

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Implementation of the Local)
Competition Provisions in the)
Telecommunications Act of 1996)

CC Docket No. 96-98

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Comments of General Communication, Inc.

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SUMMARY

Local exchange competition is in its infancy. When Congress passed the Telecommunications Act of 1996 (1996 Act or Act), it mandated a competitive structure and outlined the criteria under which competition is to be expanded to all areas of the country. It is important that the Commission establish national rules so that competition can be implemented throughout the country, as outlined by Congress. If done properly, the benefits of competition including lower prices, new technology and increased service offerings will occur across the nation, including rural areas where competition stands ready. It is vital that the Commission adopt rules to provide competition in local exchange service.

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the benefits of competition including lower prices, new technology and increased service offerings will occur across the nation, including rural areas where competition stands ready. It is vital that the Commission adopt rules to provide competition in local exchange service.

II. The Commission Must Establish Basic National Rules

The 1995 Act provides

for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and service to all Americans by opening all telecommunications markets to competition³

Pursuant to Section 251(d) and to ensure that the goals of the Act are met, it is vital that the Commission adopt a core set of national rules so that competition can be fostered in all sectors of the industry and the country. These core rules must reflect and guarantee a pro-competitive position by the Commission.⁴ The state commissions must be given flexibility in implementing the

³Conference Report at 1 (emphasis added).

⁴The Commission should look to some of the states for assistance. However, since many states adopted rules prior to the adoption of the Act, some of the rules are not consistent with the Act and intent of Congress. The Commission must take a fresh look.

Commission's rules, with the solid pro-competitive position of the Commission to guide them. Consistent with the Act, State commissions should be allowed to expand the Commission's rules, but should not be allowed to adopt rules that undermine the Commission's rules. The Commission's policies and rules should be clear in order to assist states, particularly those that have not even begun the processes outlined in Sections 251 and 252 of the Act. Thirty-four states have not started to address these issue, much less established rules for competition. Adoption of national rules that are the minimum boundaries for opening up the local exchange market for competition is required pursuant to Section 251(d) of the 1996 Act.

National guidelines must be established. Pursuant to Section 251(d) of the Act, Congress instructs the Commission "to establish regulations to implement the requirements" of the Act. Therefore, the Commission has ample authority to implement national rules.⁵ If the Commission does not establish such rules, it is in violation of the Act.

It is vitally important that new entrants and ILECs understand the minimum requirements under the Act. National

⁵In fact the Commission must stand ready to act if a State does not act. Section 252(e)(5).

rules will focus the carriers in the negotiation and arbitration proceedings on the minimum outcome. All carriers will be more focused on what is required under the Act.

In order to enter the market, new entrants must evaluate the risks and opportunities, particular the financial risks, so that necessary capital can be obtained. Without proper guidelines, competition will be delayed. Delayed competition clearly was not the intent of Congress.

Networks are not generally state specific. For example, carriers must be able to originate and terminate calls either through their own facilities or by obtaining service or elements from other carriers to complete calls. State specific solutions that do not have minimum standards will inhibit competition nationally. Congress clearly intended for the Commission to take this leading role and adopt national rules so that states could not impede competition.

III. The Act Establishes a New Framework

The Act establishes a new framework for interconnection, collocation, unbundling and resale arrangements. Sections 251 and 252 apply to both interstate and intrastate traffic. Congress specifically adopted this

approach when it declared that a "national policy framework" is needed to open up local markets to competition. Section 253 further supports this premise. Under Section 251(b) of the 1996 Act, all LECs are required to

(1) **RESALE** - The duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of telecommunications services.

(2) **NUMBER PORTABILITY** - The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.

(3) **DIALING PARITY** - the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

(4) **ACCESS TO RIGHTS-OF-WAY** - The duty to afford access to the poles, ducts, conduits, rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224.

(5) **RECIPROCAL COMPENSATION** - The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

In addition to those duties outlined above, incumbent LECs (ILECs) are required to

(1) **DUTY TO NEGOTIATE** - The duty to negotiate in good faith in accordance with Section 252 the particular terms

and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) and also this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.

