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

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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	)	

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

Margot Smiley Humphrey
KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

May 30, 1996

TDS Telecommunications Corporation
May 30, 1996

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Summary

Although the Commission must refrain from prescribing detailed interconnection requirements and let the carrier negotiation and state arbitration model crafted by Congress operate, the Commission has a critical role to play. It must act soon and decisively to preserve its jurisdiction and ability to carry out the responsibilities Congress charged it with under other sections of the Act.

Prompt Commission action is necessary because some carriers are using vague and nonbinding -- but aggressive -- demands for "interconnection" to stampede other carriers and state commissions into premature and prejudicial actions The Commission should clarify that bona fide requests for interconnection must be specific, binding and ensure payment of the resulting interconnection costs before (a) a carrier or state commission must respond, (b) the clock starts running for reviewing rural LEC exemptions, or (c) suspension and modification requests are in order. States can then choose to avoid making decisions before federal issues are settled and states have time to consider their policies for "rural markets," additional rural eligible telecommunications carriers, modifications and suspensions and the Act's other rural safeguards.

The FCC should also caution states not to make "interconnection" decisions now -- and carriers not to demand hasty decisions --that will interfere with FCC jurisdiction and the rights of rural LECs and their customers under the universal service, infrastructure sharing or other sections committed to the Commission's responsibility for implementation. For example, Ameritech's EAS demands and AT&T's blanket requests are jeopardizing the proper sequencing of various parts of the implementation process. Premature state decisions are likely to thwart Congress's integrated overall vision of telecommunications policy and adversely affect customers. Even a state such as Wisconsin -- which has dedicated substantial policy efforts to harmonizing

universal service and competition -- and is already experimenting with a new state universal service mechanism -- could benefit from prompt Commission clarification of how to avoid premature determinations that threaten to prejudge. moot or frustrate upcoming FCC decisions.

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

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation, Inc., (TDS or TDS Telecom), on behalf of its local exchange operating companies and by its attorneys, submits these reply comments to respond to comments filed in the above-captioned proceeding on May 16, 1996.[1]

Introduction

In its opening comments, TDS Telecom addressed many of the issues of particular importance to the customers in rural America and the small and rural local exchange carriers (LECs) that serve them. Small and rural LECs typically began to serve their rural service areas because there were insufficient opportunities for profit in the thin rural markets to attract the large LECs that serve metropolitan areas. And rural areas remain different today.

In these reply comments, TDS Telecom will not repeat the compelling case for:

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[1]Citations to comments provide the name, abbreviation or acronym for the filing party and the relevant page references.

(a) FCC restraint to allow the Act's marketplace negotiation mechanism to forge interconnection arrangements, subject primarily to state approval and to back-up arbitration powers vested in the states when negotiation leaves disputed requests unsettled;

(b) ensuring that ILECs, having universal service responsibilities and a laudable record of rural infrastructure development, can recover their total costs of service for providing a real world network, rather than imposing inadequate theoretical "costs" and arbitrary, potentially confiscatory prices that will raise rural rates and compromise rural service parity; and

(c) FCC and state respect for Congress's concern to spare rural areas from burdens and requirements that may be suitable only for denser markets and larger carriers and from any new interconnection responsibilities without an actual specific request and commitment.

These reply comments will instead request the Commission's help in confronting some immediate concerns for rural customers and LECs. TDS Telecom's concerns relate primarily to ensuring implementation of the 1996 Act as an integrated national telecommunications policy. Emerging problems are already acute because of aggressive demands by some carriers for actions that are necessarily premature at this time, since implementation of the 1996 Act is still in the early stages for most issues. As a result, the comprehensive regulatory context and resulting market facts upon which decisions should rest are currently unknowable.

