CC 96-98

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April 15, 1996

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Ms. Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW - Room 500
Washington, D.C. 20554

Dear Ms. Keeney:

This letter will memorialize recent discussions between Commission staff and representatives of the National Cable Television Association ("NCTA") regarding efforts by State commissions to impose the same interconnection and unbundling requirements on new entrants and incumbent local exchange carriers ("LECs"). NCTA respectfully urges the Commission to address this matter in its impending rulemaking to implement the competitive checklist provisions of the Telecommunications Act of 1996 ("1996 Act").

The 1996 Act treats new entrants and incumbent LECs differently with respect to interconnection and unbundling. Only an incumbent LEC is required to provide interconnection "at any technically feasible point" within its network. Likewise, only an incumbent LEC must provide unbundled access to its network elements. 47 U.S.C. §§ 251(c)(2), (3).

The distinction between incumbent LECs and new entrants is fundamental to the structure of the 1996 Act's efforts to open the telecommunications marketplace to increased competition. Unlike incumbent LECs, the new competitors will enjoy neither monopoly control over essential facilities nor the market dominance that would give them the incentive and ability to create substantial barriers to entry. Congress recognized that burdening competitive carriers with unnecessary obligations would significantly reduce their incentives to deploy new facilities. Such a policy would undermine rather than promote the development of a robust telecommuncations infrastructure. See, e.g., S. Rep. 23, 104 Cong, 1st Sess. 19 (1995) (explaining that Senate bill imposes interconnection and unbundling requirements only on local exchange carriers possessing market power in the provision of telephone exchange service).

Unfortunately, a number of States are already attempting to establish a "one size fits all" regulatory scheme that contravenes the 1996 Act. By imposing unnecessary burdens on new entrants, such a scheme will serve only to deter the development of alternatives to incumbent LECs.

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Just a little over two weeks ago, for instance, the Colorado Public Utilities Commission ("CoPUC") adopted new interconnection and unbundling rules.[1] In sharp contrast to the 1996 Act, the CoPUC imposes the same interconnection requirements on incumbents and new entrants. The CoPUC's rules also establish a presumption that new entrants will be required to comply with network unbundling requirements three years after certification, absent a specific CoPUC determination to the contrary. In adopting these rules, the CoPUC specifically held that the 1996 Act "does not specifically command that incumbents and new entrants be treated differently under State regulation" and does not "expressly prohibit States from requiring new entrants to unbundle."[2]

Likewise, the Connecticut Department of Public Utility Control ("DPUC") has recently opened a proceeding to examine, inter alia, "the need for -- and benefit (if any) of -- a minimum investment threshold and/or minimum penetration level" as a precondition for imposing unbundling and resale requirements on new entrants.[3] Given the clear delineation between incumbents and new entrants in the 1996 Act, there is no need or justification for embarking on such an inquiry.

In its proposed rulemaking to implement the provisions of sections 251 and 252 of the Communications Act, the Commission should make clear that the distinction between incumbents and new entrants in the 1996 Act is binding on the States. The Commission has the explicit authority to preclude State interconnection and unbundling requirements that are inconsistent with the 1996 Act and that substantially prevent the implementation of the purposes of that statute. See 47 U.S.C. § 251(d)(3). Requirements -- such as those adopted in Colorado and suggested in Connecticut -- that would saddle new entrants with obligations intended for incumbents would frustrate the growth of competition, in direct contradiction to the purposes of the 1996 Act.[4]

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1 In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101 et. seq. -- Requirements Relating to Interconnection and Unbundling (adopted Mar. 29, 1996).

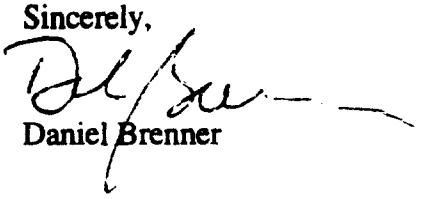
2 Id. at 12, 20, 53.

3 DPUC Investigation into Participative Architecture Issues, Docket No. 94-10-04, Statement of the Scope of the Proceeding (adopted Mar. 5, 1996), at 2 (emphasis added).

