Order Adopting Proposed Order Denying Complaint, dated July 2, 1979).[2] ELI contended that the Commission has never directly addressed the issue of exclusivity in any of its decisions.

ELI maintained that if the Commission found that exclusive LEC rights did exist, such rights must be limited to the provision of basic, voice-grade, switched services within the

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[1] RCW 80.36.230 provides: "The commission is hereby granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies."

[2] The Prescott case was initiated by a complaint filed with the Commission by Prescott Telephone and Telegraph Company ("Prescott") against Pacific Northwest Bell Telephone Company ("PNB"). Prescott sought to have a portion of PNB"s territory included as part of Prescott's service area, or at least to have the area declared open. The Commission found that the area had been properly prescribed by PNB by the filing of an exchange map and concluded that it could not deprive PNB of its right to serve unless it was shown that PNB was unable or unwilling to serve customers in the disputed service area. The Commission dismissed Prescott's complaint on the basis of a finding that PNB was not unwilling or unable to serve those customers. The Commission's decision was affirmed on appeal. Prescott Telephone and Telegraph Co. v. Washington Utilities and Transportation Commission, 30 Wn. App. 413, 634 P.2d 897 (1981).

boundaries of a single local exchange based upon the definition of "exchange" in the Commission's rules. WAC 480-120-021. ELI claimed that its proposed services do not conflict with these limited LEC rights because its proposed services are distinguishable from those services to which the protection extends. The dedicated service proposed by ELI does not utilize switching technology to enable lines to be used interchangeably to reach any destination and any end-user of the network. Dedicated services also involve a full-time connection; with switched services, the connection only lasts for the duration of the call.

B. STAFF'S POSITION

Staff argued that the proposed services would interfere with the rights of LECs, with the exception of interexchange services and the provision of intraexchange dark fiber in US WEST exchanges. Staff would support a grant of the application limited to these two types of services.

Staff contended that the prescription of exchange area boundaries and the filing of exchange maps gave the local exchange company a "quasi-exclusive" right to offer telecommunications services within that exchange, pursuant to RCW 80.36.230 and the Prescott decision. Staff defined a "quasi-exclusive" exchange area as that area covered by an exchange area map approved by order of the Commission after 1969, or as filed pursuant to the tariff process prior to 1969. Such rights extend to telecommunications services that are provided wholly within an exchange. The rights do not extend to interexchange services, nor to any service not offered to the satisfaction of the Commission.

Staff contended that the Prescott case represented the only decision in this state in which a court has reviewed the authority of the Commission to establish exchange area boundaries. Staff asserted that the Prescott decision was unambiguous with respect to whether the Commission ought to have declared the area in dispute between Prescott Telephone and Telegraph Company and Pacific Northwest Bell Telephone Company "open" for others to serve. Staff contended that the Court resolved this issue by holding that once an exchange area is properly established, the LEC has the right to provide service within the exchange, and that right cannot be infringed but for cause. Staff defined that right as the "quasi-exclusive" right currently held by the LECs.

Staff discussed the legislative history of the Regulatory Flexibility Act, Chapter 450, Laws of 1985 ("1985 amendments"). Staff argued that prior to the 1985 amendments, entry was "open", requiring nothing more than the filing of lawful tariffs. The 1985 amendments imposed greater, not lesser, entry barriers to protect consumers.

Staff contended that another carrier cannot operate intraexchange unless the existing carrier is not offering intraexchange services to the satisfaction of the Commission. Staff concluded no showing of such unsatisfactory intraexchange service had been made by ELI, except for dark fiber in U S WEST territory.

Staff had no objection to granting the application with respect to the proposed interexchange services. Such services are not embodied in the local exchange "quasi-exclusive" area concept.

Staff noted US WEST's contention that dark fiber is not a telecommunications service any more than is the grant of a right to access a right-of-way or conduit by a municipality. Staff responded that there is not sufficient evidence in the record to determine whether dark fiber is a telecommunications service.

C. PUBLIC COUNSEL'S POSITION

Public Counsel was not opposed to the application. Public Counsel submitted that the Prescott court held that an exchange area should not be declared open or given to a different company once it has been prescribed to a LEC by the Commission except in two instances: (1) when there is proof that the prescribed LEC is failing to meet its service obligations; and (2) unless the Commission determines that there is some other specific policy goal to be served.

Public Counsel was concerned about the unknown effects of entry of alternate providers such as ELI into the local exchange market. Public Counsel felt it would be appropriate for the Commission to convene a generic proceeding to focus on the question of whether systems operated by alternate providers would be in the public interest.

Public Counsel stated that the record does not contain evidence that any LEC has failed to properly service its prescribed territory. However, Public Counsel recommended that the application be suspended pending (1) a comprehensive generic proceeding to consider all public policy issues incident to the application and (2) enactment of regulations to govern such applications.

D. U S WEST'S POSITION

U S WEST supported a grant of the application on condition that LECs also be allowed to provide the requested services in exchanges other than their own. U S WEST argued that exclusive exchange area rights do not exist.

