

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held September 5, 1996

Commissioners Present:

John M. Quain, Chairman
Lisa Crutchfield, Vice Chairman
John Hanger, Statement Attached
David W. Rolka
Robert K. Bloom

DOCKETED
SEP 10 1996

In Re: Implementation of the
Telecommunications Act of 1996

Docket No.
M-00960799

ORDER ON RECONSIDERATION

DOCUMENT
FOLDER

BY THE COMMISSION:

A. Introduction

In this Order, we address petitions for reconsideration and/or clarification of our June 3, 1996 Order implementing the Telecommunications Act of 1996 ("1996 Act" or "Act").¹ The 1996 Act, like Chapter 30 of Title 66 of the Pennsylvania Consolidated Statutes, establishes a procompetitive, deregulatory telecommunications framework with significant implementation and oversight responsibilities for this Commission. Our actions today are once again designed to ensure that we meet all of our responsibilities under the 1996 Act in a timely manner and that the companies which we regulate have the benefit of established policies before they must act to meet the Act's requirements.

In our June 3, 1996 Order at this Docket, we established new policies and procedures to comply with the Act's provisions. Through our June 3, 1996 Order we, inter alia: promulgated new entry procedures for rural and non-rural service areas to comply with § 253 of the Act; established new procedures governing mediation, arbitration and adjudication proceedings to fulfill our responsibilities under § 252 of the Act; and modified policies relating to imputation of access charges, a carrier's obligation to serve, and intrastate collocation so as to ensure consistency with the Act's provisions.

As discussed in detail below, we affirm, with some modification: (1) the new entry procedures established to comply with §§ 253(a) and (b) of the Act; (2) the procedures established for Commission mediation, arbitration and approval of interconnection agreements

¹In Re: Implementation of the Telecommunications Act of 1996, Order entered June 3, 1996 at M-00960799.

under § 252 of the 1996 Act; and, (3) service by carriers upon the Commission of all FCC filings. We suspend the imputation requirement as applied to all LECs other than Bell Atlantic, subject to further comment and investigation at this Docket. We affirm our decision to establish a Task Force to assist us in carrying out our important responsibilities related to customer education and protecting the public safety and welfare. Finally, upon careful consideration of the comments of parties and the recent FCC Order at Docket 96-98², we interpret our obligations under § 252(a) of the 1996 Act dealing with pre-enactment interconnection agreements. We also interpret the definition of "rural telephone company" contained in Section 3(a)(47) of the 1996 Act, and make designations, where appropriate.

B. Background

President Clinton signed the Telecommunications Act of 1996 into law on February 8, 1996. The 1996 Act contains a legion of requirements which this Commission must implement at the state level to ensure that the Act's objectives are met in a timely manner.

In recognition of its new responsibilities under the Act, this Commission issued on March 14, 1996, a Tentative Decision at this Docket which identified the Act's provisions requiring our immediate attention and made tentative findings on how the Commission could fulfill its responsibilities in implementing those provisions of the Act. Interested parties were given the opportunity to participate through the filing of comments, and through a public forum sponsored by the Commission on April 3, 1996.

On June 3, 1996, the Commission entered a final Order at this Docket. On June 18, 1996, Petitions for Reconsideration were filed by ALLTEL of Pennsylvania ("ALLTEL"), United Telephone Company ("United"), the Pennsylvania Telephone Association ("PTA"), Bell Atlantic -- Pennsylvania ("Bell Atlantic"), and North Pittsburgh Telephone Company ("North Pittsburgh"). By Order entered June 20, 1996, the Commission granted the Petitions for Reconsideration filed by the PTA, North Pittsburgh and ALLTEL, pending further review on the merits. By Secretarial Letter dated July 3, 1996, the Commission advised parties that it would consider the Petitions for Reconsideration and/or Clarification also filed by United, Bell Atlantic, and the Petition for Reconsideration filed by MCI Telecommunications Corporation ("MCI") on June 21, 1996.³ Answers and/or Oppositions to the various petitions were filed on June 28, 1996, July 3, 1996, and July 11, 1996 by AT&T; on July 2, 1996 by the Pennsylvania Office of Consumer Advocate ("OCA"); on July 15, 1996 by the Office of Trial Staff ("OTS");

²In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 et. al., CC Docket No. 96-98, First Report and Order, released August 8, 1996.

³On July 8, 1996, GTE North Incorporated ("GTE") filed a Petition for Reconsideration. On August 6, 1996, NEXTLINK also filed a Petition for Reconsideration with the Commission. We will consider the issues raised by both GTE and NEXTLINK herein since for the most part they raise issues already contained in the Petitions filed by other parties.

on July 15, 1996 by the Office of Small Business Advocate ("OSBA"); and on July 11, 1996 and August 18, 1996 by Bell Atlantic.

The issues raised in the Petitions can be broadly classified into six subject categories and we have structured our discussion of the issues accordingly: (1) new entry and application procedures applicable to non-rural telephone service areas, (2) designation of rural telephone company ("RTC") status and entry procedures applicable to RTCs, (3) negotiation, mediation, arbitration and approval processes for interconnection agreements, (4) intraLATA toll imputation requirement, (5) the Commission's new consumer education Task Force, and (6) the requirement that jurisdictional carriers serve the Commission with copies of their FCC filings.

C. Discussion

Section 703(g) of the Public Utility Code gives the Commission the authority to reconsider its orders under appropriate circumstances, 66 Pa. C.S. § 703(g). The standard for determining whether we should exercise that authority was articulated in Duick v. Pennsylvania Gas and Water Company, 56 Pa. P.U.C. 553 (1982) wherein the Commission stated:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, where it was said that "[p]arties...cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them....." What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue is either unwise or in error.

The recent Commonwealth Court decision in AT&T v. Pennsylvania Public Utility Commission⁴, clarified that while rehearing petitions must allege newly discovered evidence, this same requirement does not apply to petitions to amend or rescind.

As discussed in detail below, based upon the above standards, we grant in part and deny in part the Petitions for Reconsideration filed by Bell Atlantic, United, PTA, ALLTEL, MCI, GTE, North Pittsburgh and NEXTLINK.

⁴130 Pa. Commonwealth Ct. 595, 568 A.2d 1362, 1364 (1990).

1. New Entry and Application Procedures Applicable to Non-Rural Telephone Service Areas.

a. Background. In our June 3, 1996 Order we determined that the Section 253(a) prohibition against entry barriers required some modification to our traditional entry analysis conducted pursuant to §§ 1101 and 1103(a) of the Public Utility Code, 66 Pa. C.S. §§ 1101 and 1103(a). To ensure that our procedures would not violate the provisions of Section 253(a) of the Act, we adopted streamlined entry procedures for non-rural service areas. Our Order required applicants desiring to commence either competitive local or interexchange service in Pennsylvania to henceforth file with the Commission's Secretary, an application, an interim proposed tariff, and a \$250.00 filing fee. In streamlining our current entry procedures, we limited the scope of any protests to the application to the fitness of the applicant. Our Order established separate procedures for applications subject to legitimate protest and those that are not the subject of protest. Under our June 3 Order, a company's interim tariffs take effect immediately upon the company's filing of its application and tariffs with the Commission's Secretary.

b. Position of the Parties. Bell Atlantic seeks clarification that the "streamlined procedures for review of applications to provide intrastate telecommunications service do not apply to requests for waivers of Commission rules and similar ancillary relief which may be part of those applications."⁵ Bell Atlantic requests that we clarify that requests for waivers or other forms of affirmative relief must be set forth in separate petitions, and that we "require applicants in pending dockets to refile their requests for ancillary relief in separate petitions".⁶ Bell Atlantic and PTA both argue that because the June 3 Order establishes a shortened time-frame for protesting the fitness of new entrants, the Commission should require new entrants to serve copies of their applications upon the affected incumbent ILEC ("ILEC").⁷ PTA urges the Commission to require applicants for both "local service rights and interexchange authority" to serve the ILEC.⁸ PTA states that without direct notice being provided via service of the application on the ILEC, the ILEC will be unable to exercise its rights meaningfully. Bell Atlantic adds that any petitions for ancillary relief should also be served on both the ILEC and governmental parties.

c. Discussion. We agree with Bell Atlantic that our June 3, 1996 Order, in limiting protests to the fitness of the applicant, does contemplate that requests for waivers and ancillary relief be filed separately. To the extent this is unclear in our Order, we hereby clarify that requests for waivers or any other form of relief ancillary to the fitness of the applicant

⁵Bell Atlantic Petition for Clarification at p. 1.

⁶Bell Atlantic Petition for Clarification at p. 2.

⁷Bell Atlantic Petition for Clarification at p. 3; PTA Petition at p. 4.

⁸PTA Petition for Reconsideration at p. 4.

should be contained in a separate petition and filed with the Commission as a separate matter within the application docket and served upon all parties of record. Within 10 days from the entry date of this Order, existing applicants which have included a request for waiver or ancillary relief in their pending applications must refile those requests in a separate petition within the relevant A-docket with service upon all parties of record. To the extent any applicant does not comply with the 10-day refiling period established herein, it shall be deemed to have withdrawn any request(s) for ancillary relief contained in existing entry applications.