4 See, e.g., H.R. Rep. No. 458, 104th Cong., 2d Sess. 1 (1996) ("Conference Report") (purpose of the 1996 Act is to "provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies").

Copies of the Colorado and Connecticut orders are attached for your reference. Thank you for your consideration of these issues.

Sincerely,



Daniel Brenner

Enclosures

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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC UTILITY CONTROL

Docket No. 94-10-04

DPUC INVESTIGATION INTO PARTICIPATIVE ARCHITECTURE ISSUES

STATEMENT OF SCOPE OF THE PROCEEDING

PROCEDURAL ORDER

Introduction

On July 1, 1994, Public Act 94-83, "An Act Implementing The Recommendations Of The Telecommunications Task Force" (the Public Act or Act) became Connecticut law. Pursuant to that legislation, the Department of Public Utility Control (Department) is charged with the responsibility of implementing the provisions of the Act in accordance with the goals stated therein.

A primary objective of the Act is to provide to the Connecticut public the greatest choice among telecommunications products, prices and providers through the development of effective competition. Over the past twenty months, the Department has conducted proceedings to ensure that competition develops in the state's telecommunications markets and that the public consequently benefits from such competition. This docket is an extension of the Department's efforts.

Scope of the Proceeding

Public Act 94-83 directs the Department to ensure that present and proposed telecommunications infrastructures in Connecticut exhibit design and operational attributes that encourage efficient and effective competition. Specifically, the Act requires that the Department pursue policies that:

> facilitate the efficient development and deployment of an advanced telecommunications infrastructure, including open networks with maximum interoperability and interconnectivity; and
>
> encourage shared use of existing facilities and cooperative development of new facilities where legally possible, and technically and economically feasible.

Conn. Gen. Stat. §§ 16-247 (a) (4) and 16-247 (a) (5).

From the outset of its implementation efforts, the Department has recognized that "the telecommunications infrastructure will play a dominant role in the success or failure of the development of effective competition in Connecticut's telecommunications marketplace and will thus greatly determine the public benefit to be derived from Public

Act 94-83." Decision, Docket No. 94-07-01, The Vision for Connecticut's Telecommunications Infrastructure, November 1, 1994, p. 33. In the Department's view, the legislative intent of greater choice for consumers will result from the availability of greater capability of the telecommunications infrastructure. Id., 28. According to the Department, such greater capability will best be achieved through "broader participation in the construction and operation of a future infrastructure composed of a 'network of networks.'" Id. Therefore, the Department has approached its implementation efforts with "a commitment toward facilitating the development of independent networks physically interconnected, functionally integrated and technically interpositioned with those of the incumbent telephone companies." Id., p. 29.

To that end (and subsequent to Docket No. 94-07-01), the Department has conducted a number of proceedings: Docket No. 94-07-04, DPUC Investigation into the Competitive Provision of Local Exchange Service in Connecticut; Docket No. 94-10-02, DPUC Investigation into the Unbundling of The Southern New England Telephone Company's Local Telecommunications Network; Docket No. 95-04-04, DPUC Investigation into Wireless Mutual Compensation Plans; and Docket No. 95-06-17, Application of The Southern New England Telephone Company for Approval to Offer Unbundled Loops, Ports and Associated Interconnection Arrangements. In the context of each of those proceedings, the Department focused on ensuring that policies and rules applied to the infrastructure currently available to support competition (i.e., SNET's infrastructure) are consistent with Public Act 94-83. However, with the exception of Docket No. 94-07-01, the Department has not addressed the scope and scale of responsibilities to be applied to new entrants to Connecticut's telecommunications markets in order that the Act's goals can and will be achieved. This proceeding will provide the opportunity for full and fair examination of such issues. Accordingly, the Department proposes to examine the following issues in this proceeding:

