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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

ORIGINAL

Re: Comments of Roseville Telephone Co.
CC Docket No. 96-98

Dear Mr. Caton:

Enclosed on behalf of Roseville Telephone Company is the original plus 12 copies of its Comments in the above-captioned proceedings. If there are any questions regarding this matter, please contact me.

Very truly yours,

Paul J. Feldman
Counsel to
Roseville Telephone Company

PJF/jr
Enclosures
cc: Janice Myles, FCC (w/enc.)

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BEFORE THE

ORIGINAL

Federal Communications Commission

WASHINGTON, D.C. 20554

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

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

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May 16, 1996

SUMMARY

In these Comments, Roseville Telephone Company ("RTC"), a local exchange carrier ("LEC") serving subscribers in Northern California with over 100,000 access lines, urges the Commission to enact regulations in this proceeding that promote fair treatment to LECs, and that will promote practical and efficient interconnection arrangements. Specifically, RTC suggests the following:

1. If the Commission believes that comprehensive national interconnection standards should be adopted, then it would be most efficient to readopt the *Expanded Interconnection* standards, as these standards formed the basis for the standards already established by many states. However, it should be noted that the *Expanded Interconnection* standards were mandatory only for Tier-1 LECs. If interconnection standards are to be imposed on non-Tier-1 LECs pursuant to Section 251, the Commission should be mindful to limit potentially great burdens on smaller LECs.

2. Section 251 resale obligations should be triggered only by a request from a *bona fide* carrier, not by a request from an end-user. Commission's rules should provide that of the service purchased from the LEC at wholesale rates, requesting carriers should be required to resell at least 95% of that service to entities that are not corporate parents, affiliates or subsidiaries of the requesting carrier. Similarly, the requesting carrier should not be allowed to resell more than a limited amount of its service to any one subscriber

3. In enacting rules for interconnection, the Commission should attempt to ensure that the process of requesting and providing interconnection is clear, precise and practical. Specifically, the Commission should make it clear that "technical feasibility" takes into account the network technology used by the LEC, and the structure of the LEC's network, <u>at the time</u> of the request. Furthermore, the LEC should only be required to act upon *bona fide* requests for interconnection with minimum requirements for such requests.

4. Rates for interconnection and provision of network elements must provide for recovery of <u>total</u> costs including joint, common and embedded costs.

5. Wholesale rates for resale of services should not exclude costs that are not recovered in retail rates

6. RTC notes that while many interexchange carriers have recently asserted that the interconnection provisions of the 1996 Act allow IXCs to purchase unbundled network elements sufficient to provide access, the purpose of the Act is clearly to encourage facilities-based competition and market entrance, <u>not</u> to reduce the cost of access for AT&T, MCI and Sprint. RTC looks forward to providing services requested by new customers of local exchange carrier service.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("RTC"), by its attorneys, hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking, released April 19, 1996 (the "*Notice*") in the above-captioned proceeding. RTC is a local exchange carrier ("LEC") with over 100,000 access lines serving subscribers in the Roseville, California area, and has been providing high quality telecommunications services for over 80 years.

The Telecommunications Act of 1996 (the "1996 Act")[1] is intended to create "a pro-competitive, de-regulatory national policy framework" for the telecommunications industry.[2] New Sections 251 and 252 enacted thereunder impose obligations and responsibilities on incumbent LECs that substantially open the local telecommunications market to competition. Nevertheless, it is clear that Congress intended that incumbent LECs be treated fairly during the transition to a fully

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[1] Pub. L. No. 104-104, 110 Stat. 56.

[2] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (hereafter "*Joint Statement*").

competitive environment, and thereafter.[3] While RTC welcomes the new competitive challenges on the horizon, it urges the Commission, in enacting regulations to implement Sections 251 and 252, to fairly allow incumbent LECs to recover substantial costs already prudently invested in local networks, to ensure that LECs be obligated to resell services at wholesale costs only to telecommunications carriers, not to large end-users, to ensure that the process of requesting and providing interconnection is clear, precise and practical, and to ensure that wholesale rates for resale of services should not exclude costs that are not recovered in retail rates.

I. COLLOCATION

Section 251(c)(6) states that incumbent LECs must provide physical collocation of equipment necessary for interconnection or access to unbundled network elements, except that a carrier may provide "virtual" collocation upon demonstration to a State commission that physical collocation is not practical for technical reasons or space limitations. At paragraph 73 of the Notice, the Commission asks whether it should adopt comprehensive national standards for collocation by readopting prior standards established in the *Expanded Interconnection* proceeding. Given the extensive role provided in the 1996 Act for State commissions in establishing interconnection terms and rates, if the Commission believes that comprehensive national standards should be

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[3] *See, e.g., Joint Statement*, 142 Cong. Rec. H1108 (daily ed. January 31, 1996) discussing exemptions for rural telephone companies (in Section 251(f)), and stating that "[i]n order to waive or modify the requirements of subsection 251(b) for such companies or carriers, the Commission or a State must determine that the application of such requirements would result in unfair competition, ..."

adopted, then it would be most efficient to readopt the *Expanded Interconnection* standards, as these standards formed the basis for the standards already established by many states. The standards adopted in that proceeding resulted from an extensive record, and many LECs have already altered their networks and practices to comply with the specifics of those standards. Nothing in the 1996 Act mandates that the "wheel be reinvented" in this matter However, it should be noted that the *Expanded Interconnection* standards were mandatory only for Tier-1 LECs.[4] If interconnection standards are to be imposed on non-Tier-1 LECs pursuant to Section 251, the Commission should be mindful to limit potentially great burdens on smaller LECs.