We grant PTA's and Bell Atlantic's request that the ILEC be served by the competitive local exchange provider ("CLEC") with a copy of the CLEC's application. We recognize that modifications to our current procedures designed to accommodate § 253(a) of the Act, e.g., elimination of the publication requirement for applications, may make it more difficult for all parties to become aware of applications which have been filed and to, therefore, meet the 15-day protest period. We also recognize that other providers, in addition to the ILEC, have a legitimate interest in keeping abreast of such applications for protest purposes. Nonetheless, we cannot possibly require new applicants to serve all existing providers with a copy of their application because such a requirement could constitute an entry barrier in and of itself. We believe limited notice to the ILEC is appropriate at least in the interim, however, for network planning purposes, and particularly in the case of an ILEC which qualifies as an RTC under the Act given the special protections afforded small rural telephone companies and the stringent timelines for Commission determinations regarding competitive carrier entry into small LEC service territories. Therefore, at least in the interim, we will require all CLECs to serve a copy of their application upon the ILEC at the time they file their application with the Commission. We also require, at least for an interim period, the CLEC to serve any request for ancillary relief upon the ILEC. We do not, however, extend this requirement to competitive toll carriers as requested by PTA.

Since our new entry procedures have been in effect for approximately two months now, we have identified a few problem areas in need of refinement. Most notably, we are finding that the applications submitted by new service providers contain technical defects which require at times that the application be returned to the provider for refiling. For instance, some applicants are not aware of the Commission's new application form and the information required therein, while others forget to enclose the proper filing fee. **For this reason, we find it necessary to modify paragraphs 4 and 6 of our June 3 Order so as to clarify that a new entrant may commence the provision of service specified in the application at the time its application has been accepted for filing by the Commission Prothonotary.** Additionally, the 15-day protest period pursuant to paragraph 6 will commence on the date the application is accepted for filing. We believe this clarification is necessary to eliminate any ambiguity with respect to when the 15-day protest period commences and when the applicant's authority to provide service begins.

We also clarify paragraph 7 of June 3 Order to be consistent with current and past Commission practice in processing applications to provide either local or interexchange service in the Commonwealth. The Secretary's Bureau will initially assign all applications to the Office of Special Assistants ("OSA") which has traditionally handled these matters. Where a valid

protest is received, OSA will return the application for assignment by the Office of Prothonotary to the Office of Administrative Law Judge ("OALJ") as is the normal procedure for Chapter 11 applications. The Commission reserves the right to make changes at any time to these or other of its internal operating procedures as necessary to ensure timely handling and processing of all applications in the future.

Finally, consistent with past practice, the Commission has modified its application form (attached as Appendix A hereto) to require applicants to file, along with their application, a copy of their Articles of Incorporation. The existence of and information contained in the Articles of Incorporation is an important consideration in determining the fitness of any applicant.

**2. Eligibility for Rural Telephone Company Status and Entry Procedures
Applicable to Rural Telephone Company Service Areas.**

a. Background. Pursuant to the discretion afforded to state commissions under § 252(g) of the Act, and in keeping with the spirit of Chapter 30 and our prior decisions to streamline to the extent possible various regulatory proceedings involving small LECs, our June 3, 1996 Order established a consolidated procedure for applicants seeking to provide service in the service territory of a small LEC (one that is eligible for streamlined regulation under Chapter 30).⁹ Pursuant to those procedures, an applicant must submit to the small LEC a bona fide request for interconnection under § 251(f)(1)(A) of the Act, and a request for universal service designation under Section 214(e)(2) committing to provide service throughout the small LEC's service territory. The Commission's grant or denial of such applications will be subject to normal procedures under 66 Pa. C.S. §§ 1101 and 1103 and the traditional public interest standard, which is consistent with the standards contained in § 254 of the 1996 Act.

Our Order further recognized that the 32 smallest Pennsylvania independent telephone companies qualified for "rural telephone company" status under the Act. The 32 smallest LECs each serve fewer than 50,000 access lines, are eligible for streamlined regulation under 66 Pa. C.S. § 3006, and fit readily within the definition of an RTC set out at §3(a)(47)(B) of the Act. While our June 3, 1996 Order also designated North Pittsburgh as an RTC, it deferred a decision on ALLTEL, United and Commonwealth pending the submission of further comment on this issue by the parties and further consideration on our part.

b. Position of the Parties. North Pittsburgh states that while the Commission designated it as a "rural telephone company" under the 1996 Act, no entry procedures were established for companies of its size with over 50,000 access lines. North Pittsburgh asks that our June 3, 1996 Order be reconsidered and that the Commission establish identical procedures for entry into all RTC service territories. North Pittsburgh argues that from the standpoint of

⁹66 Pa. C.S. § 3006, provides that "...local exchange telecommunications companies serving less than 50,000 access lines within this Commonwealth may petition the commission to establish a streamlined form of rate regulation to be applicable to their operations."

entry procedures, an RTC with 57,759 access lines is no different than a company with 49,999 access lines. Further, North Pittsburgh states that the applicability of Chapter 30's streamlined regulation to carriers with fewer than 50,000 access lines provides no basis for different treatment in entry procedures.¹⁰

United argues that it meets the RTC eligibility criteria under § 3(a)(47)(D) of the Act which permits designation for a carrier having less than 15 percent of its access lines in communities of more than 50,000. United further argues that the clear and unambiguous language of § 3(a)(47) of the 1996 Act requires that it be read in the disjunctive because Congress used the word "or" rather than "and" in its enumeration of the criteria.¹¹ United argues that to read the provision any other way would ignore the plain language of the Act. Like North Pittsburgh, United states that if it is designated as an RTC, it should be subject to the same consolidated entry procedures as LECs qualifying for streamlined regulation under Chapter 30, that two different procedures are arbitrary and such disparate treatment is not supported by the Act. Finally, United argues that the § 1103 entry procedures should apply to LECs serving greater than 50,000 access lines since the same policy questions arise.¹²

ALLTEL argues that the criteria in § 3(a)(47) of the statute be read in the disjunctive.¹³ ALLTEL argues that it also meets the criteria for RTC status contained in § 3(a)(47)(D). ALLTEL states that it does not serve any communities with over 50,000 access lines, and therefore, it must meet this definition. ALLTEL advocates that the Commission define the term "community" as "a group of people living in the same locality and having common interests."¹⁴

Commonwealth also claims RTC status through Subpart (D) of § 3(a)(47). It states that it "has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the legislation."¹⁵ Commonwealth states that it serves no communities with a population exceeding 50,000, and therefore, must qualify. Commonwealth defines the term "communities" to include minor civil divisions or municipalities.

¹⁰North Pittsburgh Petition for Reconsideration at p. 4.

¹¹We incorporate herein the comments of parties filed on May 8, 1996 at this docket and responses thereto which addressed the proper interpretation of § 3(a)(47) of the Act which sets forth the criteria for RTC status.

¹²United Petition for Clarification and Reconsideration at p. 3.

¹³ALLTEL Petition for Reconsideration at p. 7.

¹⁴Letter dated May 10, 1996 from Patricia Armstrong to Secretary Alford.

¹⁵See letter from Joseph J. Laffey of Commonwealth Telephone Company dated May 8, 1996 to Secretary Alford of the Commission.

Arguing against reading the RTC provision in the disjunctive are the OCA, AT&T and MCI. OCA argues that the rules of statutory construction require that the statute must be interpreted to give rational meaning to all of its provisions. OCA further argues that allowing subsection 47(D) to stand alone as a criterion for RTC status would render subsection 47(A)(i) meaningless. OCA suggests that subsection 47(D) "may have been intended to serve as a limited exception for companies which generally serve only customers who live in communities of less than 10,000 inhabitants [subsection 47(A)(i)], but which also happen to serve a small portion of a large city."¹⁶

AT&T argues that while subsection 3(a)(47)(D) defines an RTC as one that "has less than 15 percent of its access lines in communities of more than 50,000," a company asserting RTC status must necessarily have some of its access lines in communities where it serves more than 50,000 access lines. AT&T asserts that the "less than 15 percent" language must be read to require more than zero percent.

MCI cites to the House debate before passage of the Act and argues that Congress did not intend to insulate RTCs from competition and, consequently, that the RTC criteria should be read narrowly. MCI suggests that the term "community" should be defined as synonymous to a LEC's local service area. Nonetheless, MCI stresses that the manner in which the Commission defines the various terms in § 3(a)(47) and an RTC is less important than how the Commission decides to administer the exemption, suspension or modification provisions of § 251.

Eastern TeleLogic Corporation supports the general position advanced by the ILECs, although it does not comment on whether any particular company actually qualifies for RTC status. Eastern TeleLogic urges the Commission to recognize that third parties have the right to seek termination of the RTC exemption on a going forward basis. Eastern TeleLogic argues that termination of the exemption should be considered if the technical and economic fortunes of the RTC have improved or otherwise changed, and that market position and market vulnerability of the RTC must be considered when contemplating termination of the exemption.

c. Discussion. Carrier Eligibility for Rural Telephone Company Status. We first address the issue of whether ALLTEL, Commonwealth and United meet the definition of a "rural telephone company" under § 3(a)(47)(D) of the 1996 Act. We note that since our June 3, 1996 Order was issued, GTE has also informed the Commission that it is entitled to "rural telephone company" status under the Act for portions of its service territory under § 3(a)(47)(C)¹⁷ which we also address herein.