- the need for – and benefit (if any) of – regulating all contributors to the participative telecommunications infrastructure;
- the need for differentiation in regulation (e.g., CPCN processes) depending upon the nature of the telecommunications service provided (e.g., local service vs. underlying transport);
- the need for – and benefit (if any) of – a minimum investment threshold and/or minimum penetration level to be subject to requirements generated by the goals contained in Conn. Gen. Stat. §§ 16-247(a)(4) and 16-247(a)(5) (e.g., unbundling and resale);
- the rights to – and costs for – use of any infrastructure made available in a participative pool by a contributing provider;
- the need for uniform cost allocation procedures;
- the operational need for – and economic value of – coordinating infrastructure development in Connecticut by all contributing providers;
- the need for – and benefit (if any) of – extending uniform technical performance standards currently associated with LEC networks to all contributing providers;

- the scope of governmental contribution in the participative infrastructure deemed beneficial to maximizing the economic benefit to Connecticut in future infrastructure development (e.g., the Department's proposal in the November 1, 1994 Decision in Docket No. 94-07-01 at pp. 42-47).

The Department's primary interest in this proceeding is to ensure that, as the future business interests of telecommunications firms, cable television operators and assorted other information technology and entertainment enterprises converge, the public remains a principal beneficiary of the strategic endeavors. The telecommunications industry exhibits extreme fluidity in both its composition and its strategic business interests. Accordingly, this proceeding will provide all of the participants opportunity to examine the latest manifestation of competition and participation in Connecticut's markets as well as to define rules of engagement for all participants.

Procedural Order

In order to achieve that which the Department envisions from this Docket in the most expeditious manner, it is necessary for the Department to establish a scope of directed inquiry. Therefore, this docket will proceed as follows:

03-05-96 – Issuance of Statement of Scope of the Proceeding and Procedural Order (this document)
03-29-96 – Submission of Position Papers (Position)
04-19-96 – Submission of Comments (Comment)
05-06-96 – Submission of Reply Comments (Reply)
05-13-96 to 05/24/96 – Hearings (if necessary)
06-03-96 – Department Draft Decision
06-19-96 – Final Department Decision

NOTE: Interrogatories may be served by Parties and Intervenors on other Parties and Intervenors any time following receipt by the Department of the subject Party's or Intervenor's Position Paper, but no later than two weeks prior to the scheduled beginning of hearings; all responses must be made no later than one week prior to the scheduled beginning of hearings. **On or before May 6, 1996, any participant may submit pre-filed testimony or may notify the Department that it adopts its Position Paper, Comments and Reply as its testimony. Rebuttal testimony shall be filed on or before May 10, 1996.**

As set forth above, this proceeding will be constructed upon an initial Position Paper submitted by participants. The submission shall be no more than fifty (50) pages in length (double spaced) (exhibits and attachments are not included in the page limitation). The Position Paper should address the areas of inquiry detailed above, but can and should address any additional issues deemed pertinent to this proceeding.

The Department requires, however, that the total submission remain within the guidelines prescribed herein.

Comments shall be limited to no more than 25 pages (double spaced) and should focus on the critical issues raised by the Position Papers submitted. Other participants' position on any specific issue should be referenced by sponsor's name and the location within a submission (e.g., SNET Position at p. 26). Use the appropriate reference term provided above (Position, Comment, Reply, etc.) for all citations. Include citation references in the body of the text for easier reference.

Reply Comments shall be limited to no more than 25 pages (double spaced) and follow the same issue orientation and citation references as described for the Comment Stage. (The Comment Stage will allow participants to address the Position Papers submitted by others; the Reply Stage will allow participants to reply to the Comments.)

The Department has set forth above the page limitation for each submission. While the Department desires the broadest set of viewpoints, presented in a thorough fashion, the Department also deems it important to focus attention on essential issues and to move forward expeditiously. The Department also has set forth what it views as a reasonable time schedule that will allow the Department and the participants to move expeditiously toward full implementation of Public Act 94-83. Requests for schedule extensions will thus not be viewed favorably by the Department.

An original and 12 copies of all submissions shall be filed with the Department no later than the dates indicated above. An electronically formatted copy shall also be provided to the Department. The Department prefers that the electronically formatted copy be in Microsoft Word for Windows 6.x format, but Microsoft Word for Windows 2.x or Word Perfect 5.x or 6.x formats will be acceptable alternatives. Each participant is responsible for distributing copies of its submissions to all Parties, Intervenors, and "To Be Served" on the service list.