(2) INTERCONNECTION - The duty to provide, for the facilities and equipment of any requesting carrier, interconnection with the local exchange carrier's network -

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

(3) UNBUNDLED ACCESS - The duty to provide, to any requesting telecommunications carrier for the provision of telecommunications services, 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 in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such

telecommunications service.

(4) RESALE - The duty -

(A) to offer for resale at wholesale rate any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and

(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

(5) NOTICE OF CHANGES - The duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using local exchange carriers' facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.

(6) COLLOCATION - The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

Any requesting carrier may ask an ILEC for any of the

requirements outlined above. The Commission must ensure that these requirements are mandated, as supplemented below, for all ILECs where any carrier so requests.

A. Interconnection

The Commission has the authority to impose all types of interconnection, including physical, virtual or meet point arrangements. Pursuant to the Act, interconnection must be provided by the ILEC at any technically feasible point within the local exchange carriers network. The Commission must guarantee that the ILEC has the burden to prove that the requested interconnection point is not technically feasible. In that regard, if the ILEC has ever provided or now provides interconnection to any other carrier, that connection should be technically feasible and therefore available to all requesting carriers. However, interconnection points cannot be limited to current arrangements. Under the 1996 Act, the requesting carrier may request any technically feasible point for interconnection. The ILEC should not be allowed to make the requesting carrier mirror or match their networks.

Further, the interconnection must be nondiscriminatory and be at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary,

affiliate, or any other party. To ensure that all requesting carriers are treated equally, requesting carriers must be considered co-carriers. Co-carriers are not customers of each other but are dependent on each other to terminate calls on each other's networks. Continuing a supplier-customer relationship will enable the ILEC to discriminate against the requesting carrier, in violation of the Act.

The rates, terms, and conditions must be just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of sections 251 and 252. Interconnection on terms and conditions that are discriminatory will effectively act as a barrier to entry, contrary to the Act. Terms and conditions include many service provisioning issues such as ordering, provisioning, installing, serving and billing.⁶ Any discrimination in access to speed and quality of these services puts the requesting carrier at a disadvantage. ILECs should be required to report to the Commissions on these issues to ensure compliance.

Prices for interconnection must be based on direct economic costs, i.e., TS-LRIC. The carriers must have

⁶Back Office issues will be discussed below.

symmetrical compensation rates.⁷

B. Collocation

Collocation is a separate and distinct requirement imposed on the ILECs under the Act. The current collocation rules must be enhanced and apply to all ILECs, not just Tier 1 carriers. Under the Act, competition is endorsed throughout the country, not just in locations where a Tier 1 carrier operates.

Carriers must have the option to collocate both on the line and trunk side of the ILEC switch. All carriers should be allowed to cross connect with other co-locators. The Commission must change the current collocation rules as follows:

(1) Physical collocation rules apply to all ILECs.

(2) Rates should utilize costing principals identical to that used for interconnection and unbundled network elements, i.e., Total Service - Long Run Incremental Cost (TS-LRIC).

(3) ILECs should not be allowed to limit what equipment collocators place in their cages.⁸

⁷See Comments and Reply Comments of GCI in CC Docket 94-54.

⁸Of course, no equipment should be put in place that will degrade the network.

(4) Collocators should be allowed to choose either physical or virtual collocation.

C. Unbundled Elements

Under the Act, the network must be unbundled to any technically feasible point on rates, terms and conditions that are just, reasonable and nondiscriminatory. Further the ILEC must provide the unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services. In order for this to occur the following principals must be followed:

(1) If an ILECs receives an unbundling request that is technically feasible it must fulfill that request. ILECs must unbundle their networks to the extent a requesting carrier makes a request as long as technically feasible.

(2) It will be the obligation of the ILEC to prove that unbundling is technically infeasible.

(3) The Commission should set minimum standards for unbundling, which will evolve over time.

(4) States may require and carriers may request additional unbundled elements, features or function.