The primary issue before us is whether Congress intended that a company meet all four or only one of the criteria of § 3(a)(47) in order to be designated as an RTC under the 1996 Act.

¹⁶OCA letter to Secretary Alford dated May 17, 1996.

¹⁷See letter from Bruce Kazee of GTE to John G. Alford dated July 3, 1996.

We find that the clear and unambiguous language of the Act cannot be ignored. The criteria for meeting the definition of an RTC must be read as disjunctive. The use of the word "or" between subsections (C) and (D) manifests the intention of Congress to permit eligibility for RTC status so long as a company meets any one, not all, of the enumerated criteria.

The argument that reading the criteria as disjunctive renders subsection 3(a)(47)(A)(i) meaningless is not persuasive. In support of its argument to ignore the use of the word "or" in separating the eligibility criteria, the OCA suggests an alternate interpretation which provides a limited exception for companies which generally serve small communities but which also serve a small portion of a large city. Not only does this argument impose additional conditions on RTC status which are not set forth in the language of the Act, but the argument also creates the same type of conflict it sought to rectify. Reading subsection (D) to allow a company to serve a small portion of a large city renders meaningless the prohibition found in subsection (A)(ii).

AT&T's argument that subsection (D) requires at least some access lines in communities of more than 50,000 is equally unpersuasive. The language of the Act does not require some, but less than 15 percent; the Act requires less than 15 percent.

We do not deny that there are ambiguities in the language of this provision; indeed we expressly acknowledged these ambiguities in our June 3, 1996 Order. However, upon further examination of the statute, we are not persuaded by the arguments of OCA and AT&T that there is an actual conflict between the provisions of Subparts (A) and (D) of § 3(a)(47), such that a literal reading of Subpart (D) of the statute would render Subpart (A) meaningless. There are important distinctions in the terms used in Subparts (A) and (D) which lead us to now believe that the two subparts were meant to address different circumstances. For instance, subpart (A) applies to a company's "study area" while Subpart (D) presumably applies to a company's "service area". Qualification under Subpart (A) is dependent upon the number of "inhabitants", while qualification under Subpart (D) is based upon the percentage of total "access lines". Another point of departure, and the one which all commentators focused upon, was Subpart (A)'s use of the term "incorporated area" versus the term "communities" used in Subpart (D). When these various points of departure in the language of each subpart are carefully reviewed, we believe that the two provisions are reconcilable.

It is conceivable that some companies will serve incorporated areas of greater than 10,000 access lines resulting in their disqualification under Subpart (A), but still qualify under Subpart (D), if less than 15% of its total access lines served are in "communities" of more than 50,000. This does not render Subpart (A) superfluous, it merely means that Congress established several alternative tests for determining whether a territory served by a company was rural in nature, and that if a company did not qualify under one prong of the test, it would have another opportunity to qualify under another prong or subsection.

Without dispute, the definition of the term "community", which the 1996 Act does not expressly define, is of paramount importance in determining whether the three carriers qualify as RTCs under the 1996 Act. We find the argument of AT&T on this point to be the most

persuasive. While AT&T notes that in most contexts under Pennsylvania law, the term "community" is defined broadly and should be for purposes of our determination here, we find the definitions proffered by some parties to be too broad. For instance, the definition suggested by ALLTEL that the term "community" be read to include "[a] group of people living in the same locality and having common interests" is so broad as to be unworkable and contains terms that would be subject to great dispute. Similarly, MCI argues that "community" be broadly defined to become synonymous with a company's local service area; however, if we were to accept this interpretation Subpart (B) of the Act would be rendered superfluous.

AT&T points out that the term "community" is defined in the Community Economic Recovery Program Act as "a municipality, including counties, cities, boroughs, incorporated towns, townships, home rule municipalities and councils of local government."¹⁸ Similarly, Commonwealth advocates that the Commission define the term to include "minor civil divisions or municipalities." We agree that the term "community" as defined in the Community Economic Recovery Program Act is most appropriate for our use in determining whether companies qualify as "rural telephone companies." We shall, therefore, define the term community to include "a municipality including counties, cities, boroughs, incorporated towns, townships, home rule municipalities and councils of local government."

Based upon the data submitted to-date by the three companies claiming RTC status under § 3(a)(47)(D), we find that Commonwealth qualifies as an RTC under § 3(a)(47)(D) of the 1996 Act. The Company defined the term "community" in an almost identical manner as the definition ultimately adopted herein and the Company avers that it served no "communities" with a population exceeding 50,000 within its service territory on the date of enactment of the 1996 Act.

It is unclear, however, whether either ALLTEL or United qualify as RTCs based upon the information the companies have provided to the Commission to-date. While ALLTEL states that it serves no "communities" with greater than 50,000 access lines, it defined the term "community" much differently than the definition we adopt herein. Additionally, the Act requires that one make the necessary determination as of the date of enactment of the 1996 Act, and it is unclear whether ALLTEL based its claim upon the number of access lines served as the date of the Act's enactment as required. United submitted no verifying statements or information in its comments. Therefore, we will once again defer our determination with respect to both ALLTEL and United until the companies submit additional information to definitively establish their eligibility under subpart 3(a)(47)(D) as of the date of enactment of the 1996 Act. Both ALLTEL and United will be required to submit this information within 20 days of the entry date of this Order.

Finally, we also address GTE's claim that it is entitled to partial RTC designation under § 3(a)(47)(C) of the 1996 Act. Under subsection (C), a LEC may qualify as an RTC if it

¹⁸See 73 Pa. C.S. § 399.2.

"provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines." GTE argues that it has approximately 60,000 access lines in the "Contel" study area and approximately 38,000 access lines in the "Quaker State" study area, and that therefore, it is entitled to partial RTC status for those portions of its service territory.¹⁹ We disagree. We believe that it was Congress' clear intent that in determining RTC status, a company's operations in a state be viewed as a whole. The plain language of this provision of the Act simply does not support the concept of "partial designations" for portions of a LEC's service territory. Such an interpretation would stretch the statute's meaning beyond any logical or reasonable reading.

For instance, such an interpretation would exempt GTE, one of the largest telephone operating companies in the United States, from the interconnection provisions of the Act for a large portion of its service territory in Pennsylvania and permit it to be treated similar to some of the smallest LECs in the country. We cannot accept that Congress would go to the trouble of enacting a very comprehensive procompetitive regulatory scheme and then turn around and exempt large portions of the service territory of one of the nation's largest LECs from its application. Consequently, we find that in order for a company to meet the criteria for designation as an RTC under § 3(a)(47)(C), its operations within a state must be viewed as a whole. Section 3(a)(47) does not contemplate partial designations for portions of a company's service territory. Accordingly, GTE does not meet the criteria for eligibility as an RTC under § 3(a)(47)(C) of the 1996 Act.

MCI's admonition that Congress did not intend to insulate rural telephone companies from competition is noted. We also agree that the 1996 Act, like Chapter 30 of Title 66 of the Pennsylvania Consolidated Statutes, establishes a pro-competitive, deregulatory telecommunications policy framework in rural and non-rural areas alike. Nonetheless, we cannot ignore Congress' clear dictates contained in the Act that before additional competitive providers may enter RTC service areas, some very specific determinations must be made which ensure that the Act's requirements would not impose an undue burden upon smaller companies and that competitive entry is consistent with the Act's universal service objectives.

Application Procedures for RTCs Serving More Than 50,000 Access Lines. We agree with North Pittsburgh that our June 3, 1996 Order is in need of some clarification with respect to the entry procedures for RTCs serving more than 50,000 access lines. However, we first respond to the arguments of North Pittsburgh, ALLTEL and United that the Commission erred in using Chapter 30's 50,000 access line demarcation cutoff for consolidated proceedings. This Commission has the discretion under § 252(g) to consolidate proceedings under several provisions of the 1996 Act where it would be practical to do so and would reduce the administrative burdens of the parties. 66 Pa.C.S. § 3006 specifically requires the Commission, through its streamlined regulation provisions, to reduce the administrative burdens on small

¹⁹July 3, 1996 Letter from Bruce Kazee, Attorney for GTE, to Secretary John Alford of the Commission.

LECs to the extent possible, recognizing that smaller LECs do not have the resources to participate in proceedings to the same extent as the larger LECs. Chapter 30 defines small LECs, or those entitled to streamlined regulation, as "local telecommunications companies serving less than 50,000 access lines within this Commonwealth."²⁰ There is nothing in § 252(g) of the 1996 Act, or any other provision of the 1996 Act for that matter, which requires that if the Commission consolidates one proceeding or even a class proceedings under the Act, that it must consolidate all others which come before it. We continue to believe that the 50,000 access line demarcation point established in Chapter 30 for purposes of defining those small LECs entitled to streamlined regulation in Pennsylvania, provides a sound basis for our initial determination regarding consolidated proceedings under § 252(g) of the 1996 Act. No party has convinced us otherwise in their Petitions for Reconsideration. Most of the issues raised by parties had already been considered and rejected by the Commission in its June 3, 1996 Order.