Dated at New Britain, Connecticut this 5th day of March, 1996.

Department of Public Utility Control

Robert J. Murphy
Executive Secretary

(Decision No. C96-347)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES REGARDING IMPLEMENTAION OF §§ 40-15-101 ET. SEQ.--REQUIREMENTS RELATING TO INTERCONNECTION AND UNBUNDLING.	DOCKET NO. 95R-556T

COMMISSION DECISION ADOPTING RULES

Mailed Date: April 1, 1996
Adopted Date: March 29, 1996

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I. BY THE COMMISSION:

A. Procedural History

1. This matter comes before the Commission to consider adoption of rules relating to interconnection[1] and unbundling[2] of the networks of regulated telecommunications providers. As discussed herein, we adopt the rules appended to this decision as Attachment A in accordance with the legislative directives set forth in § 40-15-503(2)(b)(I), C.R.S.

2. We initiated the present proceeding by issuing a Notice of Proposed Rulemaking on November 29, 1995. *See* Decision No. C95-1173. Additionally, we issued a Supplemental Notice of Proposed Rulemaking in this docket on December 22, 1995. *See* Decision No. C95-1302. As explained in those decisions, the

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[1] As defined in the rules attached to this decision, "Interconnection" is the process of providing a connecting link between the networks of competing telecommunications providers for the purpose of completing local calls originating on the network of one provider and terminating on the network of another provider.

[2] "Unbundling", as defined in the adopted rules, is the disaggregation of facilities and functions into multiple network products or services, enabling those facilities and functions to be offered separately to other telecommunications providers in a manner that allows those providers to utilize such elements in the provision of their own services.

general intent of this proceeding is to comply with the provisions of the recently enacted House Bill 1335 ("HB 1335"), §§ 40-15-501 et seq., C.R.S. The General Assembly adopted HB 1335 in the 1995 legislative session, determining that competition in the market for basic local exchange service is in the public interest. See § 40-15-101, C.R.S. Consistent with that determination, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace the existing regulatory framework. HB 1335 further mandates that the Commission adopt rules implementing cost-based, non-discriminatory, and unbundled methods of pricing for carrier interconnection to essential facilities or functions. See § 40-15-503(2)(b)(I), C.R.S.

3. In §§ 40-15-503 and 504 the Legislature established a Working Group comprised of providers and consumers of telecommunications services, representatives from the Governor's Office, Commission Staff, Legislative Staff, and other interested persons. The Working Group was directed to recommend proposed rules for consideration by the Commission in this docket as well as in related proceedings. On November 30 and December 20, 1995, the Working Group submitted its reports to the Commission. In addition to considering the written and oral comments submitted in this case, we have taken administrative notice of the reports filed by the Working Group. Those reports have been filed in Docket No. 95M-560T, the repository docket regarding implementation of HB 1335.

4. Commission Staff conducted a number of public outreach meetings throughout the state in September and October 1995 to solicit public comment regarding local telephone service. A report summarizing public comment as a result of those meetings has also been submitted in Docket No. 95M-560T.[3] We take administrative notice of that report for purposes of the present proceeding.

5. In accordance with our notices of proposed rulemaking, we conducted hearings in this matter on February 2 and 8, 1996. A number of parties submitted written and oral comments regarding proposed interconnection and unbundling rules, including: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services; Colorado Independent Telephone Association ("CITA"); the Competitive Telecommunications Association ("Comptel"); ICG Access Services, Inc., and Teleport Denver Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); the Colorado Office of Consumer Counsel ("OCC"); Staff of the Commission ("Staff"); TCI Communications, Inc., Teleport Communications Group Inc., Sprint Telecommunications Venture, and

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[3] This report summarizes the comments (both oral and written) received during 16 public outreach meetings held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

As stated in the report,

> An overriding concern expressed at the meetings was the question of whether statewide competition in the local telephone market is a realistic expectation, how long will it take competition to reach less densely-populated areas of the state, and how will the PUC manage the transition period?