II. SECTION 251 RESALE OBLIGATIONS SHOULD BE TRIGGERED ONLY BY A REQUEST FROM A BONA FIDE CARRIER, NOT BY A REQUEST FROM AN END-USER.

Under Section 251(c)(4), incumbent LECs must offer for resale, at wholesale rates, telecommunications services that the carrier itself provides at retail to subscribers. Furthermore, under Section 251(b)(1), LECs have a duty not to "prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of [their] telecommunications services." While the Commission properly seeks comments on a wide variety of issues necessary to enact complying regulations, RTC addresses herein one major issue that might be inadvertently missed by the Commission: the potential of a single large end-user to abuse the LEC's resale

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[4] *See, e.g.*, Expanded Interconnection Report and Order, 7 FCC Rcd 7369, 7398 (1992); Expanded Interconnection Second Report and Order, 8 FCC Rcd 7374 (1993).

obligations to obtain, for itself only, telecommunications services at wholesale prices.

First, it should be noted that the entire thrust of Sections 251 and 252 was to allow telecommunications carriers to compete with incumbent LECs in the provision of service to end-users, through interconnection with the LEC network and purchase of unbundled network elements, as well as through resale of LEC services.[5] Certainly Congress did not intend to require LECs to make wholesale rates available to any and every end-user: to do so would not only be unfair to LECs, it would threaten the economic viability of LECs subject to substantial numbers of such requests, and thus threaten the existence of the local network. Indeed, the language of the 1996 Act makes it clear that a LEC's obligations under Section 251(b)(1) and 251(c)(4)(A) only apply to requests from carriers, as only carriers (as opposed to end-users) can "resell" such services.

Given then, that under Section 251, LECs have a duty to offer telecommunications services at wholesale rates only to carriers, the Commission must account for the possibility that a large end-user could attempt to side-step this limitation by creating a "carrier" whose only "subscriber" is the large user end itself. Clearly, as any such transaction between the ersatz "carrier" and the "carrier's" subscriber (*i.e.*, the end-user) does not constitute "resale",[6] a LEC's refusal to provide services at wholesale

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[5] The Commission appears to have recognized this in paragraph 174 of the Notice, wherein it discussed the obligation of LECs to make services available at wholesale rates "to requesting telecommunications carriers."

[6] As the end-user would own or control the "carrier, " functionally, such a transaction would constitute the end-user's purchase of service at wholesale prices, not

rates under such circumstances cannot be prohibited under Sections 251(b)(1) and 251(c)(4). Accordingly, the Commission's rules should restrict the entities to whom LECs must provide service at wholesale prices, to *bona fide* carriers, defined as entities that provide service to multiple independent subscribers. For example, the Commission's rules could provide that of the service purchased from the LEC at wholesale rates, requesting carriers should be required to resell at least 95% of that service to entities that are not corporate parents, affiliates or subsidiaries of the requesting carrier. Similarly, the requesting carrier should not be allowed to resell more than a limited amount of its service to any one subscriber.[7]

III. INTERCONNECTION

Section 251(c)(2)(B) requires incumbent LECs to provide interconnection "at any technically feasible point" within the incumbent LEC's network. In enacting rules for interconnection, the Commission should attempt to ensure that the process of requesting and providing interconnection is clear, precise and practical.

First, the Commission should make it clear that technical feasibility takes into account the network technology used by the LEC, and the structure of the LEC's network, at the time of the request. Interconnection that is merely theoretically possible, possible on another LEC's network, or possible with network technology largely

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the "resale" of service to the end-user.

[7] Such a provision would prevent "carriers" not directly affiliated with a single end-user from providing service only to that single end-user. The impact of such a situation on the LEC providing wholesale service would be identical to the impact of the end-user creating an affiliate "carrier" that only provides service to the end-user.

unavailable to the LEC or incompatible with the LEC's network, cannot be considered "feasible." Similarly, LECs should not be required to build additional facilities to accommodate interconnection requests.[8]

Second, interconnection should be required only upon the receipt of a *bona fide* request ("BFR"). Such a requirement will eliminate LECs being burdened with frivolous or unreasonable requests. A BFR should include, at a minimum, specific points of interconnection sought, the date upon which service is desired, and a commitment to purchase service upon compliance with the request. The BFR should also include a commitment to pay the LEC for any design, engineering or equipment costs incurred by the LEC if the entity requesting interconnection fails to take interconnection service once provided by the LEC pursuant to the parameters established in the BFR.