As we noted in our June 3, 1996 Order, this determination does not in any way prejudice the interests of RTCs serving greater than 50,000 access lines. At p. 16 of our Order, we noted that our decision not to immediately consolidate proceedings for a larger RTC:

does not mean that any other rural telephone companies do not receive the general benefits of rural telephone company status as expressly set forth in Sections 251, 253 and 254. It merely means that we will not exercise the option provided state commissions under Section 252(g) for these carriers at this time.²¹

Since § 252(g) gives us the right to exercise our discretion to consolidate at any time, there is nothing that would prevent any of the larger LECs that qualify as RTCs, once they receive a bona fide request for interconnection under § 251 of the Act, from petitioning the Commission at that time for consolidation under Section 252(g). Accordingly, we decline to extend application of the consolidated entry procedures to RTCs serving over 50,000 access lines at this time.

Carriers seeking to provide service in RTC service areas that exceed the 50,000 access line demarcation point must, like all other applicants, file an application with the Commission. The applicant is also required to submit to the RTC a request for interconnection pursuant to § 251(f)(1)(A) of the Act, with a copy to the Commission. The actual provision of service by the applicant cannot occur until the Commission makes the required finding that the request for interconnection would not be "unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof)".²² The

²⁰66 Pa. C.S. § 3006(a).

²¹Implementation Order at p. 16.

²²See § 251(f)(1)(A).

Commission will refer any cases involving contested issues of material fact to the OALJ for resolution within the time-frames contemplated by the Act. We believe that this should sufficiently clarify the entry procedures applicable to areas of RTCs serving greater than 50,000 access lines.

3. Negotiation, Mediation, Arbitration and Adjudication Procedures for Interconnection Agreements.

a. Background. One of the primary areas of increased responsibility for this Commission under the Federal Act involves the review and approval of interconnection agreements between carriers. Our June 3, 1996 Order restricted the negotiations phase of the proceeding to the contracting parties. We adopted mediation procedures based in large part upon the AAA Commercial Mediation Rules. Pursuant to the procedures established in our Order, the Commission limited participation in any mediation proceedings to the contracting parties, their representatives and members of the Commission's advisory staff. We also adopted procedures to govern arbitration proceedings conducted by the Commission pursuant to § 252(b) of the Act and permitted the OCA, OTS and OSBA to participate in any arbitration proceedings which come before the Commission. Our June 3 Order also established a procedure for adjudication of approved agreements and statements of generally available terms and conditions filed pursuant to § 252(f) which provides for full participation by interested parties. Finally, we required ILECs to file a list of all of pre-enactment interconnection agreements with the Commission to give us a greater appreciation of the administrative burden associated with the filing of these agreements pursuant to § 252(a) of the Act.

b. Position of the Parties. United, PTA and GTE object to Commission staff being present during mediation sessions. PTA argues that "this unorthodox procedure would violate the prohibition against ex parte communications."²³ United, on the other hand, argues that mediation sessions are deemed confidential under Paragraph 8, and that attendance of Commission advisory staff members at those confidential mediation sessions could "taint subsequent review of the interconnection agreement by the Commission due to staff's receipt of ideas or facts at confidential mediation sessions."²⁴ United also raises the possibility of Lyness problems if Commission advisory staff members attend mediation sessions. GTE argues that the "Commission advisory staff's presence at mediation may very well impair its ability to remain objective and impartial or at least create an undesired appearance of bias, thereby undermining its ability to properly arbitrate and/or adjudicate".²⁵

ALLTEL and GTE argue that the Commission has no authority to direct or allow

²³Id. at p. 11.

²⁴Petition of United for Clarification and Reconsideration, p. 6.

²⁵GTE Petition for Reconsideration at p. 1.

participation in the negotiations by the OCA and OSBA and that the Act infact specifically preempts such participation.²⁶ GTE states that the involvement of OCA, OTS and OSBA, would undoubtedly encumber the process and could be viewed as a violation of § 252 of the Act.²⁷ PTA adds that "interconnection agreements are basically business decisions between contracting parties and that the OCA, the OTS and the OSBA have no statutory right to participate in that process."²⁸ PTA also states that the arbitration process would be slowed considerably if the OCA, the OTS and OSBA are permitted to participate. PTA argues that only after the issues have been resolved in the arbitration phase and the agreements are filed with the Commission for approval should other parties be involved, and that this would provide adequate time for the OCA, the OTS and the OSBA to review the substantive terms and develop their positions.

OCA responds that it has a legal right to participate in matters before the Commission and that by statute it is authorized to represent the interest of consumers as a party, or otherwise participate on their behalf in any matter properly before the Commission.²⁹ Moreover, OCA argues that there is nothing in the Act to indicate that "Congress meant to preempt every states' standards on participation in proceedings before its commission in arbitration proceedings."³⁰

MCI, on the other hand, urges us to implement a process in which all interested parties have the right to participate in any arbitration.³¹ MCI further argues that the Commission "should strive, wherever possible, to consolidate arbitrations and other proceedings that raise common issues."³² MCI further argues that with a consolidated procedure for handling arbitrations, the Commission would not have to engage in repetitive, time-consuming litigation over the same issues. MCI also argues that "more than a mere paper comment period should occur for the review of interconnection agreements if requested and for good cause shown."³³ Finally, MCI asks the Commission to require the filing of interconnection agreements as soon as they are executed by the parties.³⁴

²⁶ALLTEL Petition for Reconsideration at p. 9.

²⁷GTE Petition for Reconsideration at p. 4.

²⁸Petition for Reconsideration of the Pennsylvania Telephone Association, at p. 12.

²⁹Answer of the OCA at p. 10.

³⁰Id. at p. 10

³¹MCI Petition for Reconsideration at p. 6.

³²MCI Telecommunications Corporation's Petition for Reconsideration at p. 4.

³³MCI Petition for Reconsideration at p. 6.

³⁴MCI Telecommunications Corporation Petition for Reconsideration at p. 10.

Bell Atlantic argues that there is no provision in the language of the Act which would allow for participation by parties other than those negotiating the agreement at hand.³⁵ AT&T also opposes full participation by non-governmental third parties which it states could result in the "same confusion and inefficiency that MCI hopes to avoid."³⁶ In support of its position, AT&T argues that mixing disparate objectives of individual applicants would permit the ILEC to pursue a "lowest common denominator" strategy which wouldn't serve anyone's interest.³⁷

GTE objects to the process established by the Commission for approval of negotiated and/or arbitrated agreements. GTE argues that "the process envisioned by the Commission is unduly burdensome, of limited value and inconsistent with Section 252(h)".³⁸ GTE further argues that providing interested parties the opportunity to file comments is unwise and would only reflect parties' views which would necessarily be limited if not uninformed because of their nonparticipation in negotiation or mediation.

Finally, GTE, PTA and ALLTEL all object to the June 3, 1996 Order's directive to ILECs to provide a list of all pre-enactment interconnection agreements. These parties argue that these "historical arrangements" were not voluntary/negotiated interconnection agreements among competitors and that they have no relevance or bearing on interconnection agreements as contemplated under the 1996 Act. In its Statement filed pursuant to our June 3 Order, Bell Atlantic cites to the administrative burden to the Commission of reviewing all of the potential agreements encompassed by a broad reading of the statute which would be enormous. Teleport, on the other hand, argues that "it is only proper that every local exchange telecommunications company have the opportunity to interconnect with other local exchange telecommunications companies on equal terms and conditions."³⁹ Teleport argues that pre-enactment arrangements are competitively neutral and would be less characterized by efforts to impede the operations of the interconnecting parties and are important in assessing the reasonableness of post-enactment agreements.

OCA states that the rates charged between LECs for EAS traffic are rates under the jurisdiction of the Commission and should be made publicly available as tariffed rates pursuant to 66 Pa. C.S. § 1302.⁴⁰ AT&T argues that the Act's provisions require that the terms of any

³⁵Response of Bell Atlantic-Pennsylvania to MCI Telecommunications Corporation's Petition for Reconsideration, p. 2.

³⁶AT&T's Opposition to MCI's Petition for Reconsideration at p. 1.

³⁷Id. at p. 2.

³⁸GTE Petition for Reconsideration at p. 2.

³⁹Statement of Teleport Communications Group at p. 1.

⁴⁰OCA Answer at p. 12.

interconnection agreements must be made available without discrimination to any requesting carrier likewise seeking to exchange or terminate local and toll traffic with the ILEC.⁴¹

c. **Discussion. Participation Rights and Other Issues Involving the Mediation, Arbitration and Adjudication Processes.** With respect to the mediation phase of the proceeding, we grant reconsideration of that portion of our Order relating to Commission staff being present during the Commission mediation sessions. We find GTE's and United's arguments to be particularly persuasive on this point. Mediation sessions are deemed confidential, and as a result, Commission staff participating in the mediation phase of the proceeding could possibly be precluded from participating in the subsequent arbitration phase of the proceeding. Otherwise, as United points out, subsequent review of the interconnection agreement by the Commission could be tainted due to Commission staff's receipt of ideas or facts at the confidential mediation sessions. We, therefore, revise Paragraph 7 of our June 3, 1996 Order to eliminate the reference to participation by Commission staff.

