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May 14, 1996

William F. Canton, Acting Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

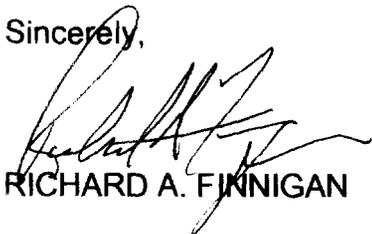
DOCKET FILE COPY ORIGINAL

Re: Opening Comments - Docket No. 96-98

Dear Mr. Canton:

Enclosed are the original and 16 copies of the Opening Comments of the Washington Independent Telephone Association in the above-referenced docket. Thank you for the opportunity to participate in this proceeding.

Sincerely,


RICHARD A. FINNIGAN

RAF/aw
Enclosures as noted

cc: Terry Vann
Janice Myles - Common Carrier Bureau
International Transcription Services, Inc.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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In the Matter of)
Implementation of the Local Competition) CC DOCKET NO. 96-98
Provisions in the)
Telecommunications Act of 1996)

OPENING COMMENTS OF THE
WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

Its Attorney:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of) CC Docket No. 96-98
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Implementation of the Local Competition) OPENING COMMENTS OF THE
Provisions in the) WASHINGTON INDEPENDENT
Telecommunications Act of 1996) TELEPHONE ASSOCIATION

These are the Opening Comments of the Washington Independent Telephone Association ("WITA") offered in this docket. This docket calls for comment on hundreds of questions and the parties have been given less than 30 days to provide those comments. It is not possible for WITA to comment on even a majority of these highly complex and interrelated issues in the time frame allowed. Therefore, WITA will focus its comments on the following issues: the distinction between rural and urban areas; the determination of what is a bona fide request; pricing concepts for interconnection as they relate to the transport and termination of calls between networks; the determination of technical feasibility; the use of ceilings in setting prices for unbundling and interconnection; resale as a substitute for facilities-based competition; the requirement to file pre-existing agreements; and general comments on the scope of preemption.

1. The FCC must keep in mind the distinction provided in the Act between urban and rural areas.

This NPRM has its primary focus upon the interconnection requirements under Section 251 of the Telecommunications Act of 1996 (the "Act"). The obligations of local exchange carriers are particularly spelled out in Section 251(b) and (c). However, as

clearly stated in the Act, rural telephone companies are exempt from the requirements of Section 251(c) until such time as a bona fide request for interconnection services has been made and the State commission makes a determination as required by the Act. In addition, under Section 251(f)(2) incumbent LECs with fewer than 2% of the nation's subscriber lines may petition for suspension or modification of certain requirements. However, throughout the Notice of Proposed Rulemaking ("NPRM") there is little in the way of consideration for the distinction that exists throughout the Act between urban and rural areas.¹

The Act correctly recognizes the difference in service characteristics between urban and rural areas. This same distinction should be kept in mind by the FCC to the extent it believes it should engage in the establishment of national standards for interconnection. Interconnection standards that may be reasonable for an RBOC serving in a highly urbanized area may not make any sense at all in a rural area. Thus, WITA believes it is critically important for the FCC to keep this distinction in mind throughout its consideration of interconnection issues.

2. A bona fide request must be more than the simple expression of a desire for interconnection or services.

Under Section 251(f)(1)(B) a party making a "bona fide request" of a rural telephone company for telecommunications services or network elements is directed to submit a

¹The only question that is asked about the distinction between rural and urban areas is in Paragraph 260. The question addressed is whether the FCC can and should establish some standards that would assist states in satisfying their obligations under Section 251(f). The FCC's tentative conclusion is that the states alone have the authority to make determinations under that Section. WITA agrees with this tentative conclusion.

notice of its request to the State commission for determination of whether or not to terminate the rural exemption. A bona fide request should be more than a simple expression of a desire for interconnection or services. WITA believes that a bona fide request is one where a request is made in writing detailing the level of interconnection and services requested and the requester tenders the pre-engineering costs to the company to which the request is made. Pre-engineering costs would cover the costs of analyzing and accommodating the request that is made and the preparation of any necessary tariff to accommodate that request.

3. Interconnection for transport and termination should be on a compensation basis for the use provided, not on a “bill-and-keep” basis.

In Paragraph 243 of the NPRM, the Commission seeks comment on certain aspects of interconnection for termination and transport. In particular, these comments will address the “bill-and-keep” aspect of those requests for comment.