U S WEST cited the Washington Constitution, Article XII, Section 19, which affirmatively allows a telecommunications company to construct its facilities throughout the state. U S WEST inferred from this provision that the state cannot limit where a telecommunications company may construct, and by necessary implication, where it can serve.

U S WEST also cited the Washington Constitution, Article XII, Section 22, contending that this provision prohibits monopolies, except for monopolies fostered by the state in the public interest. U S WEST concluded from these two constitutional provisions that the Commission can restrict where any one company can serve, but cannot grant territorial exclusivity to any one company. U S WEST further contended that RCW 80.36.230 only gives the Commission the authority to change a tariff of a company holding itself out to serve a territory when an investigation proves that the company does not possess the ability to serve that territory.

E. GTE'S POSITION

GTE opposed a grant of the application. GTE contended that a grant of the application would irrevocably alter Washington's unified public utility telecommunications system.

GTE argued that regulators have worked together with the companies to implement the public policy goal of "universal service." The goal of universal service contemplates that telephone service will be brought to all persons at the lowest reasonable cost.

GTE contended that local telecommunications companies such as GTE have a "property right" to exclusive service provision in their filed service areas. GTE asserted an exclusive right to provide all services (switched and dedicated, including access services), except long distance services, as long as the company's access services are used for that long distance connection.

In exchange for this exclusive property right, and to further the goal of universal service, LECs have agreed to assume the obligation to provide telephone service to all who request it at uniform rates based upon geographically averaged costs. GTE described this arrangement as the "regulatory bargain." The regulatory bargain should not be violated by depriving the LECs of their exclusive right to serve when they have "done nothing wrong," i.e., when they have fulfilled their service obligations.

GTE contended that the Court of Appeals adopted and approved the Commission's practice of assigning exclusive service territories to LECs in Prescott, supra. GTE argued that the Regulatory Flexibility Act did not abrogate the LECs rights recognized in the Prescott decision. The intent of the bill was

not to mandate the creation of competition, but to equip the Commission to deal with the competition being created by other forces and to guide the Commission in considering authorization of new competition in appropriate proceedings. Also, the legislature did not repeal RCW 80.36.230, which authorizes the Commission to prescribe service area boundaries, when it adopted the 1985 amendments. GTE claimed that these facts demonstrate that the legislature intended to leave the legal and regulatory scheme untouched as it applies to LECs.

F. WITA, CONTEL, and WHIDBEY'S POSITIONS

WITA, Contel, and Whidbey opposed a grant of the application on the basis that ELI's proposed services would unlawfully interfere with their exclusive right to serve their respective exchange areas. They defined that exclusive right as the right to provide all telecommunications service between customers located in their respective exchange areas and the world. They based this argument on the Prescott case and the Commission's actions to date in granting service territories.

WITA, Contel, and Whidbey argued that nothing in the Regulatory Flexibility Act diminishes the rights of local companies as described above. After the passage of the Act, and until now, the Commission has continued to affirmatively act as though companies had exclusive rights to serve their respective territories.

Whidbey also contended that by virtue of its filed tariff maps and the assignment by the Commission of the Point Roberts territory to the company, it would constitute a taking of Whidbey's property to permit entry of a second telecommunications company into those areas covered by Whidbey's exchange area tariff maps filed with and approved by the Commission.

G. UNITED TELEPHONE'S POSITION

United Telephone opposed the application. United Telephone contended that the LECs have exclusive territorial rights based upon Washington Public Service Commission v. Mashell Telephone Company, Inc., Cause No. U-8723 (1954), and Prescott, supra. The passage of the 1985 amendments never altered or removed those rights according to United.

H. DDS' POSITION

DDS supported the application. DDS argued that Prescott was of no help to the LECs because it established nothing about whether LECs enjoy an exclusive right to provide telecommunications services within their service areas. Even if it did establish such a right, the regulatory scheme that encompassed such a right was substantially altered by the 1985 amendments.

DDS contended that the Regulatory Flexibility Act did not affect the right of existing companies to continue to provide services in their service areas. However, they are effectively no longer immune from competition within those service areas. In a registration proceeding pursuant to RCW 80.36.350, the only issues are those framed in the statute. DDS concluded that there are no exclusive rights of existing companies at issue.

I. TRACER'S POSITION

TRACER also supported the application on the basis that no exclusive rights exist. TRACER argued that Article XII, Section 19 of the state Constitution gives telephone companies the absolute right, subject to legislative control, to construct and maintain telephone lines anywhere in the state of Washington.

TRACER contended that Prescott does not support the notion of an exclusive franchise. The Prescott court was not presented with the question, and consequently did not decide, whether there could be multiple companies providing local exchange service in the same territory. TRACER submitted that the fact that LECs may have enjoyed exclusivity as a matter of fact did not establish a legal right to exclusivity. TRACER stated that exclusive franchises are not favored by law and therefore must be express rather than implied. The legislature has not made any express provision for granting exclusive franchises.

TRACER contended that, if exclusive franchises do exist, their scope is limited to basic, voice-grade, switched services within the boundaries of a single exchange. ELI's application would not interfere with these franchises because it does not include switched services.