We reject the arguments of ALLTEL and PTA that OCA and OSBA should be excluded from arbitration proceedings conducted by the Commission. OCA, OSBA and OTS have a statutory right to participate in any proceeding before this Commission. There is nothing in the 1996 Act which would preempt procedural requirements and/or participation rights created under state law with respect to arbitration proceedings conducted pursuant to § 252 of the Act.

At the same time, however, we do not accept the argument of MCI that all interested parties have a right to participate in the arbitration process. MCI raises no arguments which were not already considered and rejected by the Commission in its June 3, 1996 Order. Section 252 of the 1996 Act does not entitle private carriers to participate in arbitration proceedings involving an agreement to which they are not a party, unless the Commission decides to consolidate proceedings pursuant to § 252(g) of the Act. Our June 3, 1996 Order established a process that we continue to believe accommodates the views and interests of all parties.

We also reject MCI's argument that the Commission establish one consolidated proceeding for all requests for arbitration. Individual applicants many times have very different objectives and strategies which would diffuse the focus otherwise present when only one agreement is at issue. Nonetheless, we do agree with MCI that § 252(g) gives this Commission the authority to consolidate arbitration proceedings under § 252 where appropriate. Section 252(g) provides:

(g) CONSOLIDATION OF STATE PROCEEDINGS. -- Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers,

⁴¹AT&T Opposition at p. 5.

other parties to the proceedings, and the State commission in carrying out its responsibilities under this Act. (Emphasis added).

To the extent that this was unclear in our June 3, 1996 Order, we clarify that where practical, we will consider consolidation of arbitration proceedings. Parties may request consolidation where common issues are being addressed and consolidation would be practical and desirable from an administrative viewpoint. We will allow full opportunity for comment by the affected parties before any consolidation is ordered. Consolidation will be at the discretion of the Commission.

Finally, with regard to the adjudication phase, we reject the arguments of GTE to restrict participation by outside parties during this phase of the proceeding. The Act sets out specific findings that the Commission must make during this phase of the proceeding and the Commission's review must be completed within 90 days. Section 252(e) requires that we reject a negotiated agreement, *inter alia*, when we find that "...the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity...". It would be almost impossible for the Commission to make the required discrimination and public interest findings required by the statute if, as GTE suggests, we do not permit participation by outside parties. It is our interpretation that Section 252(e) specifically contemplates participation by outside parties, and we, therefore, reject GTE's request for reconsideration of this portion of our Order.

Furthermore, we reject the claims of both NEXTLINK and MCI that they should have unlimited access to proprietary documents and materials during the arbitration process even though they are not parties to the proceeding. We do, however, agree that parties should have access to proprietary material during the 90-day approval stage for a negotiated agreement. In all instances, however, parties will be required to sign protective agreements before they have access to any proprietary materials. We agree with both NEXTLINK and MCI that this information will be necessary for interested parties to determine whether the § 252 standards for approval have been met.

We also reject MCI's request that carriers be required to file copies of negotiated interconnection agreements immediately upon execution with the Commission. MCI was unable to offer any persuasive reasons why the timeframes established in our June 3, 1996 Order at pp. 33-34 are in need of modification. We believe the filing procedures established in our June 3, 1996 Order are reasonable and meet the interests of all parties. Accordingly, we decline to modify them at this time.

With regard to the procedures established in our June 3, 1996 Order for the arbitration and adjudication processes, we clarify, first that the Commission will publish notice of all negotiated interconnection agreements submitted to it for approval in the Pennsylvania Bulletin. In order to accommodate notice to all interested parties in this manner and still ensure that the Commission has sufficient time to review negotiated agreements before being required to

approve them, the Commission will shorten the comment period from the current 20 days to 10 business days from the date of publication in the Pennsylvania Bulletin. We believe that this new process is necessary because the Commission contemplates that especially in light of the FCC's recent Order in Docket 96-98, it will begin to receive many more interconnection agreements in the future for approval which are not part of any cases currently pending before the Commission. We believe publication in the Bulletin is necessary to give interested parties notice of these various filings for the purpose of submitting comment. With arbitrated agreements, we require parties to serve their joint application for approval consistent with the directives contained in our June 3, 1996 Order.

Second, we establish a bifurcated process for the review of negotiated and arbitrated provisions of an interconnection agreement. The Commission will accept any agreed upon or negotiated provisions for approval, as long as they constitute a substantial portion of the entire interconnection agreement, prior to the completion of the 9-month arbitration process in which the Commission is considering only the disputed portions of the agreement. The Commission believes this action is appropriate for the following reasons. First, negotiated and arbitrated provisions are subject to different standards for approval. In addition, different time periods apply to the Commission's review of negotiated and arbitrated provisions: the Commission has 90 days to approve negotiated provisions, but only 30 days to approve arbitrated provisions. Further, should the Commission have to reject any negotiated provisions for not meeting the § 252 standards, parties would have an opportunity to include those provisions in the pending arbitration proceeding, if necessary. In the alternative, parties may wait until the conclusion of the arbitration proceeding to submit the entire agreement for approval. However, the Commission puts parties on notice that it will also utilize a bifurcated approval process at that time to accommodate the different review periods and standards applicable to negotiated versus arbitrated provisions of an interconnection agreement.

Third, we clarify that once a party to a given interconnection agreement files a request for arbitration, the other party to the agreement must respond to that request and shall not be permitted to instead submit another separate request for arbitration. Responses by the other party to the agreement may, however, include any new issues which the respondent believes are also in dispute and should be subject to arbitration. Any request for arbitration received by the Commission after it has already received an initial request for arbitration in the case, shall be treated as a response to the initial request for arbitration.

Pre-enactment Agreements. We come now to the last, and perhaps most contentious issue in this section, the requirement that carriers file preenactment interconnection agreements with state commissions pursuant to § 252(a). Our actions here must necessarily conform to the FCC's recent Order at Docket 96-98, which established uniform requirements under this section of the Act which all states must follow. In its Order, the FCC concluded that the 1996 Act requires all interconnection agreements, including any interconnection agreement negotiated before the date of enactment of 1996 Act and those between non-competing carriers, to be submitted to the state commission for approval pursuant to § 252(e). The FCC stated in relevant part:

State commissions should have the opportunity to review all agreements, including those that were negotiated before the new law was enacted, to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest. In particular, preexisting agreement may include provisions that violate or are inconsistent with the procompetitive goals of the 1996 Act, and states may elect to reject such agreements under section 252(e)(2)(A). Requiring all contracts to be filed also limits an incumbent LEC's ability to discriminate among carriers, for at least two reasons. First, requiring public filing of agreements enables carriers to have information about rates, terms, and conditions that an incumbent LEC makes available to others. Second, any interconnection, service or network element provided under an agreement approved by the state commission under section 252 must be made available to any other requesting telecommunications carrier upon the same terms and conditions, in accordance with section 252(i). In addition, we believe that having the opportunity to review existing agreements may provide state commissions and potential competitors with a starting point for determining what is "technically feasible" for interconnection.

* * * *

...Conversely, excluding certain agreements from public disclosure could have anticompetitive consequences. For example, such contracts could include agreements not to compete. In addition, if we exempt agreements between neighboring non-competing LECs, those parties might have a disincentive to compete with each other in the future, in order to preserve the terms of their preexisting agreements. Such a result runs counter to the goal of the 1996 Act to encourage local service competition.

FCC August 8, 1996 Order at pp. 87-88.

Given the FCC's ruling, we view the issue of whether we are required to review all preenactment interconnection agreements, including agreements between non-competing carriers, as moot. As the above passage from the FCC August 8, 1996 Order makes clear, all preenactment agreements, including those between non-competing carriers must be submitted to state commissions for review. While the FCC declined to establish a deadline for the submission of these pre-existing agreements to the state commission, it did require that preexisting

agreements between Class A carriers⁴² be filed no later than June 30, 1997 with the appropriate state commissions. The FCC left the option open to states of imposing a shorter time period for the filing preexisting agreements between Class A carriers and also left to the state commission the ability to establish its own timetable for the submission of agreements between other carriers.

In our June 3, 1996, Order we required LECs to file with the Commission a statement of all of their preenactment interconnection agreements. We received statements from some of the larger ILECs and from at least one CLEC. We deny the request for reconsideration of the PTA on this issue and require all LECs which have not yet complied with our June 3, 1996 Order's directive to file with the Commission a statement of all of their preenactment interconnection agreements on or before October 10, 1996.