Outreach Report at 4.

Sprint Communications Company L.P. ("TCI et al."); and U S WEST Communications, Inc. ("USWC").

B. Consensus and "Substantial Deference"

1. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we accord "substantial deference" to the proposals submitted by the Working Group with respect to issues on which the Working Group has reached consensus on or before January 1, 1996. The statute does not define "substantial deference." In this case, while members of the Working Group disagreed upon many of issues relating to interconnection and unbundling, nevertheless consensus was reached upon a number of the proposed rules. Thus, we must develop and apply our understanding of the term "substantial deference." To do so, we have examined the concept within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

2. In implementing our understanding of "substantial deference," we take the following into consideration:[4] our overarching obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rules with all provisions of § 40-15-501 et seq., C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of

[4] This listing is not a definitive statement of the considerations relied upon by the Commission.

regulated entities to understand the proposed consensus rule and the processes described therein; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective.

3. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, where we rejected a consensus rule the rationale supporting our decision is clearly articulated.

C. The Telecommunications Act of 1996

1. After we issued the notices of proposed rulemaking, but before conclusion of the hearings in this docket, Congress enacted the Telecommunications Act of 1996 ("Act"). Public Law No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § 151, et seq.). President Clinton signed the Act on February 8, 1996. Notably, the Act mandates competition in the local exchange market. See § 253 (no state or local statute or regulation may prohibit the ability of any entity to provide any interstate or intrastate telecommunications service). The Act also sets forth

numerous provisions relating to interconnection and unbundling. For example, § 251(a) sets forth the duty of telecommunications carriers to interconnect with the facilities and equipment of other providers. Subsection 251(c)(3) compels incumbent local exchange carriers ("LEC"):

> . . .to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . .

2. The parties to this case have argued that, in many instances, the Act constrains our authority to adopt some of the proposed rules. We address those arguments in the discussion relating to specific proposals. At this point, we simply comment upon the overall effect of the Act upon our decision. We note that virtually every party to this proceeding filed extensive comment regarding the Act and how its provisions influence the determinations to be made in this proceeding. The two rounds of post-hearing comment provided for in this docket largely addressed the Act's interconnection and unbundling requirements. Therefore, the parties have had sufficient opportunity to comment upon the relationship of the Act to the interconnection and unbundling rules under consideration here, and it is appropriate for us to consider the Act in ruling upon the various proposals herein.

3. In general, we observe that, in adopting the rules set forth in Attachment A, we have attempted to adopt rules which are consistent with the requirements of HB 1335 and the notices of proposed rulemaking issued herein, while avoiding inconsistency with the Act. In that spirit, we have carefully considered argu-

ments that various rules proposed by some of the commenters in specific reliance upon the Act exceed the scope of the notices of proposed rulemaking. We disagree with those arguments with respect to the rules set forth in Attachment A. The Act is generally consistent with the intent of HB 1335 and the notices which initiated this docket. Therefore, even though the Act was passed after the issuance of the notices of proposed rulemaking, we are able to approve rules which are both within the scope of the notices and consistent with the Act.

4. The suggestion was made (*e.g.*, by USWC) that the rules adopted here should be as narrow as possible inasmuch as the Federal Communications Commission ("FCC") will be promulgating rules to implement the Act. *See* § 251(d) (within 6 months of enactment of the Act, FCC must establish regulations implementing interconnection and unbundling requirements). We disagree with that suggestion for various reasons.

5. First, we believe that the rules approved here are consistent with the Act for the reasons discussed *infra*. Second, HB 1335 requires us to implement interconnection and unbundling standards by July 1, 1996. *See* § 40-15-503, C.R.S. Therefore, we cannot defer action on interconnection and unbundling rules in anticipation of forthcoming FCC regulations. Finally, we note that the States retain extensive authority to implement the Act's requirements. *See* § 251(d)(3) (in prescribing and enforcing rules, the FCC shall not preclude the enforcement of State regula-tions which are consistent with § 251 and which do not substan-tially prevent implementation of the Act); § 253(b) (nothing in § 253

shall affect the ability of a State to impose, on a compati-tively neutral basis, 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); § 261(b) (nothing in Act shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of the Act, or from prescribing regulations after such date of enactment, if such regulations are not inconsistent with the Act). We conclude that the provisions set forth in Attachment A are consistent with the Act, and that no need exists to await FCC action before adoption of the rules.

