

APPEARANCES:

Commissioner Present:	DONALD L. SODERBERG Chairman and Presiding Officer
Supervising Administrative Attorney:	POLLY HAMILTON
For Petitioner Virtual Hipster Corporation:	CROWELL, SUSICH, OWEN & TACKES, LTD. Attorneys at Law by ROBERT L. CROWELL, ESQ. 510 West Fourth Street P.O. Box 1000 Carson City, Nevada 89702
For Churchill County Telephone Company, dba CC Communications, Inc.:	HALE, LANE, PEEK, DENNISON, HOWARD & ANDERSON Attorneys at Law by KRISTIN B. McMILLAN, ESQ. Eighth Floor 2300 West Sahara Avenue Las Vegas, Nevada 89102
For the PUCN Regulatory Operations Staff:	LOUISE UTTINGER, ESQ. Assistant Staff Counsel 1150 East William Street Carson City, Nevada 89701

CARSON CITY, NEVADA

WEDNESDAY, NOVEMBER 1, 2000, 9:02 A.M.

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CHAIRMAN SODERBERG: This prehearing conference will come to order.

Let the record reflect that this is the time and place set before the Public Utilities Commission of Nevada for a prehearing conference in the matter of the petition of Virtual Hipster Corporation for arbitration of an interconnection agreement with Churchill County Telephone Company, dba CC Communications; or order declining the request based on jurisdictional uncertainty, as more fully set forth in the petition on file with the Commission.

This matter is designated as Docket Number 00-10009.

Appearing for the Commission today are myself, Don Soderberg, Chairman and Presiding Officer; the Commission's Supervising Administrative Attorney, Polly Hamilton.

Appearing for the petitioner, Virtual Hipster?

MR. CROWELL: Good morning, Chairman. My name is Robert Crowell.

CHAIRMAN SODERBERG: Appearing for

1 Churchill County Telephone Company?

2 MS. McMILLAN: Good morning. Kristin
3 McMillan, Hale, Lane and Peek on behalf of CC
4 Communications. Also with me today to my left is Don
5 Mello, who is the General Manager of CC Communications.
6 To my right is Dale White, who is the Business
7 Development Manager for CC.

8 CHAIRMAN SODERBERG: Appearing for the
9 Commission's Regulatory Operations Staff?

10 MS. UTTINGER: Good morning. Louise
11 Uttinger.

12 CHAIRMAN SODERBERG: Are there any other
13 individuals who wish to enter an appearance at this time?

14 (No response.)

15 CHAIRMAN SODERBERG: The record will
16 reflect that the Commission has in its files affidavits
17 of publication regarding the notice of this prehearing
18 conference for this time and place.

19 Are there any parties at this proceeding
20 who wish to examine the affidavits on file?

21 (No response.)

22 CHAIRMAN SODERBERG: Hearing no requests,
23 the Commission deems that this matter has been duly and
24 properly noticed for a prehearing conference at this time
25 and place.

1 Prior to getting into the meat of this
2 case, I believe I should disclose that in my prior
3 profession as an attorney I have represented Churchill
4 County Telephone Company in matters not related to the
5 Telecom Act of '96. It was actually prior to the
6 enactment of the Telecom Act. In reviewing this case, I
7 do not see any issues which are common, or parties, other
8 than Churchill County Telephone, which are common to the
9 representation of that entity, and I don't believe that
10 my judgment would be impaired, or that I'd have any
11 special knowledge that would impact this case.

12 We have a great deal of paper in front of
13 us. And my hope today would be that we would just get a
14 little clarification from the parties as to what you'd
15 like the Commission to do.

16 And then if the Commission were to move
17 forward, then we would discuss how we would like to do
18 that.

19 Mr. Crowell, you are the moving party. Why
20 don't you walk us through what you intend to accomplish
21 today.

22 MR. CROWELL: Mr. Chairman, what we intend
23 to accomplish is to get a time set certain for the
24 arbitration of this interconnection agreement before this
25 Commission. And failing that, it's our request that this

1 Commission enter an order that it declines to exercise
2 jurisdiction to arbitrate so that we may file with the
3 Federal Communications Commission to do the same thing.

4 So our request to you today is a procedural
5 one to ask the Commission to either entertain our
6 petition for arbitration or not. And if it decides to
7 entertain it, to set a date and we'll be prepared to go
8 forward.

9 CHAIRMAN SODERBERG: Why would we not?

10 MR. CROWELL: The reason I guess that you
11 would not is - and I don't know all the history about
12 it - that I'm told that Churchill County in the past has
13 taken a position that this Commission does not have that
14 type of jurisdiction.