We interpret the term interconnection agreement broadly to include, *inter alia*, toll transport agreements, other toll agreements covering Feature Group arrangements and other services not covered in the toll transport or toll recording category, 911 agreements, directory assistance agreements, directory listing agreements, operator service agreements, toll recording agreements, SS7 agreements, switcher area agreements, private line agreements, intercept agreements, internet agreements, cellular agreements, Extended Area Service ("EAS") agreements, administration of the ITORP and monthly processing of ITORP messages, shared network facilities arrangements ("SNFA"), common channel signaling access service agreements, and any other agreement which establishes an interconnection term and/or condition not already included in this list. Such agreements shall not be limited to agreements among wireline providers, but shall include agreements with wireless providers also.

We decline to establish a schedule for the submission of these agreements at this time, but will do so once we receive the statements of all LECs. In order to establish an orderly and manageable timetable for the submission of these agreements, we must first determine the number and type of agreements involved.

4. LEC IntraLATA Toll Imputation.

a. Background. In our June 3, 1996 Order, we modified our December 14, 1995 Order at Docket I-00940034 so as to impose an imputation requirement on Bell Atlantic in conjunction with the implementation of intraLATA toll 1+ presubscription, as required by §272(e)(3) of the Act, effective when Bell Atlantic's affiliate provides interLATA services. We went on to impose an imputation requirement on all noncompetitive intraLATA toll services provided by any local carrier, effective at the time intraLATA presubscription becomes available in its service territory.

⁴²Class A companies are defined as companies "having annual revenues from regulated telecommunications operations of \$100,000,000 or more." 47 C.F.R. § 32.11(a)(1).

b. Position of the Parties. Strenuous objections to the imputation provisions of our June 3, 1996 were raised by ALLTEL, United and PTA. PTA argues that the manner in which the Commission's Order was issued violates due process and is procedurally defective.⁴³ PTA claims that there is a lack of explanatory rationale to justify imposition of the imputation requirement on all ILECs. PTA also cites extensively to our IntraLATA Investigation Order⁴⁴ wherein we rejected imputation for a number of reasons. PTA further argues that there has been no change in circumstances to justify the modification to Commission policy.⁴⁵ Finally, PTA argues that institution of LEC-only imputation is one-sided and places the LEC at a serious competitive disadvantage.

United in its petition raises many of the same concerns as PTA relating to inadequate notice and opportunity to be heard. However, at the same time, United states that its "corporate position is that an imputation requirement is appropriate, but that it should be coupled with rate rebalancing and that its timing of implementation should be cognizant of the practical ramifications that will result."⁴⁶ United also argues that the transition from a residually-priced ratemaking environment to a market-driven environment "may call for a phase-in of imputation, or a delayed imputation time-frame to assess competitive market erosion, or some other mechanism designed to temper the impact of competition on incumbent LECs and their ratepayers."⁴⁷

ALLTEL argues that there has been no subsequent proceeding or new evidence which justifies the change in policy relating to imputation. ALLTEL submits that "the imputation requirement imposed upon the LECs should be deleted and the market forces should be allowed to control."⁴⁸

AT&T opposes the requests for reconsideration by PTA, United and ALLTEL, stating that the imputation safeguard is critical to the emergence of competition in the intraLATA toll market. AT&T argues that without imputation, an ILEC would be able to exclude existing and potential competitors by pricing its own toll services below what it charges its competitors for access. AT&T also argues that it makes no sense to limit the imputation requirement solely to Bell Atlantic and impose a safeguard on only one service territory within the state "when the

⁴³PTA Petition for Reconsideration at p. 3.

⁴⁴Investigation into IntraLATA Interconnection Arrangements, Docket No. I-940034 (July 26, 1994).

⁴⁵PTA Petition for Reconsideration at pp. 7-8.

⁴⁶United Petition for Reconsideration at p. 7.

⁴⁷United Petition for Reconsideration at p. 8.

⁴⁸ALLTEL Petition for Reconsideration at p. 10.

conditions that give rise to that safeguard appear throughout the Commonwealth.⁴⁹ Finally, AT&T states that PTA and its other member companies had notice that the Commission was reconsidering its IntraLATA Investigation Order, that they were active participants to that proceeding and that there was no due process violation as alleged.⁵⁰

c. **Discussion.** We grant in part the petitions for reconsideration filed by PTA, ALLTEL and United. We agree that our June 3, 1996 Order was ambiguous as to whether the Commission intended to extend the imputation requirement to other LECs. The relevant section of our June 3, 1996 Order provides as follows:

Furthermore, the Commission refrained from imposing an imputation requirement on intraLATA services provided once presubscription is available, on either local exchange carriers, including Bell, or interexchange carriers. Instead, the Commission determined that, at least initially, the marketplace should be permitted to govern the pricing of intraLATA services and that the Commission would monitor the marketplace on an ongoing basis to assure that no carrier was engaging in anti-competitive behavior.

* * * *

It appears that the effect of Section 272(e)(3) is to require that Bell be made subject to an imputation requirement upon the availability of intraLATA presubscription in its service territory. Accordingly, interested parties should comment on whether the Commission's December 14, 1995 Order at I-00940034 requires revision given the application of the Act.

Because of this ambiguity, we suspend the imputation requirement as to all LECs with the exception of Bell Atlantic, pending further comment at this Docket on whether all LECs should be subject to the imputation requirement. We agree with the parties that it would be appropriate to develop the record further on this issue. Parties desiring to submit further comment on this issue shall do so on or before October 15, 1996. Reply comments will be accepted for filing on or before October 31, 1996. In addition to addressing whether the imputation requirement is appropriate for all LECs, parties should address any timing considerations including the relationship with any other pending dockets at the Commission.

⁴⁹AT&T Opposition at p. 8.

⁵⁰AT&T Opposition at p. 9.

5. Commission Consumer Protection Task Force.

a. **Background.** In our June 3, 1996 Order, we established a Task Force comprised of representatives of the Commission and industry to develop definitions and marketing terminology that will be universally understood by consumers when used in the actual marketing of telecommunications services. The Task Force was intended as a important consumer protection device given the significant entry preemption contained in § 253 of the Act.

b. **Position of the Parties.** PTA objects to the formation of the Task Force, stating that the Commission is inappropriately "expanding the universal service proceeding into areas that are strictly at the discretion of company management..."⁵¹ Furthermore, states PTA, the overwhelming types of products offered by telecommunications companies are deregulated or will soon be competitive divesting the Commission of any jurisdiction over the particular services or products.⁵² PTA argues that smaller LECs are not currently required to comply with the Commission's plain language policy statement and that the Commission's establishment of the Task Force imposes new regulatory burdens inconsistent with the recent Governor's Executive Order 1996-1, entitled Regulatory Review and Promulgation.⁵³ Finally, PTA argues that "the objective of providing consumers with comparable product detail is based on illogical assumptions and will cause unwieldy delays in market entry."⁵⁴

c. **Discussion.** We reject the PTA's request for reconsideration for the following reasons. First, PTA's position is based upon either a fundamental misunderstanding or unduly narrow reading of the Commission's authority under § 253(b) of the Act as applying to universal service issues only. The Commission's broad authority under Section 253(b) of the Act authorizes it to address not only universal service issues but matters necessary to protect the public welfare as well. Section 253(b) provides in relevant part:

(b) STATE REGULATORY AUTHORITY.--Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. (Emphasis added).

⁵¹PTA Petition for Reconsideration at p. 15.

⁵²PTA Petition for Reconsideration at p. 16.

⁵³PTA Petition for Reconsideration at p. 16.

⁵⁴PTA Petition for Reconsideration at p. 17.

Second, the argument that the Commission, through the establishment of the Task Force, intends to become involved in any day-to-day management decisions of carriers, belies a basic misunderstanding of the Task Force's purpose and mission. The Task Force's mission is to ensure that consumers have the information they will need in the future not only to make educated decisions as to their telecommunications needs, but to prevent them from falling prey to any less scrupulous providers in the open entry environment created by § 253(a) of the Act. We view customer education as a critical part of our responsibilities as regulators. As such, we believe the Task Force's scope and purpose falls squarely within our authority under § 253(b). Accordingly, we deny PTA's Petition for Reconsideration of this portion of our June 3, 1996 Order.

6. Notice of FCC Filings.

a. Background. Our June 3, 1996 Order requires parties to file a copy of all FCC filings made under Title II of the Communications Act. As to other filings, our Order required that carriers file with the Commission a one-page notice of the filing which includes the docket number of the filing and a description of the document filed.

b. Position of the Parties. Both ALLTEL and GTE object to having to serve the Commission with their FCC filings stating that such a requirement is unduly burdensome. ALLTEL states that the very purpose of the Act is to promote competition and reduce regulation and regulatory filings. GTE states that it has voluntarily provided the Commission with copies of comments and filings when officially requested or by informal inquiry from Commission staff.⁵⁵

c. Discussion. We do not agree with either ALLTEL or GTE that the requirement that they provide the Commission with a copy of all filings made with the FCC pursuant to Title II of the Communications Act is burdensome or otherwise inappropriate. Accordingly, we decline to modify this portion of our June 3, 1996 Order. In addition, we supplement our Order to require that carriers serve the Law Bureau of the Commission, in addition to the Commission's Secretary, with a copy of any petition or request for relief filed with the FCC which affects the provision of service in Pennsylvania.