II. APPLICABILITY OF RULES

Rule 1 states that the rules are applicable to all providers who offer telecommunications exchange service within the state. In conjunction with Rules 2.24 and 2.25 (definitions of "telecommunications exchange service" and "telecommunications provider"), this rule clarifies that the regulations are, intended to apply to all providers of local exchange service.

III. DEFINITIONS

1. As discussed *infra*, substantial disagreement exists between the parties regarding substantive requirements which use terms defined in Rule 2. However, with respect to the definitions themselves, most of the provisions contained in Rule 2 were consensus rules, or, at least, little dispute existed with respect to

these terms. We discuss here the rationale for some of the definitions which were not included in the notices of proposed rulemaking or for which some controversy existed among commenting parties.

2. Some of the new definitions (*i.e.*, terms which were not included in the notices of proposed rulemaking) in Attachment A are based upon the Act. These include the terms "incumbent telecommunications provider", "network element", and "rural telecommunications provider."

3. Rule 2.10 defines "incumbent telecommunications provider" in a manner consistent with subsection 251(h)(1) of the Act. In addition, the provisions in Rule 2.10 which describe the circumstances in which a new entrant may be considered to be an incumbent provider are generally consistent with subsection 251(h)(2).[5] The provision in Rule 2.10 that a new entrant will be considered to be an incumbent after three years from the date of certification, absent specific action by the Commission, is based upon our judgment that this is an appropriate requirement for new entrants. Rule 2.10, in conjunction with other rules, will result in asymmetric treatment of incumbents as compared to new entrants. Notably, even before passage of the Act we received comment as to whether incumbents should be treated differently than new entrants. We address this issue infra.

4. With respect to the definition for "network element", Rule 2.13 is identical to the definition set forth in § 3(a)(45) of

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[5] This rule was suggested by Staff and the OCC. We note that the three factors which would result in a new entrant being treated like an incumbent are, in Rule 2.10, stated in the disjunctive.

the Act (to be codified at 47 U.S.C. 153(a)(45)). We find this to be appropriate.

5. "Rural telecommunications provider", Rule 2.17, is based upon the provisions of the Act, § 3(a)(47) (to be codified at 47 U.S.C. 153(a)(47)), as well as the provisions set forth at subsection 40-15-503(2)(d), C.R.S. In conjunction with Rule 9, rural telecommunications providers will be exempt from many of the interconnection and unbundling requirements established here, absent further action by the Commission.

6. We note that Rule 2 does not incorporate definitions for "loop concentration", "loop distribution", and "loop feeder." Some of the parties (e.g., AT&T and MCI) proposed to define these terms in the rules as part of their position that the loop should be unbundled into a number of components. In Rule 6.2, we list those elements which must be unbundled. Rule 6.2 does not adopt the position of new entrants[4] regarding loop unbundling. Therefore, these definitions are unnecessary. See discussion regarding Rule 6.

7. As noted above, § 40-15-503(2)(b) mandates that the Commission adopt interconnection and unbundling rules relating to "essential facilities." The parties disagreed with respect to the definition of this term. USWC argued that an "essential facility" is a feature, function or capability that competitors cannot practically duplicate or obtain from an alternative source, and to

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[4] In many instances, the positions of parties seeking to enter the local exchange market in competition with incumbent LECs (e.g. AT&T, Comptel, IOS, MCI, MFS, and TCI et al.) were virtually identical with respect to many of the rules. This decision, in discussing some of the positions of these parties, refers to these parties as "new entrants."

which reasonable access is necessary to enable competition.[7] In contrast, parties such as AT&T and MCI suggested that no definition of "essential facilities" is necessary. According to that comment, the Act does not limit competitor access to unbundled network elements to "essential facilities" only. AT&T and MCI recommended that, if the Commission adopts a definition of the term, it should be sufficiently broad to include all network elements which the FCC may require to be unbundled.