Under Section 251(b)(5) each LEC has the duty to “establish reciprocal compensation arrangements for the transport and termination of telecommunications.” This Section applies both to incumbents and new entrants. Under Section 252(d)(2), for purposes of determining an incumbent LEC’s compliance with Section 251(b)(5), a State commission is directed that it shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions provide for the “mutual and reciprocal recovery of each carrier’s costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier” and “determine such costs on the basis of a reasonable

approximation of the additional costs of terminating such calls.” There is further direction that this language is not to be construed to preclude arrangements that “afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements).”

The NPRM states that this language arguably authorizes the states to approve bill-and-keep compensation in negotiated arrangements and may also authorize the states to impose bill-and-keep arrangements in arbitration.

WITA disagrees that the language of the Act can be construed to allow the states to impose bill-and-keep arrangements. Clearly the import of Section 252 is to allow negotiation among the parties. If the parties, in their negotiation arrangements, determine that bill-and-keep is appropriate, the language of Section 252(d)(2)(B)(i) is an authorization to allow a State commission to approve such arrangements which would otherwise deviate from the mandate in Section 252(d)(2)(A) that the charges be based upon the costs to transport and terminate the calls over each carrier’s network. Language which authorizes approval of an exception does not carry with it the implied authority to mandate the exception.

At times in its discussion of pricing of the termination and transport of interconnection, the NPRM cites to the Washington Utilities and Transportation Commission’s (“WUTC”) decision to allow bill-and-keep on an interim basis. What the NPRM fails to cite is the WUTC’s ultimate conclusion that a bill-and-keep arrangement does not provide a long-term compensation structure that meets the policies and objectives established by the WUTC of promoting competition with conditions and prices

based upon costs while promoting universal services.² Use of bill-and-keep sends the wrong economic signals (i.e., that use of a network incurs no costs). The FCC should not adopt policies which favor bill-and-keep as a “compensation” mechanism.

4. Technical feasibility must be determined with care.

The NPRM concludes that if an incumbent LEC currently provides interconnection to any other carrier at a point in the network then all incumbent LECs that employ similar network technology should be required to make interconnection at such similar points in their own networks. Paragraph 57 of the NPRM. The problem with this tentative conclusion is that it is unclear what is meant by “similar network technology.” What constitutes “similar technology?” Does the same standard apply no matter what size of incumbent carrier uses that technology?

WITA believes that the best solution to determining the appropriate points of interconnection is to broadly define a few major points for interconnection as a baseline and then allow the parties to negotiate additional points of interconnection. This approach is consistent with the intent of the Act which favors one-on-one negotiation among the parties as the first step. Establishing broad parameters for that negotiation may be appropriate. Establishing detailed requirements is not.

5. Prices for unbundling and interconnection should not be limited by proxy-based factors.

²*Washington Utilities and Transportation Commission v. US West*, Docket Nos. UT-941464-65, UT-950146, UT-950265, Fourth Supplemental Order at p. 26 (October 31, 1995).

Beginning with Paragraph 134, the NPRM seeks comments on the benefits, if any, of adopting a national policy of outer boundaries for reasonable rates for interconnection and unbundled elements. The NPRM goes on to suggest that perhaps use of proxies as a ceiling, using generic or average cost data such as the Benchmark Cost Model or the Hatfield study, may be appropriate.

WITA firmly believes that any use of a proxy model to determine a ceiling would be in violation of the Act. The clear direction in the Act is that interconnection shall be “on rates, terms, and conditions that are just, reasonable, and non-discriminatory. . . .” Section 251(c)(2)(D). Setting a ceiling through a proxy model would violate the requirement that the rates be just, reasonable, and non-discriminatory.

Further, the pricing standards contained in Section 252(d) state that determinations by State commission of the just and reasonable rate for interconnectional facilities and equipment and the just and reasonable rate for network elements for unbundled access “shall be--(1) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network elements (whichever is applicable), and (2) non-discriminatory, and may include a reasonable profit.” To establish a ceiling would violate the principle that the rates be based upon cost and could arbitrarily preclude any recovery of a reasonable profit.

Proxy models do not reflect the actual costs for interconnection, particularly in rural areas. A census block approach certainly has no relationship to the costs for providing service to a rural exchange which may include many different census blocks. An average cost or generic cost does not accurately reflect the differentiation in service cost between

highly urbanized and rural areas. The charges for interconnection should reflect the cost of interconnection. Simply because an area is a high-cost area should not be used as a reason to set an arbitrary ceiling. Setting a ceiling would provide a distorted economic signal of the cost of providing service for that area.