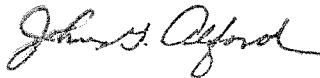
We will, however, eliminate the requirement that carriers file a one-page notice of non-Title II filings with the Commission. In lieu of this requirement, we will require parties to submit any non-Title II filing with this Commission which affects either the provision of telecommunications services in Pennsylvania, which has an impact upon a proceeding or issue otherwise before this Commission, which impinges upon a matter over which this Commission has jurisdiction, or which affects the Commission's responsibilities under the Act; **THEREFORE,**

⁵⁵GTE Petition for Reconsideration at p. 6.

IT IS ORDERED:

1. That the Petitions for Reconsideration and/or Clarification filed by GTE, United, Bell Atlantic, PTA, NEXTLINK, North Pittsburgh, ALLTEL and MCI are hereby granted in part, and denied in part consistent with the discussion set forth in this Order.
2. That the Commission's June 3, 1996 Order at this Docket is modified to the extent discussed herein.
3. That applicants shall have 10 days from the entry date of this Order to refile in a separate pleading within the relevant A-docket all requests for ancillary relief currently contained in their pending applications with service upon all parties.
4. That ALLTEL and United shall file information with the Commission which establishes their eligibility for RTC status under Section 3(a)(47)(D) as of the date of enactment of the 1996 Act within 20 days from the entry date of this Order.
5. That any LEC which has not yet complied with the requirement contained in the Commission's June 3, 1996 Order to file a statement of all preenactment interconnection agreements with the Commission, shall do so on or before October 10, 1996.
6. That parties shall file initial comments on whether the Commission should extend the imputation requirement to all LECs, in addition to Bell Atlantic, on or before October 15, 1996, and reply comments on or before October 31, 1996.
7. That the Secretary shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin effective immediately.
8. That the Secretary's Office is directed to serve this Order on all parties on the Executive Director's telecommunications mailing list which are not parties on the service list for this docket.

BY THE COMMISSION



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: September 5, 1996

ORDER ENTERED: SEP 9 1996

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

IN RE: IMPLEMENTATION OF THE
TELECOMMUNICATIONS ACT OF 1996

PUBLIC MEETING -
AUGUST 8, 1996
AUG-96-L-57* (REVISED)
DOCKET NO. M-00960799

STATEMENT OF COMMISSIONER JOHN HANGER

The Telecommunications Act of 1996 (Telco Act) presents many new opportunities for Pennsylvania's families and businesses. The Reconsideration Order now before the Commission presents staff's recommendations concerning the recently filed Petitions for Reconsideration from Alltel of Pennsylvania, United Telephone Company, the Pennsylvania Telephone Association, Bell Atlantic-Pennsylvania, MCI Corporation, and North Pittsburgh Telephone Company.

The principal issues for reconsideration by Petitioners are: new entry and application procedures applicable to non-rural telephone service territories; eligibility for rural telephone company status and entry procedures applicable to rural telephone company service areas; negotiation, mediation, arbitration, and adjudication procedures for interconnection agreements including pre-enactment agreements; LEC intralata toll imputation; and Commission consumer protection task force.

It should be noted that the Federal Communications Commission (FCC) issued Orders on August 1st and 8th, which give state commissions much guidance in interpreting the Telco Act.

I will vote for the entire staff recommendation. The issues below are those of special note.

LEC Intralata Toll Imputation

The Commission's June 3rd Order on implementation of the Telco Act imposed an imputation requirement on all noncompetitive intralata toll services provided by any local carrier when intralata presubscription becomes available in its service territory.

Staff has revisited this issue, because Petitioners have asserted that improper notice of such a proposed requirement was given in the March 14th Tentative Order. In fairness to all the parties involved, staff has proposed a comment period in which affected parties may be heard concerning imputation. I agree with this recommendation.

L-57

September 5, 1996

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Pre-enactment Interconnection Agreements

The FCC Order from August 8th requires that all pre-enactment agreements be submitted to state commissions for approval. I believe this is the Order's most important provision.

Commission approval of pre-enactment agreements will help ensure that the non-discrimination clauses of the Telco Act are enforced. The price paid for interconnection services by one telecommunications competitor will be the same price paid by all competitors. Competition will not happen in Pennsylvania if the rules are not fair to incumbents and new entrants.

September 4, 1996

DATED

John Hanger

JOHN HANGER, COMMISSIONER

APPENDIX A

Sample Application Form for Parties Wishing to Offer, Render, Furnish, or Supply Telecommunication Services to the Public in the Commonwealth of Pennsylvania.

You may use the attached form to make your application. (**Remove this instruction sheet prior to filing.**) If you need more space than is provided on this form or if you are attaching exhibits, attach additional pages and exhibits immediately following the page containing the item(s) being addressed. If you retype the application, please repeat each item in conjunction with your answers.

To file an application with the Pennsylvania Public Utility Commission, **file a signed and verified original and three copies** of your application and attachments with the Commission's Secretary's Office in Harrisburg, Pennsylvania:

**B-20, North Office Building
Harrisburg, PA 17120**

OR

**P.O. Box 3265
Harrisburg, PA 17105-3265**

IF YOUR ANSWER TO ANY OF THESE ITEMS CHANGES DURING THE PENDENCY OF YOUR APPLICATION OR IF THE INFORMATION RELATIVE TO ANY ITEM HEREIN CHANGES WHILE YOU ARE OPERATING WITHIN THE COMMONWEALTH OF PENNSYLVANIA, YOU ARE UNDER A DUTY TO SO INFORM THE COMMISSION AS TO THE SPECIFICS OF THE CHANGE. ADDITIONALLY, IF YOU PLAN TO CEASE DOING BUSINESS WITHIN THE COMMONWEALTH OF PENNSYLVANIA, YOU ARE UNDER A DUTY TO REQUEST AUTHORITY FROM THE COMMISSION FOR PERMISSION PRIOR TO CEASING BUSINESS.

As noted herein, you should file a separate application for each category of operation. If you are filing multiple applications simultaneously, the applications should cross reference each other. At the time of filing, you may petition the Commission, pursuant to Section 5.43 of the Commission's Regulations, 52 Pa. Code §5.43, to waive the provisions of Sections 1.34 and 1.43, 52 Pa. Code §§1.34 and 1.43, which require a separate application fee for each application (i.e., multiple fees), and to seek authorization for the payment of one application fee. Additionally, pursuant to Sections 1.57 and 1.58 of the Commission's Regulations, 52 Pa. Code §§1.57 and 1.58, you must attach Proof of Service of the Application and attachments upon certain parties as specified in the Sample Application. Upon review of the Application, further notice may be required pursuant to Section 5.14 of the Commission's Regulations, 52 Pa. Code §5.14.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of _____,
 d/b/a: _____, for approval
 to offer, render, furnish, or supply telecommunica-
 tion services as a(n) [as specified in Item 10 below] _____
 to the public in the Commonwealth of Pennsylvania.

Application Docket No.

 F _____
 19 _____

To the Pennsylvania Public Utility Commission:

1. **IDENTITY OF THE APPLICANT:** The name, address, telephone number, and FAX number of the Applicant are:

Please identify any predecessor(s) of the Applicant and provide other names under which the Applicant has operated within the preceding five (5) years, including name, address, and telephone number.

2. **CONTACT PERSON:** The name, title, address, telephone number, and FAX number of the person to whom questions about this Application should be addressed are:

3. **ATTORNEY:** If applicable, the name, address, telephone number, and FAX number of the Applicant's attorney are:

4. **FICTITIOUS NAME:** (select and complete appropriate statement)

- The Applicant will be using a fictitious name or doing business as ("d/b/a"):

Attach to the Application a copy of the Applicant's filing with the Commonwealth's Department of State pursuant to 54 Pa. C.S. §311, Form PA.-953.

OR

- The Applicant will not be using a fictitious name.

5. **BUSINESS ENTITY AND DEPARTMENT OF STATE FILINGS:** (select and complete appropriate statement)

- The Applicant is a sole proprietor.

If the Applicant is located outside the Commonwealth, provide proof of compliance with 15 Pa. C.S. §4124 relating to Department of State filing requirements.

OR

- The Applicant is a:
- domestic general partnership (*)
 - domestic limited partnership (15 Pa. C.S. §8511)
 - foreign general or limited partnership (15 Pa. C.S. §4124)
 - domestic limited liability partnership (15 Pa. C.S. §8201)
 - foreign limited liability general partnership (15 Pa. C.S. §8211)
 - foreign limited liability limited partnership (15 Pa. C.S. §8211)

Provide proof of compliance with appropriate Department of State filing requirements as indicated above.

Give name, d/b/a, and address of partners. If any partner is not an individual, identify the business nature of the partner entity and identify its partners or officers.

- * If a corporate partner in the Applicant's domestic partnership is not domiciled in Pennsylvania, attach a copy of the Applicant's Department of State filing pursuant to 15 Pa. C.S. §4124.

or

- The Applicant is a:
- domestic corporation (none)
 - foreign corporation (15 Pa. C.S. §4124)
 - domestic limited liability company (15 Pa. C.S. §8913)
 - foreign limited liability company (15 Pa. C.S. §8981)

Provide proof of compliance with appropriate Department of State filing requirements as indicated above. Additionally, provide a copy of the Applicant's Articles of Incorporation.