8. Our adopted rule defines "essential facilities or functions" as those network elements which are required to be unbundled. As indicated in the arguments for or against a particular definition of the term, the significance of the definition is related to the unbundling requirements themselves. As such, our definition, in conjunction with Rule 6, which lists the network elements which must be unbundled, directly resolves the dispute. In addition, the definition of "essential facilities" is potentially related to imputation requirements for incumbent local exchange providers. We address those requirements in Rule 7.6 *See* discussion *infra*.

IV. [redacted]

1. As defined in the rules, interconnection is the process of providing a connecting link between the networks of competing telecommunications providers for the purpose of completing local calls originating on the network of one provider and terminating on

[7] Consistent with this concept of essentiality, USWC's unbundling rule would limit the network elements required to be unbundled.

the network of another provider. Simply put, interconnection enables the customers of one provider to call customers of another provider. Rule 3 in Attachment A sets forth our approved requirements relating to interconnection.

2. There was substantial disagreement between the parties regarding certain issues associated with interconnection, including: (1) should the same interconnection requirements apply to incumbents and new entrants alike, or should more stringent requirements be applied to incumbents; (2) at what points should interconnection be compelled; (3) what collocation arrangements should be mandated; (4) what rates, terms, and conditions should apply for interconnection? We discuss these issues here.

A. Applicability of Rule 3

1. Adopted Rule 3.1 provides that, "All telecommunications providers shall interconnect directly or indirectly with the facilities and equipment of other telecommunications providers" (emphasis added). In addition, Rule 3.4 directs that a telecommunications provider generally (i.e., the rule does not distinguish between incumbents and new entrants) shall allow for physical or virtual collocation of equipment necessary for interconnection at that provider's premises. Some of the parties objected to rules which apply identical interconnection requirements to new entrants and incumbent LECs.

2. Parties such as AT&T, MCI, and MFS argued that the Act imposes different interconnection standards upon incumbent LECs as compared to new entrants. Specifically, these parties suggested,

while the Act requires all providers to interconnect with the facilities of other telecommunications providers (§ 251(a)(1)), only incumbent LECs are compelled to provide interconnection at any technically feasible point (§ 251(c)(2)). These parties also pointed out that the Act, § 251(c)(2)(6), imposes collocation obligations upon incumbents only. According to these parties, Congress acknowledged the monopoly position of the incumbents and the significant market and cost hurdles that new entrants would encounter in competing with incumbent LECs. Thus, it was suggested, imposition of identical interconnection responsibilities upon incumbents and new entrants is directly inconsistent with the Act.

3. Staff, the OCC, USWC, and CITA disputed these arguments. These parties suggested that adoption of identical interconnection obligations for all providers will foster competition. These parties also submitted that uniform requirements are consistent with the Commission's duty to adopt non-discriminatory interconnection rules. We agree with these positions.

4. First, interconnection by all providers is necessary to enable end-users of one telecommunications provider to complete calls to customers of other providers. The obligation to interconnect on the part of all providers will advance the goal of promoting competition in the local exchange market. The record does not indicate that imposition of identical interconnection requirements will harm the ability of new entrants to compete with incumbents. Since, under the Act, even new entrants must interconnect with other providers, there should be good reason to adopt

lesser interconnection standards for new providers. No compelling reason was offered in this proceeding.

5. As for the preemptive effect[8] of the Act on our rules, we disagree with the arguments by the new entrants. Federal law may be found to preempt inconsistent State action, generally, in three ways: (1) Congress may express its intent to preempt State law; (2) preemption may be inferred from a pervasive scheme of federal regulation such that preclusion of State laws on the subject will be assumed; and (3) a State law may be preempted because it conflicts with a federal law. *Grand Junction v. Ute Water Conservancy District*, 900 P.2d 81 (Colo. 1995), *Banner Advertising, Inc. v. People*, 868 P.2d 1077 (Colo. 1994). *See also Cippollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1990). None of these circumstances exist here.