IV. PRICING STANDARDS UNDER SECTION 252(d)

A. *Rates for Interconnection and Provision of Network Elements Must Provide for Recovery of Total Costs, Including Joint, Common and Embedded Costs.*

Section 252 (d)(1)(A) provides that the rates for interconnection and unbundled elements shall be based on cost "determined without reference to a rate of return or other rate-based proceeding..." In paragraphs 144 and 145 of the Notice, the Commission suggests that such language could be read to require only consideration of "forward-looking" costs, and to preclude consideration of joint and common costs, and

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[8] If facilities are limited at a requested point of interconnection, LECs should only have to make such facilities available on a first-come, first-served basis, and LECs should not be required to construct new facilities.

embedded costs. RTC asserts that such a conclusion is a clear misreading of the 1996 Act, and that any regulations based on that misreading would be unfair, inefficient, and would constitute a "taking" under the Fifth Amendment of the Constitution.

As an overriding principle, the Commission must recognize that LECs, like any carrier, must recover at least their total costs of service over time, in order to remain economically viable. Such costs include joint and common costs, and embedded costs, as well as long run incremental costs ("LRIC"). In crafting pricing for provision of interconnection and provision of network elements, the Commission's cannot merely make non-incremental costs disappear, based on an attraction to a theoretical model based on LRIC. Rather, rational rulemaking requires the Commission to account for actual costs in the world, and the impact of pricing rules on recovery of those costs.

In looking at the issue of embedded costs, it must be noted that incumbent LECs have prudently invested billions of dollars in plant, in compliance with their obligation to provide high quality service, and in reasonable expectation of a fair return on investment, pursuant to state and federal regulations As a matter of both fairness and rational policy, LECs must be allowed to recover prudent and authorized investments, in part through charges for interconnection and provision of network elements. It should be noted that entities purchasing interconnection and network elements will be using the embedded facilities at issue here. For a very long time, the vast majority of plant used by LECs and their interconnecting competitors will be plant constructed before the passage of the 1996 Act. If the provision of interconnection or network elements requires usage of the LEC's embedded plant, any rational definition of the

cost of those services must include some portion of the embedded costs.

While rational policy making requires that some portion of joint, common and embedded costs be recovered in rates for interconnection and purchase of network elements, nothing in the 1996 Act precludes such recovery. While the parenthetical language in Section 252(d)(1)(A)(i) prohibits States from engaging in rate-based proceedings to determine the embedded costs allocated to network elements or interconnection, that language does not limit use of any particular pricing methodology, and only requires that rates be based on "costs", not that they be based only on "forward-looking" or long run incremental costs.

B. *Wholesale Rates for Resale of Services Should Not Exclude Costs That are not Recovered in Retail Rates.*

Section 252(d)(3) provides that wholesale prices for telecommunications services provided pursuant to Section 251(c)(4) should be based on retail rates for those services, excluding the portion of such retail rates attributable to costs avoided by the LEC as a result of the resale of its services. In enacting rules under this provision, RTC urges the Commission to take into account the fact that pursuant to many state policies designed to promote universal service, rates for many retail services (especially basic residential service) do not recover total company costs, and in some cases do not even recover LRIC. For the reasons discussed above, rational policy making does not allow the Commission to ignore this fact, and accordingly, the Commission's rules should explicitly provide that any costs not recovered by the LEC in the retail rate for a service cannot be "deducted" from that retail rate in calculating the wholesale rate under

Section 251(c)(4). If the Commission does not follow this policy, one result will be inefficient pricing of services, as competitors will be encouraged to purchase resale from LECs when they might otherwise more efficiently provide service from their own facilities. Such a result would be contrary to the intent of the 1996 Act to encourage new facilities-based local competition.[9] A second result, if the Commission allows deduction of "cost savings" that were not in fact recovered from retail rates, will be that the unrecovered costs will likely have to be made up from universal service subsidies.[10]

V. CONCLUSION

In enacting regulations to implement Sections 251 and 252, the Commission should fairly allow incumbent LECs to recover substantial costs already invested in local networks, and should ensure that LECs are obligated to resell services at wholesale costs only to telecommunications carriers, not to large end-users, to ensure

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[9] Similarly, it should be noted that while many interexchange carriers have recently asserted that the interconnection provisions of the 1996 Act allow IXCs to purchase unbundled network elements sufficient to provide access, the purpose of the Act is clearly to encourage facilities-based competition and market entrance, not to reduce the cost of access for AT&T, MCI and Sprint. RTC looks forward to providing services requested by new customers of local exchange carrier service.

[10] RTC recognizes that recovery of these costs could be addressed in the Commission's pending proceeding on universal service, but that possibility cannot be used to avoid creating a fair and permanent solution to cost recovery in this proceeding. First, the context and the issues in the universal proceeding are different, and accordingly, full cost recovery for services sold on a wholesale basis may not be adequately addressed in that proceeding. Second, as the Commission has stated, there will be a substantial delay between completion of this proceeding and the universal service proceeding. It would be irrational to not provide for full and fair cost recovery in the interim. Accordingly, the Commission should address full cost recovery in this proceeding.

that the process of requesting and providing interconnection is clear, precise and practical, and to ensure that wholesale rates for resale of services should not exclude costs that are not recovered in retail rates.

Respectfully submitted,

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