J. DOD'S POSITION

The Department of Defense and the other federal executive agencies (DOD) concurred with U S WEST's position that the Commission should grant the application, but should not block the legitimate initiatives of existing telecommunications firms to make effective responses to the services and prices offered by their new competitors. However, the DOD also stated that U S WEST, GTE, and the small "independent" telephone companies should continue to maintain exclusive areas for the provision of basic telephone services and to serve as the "carrier of last resort."

K. COMMISSION DISCUSSION

If exclusive local exchange area rights exist, the source and nature of those rights must be determined in order to answer the question of whether they are being impinged. Staff submitted that prior to the 1985 amendments to chapter 80.36 RCW, the court,

the Commission, and the Attorney General all concluded that the LECs had "quasi-exclusive" territorial rights to serve their prescribed exchange areas pursuant to RCW 80.36.230.

The attorney general summarized the historical fact of territorial exclusivity in an opinion in 1956.[3] The opinion found two cases in which the Commission had altered an exchange area. In Clyde Hill Telephone Company v. Prescott Telephone and Telegraph Company, Cause No. U-8296 (February 14, 1950), a telephone company with an area subject to an exchange map was found to lack the financial ability to serve the area. The area was declared "open" by the Commission for other carriers to serve. In Utilities and Transportation Commission v. Mashell Telephone Company, Cause No. U-8723, (September 10, 1954), several complaints were received regarding satisfactory service by Mashell Telephone Company. The Commission declined a request that Mashell's exchange area be opened in the absence of any evidence that Mashell's service was inadequate.

The Commission has continued to maintain its consistent practices and procedures regarding the establishment of exchange area boundaries since 1956, including the period after the 1985 amendments. In 1981, the Washington State Court of Appeals affirmed a Commission decision and recognized that the LECs had exclusive territorial rights to serve within an exchange that could not be infringed but for cause. Prescott Telephone and Telegraph Company v. Washington Utilities and Transportation Commission, 30 Wn. App. 413, 634 P.2d 897 (1981). The Prescott case represents the only decision in this state where a court reviewed the Commission's authority to establish exchange area boundaries. It was staff's conclusion that Prescott is unambiguous with respect to this issue. Once an exchange area is properly established, the LEC has the right to provide service within the exchange, and that right cannot be infringed but for cause.

In a 1984 case, the Commission considered tariff revisions filed by three separate telephone companies to serve the same unassigned territory in the Dewatto/Toonerville area.[4] The Commission held extensive hearings to determine which company would be allowed to establish the exchange area. The Commission's action to suspend the three tariff filings and select a carrier for the area would have been futile and probably unlawful absent the exclusivity of exchange boundaries.

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[3] Opinion of the Attorney General (March 15, 1956).

[4] In the Matter of the Application of Inland Telephone Company, Hood Canal Telephone Company, and Whidbey Telephone Company, Cause Nos. U-83-60, U-83-61, and U-83-01 (August 1, 1984). Exhibit 31.

Examples of consistent Commission practice after 1985 include a 1987 decision in which the Commission assigned the territory of Point Roberts to Whidbey Island Telephone Company in preference over two other companies.[5] The territory had previously been served by an "unauthorized" carrier. The Commission action in the Point Roberts case is important because (1) the Commission recognized the coexistence of its authority to prescribe exchange area boundaries and the registration requirements contained in the 1985 amendments, and (2) it recognized that the prescription of exchange area boundaries still included an exclusivity feature, despite the existence of these registration requirements.

Staff defined an exclusive--or, more properly "quasi-exclusive"--exchange area as that area covered by an exchange area map approved by Commission order after 1969, or as filed pursuant to the tariff process prior to 1969. The rights extend to telecommunications services that are provided wholly within an exchange. The rights do not extend to interexchange services, nor to any service not offered to the satisfaction of the Commission.

Staff submitted that the 1985 amendments to chapter 80.36 RCW did not affect the rights of local exchange companies as to intraexchange services. The legislature made no attempt to change the Commission's authority to prescribe exchange area boundaries. RCW 80.36.230 was left intact, except for conforming amendments. Staff asserted that the 1985 amendments imposed the additional entry requirements of financial and technical competency to the existing tariff filing process.

These amendments noticeably did not address deregulation of local exchange service provision. Nor did the amendments, staff concluded, alter the requirement that telecommunications companies operate in conformity with existing law and regulation and in the public interest. Recognition and protection of the rights of LECs is lawful and in the public interest in staff's view.

The amendments did address the deployment of the evolving technology for providing cellular telephone service. RCW 80.36.370 exempts "radio communications service" from Commission regulation except in a narrowly-drawn circumstance. However, the Federal Communications Commission (FCC) had effectively preempted state regulation of entry by cellular telephone companies. The staff notes that primary among the reasons for FCC preemption was concern with "state franchising regulations"--state rate regulation was not

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[5] Consolidated cases: Washington Utilities and Transportation Commission v. Whidbey Telephone Company, Cause No. U-86-105; In the Matter of the Application of Inter-Island Telephone Company, Cause No. U-86-132; In the Matter of Application of Point Roberts Telecommunications, Cause No. U-86-134 (July 8, 1987).

preempted. Staff asserts and the Commission agrees that the legislative treatment of cellular telephone service "adds nothing to the analysis of prescribed exclusivity of local exchange areas."