(5) Unbundled elements may be used by any requesting carrier for any purpose. It is not the duty of ILEC to

police the purpose.

(6) Requesting carriers may combine any or all unbundled elements without limitation.

GCI agrees that at a minimum the following elements must be unbundled:⁹

- (1) Network Interface Device
- (2) Loop Distribution
- (3) Loop Concentrator/Multiplexer
- (4) Loop Feeder
- (5) Local Switching
- (6) Local Operator Services¹⁰
- (7) Local Directory Assistance
- (8) Common Transport
- (9) Dedicated Transport
- (10) Digital Cross Connect System
- (11) Data Switching Element
- (12) SS7 Message Transfer and Connection Control
- (13) Signaling Link Transport

⁹These are identical to the list submitted by TCC.

¹⁰In the Notice, the Commission states that all customers must be able to connect to a local operator by dialing 0 or 0 plus. In Alaska, ILECs do not provide 0 or 0 plus. Those services have long been provided by Alascom and GCI, interexchange carriers in Alaska. This arrangement should not be precluded.

(14) SCPs/Databases

(15) Tandem Switching

(16) Advanced Intelligent Network

These minimum elements will change over time as carriers request additional elements. This should be the bare minimum required to comply with the rules relating to unbundling.

D. Resale

All LECs are required to offer resale. All LECs, including ILECs, have the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of any telecommunications services. ILECs have additional duties regarding resale. ILECs must offer any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers at wholesale rates. The only limitation expressed by Congress is that a State commission may prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers. The State must make an affirmative finding that any restriction satisfies the requirements outlined in 251(c)(4)(B).

The Commission must require that all service offerings, including promotions and discounts, be offered for resale. An ILEC should not be allowed to strip the intent of Congress by offering only certain services for resale. Trying to limit resale to certain offerings violates the spirit of the Act. Also, ILECs should not be allowed to withdraw or limit any service offering preemptively so that it cannot be resold. It would be discriminatory to allow the ILECs to limit resale to only regular service offerings, but not promotions and discounts.

To determine the wholesale rate, the Act is clear that the rate is determined by starting with the ILEC retail rate, even for those services which receive an internal or external subsidy. The retail rate offered by the ILEC is the rate which the competitive carrier is competing against. Any current subsidy structure would continue to apply. There is absolutely no reason to delay the advent of competition until the ILEC restructures their rates or the Commission or state commission restructure applicable subsidies.

Wholesale rates must exclude all costs that will be avoided by the local exchange carrier including marketing, billing and collection. All ILECs are required to keep

their books of account pursuant to the Uniform System of Accounts (USOA). The Commission rules regarding resale must exclude the direct retail related costs as follows: Uncollectibles, Marketing Expense, Customer Service Expense, and Billing Expense. The Commission should also exclude the portion of the following accounts which are directly associated with the ILECs retail operations: Network Support Expense, Operator Systems Expense, Testing Expense, Plant Operations Administration Expense, Call Completion Services and Number Services. The retail portion of the following shared, common and general overhead accounts must be excluded: General Support Expense, Depreciation Expense, Total Executive and Planning Expense, Total General and Administrative Expense, Operating Federal Income Taxes, Operating State and Local Income Taxes, Other Interest Deductions and Total Returns. Requesting carriers should not have to reimburse the ILEC for the retail costs that the competitors themselves will incur.

ILECs should not be allowed to add back any costs, including back office support costs. If Congress intended for ILECs to be able to add additional costs into resale, it would have been specifically adopted. Wholesale rates by definition must be set below retail rates. At least

initially, there should be an identical discount for all services provided by the ILEC.

E. Back Office Issues

All of the requirements outlined in the Act have a back office component. ILECs must be required to establish automated, nondiscriminatory operations support for the ordering, provisioning, installation, maintenance, repair and billing by requesting carriers. These issues are part and parcel of the success of the competitive carriers. However, the requirements to interconnect, collocate, unbundle and to resale should not be delayed due to the lack of "back office" parity. If the requesting carrier agrees, the ILEC should be required to provide the requirements outlined under the Act while quickly working on these issues. However, the ILEC should only be allowed to continue this situation for a limited period of time.