6. We note that, while the Act enumerates distinct requirements for new entrants and incumbents, the Act does not specifically command that incumbents and new entrants be treated differently under State regulation. Moreover, the Act's preservation of significant State prerogative in implementation of its purposes (paragraph E.3) indicates that Congress has not intended to preempt State regulation simply because that regulation is different. We conclude that our interconnection rule, which treats all providers the same, does not conflict with the purposes of the Act, and, therefore, is not preempted.

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[8] In our view, the numerous arguments in this proceeding that the Act prevents us from adopting various rules are preemption arguments.

B. Points of Interconnection

1. Rule 3.3 declares that telecommunications providers shall allow interconnection, ". . .at any technically feasible point within the provider's network. . . ." The rule is consistent with the directives within § 251(c)(2) of the Act. Some of the parties (*e.g.*, AT&T, MCI, USWC) suggested that the rule should specify the permissible points for interconnection as being: a point inside the originating provider's central office; a point outside the originating provider's central office that such provider controls; a point outside the terminating LEC's central office; or, at any point agreed to between the interconnecting providers. As grounds for their recommendation, these parties observed that the FCC will conduct a rulemaking proceeding to determine the points at which it is "technically feasible" to provide interconnection. Pending that determination, these parties proposed that the rules specify the points listed above.

2. Our decision to direct simply that interconnection occur at any "technically feasible point" is based upon the suggestion of Staff and the OCC. As noted in their comments, the adopted rule is consistent with present federal law (*i.e.*, the Act). Specifying or restricting the possible points of interconnection as suggested in some of the comments may prove to be too restrictive in the future. Therefore, we accept the recommendation by Staff and the OCC to adopt a standard which is consistent with the Act at this time.

3. USWC and CITA also recommended that the interconnection rules be limited to trunkside interconnection[9] only. That is, USWC and CITA strongly opposed the suggestion that the rule allow for lineside, as well as trunkside, interconnection[10]. According to USWC and CITA: Trunkside interconnection relates to the interconnection of provider-switched networks, and permits the mutual exchange of calls. Lineside interconnection, on the other hand, relates to the connection of dedicated end-user loops to the lineside of a switch, and is essentially an unbundling issue. Lineside interconnection has nothing to do with the interconnection of switched networks, or the exchange of local calls between networks. Therefore, since trunkside and lineside interconnection are fundamentally different, trunkside interconnection only should be addressed in the interconnection rule; lineside interconnection should be addressed in the unbundling regulation.

4. We understand USWC's and CITA's objection (to inclusion of lineside interconnection in the rule) to be premised upon two arguments: (1) the services involved in lineside interconnection (*e.g.*, unbundled switching ports, loopless exchange service) are not essential elements which should be unbundled; and (2) there is no market demand for the services which could be provided with lineside interconnection.

5. All other parties opposed the position of USWC and CITA. These parties commented that the USWC/CITA position is

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[9] Trunkside interconnection refers to the connection between switches through trunks.

[10] Lineside interconnection generally refers to the connection between a switch and a loop.

overly restrictive. According to this comment, competing LECs will require both trunkside and lineside interconnection. For example, in the event a competitor decides to build its own loop, it may need interconnection on the lineside only. This would enable a provider to connect end-users to their network. A potential effect of the USWC/CITA position, according to the parties, is that competitors may be required to replicate existing network infrastructure. These results, it was asserted, will impair competition in the local exchange market.

6. Since we agree with those parties opposing the USWC/CITA position, the interconnection rule is not limited to trunkside interconnection. We conclude that rejection of the USWC/CITA arguments is consistent with the intent of HB 1335 as well as the Act.

C. Collocation

1. The notices which initiated this proceeding essentially proposed that only virtual collocation be required. Physical collocation was to be permitted by mutual agreement only. However, the Act mandates that incumbent LECs provide, ". . . .physical collocation of equipment necessary for interconnection or access to unbundled network elements. . . ." *See* § 251(C)(6). Although the Act compels incumbent LECs to offer physical collocation, USWC, nevertheless, asserted that it should not be forced to provide the service. USWC argued that the