In staff's analysis, ELI had the burden of showing that the intraexchange services it proposed were not being provided by the LECs. ELI failed to show that its proposed services were not already being provided, with the exception of dark fiber in US WEST territory.

The Commission adopts the staff's legal analysis of this issue. The staff brief presents an exhaustive and compelling recitation of statutory history, prior Commission practice, and administrative and judicial interpretation and application of the concept of protected local exchange service territory in this state.

The Commission believes that, if there is a legitimate need for a telecommunications service and that service is not being provided, a telecommunications company other than the LEC may be authorized to provide the service. ELI did not assert that the local exchange companies (LECs) are failing to respond to customer needs for its proposed services. (Tr. p. 308) GTE's witness, Jeffrey Bolton also testified that the LECs are capable of providing SONET technology. (Exhibit T-41, p.4-9, Tr. p. 842) Thus, there has been no showing that the proposed services of ELI are not being provided by the LECs, except for dark fiber as noted.

Staff found that one of ELI's proposed intraexchange services is private line service provided wholly within a local exchange boundary. According to staff's legal analysis, the local exchange carrier is entitled to be the exclusive provider of this service. An alternate carrier may not offer intraexchange private line service unless it can show that the LEC is not providing the service offered to the satisfaction of the Commission. The Commission adopts staff's conclusion and analysis and finds that, with the exception of dark fiber in U S WEST exchanges, the LECs are satisfactorily providing the intraexchange services proposed by ELI.

In the context of its discussion of the obligation to serve inherent in ELI's registration, the staff describes the practical effect of its position that ELI can provide dark fiber service in U S WEST exchanges. By finding that a LEC is not providing service to the satisfaction of the Commission, the quasi-exclusive rights of the LEC can be either "extinguished by substituting another carrier" or "limited by allowing a second carrier to enter."

In the instant case, the Commission finds that U S WEST is not offering dark fiber service and holds that it is in the public interest to "limit" the preexisting rights of U S WEST by

permitting ELI to provide that service. The Commission believes that authorizing an alternate provider of this service--thereby effecting a limitation on the preexisting rights of U S WEST--is entirely consistent with the law and prior Commission practice. This action would not prohibit U S WEST from providing dark fiber service.

The Commission decision is analogous to actions it has taken regarding solid waste collection service for bio-infectious and bio-medical wastes pursuant to chapter 81.77 RCW, despite the protests of the dissent that the statutory framework is dissimilar and irreconcilable. The statutory framework for economic regulation of the various industries subject to Commission jurisdiction had different origins, was premised upon different statutory models, and has evolved at different rates and for different reasons.

The public policy issue before the Commission is the effect on LEC consumers of basic, voice-grade, switched services of approving ELI's application. The Commission is concerned that approval of the application as filed for intraexchange services would result in "cream-skimming" of the LECs' large customers. Without the contributions to total company costs from these large customers, the LECs may be forced to seek higher rates from basic local service subscribers to meet authorized revenue requirements.

The Commission cannot ignore the persistent, pervasive and potentially limitless effect of technology on the provision of telecommunications services. But the Commission must be concerned with imprudent and inopportune investment in transient technologies to the eventual detriment of the subscribers of basic telephone service. The dissent appears to give short shrift to what should be a legitimate and problematic concern of this Commission.

The Commission recognizes actions taken in other states which have authorized interconnection of an alternate telecommunications services system with existing local exchange networks. The Commission is unable to discern how these jurisdictions will monitor and respond to the impact these alternate systems may have upon universal service objectives. Nor is the Commission aware of "safety net" proposals to protect and maintain the universal service objective.

As to the portion of the application relating to interexchange private line services, staff asserted that ELI's application would not violate any existing rights of LECs. An interexchange carrier may offer private line service end-to-end, which is not a service provided wholly within an exchange area boundary by definition. The Commission concurs with staff and adopts this analysis.

## VI. OTHER RELATED ISSUES

Public Counsel recommended that the Commission suspend the application pending a generic proceeding to consider all public policy issues incident to the application. The Commission believes that the public policy issues raised by this application have been adequately explored and considered by the Commission in this proceeding. A generic proceeding is therefore not required to address these issues.

U S WEST contended that dark fiber is not a telecommunications service subject to Commission jurisdiction. Staff responded that there is not enough evidence in the record to determine whether dark fiber is a telecommunications service. The Commission, however, finds that dark fiber is a telecommunications service subject to Commission jurisdiction. "'Telecommunications' is the transmission of information by . . . optical cable . . ." RCW 80.04.010 Pursuant to RCW 80.01.040(3), the Commission is required to regulate "facilities".[6] "Facilities" is defined by RCW 80.04.010 to include lines and conduit.[7]

The parties expressed some concern regarding ELI's filing of individual case basis contracts (ICBs) instead of tariffs with the Commission. Commission staff stated that it would prefer to see services offered pursuant to tariff. However, it recognized that there are other companies currently filing ICBs with the Commission for similar services. The Commission concurs with staff and will permit the filing of individual case basis contracts for the approved services.