TDS Telecom is convinced that implacable demands by some carriers are forcing hasty decisions upon carriers and state

regulators that are likely to be inconsistent with rules the Commission is required to make under other sections of the Act. Premature and inadequately informed decisions at this time are likely to prevent achievement of Congress's paramount universal service, competition and deregulatory purposes. Guidance by the FCC is essential now to permit implementation of goals that are embodied in the Act, but are divided among the various implementation proceedings and jurisdictions. TDS Telecom urges the Commission to take immediate action to clarify that states should not compromise this Commission's ability to satisfy its responsibilities under other sections of the Act by acceding to premature or inadequately spelled out demands under the interconnection provisions. Commission intervention is need now to prevent the impatience of some providers from frustrating good faith, comprehensive and properly sequenced implementation of the Telecommunications Act of 1996.

Bona Fide Request Clarification

One potential rural policy casualty the Commission should prevent is premature decisions that rob telephone companies ("rural "LECs") of prophylactic measures in the Act designed to shield their customers from adverse consequences during the transition to competition. AT&T has been seeking statewide

interconnection and/or authority to provide local exchange and access services.[2] Since AT&T submits only vague, general requests, it is probable that it does not actually plan statewide service in all the markets for which it has sought authorization or interconnection.

Most states have not yet had the opportunity to consider the rural policy issues left for their decision under the Act, such as setting the criteria for designating eligible telecommunications carriers in rural areas, deciding whether to take advantage of the "rural markets" provision in section 253 and determining what state universal service mechanisms will be necessary. Even the definition that will apply for rural study areas remains open in the Joint Board's universal service proceeding. Such decisions will shape the critical market facts for interconnection and other decisions.

Notwithstanding the many unsettled questions, some states are granting AT&T blanket local exchange authority.[3] Competition is, of course, a central purpose of the Act. But hard issues will likely arise as "fallout" from blanket grants of authority.

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[2]See, e.g., U.S. West at 41, n. 90.

[3]For example, the filing by the Maine PUC and seven other rural states discloses (p.5) that Maine granted AT&T blanket authority within six weeks of AT&T's 50-state local service request..

AT&T has also been pressing for the filing of all ILECs' agreements, whether for interconnection or, in essence, for jointly serving adjacent ILEC areas. It is also reportedly demanding various interconnection rights purportedly available to it under the new law. Will AT&T next succeed in arguing that its blanket application is a bona fide request for interconnection, thus starting the period for a state to review all of its rural LECs' exempt status under section 251(f)(1)? How could the state review the exemption without specific information about AT&T's plans in each market?

TDS Telecom agrees with USTA (see pp.87-88) that the states and the ILECs must have far greater specificity and binding assurances that a requesting carrier will actually use and pay for the interconnection it requests before the LEC should have to take any action to comply or the state to evaluate the exemption. ILECs should also have an opportunity to seek modification or suspension under section 251(f)(2) when enough information is available for the LEC to make its case and the state to act with knowledge of the facts. Indeed, the need for adequately detailed requests and commitments is of such great importance in a rural area that TDS urges the Commission to clarify for the states what constitutes a bona fide request, so the states will not act

unnecessarily. The legislative history and the Act itself leave no doubt that Congress intends a rural LEC to become subject to any of the all-LEC and incumbent LEC requirements in subsections 251(b) and (c) only "in the context of a specific request from another telecommunications carrier or another person who actually seeks to connect with or provide services using the LEC's network."[4] Clarification of this requirement can prevent potential confusion, litigation, premature destruction of the rural safeguards in section 251(f)(1) and (2) and inadequately examined rate and service impacts on rural customers.

EAS Agreements and Infrastructure Sharing

Premature pressures to "enforce" the section 252 requirements for filing interconnection agreements and making their terms available also threaten (a) to compromise Extended Area Service (EAS) arrangements that are valued by customers, (b) to deprive rural LECs of their infrastructure sharing rights and (c) to erode the Commission's infrastructure sharing jurisdiction. Rural LECs are generally automatically exempt from the requirements of section 251(c) until a bona fide request has triggered state review of whether to continue the exemption. While the exemption remains in effect, the filing and other