Give name and address of officers.

The Applicant is incorporated in the state of _____.

6. **AFFILIATES AND PREDECESSORS WITHIN PENNSYLVANIA:** (select and complete appropriate statement)

- Affiliate(s) of the Applicant doing business in Pennsylvania are:

Give name and address of the affiliate(s) and state whether the affiliate(s) are jurisdictional public utilities. Give the docket numbers for the authority of any jurisdictional affiliate(s).

If the Applicant or an affiliate has a predecessor who has done business within Pennsylvania, give name and address of the predecessor(s) and state whether the predecessor(s) were jurisdictional public utilities. Give the docket numbers for the authority of any jurisdictional predecessor(s).

OR

The Applicant has no affiliates doing business in Pennsylvania or predecessors which have done business in Pennsylvania.

7. **AFFILIATES AND PREDECESSORS RENDERING PUBLIC UTILITY SERVICE OUTSIDE PENNSYLVANIA:** (select and complete the appropriate statement)

Affiliate(s) of the Applicant rendering public utility service in any jurisdiction other than Pennsylvania are:

Give name and address of the affiliate(s).

Predecessor(s) of the Applicant which rendered public utility service in any jurisdiction other than Pennsylvania are:

Give name and address of the predecessor(s).

OR

- The Applicant has no affiliates rendering or predecessors which rendered public utility service outside Pennsylvania.

8. TRANSACTIONS WITH AFFILIATES: (select and complete the appropriate statement)

- Identify any affiliate(s) which provide services to or receive services from the Applicant. Describe the nature of the services and how the transactions between or among affiliates will be handled.

OR

- The Applicant has no affiliate(s) providing service to or receiving services from the Applicant.

9. APPLICANT'S PRESENT OPERATIONS: (select and complete the appropriate statement)

- The Applicant is presently doing business in Pennsylvania as a jurisdictional public utility pursuant to authority at Docket No. _____ as a :
- Reseller of Toll Services, e.g., MTS, 1+, 800 & 888, Out WATS, Travel Cards, Debit Cards, etc.
 - Competitive Access Provider, e.g., dedicated point-to-point service or IXC transporter.
 - Interexchange Carrier, e.g., providing toll services as a facilities-based carrier.
 - Competitive Local Exchange Carrier, e.g., providing local exchange service as a facilities-based carrier or as a reseller in an area previously served by an incumbent local exchange carrier.

- Local Exchange Carrier, providing local exchange service as a facilities-based carrier within a defined service territory.
- Other. (Identify the nature of public utility service being rendered.)

OR

- The Applicant is not presently doing business in Pennsylvania as a public utility.

10. **APPLICANT'S PROPOSED OPERATIONS:** The Applicant proposes to operate as a:

- Reseller of Toll Services, e.g., MTS, 1+, 800 & 888, Out WATS, Travel Cards, Debit Cards, etc.
- Competitive Access Provider, e.g., dedicated point-to-point service or IXC transporter.
- Interexchange Carrier, e.g., providing toll services as a facilities-based carrier.
- Competitive Local Exchange Carrier, e.g., providing local exchange service as a facilities-based carrier or as a reseller.
- Other. (Identify the nature of public utility service to be rendered.)

The Applicant should file a separate application for each category of operation. If the Applicant files multiple applications simultaneously, the applications should cross reference each other. At the time of filing, the Applicant may petition to the Commission, pursuant to Section 5.43 of the Commission's Regulations, 52 Pa. Code §5.43, to waive the provisions of Sections 1.34 and 1.43, 52 Pa. Code §§1.34 and 1.43, which require a separate application fee for each application (i.e., multiple fee), and to seek authorization for the payment of one application fee.

11. **PROPOSED SERVICES:** Describe the services which the Applicant proposes to offer.

12. **SERVICE AREA:** Describe the geographic service area in which the Applicant proposes to offer services.

Additionally, the Applicant asserts that it [will or will not] be a rural telephone company. State which provision of the federal Telecommunications Act of 1996 is applicable to the Applicant's status if the Applicant is a rural telephone company.

13. **MARKET:** Describe the customer base to which the Applicant proposes to market its services.
14. **INITIAL TARIFF:** Attach to the Application a proposed Initial Tariff setting forth the rates, rules, and regulations of the Applicant. The tariff shall state on its cover sheet the nature of the Applicant's operations as identified in Item 10, above.
15. **FINANCIAL:** Provide a general description of the Applicant's capitalization and, if applicable, its corporate stock structure.

Attach to the Application a tentative operating balance sheet and a projected income statement for the first year of operation within the Commonwealth of Pennsylvania.

The name, title, address, telephone number, and FAX number of the Applicant's custodian for its accounting records and supporting documentation are:

The Applicant's accounting records and supporting documentation are, or will be, maintained at:

16. **START DATE:** The Applicant proposes to begin offering services on _____
(approximate date).

17. **FURTHER DEVELOPMENTS:** Attach to the Application a statement of further developments, planned or contemplated, to which the present Application is preliminary or with which it forms a part, together with a reference to any related proceeding before the Commission.

The Applicant is under a continuing obligation to amend this Application if any matter asserted herein changes during the pendency of the Application or while the Applicant is providing public utility service within the Commonwealth.

18. **NOTICE:** Pursuant to Section 5.14 of the Commission's Regulations, 52 Pa. Code §5.14, serve a copy of the signed and verified Application with attachments on the following:

Irwin A. Popowsky
Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120

Bernard A. Ryan, Jr.
Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101

Office of the Attorney General
Bureau of Consumer Protection
Strawberry Square, 14th Floor
Harrisburg, PA 17120

Office of Trial Staff – 1 copy
Office of Special Assistants – 1 copy
Bureau of Consumer Services – 1 copy
Bureau of Fixed Utility Services – 1 copy
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pursuant to Sections 1.57 and 1.58 of the Commission's Regulations, 52 Pa. Code §§1.57 and 1.58, attach Proof of Service of the Application and attachments upon the above named parties. Upon review of the Application, further notice may be required pursuant to Section 5.14 of the Commission's Regulations, 52 Pa. Code §5.14.

19. **AFFIDAVIT:** Attach to the Application an affidavit as follows:

AFFIDAVIT

[Commonwealth/State] of _____ :

: SS.

County of _____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

[He/she is the _____ (Office of Affiant) of _____ (Name of Applicant);]

[That he/she is authorized to and does make this affidavit for said corporation;]

That _____, the Applicant herein, acknowledges that [he/she/it] may have an obligation to serve or to continue to serve the public by virtue of the Applicant commencing the rendering of service pursuant to this Application consistent with the Public Utility Code of the Commonwealth of Pennsylvania, Title 66 of the Pennsylvania Consolidated Statutes; with the federal Telecommunications Act of 1996, signed February 6, 1996; or with other applicable statutes or regulations;

That _____, the Applicant herein, asserts that [he/she/it] possesses the requisite technical, managerial, and financial fitness to render public utility service within the Commonwealth of Pennsylvania and that the Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Pennsylvania Public Utility Commission.

That the facts above set forth are [true and correct/true and correct to the best of his/her knowledge, information, and belief] and that he/she [expects/expects said corporation] to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 19__.

Signature of official administering oath

My commission expires _____.

20.

FEDERAL TELECOMMUNICATIONS ACT OF 1996: State whether the Applicant claims a particular status pursuant to the federal Telecommunications Act of 1996. Provide supporting facts.

21. **COMPLIANCE:** State specifically whether the Applicant, an affiliate, a predecessor of either, or a person identified in this Application has been convicted of a crime involving fraud or similar activity. Identify all proceedings, limited to proceedings dealing with business operations, in the last five (5) years, whether before an administrative body or in a judicial forum, in which the Applicant, an affiliate, a predecessor of either, or a person identified herein has been a defendant or a respondent. Provide a statement as to the resolution or present status of any such proceedings.
22. **CONTACT FOR RESOLVING COMPLAINTS:** Provide the name, address, telephone number, and FAX number for the person and an Alternate person responsible for addressing customer complaints. These persons will ordinarily be the initial point(s) of contact for resolving complaints and queries filed with the Public Utility Commission or other agencies.
23. **FALSIFICATION:** The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to 18 Pa. C.S. §§4903 and 4904, relating to perjury and falsification in official matters.
24. **CESSATION:** The Applicant understands that if it plans to cease doing business within the Commonwealth of Pennsylvania, it is under a duty to request authority from the Commission for permission prior to ceasing business.

Applicant: _____

By: _____

Title: _____

VERIFICATION

[Commonwealth/State] of _____ :

: SS.

County of _____ :

_____, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

[He/she is the _____ (Office of Affiant) of _____ (Name of Applicant);]

[That he/she is authorized to and does make this affidavit for said corporation;]

That the facts above set forth are [true and correct/true and correct to the best of his/her knowledge, information, and belief] and that he/she [expects/excepts said corporation] to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 19____.

Signature of official administering oath

My commission expires _____.