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[6] RCW 80.01.040 requires the Commission to: (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including, but not limited to, . . . telecommunications companies.. . .

[7] RCW 80.04.010 defines "facilities" to mean: lines, conduit, . . .and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by any telecommunications company to facilitate the provision of telecommunications service. "Telecommunications" is defined by RCW 80.040.010 as "the transmission of information by. . .optical cable."

## VII. COMMISSION DECISION

The Commission finds it to be in the public interest to grant in part ELI's application for registration and to provide interexchange private line or special access services and intraexchange dark fiber service in US WEST exchanges.

### FINDINGS OF FACT

Having discussed in detail the evidence in this proceeding and having stated findings and conclusions, the Commission makes the following summary of those facts. Those portions of the preceding detailed findings pertaining to the ultimate facts are incorporated by this reference.

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with the authority to regulate rates, rules, regulations, practices, accounts, securities and transfers of public service companies, including telecommunications companies.

2. On September 18, 1990, Electric Lightwave, Inc. filed an application with the Commission pursuant to RCW 80.36.350 requesting an order approving its registration as a telecommunications company authorized to provide service to the public in this state.

3. The applicant has secured commitment of the requisite financial resources to construct its network facilities and to provide the proposed services.

4. The applicant has retained personnel with professional telecommunications experience, proposes a state-of-the-art telecommunications system, and satisfies the requirement of adequate technical competency to provide the proposed services.

5. ELI proposed to offer both interexchange and intraexchange services. ELI had the burden of showing that the services it proposed to offer were not being satisfactorily provided by the LECs. With the exception of dark fiber in US WEST exchanges, ELI failed to provide sufficient evidence to meet this burden.

6. A generic proceeding is not required to address the public policy issues raised in this proceeding. The Commission has adequately explored and decided these issues.

7. The applicant will be permitted to file individual case basis contracts for the approved services.

8. In this proceeding, the Commission in no way endorses the financial viability of Electric Lightwave, Inc., nor the investment quality of any securities it may issue.

## CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties thereto. This jurisdiction includes the regulation of dark fiber.

2. The form of the ELI application filed with the Commission meets the requirements of RCW 80.36.350 and the rules and regulations which the Commission has adopted.

3. The registration of Electric Lightwave, Inc. as a telecommunications company is not inconsistent with the public interest.

4. The local exchange company is entitled to be the exclusive provider of wholly intraexchange services. An alternate provider may not offer wholly intraexchange services unless it can show that the LEC is not providing service to the satisfaction of the Commission. With the exception of dark fiber in U S WEST exchanges, the LECs are satisfactorily providing the wholly intraexchange services proposed by ELI.

5. The applicant's registration therefore should be limited to the following services:

(1) interexchange private line or special access services; and,

(2) intraexchange dark fiber services in US WEST exchanges.

In all other respects, the application of ELI is denied.

## O R D E R

WHEREFORE, IT IS HEREBY ORDERED That:

1. On the effective date of this order, the application of Electric Lightwave, Inc. requesting an order approving registration as a telecommunications company pursuant to RCW 80.36.350 to provide service to the public in this state is approved in part as follows:

(1) interexchange private line or special access services; and,

(2) intraexchange dark fiber services in U S WEST exchanges.

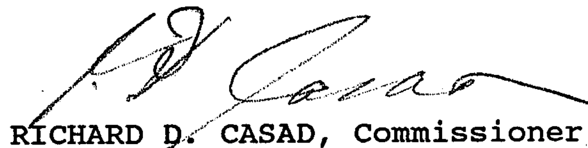
In all other respects, the application is denied.

2. Registration of Electric Lightwave, Inc. shall not be construed as an endorsement by the Commission of the financial viability of Electric Lightwave, Inc., nor the investment quality of any securities it may issue.

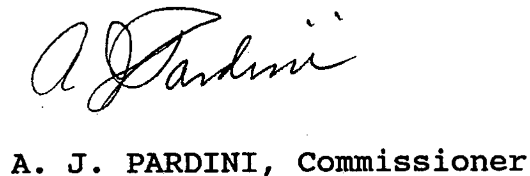
3. As a telecommunications company providing service to the public in this state, Electric Lightwave, Inc. is subject to the jurisdiction of this Commission under the provisions of Title 80 RCW and all rules and regulations of the Commission adopted pursuant thereto.

DATED at Olympia, Washington, and effective this 6th day of December 1991.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

Sharon L. Nelson, Chairman (Dissenting from the opinion of the Commission) - I dissent. In my opinion, the Commission should register ELI as a telecommunications company and permit it to provide all of the services it proposes. The majority opinion errs both in its legal and policy analyses. The order represents a step backwards in regulatory policy and could threaten reasonable technology deployment throughout the state. RCW 80.36.230, which permits the Commission to prescribe exchange boundaries, does not, in my opinion, amount to the grant of an exclusive franchise or a "quasi-exclusive" franchise. The plain meaning of the statute, principles of statutory construction, legislative history, and

public policy considerations argue strongly against artificially created monopolies. At a time when it is becoming clear to most economists that hardly any "natural monopoly" remains in the telecommunications industry, this order would create a legal monopoly. Such an approach cannot endure against changing technology and economics. In my view, the result of the majority opinion may be to create a patchwork of services and providers that serves neither the public interest nor the interests of incumbent telecommunications providers.