[4]Managers' Statement at 121 (emphasis added)

requirements of section 252 do not apply to rural LECs. Ameritech is nevertheless pressuring LECs in the states in its region to seek modification or suspension under section 251(f)(2), regardless of a rural LEC's exempt status. TDS understands that Ameritech is threatening to make a "bona fide request" for new interconnection terms if the LEC refuses. In some cases, Ameritech has sought to cancel existing EAS arrangements unilaterally by requesting negotiation under section 252(a), without waiting for clarification and implementation of the Act's interconnection and other provisions. Through these tactics, Ameritech has already pushed some states into requiring the filing of EAS agreements between non-competing, adjacent ILECs--which could moot the Commission's investigation in this proceeding (NPRM ¶¶ 48, 170-71) of whether such agreements fall within the scope of sections 251 and 252 at all.

TDS Telecom agrees with the Rural Telephone Coalition (pp. 17-20) and USTA (pp. 67-70) that the Act's interconnection provisions are designed to deal with carriers competing to provide local exchange and exchange access services in the same area. For rural LECs, including the 102 TDS LECs, applying the section 252(a) filing and state approval procedure sweeps them under subsection(c), from which they are exempt. Applying the

interconnection provisions to Ameritech to require filing and approval or renegotiation of their agreements with rural LECs also denies qualified rural LECs their statutory right to request and obtain infrastructure sharing from a larger neighboring ILEC, such as the Ameritech LECs, and to take advantage of their greater economies of scale and scope on a non-common-carrier basis.[5]

By ignoring section 259, Ameritech's requests and the premature state determinations it is demanding usurp the Commission's jurisdiction. The requests put states in a difficult position. Aggressive pursuit of interconnection now can bring the deadlines for state determinations on interconnection and exemption into play, while the Commission's statutory deadline for adopting infrastructure sharing rules is not until August 8, 1996.

There is obviously a serious federal problem with the sequencing of implementation steps. Thus, it is clear that national guidance from the Commission is essential to implementing the entire Act as an integrated national policy package. Unless the Commission steps in soon to clarify that the states have no jurisdiction to apply section 251 prematurely to

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[5]Section 259(b)(3).

noncompeting adjacent LECs, especially those likely to be qualified for infrastructure sharing rules, its options may narrow or evaporate. Indeed, the LEC-to-LEC arrangements Congress intends to maintain may become unsustainable as a result of tardy assertion of the FCC's jurisdiction, in spite of the FCC's timely compliance with the implementation responsibilities and deadlines assigned to it by Congress.

Universal Service Concerns from Premature State Implementation

There is also the potential for rural rate and service jeopardy if carriers prod states into implementing these and other parts of the Act's interconnection requirements before the whole regulatory picture has been developed. Even Wisconsin--a state that has devoted substantial time, effort and resources to harmonizing the goals of competition and universal service--is being pressured to take actions that could conflict with other parts of the Act that are the FCC's responsibility. The resale provisions in the Act provide good illustration.

For example, Wisconsin recently ordered its ILECs to file tariffs that comply with the Act's resale requirements. It appears that the PSC may intend to order only Ameritech and GTE to file tariffs that establish wholesale pricing for resale services at this time. If required, resale at wholesale levels

for rural LECs would shift additional costs into the rates of rural end users that often do not have competitive options. The federal universal service mechanisms will not take effect until May of 1997. Moreover, a State Commission should not apply the resale requirements of either section 251(b) or (c) to any rural LEC in the absence of a specific request and commitment to pay for interconnection--and the required state proceeding on retention of the subsection (c) exemption conferred by section 251(f). LECs should also have a reasonable opportunity to seek modifications or suspension under section 251(f)(2) where appropriate. Customers may pay the price for the bypassing of these rural safeguards.

Jeopardy may be avoided if a state has adequate universal service mechanisms in place to ward off disaster while the federal universal service mechanism takes shape. But not all states do. The Wisconsin PSC's state universal service mechanism remains untested, but it is important that Wisconsin at least has a state mechanism in place.

TDS Telecom urges the Commission to provide prompt guidance to ensure that its universal service efforts are not frustrated by precipitate state or carrier implementation of interconnection measures.