6. Resale should not be a permanent substitute for the goal of facilities-based competition.

The Act clearly views resale as one means of promoting competition. See Section 251(b)(1)(c)(4). However, WITA urges the Commission to carefully consider its policies on resale so that competition does not end at that point. If care is not taken, then there will be no incentives for any new entrant to provide additional facilities-based competition.

The current advanced state of the telecommunications network in the United States is because of the existing facilities that provide the services. If competition is premised only upon the reuse and resale of the existing level of facilities, then competition may provide some benefits based upon cost and service to customers, but it will not promote the continued advance of the network. Resale should not become such an overwhelmingly attractive option, that the incentives to continue to provide investment into infrastructure are gone. It is the development of the infrastructure that will ultimately determine the capability of the telecommunications networks to provide advanced services and, by necessary corollary, advance the competitiveness of American industry.

7. Preemption is a tool which must be used with care.

The scope of the NPRM favors federal preemption of state action. Overuse of preemption goes against the trend in recent years to lessen the impact of the Federal government in the affairs of individuals and private concerns. There are some areas where preemption may be appropriate in order to accomplish the goals of the Act. However, rather than using preemption as an elephant gun to kill a fly, this piece of heavy artillery should be used only on the major targets.

For example, in the NPRM's discussion of number portability, the NPRM suggests federal preemption over both the establishment of a national standard for number portability and an implementation schedule may be appropriate.³ While it may be appropriate to establish a national standard for the number portability architecture⁴, it is not appropriate to establish a deployment or implementation time line. This deployment time line is very much a state-specific issue. Only on a state level can the interrelationship between urban and rural areas be considered and the focus on the growth of competition be accommodated appropriately. For example, in the state of Washington, work is being done under the auspices of the Washington Exchange Carrier Association in its docket process to establish an implementation framework that takes into account the needs of the new entrants, while balancing the real effects of competition on various networks, including

³Paragraph 199 states that the issues surrounding number portability will be addressed in a separate docket, but indicates that in that proceeding the Commission will address deployment schedules.

⁴Even here care must be taken to allow the states some latitude to experiment to find the most efficient and useful mechanism.

the costs that would be imposed on very small incumbent companies.⁵ This type of work can only be done on the state level.

WITA urges that the FCC carefully consider where preemption is appropriate. The FCC should not give in to the temptation to use this weapon indiscriminately.

8. The Act should not be read to require the filing of interconnection agreements with non-competing neighboring LECs.

In Paragraphs 170 and 171 of the NPRM, the Commission seeks comment on whether there is a requirement to file pre-existing interconnection agreements between incumbent LECs, including agreements between an incumbent LEC and a neighboring non-competing incumbent LEC. WITA believes that the most accurate reading of the language contained in Section 252 is that it does not require unilateral filing of interconnection agreements between non-competing incumbent LECs. The apparent intent of Section 252 is to provide for the negotiation of interconnection arrangements between competing LECs. Under Section 252, an incumbent local exchange carrier may negotiate and enter into a binding agreement with a requesting carrier. The Section then requires “the agreement” reached between the incumbent local exchange carrier and the requesting carrier be filed to the State commission. When this new agreement is filed, then any pre-existing interconnection agreement negotiated before the date of enactment is to be submitted along with the new agreement. If Section 252 is read to apply to negotiations between an incumbent LEC and a new entrant, then certainly no requirement exists to file the pre-existing agreements between non-competing LECs.

⁵WECA Docket 95-02

Even if Section 251(c)(2) and Section 252(a) are read to apply to the terms of interconnection between non-competing incumbent LECs, then the pre-existing interconnection agreements need only be filed when a new interconnection agreement is reached pursuant to the negotiation provisions of Section 252.

9. Conclusion.

The foregoing are WITA's comments on some of the major highlights of the interconnection NPRM. WITA does not envy the Commission's task of dealing with these complex issues in a short period of time. WITA respectfully suggests, however, that the Commission not ignore the effect that the Commission's determinations may have on LECs serving more rural areas of the country. Everyone recognizes that competition is focusing on the more urbanized areas. However, rules to accommodate and encourage that competition should not wreak havoc upon the distribution and advancement of telecommunications services throughout all parts of the nation.

Respectfully submitted this 14th day of May, 1996.

WASHINGTON INDEPENDENT
TELEPHONE ASSOCIATION

By: Terry Vann
TERRY A. VANN
Its: Executive Vice President