I. RCW 80.36.230 does not create an exclusive franchise.

All parties to the case trace the existence (or nonexistence) of an exclusive local franchise to RCW 80.36.230. I believe that RCW 80.36.230 confers what it has since enactment: discretionary power to the Commission to set exchange area boundaries in the public interest.

A. Rules of statutory construction support the determination that RCW 80.36.230 does not create an exclusive franchise.

Basic rules of statutory construction point to this result. In a case rejecting this Commission's attempt to include construction work in progress in electric rates, the State Supreme Court stated:

> The intent of the Legislature must be determined primarily from the language of the statute itself...where the language of a statute is plain, free from ambiguity, and devoid of uncertainty there is no room for construction because the meaning will be discovered from the wording of the statute itself.
> Power v. WUTC, 104 Wn.2d 425, 429, 679 P.2d 922 (1984).

A corollary is that the court will not read into a statute words that are not there. See Vannoy v. Pacific Power & Light Co, 59 Wn.2d 623, 369 P.2d 848 (1962).

The language of RCW 80.36.230 is clear on its face. The power to set exchange area boundaries is discretionary. The statutory language does not require the Commission to make those boundaries exclusive. This reading is consistent with relevant constitutional provisions. Article 12, Section 19 of the Washington State Constitution allows "any person" to construct lines of telephone and telegraph subject to reasonable legislative regulations. Article 12, Section 22 is a general prohibition against monopolies. Case law indicates that the state may establish and sanction monopolies in the public interest, but this power should be read narrowly in light of the general constitutional prohibitions evincing a distaste for monopolistic

practices. See State ex rel. Department of Public Works v. Inland Forwarding Corp, 176 Wash. 412, 30 P.2d 888 (1931) and Uhden v. Greenough, 181 Wash. 412, 53 P.2d 983 (1935).

The Inland Forwarding case, supra, cited by staff counsel is instructive. In that case, the court upheld the Commission's grant of "quasi-exclusive" franchises to auto transportation companies under a statute that explicitly established a monopoly structure. See RCW 81.68.040. This statute predated enactment of RCW 80.36.230 by 20 years. Similar language is contained in RCW 81.77.040, which allows the Commission to regulate certain garbage haulers and control entry. That statute postdates RCW 80.36.230 by 20 years. In both cases, the Legislature sought to create a "quasi-exclusive" franchise, and used clear, explicit language to do so.

The wording differences between RCW 80.36.230 and these other explicitly monopolistic statutes are important because Washington courts have repeatedly held that it is an "elementary rule that where the Legislature uses certain statutory language in one instance and different language in another, there is a difference in legislative intent." United Parcel Service vs. Department of Revenue, 102. Wn.2d 355, 362, 687 P.2d 186 (1984)

The legislature could have chosen to make RCW 80.36.230 explicitly a monopoly statute, but it did not. We may not read in words that are not there. This comports with a general rule of statutory construction:

> Public grants of exclusive franchises or monopoly which tend to exclude competition, quite generally, are given a strict interpretation against the claims of the grantee and in favor of the public. . . . The courts have not only regarded with disfavor claims that a statute vests a monopoly, but where an exclusive franchise is conceded the extent of its operation is rigidly limited. Sutherland Statutory Construction §63.06, Vol. 3, p. 147, 1986.

B. The legislative history of RCW 80.36.230 indicates the statute was not intended to create exclusive franchises.

While I believe the basic construction of RCW 80.36.230 is clear, the history surrounding the law also argues against the staff counsel's monopoly interpretation upon which the majority opinion relies. Legislative history reveals that the statute was proposed by the Commission to resolve a very specific problem in Eastern Washington. In the 1930s, cases arose where customers in the rate area of one local exchange telephone company would construct lines into the rate area of another telephone company

with the intent of obtaining service. This would avoid foreign exchange charges and allow the customers to receive services from the company of their choice. See Sunquist v. Pacific Telephone and Telegraph Company, et al., Cause No. 7174 (1940) and Seventeenth Report of the Department of Public Service to Honorable Clarence D. Martin, Governor, 110 (1940).

To remedy this situation, the Department proposed House Bill 328, which was enacted as Chapter 137, Laws of 1941. That law, which now is codified as RCW 80.36.230, granted the Commission discretionary power to prescribe exchange area boundaries and/or territorial boundaries for telephone companies.

It appears the real purpose of the 1941 statute was to bring some order out of the chaos associated with small independent telephone companies, to clearly delineate local and interexchange telephone calling, and to create zones for local telephone service. The power the Commission sought was discretionary and did not purport to grant an exclusive franchise or a perpetual franchise. The Commission could have proposed a true monopoly model along the lines of the auto transportation statutes, which already existed, but did not. To claim now that the statute gives incumbent providers a perpetual monopoly over all intraexchange telecommunications services currently offered by them or yet to be invented strains credulity.