IV. The Commission Should Limit Exemptions, Suspensions and Modifications

The Commission notes that under Section 251(f)(1) rural telephone companies are exempt from complying with Section 251(c) until such company receives a "bona fide request." Further, under 251(f)(2), any local exchange carrier with less than 2 percent of the nation's subscriber lines may petition for a suspension or modification of the

requirements outlined in 251(b) and 251(c). The State commission in each instance must address the petition or the bona fide request. The Commission must clarify in its national rules that the requirements under 251(b) and 251(c) must be implemented to the greatest extent possible. BEEF UP!

Under 251(f)(2), a local exchange carrier make be granted a suspension or modification of the requirements of 251(b) or (c) only if the State determines that such suspension or modification -

- (A) is necessary -
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome;
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.¹¹

This requirement was adopted so that local exchange carriers could seek suspensions or modification of the requirements, primarily due to timing problems. For example, LECs are required to implement number portability. However, certain LECs may need more time to implement this requirement than others. Nonetheless, it is vital that the Commission clarify that the

¹¹Section 251(f)(2).

Telecommunications Act of 1996 was adopted to "provide for a pro-competitive, de-regulatory national policy framework to all Americans by opening all telecommunications markets to competition."¹² Congress determined that competition is the national policy and must be implemented everywhere. The Commission cannot allow the LECs to usurp Congress' intent by utilizing a provision for limited equitable relief to forestall competition.

Under 251(f)(1), rural telephone companies are exempt from complying with 251(c) until they receive a "bona fide request." The rural telephone companies pleaded with Congress to exempt them from these requirements because competitors would not be interested in expanding their facilities to rural areas. They stated that they should not be required to go through various proceedings since no one would be interested in competing in rural America. They wanted to be exempt from all of these pro-competitive requirements. Congress, based upon the "they won't come" premise, exempted these carriers only so long as no carrier requested such interconnection, services or network elements; only so long as "they [really] don't come." Congress clearly did not intend for rural telephone companies to be excused from these requirements if a carrier wished to compete with the rural

¹²Conference Report at 1 (emphasis added).

telephone company. As Mr. Boucher stated in the debate in the House of Representatives

Rural telephone companies were exempted [under H.R. 1555] because the interconnection requirements of the checklist would impose stringent technical and economic burdens on rural companies, whose markets are in the near future unlikely to attract competitors.

It was never our intention, however, to shield these companies from competition, and it is in that context that the language the gentlemen and I have agreed to is pertinent, and I would yield back to him to explain the amendment we have crafted.¹³

The Commission must clarify in its national guidelines that exemptions and modifications of the requirements of 251(b) and 251(c) by any LEC, including rural telephone companies, must be limited to timing issues, if limited at all. The consumers in rural America should be given a choice of carriers and should receive the benefits of competition. This is particularly necessary today and will continue in the future due to the introduction of new technologies, such as PCS, which will allow competition to spread to all areas of the country. The benefits of competition will be ensured only if the Commission enforces the requirements of 251(b) and (c) on all LECs.

¹³Congressional Record, pp. H8454.

General Communication, Inc.
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V. Conclusion

The Commission must adopt national rules to establish the minimum requirements outlined in the Act. Any exemptions, suspensions or modifications must be very limited. To allow any other outcome would be in conflict with the Act.

Respectfully submitted,

GENERAL COMMUNICATION, INC.

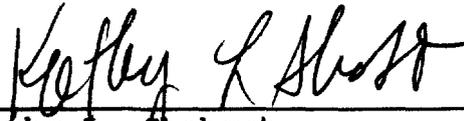


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May 16, 1996

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed this 16th day of May, 1996.



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CERTIFICATE OF SERVICE

I, Kathy L. Shobert, do hereby certify that on this 16th day of May, 1996 a copy of the foregoing was sent by first class mail, postage prepaid, to the parties listed below.


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