Conclusion

There are inevitable tangles in the Act's sequencing of the many strands necessary to the Act's implementation process. Only prompt action by this Commission can unsnarl them. Thus, although TDS Telecom believes the Commission's role with regard to implementing the details of interconnection and access under sections 251 and 252 must give precedence to carrier marketplace negotiations and state arbitration, the Commission has a vital role to play in the overall sequencing of implementation. Only the FCC can clarify that carriers and states must avoid interconnection decisions that conflict with the Commission responsibilities under other sections of the law.

It is clear from current developments in various states that this Commission needs to act as Congress's "traffic cop." TDS urges the Commission to protect its own jurisdiction and ability to exercise the responsibilities Congress has given it in areas such as universal service, infrastructure sharing and fostering infrastructure and service advancements. State interests and responsibilities are also at stake because the Act has made some significant jurisdictional changes. The Commission should, therefore, (a) clarify the need for actual specific requests and commitments to trigger state and carrier interconnection

responsibilities, (b) clarify that states can and must avoid compromising provisions of the Act under Commission or Joint Board jurisdiction that have yet to be fully implemented and (c) work closely with the states and NARUC to prevent piecemeal or premature state implementation of the Act's interconnection provisions from interfering with the implementation of other, interrelated parts of the law committed to the Commission's responsibility.

Respectfully Submitted,

TDS Telecommunications Corporation

By /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

Koteen & Naftalin,L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

CERTIFICATE OF SERVICE

I, Michelle Arrington, a secretary in the law firm of Koteen & Naftalin, L.L.P., do certify that on this 30th day of May, 1996, a true and correct copy of the foregoing "Reply Comments of TDS Telecommunications Corporation" was served by United States First Class Mail, postage prepaid, on the following:

*Janice Myles (with 3.5" diskette)
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

*International Transcription Service
2100 M Street, N.W. Suite 140
Washington, D.C. 20554

Cheryl L. Parrino, Chairman
Public Service Commission
of Wisconsin
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

David W. Carpenter, Esq.
Sidley & Austin
1722 Eye Street, N.W.
Washington, D.C. 20006

Ameritech
1401 H Street, N.W.
Suite 1020
Washington, D.C. 20005

Ameritech
30 South Wacker Drive
Chicago, IL 60606

U.S. West
1801 California Street
Denver, CO 80202

U.S. West
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036

David Cosson, Esq.
NTCA
2626 Pennsylvania Ave., N.W.
Washington, D.C. 20037

Lisa M. Zaina, Esq.
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036

Mary McDermott, Esq.
United States Telephone
Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Joel B. Shifman, Esq.
Maine Public Utilities
Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018

TDS Telecommunications Corporation
May 30, 1996

Karen Finstad-Hammel, Esq.
Montana Public Service
Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

Lowell C. Johnson
Vice Chair
Nebraska Public Service
Commission
300 The Atrium
1200 N Street
Lincoln, NB 68508

E. Barclay Jackson, Esq.
New Hampshire Public Utilities
Commission
8 Old Suncook Road
Concord, NH 03301-7319

David Kaufman, Esq.
New Mexico Public Utilities
Commission
New Mexico State Corporation
Commission
P.O. Box 1269
Santa Fe, NM 87504-1269

Stephen F. Mecham,
Chairman
Utah Public Service Commission
160 East 300 South
P.O. Box 45585
Salt Lake City, UT 84145

Michael L. Ginsberg
Assistant Attorney General
Utah Division of Public Utilities
160 East 300 South
Box 146751
Salt Lake City, UT 84114-6751

George E. Young, Esq.
Vermont Public Service Board
112 State Street
Drawer 20
Montpelier, VT 05620-2701

Sheldon M. Katz, Esq.
Vermont Department of Public
Service
112 State Street
Montpelier, VT 05620-2601

Rolayne Ailts Wiest, Esq.
South Dakota Public Utilities
Commission
500 E. Capitol
Pierre, SD 57501

* By hand.

/s/ Danielle Arrington

TDS Telecommunications Corporation
May 30, 1996