C. Attorney General opinions, Commission cases, and judicial opinions do not support an exclusive franchise.

The parties who advocate interpreting the law as mandating a monopoly franchise present a number of legal opinions, Commission orders, and court cases which purport to show that previous interpretation of RCW 80.36.230 has established monopoly franchises. However, it is notable that even these parties do not agree on the definition or scope of the purported franchise. In my view, the proponents of a monopoly franchise substantially overread those cases and opinions. At most, they show that the exchange area constitutes a property interest that may not be taken away absent a showing of unsatisfactory performance. They do not stand for the proposition that the Commission is obliged to prevent new competitors from entering a market.

For example, some parties overread the Prescott case. See Prescott Telephone and Telegraph Co. v. The Utilities and Transportation Commission, 30 Wn.App 413 (1981). Prescott holds that the Commission may not revoke a company's exchange area without substantial evidence of unsatisfactory performance. It says nothing about authorizing a second provider in an already served exchange area. The issue arose in the context of Prescott Telephone company's request that the Commission declare a portion of Pacific Northwest Bell Company's territory open and unserved. The court said that to "have declared the disputed area as either

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open or within Prescott's area would have deprived PNB of its interest in the exchange area..." Prescott, supra, at 418.

"Open" territory should mean just that: the incumbent's obligation to serve is extinguished and the territory is declared open for service by any company. ELI has not made such a request. It simply seeks to provide a redundant service similar to those provided by US WEST and GTE. Nothing in RCW 80.36.230 prevents the Commission from granting such a request.

D. ELI meets all the Commission registration requirements.

At this point in our analysis, the Regulatory Flexibility Act becomes relevant. The registration provisions of the Act allow the Commission to deny registration to companies which fail to meet technical and financial competence standards. RCW 80.36.350. The Commission's rules also require that the Commission find the application is in the public interest. WAC 480-121-040. I believe the evidence is clear that ELI is financially and technically competent, so my focus is only on whether ELI's entry is in the public interest.

In adopting the Regulatory Flexibility Act, the Legislature directed the Commission to, inter alia,

> (1) Preserve affordable universal telecommunications service;
>
> (2) Maintain and advance the efficiency and availability of telecommunications service; . . .
>
> (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state[.]

RCW 80.36.300.

In my view, allowing ELI to enter will not threaten affordable universal service. As staff counsel argued in his brief, "Staff does not believe that much credence can be given to the argument advanced by WITA that permitting ELI to operate could jeopardize universal service." Staff brief at 18. (citation omitted). "It appears that the impact of registration of ELI is a less significant threat to LEC revenue than was registration of interexchange toll carriers." Staff brief at 19.

This is reinforced by the testimony of staff witness Thomas Wilson, who, in response to cross-examination, said:

Q If you were not advised that there were legal restrictions on intraexchange competition, would your view as an economist be that the Commission should grant the application to provide intraexchange services, or to oppose it?

A This application, and all the facts are the same as right now?

Q If you'd like to assume that, that's fine.

A I'd recommend approval.

Q I take it from that answer that you don't believe, as an economist, that there's any significant difference between intraexchange and interexchange service that would require, from an economic analysis, that one be a monopoly and one be competitive?

A I think that the benefits outweigh the costs.

Transcript at p.623. It also is unquestioned that the entry of ELI will promote diversity in the supply of telecommunications services. Therefore, under the policy enunciated in RCW 80.36.300, ELI should be registered.

II. Public Policy Considerations Also Favor Registration.

This legal analysis is consistent with and supports sound public policy analysis. In my view, it is unwise to base a legal decision on the characteristics of a particular technology at a point in time. Regulatory categories based on technologies are simply not sustainable in an age of rapid and significant innovation. If the majority position prevails, we will have the anomalous situation where entry into the local exchange market will depend on a new entrant's choice of technology. Cellular companies and personal communication service (PCS) providers, which are licensed by the federal government, would be free to compete with incumbent local exchange companies, as they do now. Wireline competitors, however, no matter how efficient, would be unable to compete. Businesses would be deprived of access to alternative local transport systems for intraexchange calls but could access these for interexchange calls.

The result announced in the majority opinion flies in the face of emerging federal and state policies, which generally

encourage interconnection of alternative local transport systems with local exchange networks. The actions of Florida[8], Illinois[9], Maryland[10], Massachusetts[11], Minnesota[12] and New York[13] are

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[8] Before The Florida Public Service Commission, In re: Generic investigation into the Operations of Alternate Access Vendors., Docket No. 890183-TL, Order No. 24877, Issued: 08/02/91. Due to statutory limitations, "Alternate Access Vendors" are permitted by the Florida PSC to provide private line services, both intraexchange and interexchange, between "affiliated entities" only.

[9] Order of Illinois Commerce Commission, Teleport Communications Chicago Application for a Certificate of Service Authority to Provide Direct Nonswitched Access service and Resold Exchange Service in the Chicago Exchange, Docket No. 89-0171, September 22, 1989.

[10] Public Service Commission of Maryland, Order No. 68290, Case No. 8167, In the Matter of the Application of Metro Fiber Systems of Baltimore, Inc. for Authorization to Provide Dedicated, Non-Residential Intrastate Telecommunications Service Within the State of Maryland, December 21, 1988.

[11] Department of Public Utilities, Commonwealth of Massachusetts, Order in Docket No. D.P.U. 88-229, Application by MFS-McCourt, Inc. Under the Provisions of GL c 159, as amended, For a Certificate of Public Convenience and Necessity to Operate as a Resale, Value-Added or Interexchange Common Carrier Within the Commonwealth of Massachusetts. D.P.U. 88-252, Investigation by the Department on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariff M.D.P.U. NO. 1. Original Page 1 through 41 filed with the Department on November 15, 1988, to Become Effective December 15, 1988, by MFS-McCourt, Inc., June 14, 1989. See also, D.P.U. 88-60, Application by Teleport Communications-Boston Under the Provisions of Chapter 159 of the General Laws, as amended, For a Certificate of Public Convenience and Necessity to Operate as a Resale, Value-Added or Interexchange Common Carrier Within the Commonwealth of Massachusetts. D.P.U. 88-71, Investigation by the Department on Its Own Motion as to the Propriety of the Rates and Charges Set Forth in M.D.P.U. No. 1 Tariff, Original Pages 1 through 41, Also Original Attachment A, Filed with the Department on March 3, 1988, to Become Effective April 3, 1988, by Teleport Communications-Boston., October 3, 1988.

[12] Minnesota Public Utilities Commission, Order Granting Certificate of Authority in Docket No. P-495/EM-89-80, In the Matter of the Filing by Metro Fiber Systems to Provide Certain Telecommunications Services Within Minneapolis and St. Paul, Minnesota. June 16, 1989.

instructive in this regard. Those states correctly recognize that intraexchange competition can spur additional reliability and innovation and may even promote efficiencies in the incumbent's network which can benefit all subscribers.

A second unfortunate result of the majority opinion is that it provides inefficient and wasteful incentives to companies to invest in new services prematurely, solely to protect their purported franchise. As a result, the cost of local service could actually rise, as companies stake a claim to future services. Moreover, if we conclude that there is a legal monopoly for all intraexchange services, then whoever provides any particular service first will have "locked up" the market. In US WEST territory, after this order, US WEST may be foreclosed from providing intraexchange dark fiber service at any point in the future, because it would violate ELI's new franchise over dark fiber. Under the staff counsel's reasoning, US WEST may already be foreclosed from providing low-end Centrex packages, which would be the exclusive province of Enhanced Telemanagement, Inc. (ETI) and Metro-Net Services Corporation, which the Commission previously registered as providers of that service. When information gateways evolve, if the majority opinion is followed, the Commission may be limited to allowing one gateway per local exchange. This is hardly the way to stimulate the information economy.

Under the majority opinion, incumbent local exchange providers have "first claim" on all intraexchange services they are "willing and able" to provide. This construction will cause enormous practical problems. For example, if we conclude that local exchange companies are monopolists of all intraexchange services which they are willing or able to provide, how long do they have to meet a bona fide service request in order to preserve that claim: Thirty days? Sixty days? Ninety days? At what price must the company provide the service: Marginal cost? Fully distributed cost? These questions illustrate the error of engrafting onto RCW 80.26.230 language which is not there.

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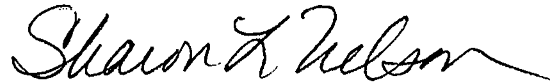
[13] State of New York, Public Service Commission, Order Issuing Certificate of Public Convenience and Necessity and Approving Related Waivers, Case 28891, <u>Petition of Teleport Communications for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Common Carrier Communications Services Within the State of New York</u>. January 7, 1985. <u>See also</u>, Order Issuing Certificate of Public Convenience and Necessity and Approving Expedited Proceeding and Related Waivers, Case 89-C-141, <u>Petition of Metropolitan Fiber Systems of New York, Inc. for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services in the State of New York. Petition for Expedited Proceeding and Related Waivers</u>. October 10, 1989.

There are far better alternative policies which can allow competition and still protect universal service. Our colleagues in other states have pioneered the way. Common carrier standards, interconnection standards, open network architecture, and access fees are all still available as policy tools to the Commission. Using them, we could deal with the issues of interconnection, universal service, and contribution without forcing inefficient investment by either the incumbent telephone company or telecommunications dependent businesses which may construct private networks to ensure reliability. In my view, we would best protect universal service goals by allowing local providers to compete and price competitively than by taking steps which choke off supply and provide incentives for exotic forms of bypass. Finally, to the extent that we erect a legal wall around the local exchange telephone company, we should consider whether the lower risk faced by local exchange companies in light of their exclusive franchises justifies a substantially lower return on investment.

## III. Other Considerations

The Commission does not operate in a vacuum; nor does technology. The Commission was established to regulate in the public interest, and to harmonize the diverse interests of ratepayers and the telecommunications industry. The majority's conclusions in this case ignore legal precedent and technological realities and therefore will not be sustainable in the long run. This decision contravenes the state's goals of promoting diversity, efficiency and availability of telecommunications services, and is not in the public interest.



SHARON L. NELSON, Chairman

**NOTICE TO PARTIES:**

**This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).**