15 I read Miss McMillan's answer reply to say
16 that they now consent to that jurisdiction. I assume
17 that's a full consent to letting this Commission proceed.
18 And if that's the case, I think we need to talk about
19 what that means; what she means by consenting to
20 jurisdiction. But if that's the case, then there is no
21 reason why you shouldn't undertake to arbitrate the
22 matter.

23 The argument of jurisdiction is one that
24 the phone company has made.

25 CHAIRMAN SODERBERG: Okay. Miss McMillan,

1 walk me through your position.

2 MS. McMILLAN: Yes.

3 CHAIRMAN SODERBERG: And then I guess the
4 question that I have, if it is an accurate statement that
5 you've maintained that we don't have jurisdiction, but
6 yet you would consent to it, that's a little confusing.

7 First I would like clarification on that,
8 too. If that is the case, how do you consent to
9 jurisdiction if it isn't intrinsically there?

10 MS. McMILLAN: Well, we're not consenting
11 to the Commission's jurisdiction over Churchill County or
12 CC Communications. As I think you know, and I don't
13 think any party would disagree with, Churchill County
14 owns and operates CC Communications as a municipal
15 entity, and therefore the Commission does not have
16 general regulation and jurisdiction over the rates, the
17 status, the operations of CC Communications.

18 I don't believe that we said that we were
19 consenting to the Commission's jurisdiction. What I
20 believe that we said in our papers was that we believed
21 under these particular circumstances that the Commission
22 was well positioned and in a unique ability to be able to
23 arbitrate this matter as a third party.

24 We're seeking the Commission's help in this
25 matter. We haven't been able to resolve it on our own.

1 Frankly, Mr. Chairman, I think the best way to do
 2 it would be for you to act as a mediator in this
 3 particular situation, and then we avoid the issue of
 4 whether this is a jurisdictional topic or not. That's
 5 something we would like to put forward. We haven't
 6 really had a full opportunity to discuss that with the
 7 other side.

8 We had talked about mediation earlier in
 9 the negotiations, and I don't think we've come back
 10 around to that. But that's something that would avoid
 11 this issue all together.

12 But let me get back to the other issue at
 13 hand. We think that the Commission does have the ability
 14 to do this under the Act. The definition of state
 15 commission under the Act is fairly broad in that it
 16 refers to a commission that generally oversees intrastate
 17 telecommunications carriers. I think you do that
 18 generally.

19 In this instance, we would like to see this
 20 case be resolved as expeditiously as possible. We, too,
 21 think it has gone on long enough. We do not think that
 22 we have acted in bad faith. We think we have acted in
 23 good faith every step of the way, and we would disagree
 24 with any notion that we have not. And I think the
 25 history would bear out the fact that we have had offers

1 on the table that haven't been responded to for very long
2 periods of time.

3 At any rate, there has been a lot of money,
4 a lot of time spent on this process so far. We don't
5 want to start all over again. We don't want any more
6 unnecessary delays in this process.

7 We think the Commission is well positioned
8 because of its background and expertise in reviewing
9 these matters for carriers that it does regulate such
10 that we think that the Commission is in a good position
11 to be able to arbitrate this, and we would consent and
12 ask the Commission to do so at this point.

13 Does that respond to your question?

14 CHAIRMAN SODERBERG: To a point.

15 And I have some other questions, but I'll
16 ask those of Miss Uttinger.

17 In the rare times that this Commission
18 actually conducts an arbitration for one of these
19 interconnection agreements, there are situations where
20 there's a clear delegation of authority from the Telecom
21 Act, and there is clear authority in the Nevada Statutes
22 to impose regulatory conditions upon both parties to the
23 interconnection agreement.

24 So there's really no debate that once we
25 have our interconnection agreement arbitrated that that's

1 the law.

2 Here, it's debatable whether we can impose
3 any type of condition upon your client.

4 And so if you voluntarily consent to having
5 this agency participate as a mediator, or as an
6 arbitrator, I don't understand what the benefit would be
7 if at the end of the day, whatever order this Commission
8 would come forward with, would essentially be voluntary
9 on your part whether you wanted to go along with it or
10 not.

11 MS. McMILLAN: I don't think that it would
12 be voluntary. I think we are agreeing to the same
13 process that other carriers would have to agree to.

14 What we're asking you to do is to arbitrate
15 an interconnection agreement, is to help us come up with
16 the terms and conditions and prices that are going to go
17 into that agreement. I'm not sure in doing so that
18 you're going to be in a position of imposing terms and
19 conditions on Churchill County that's going to affect
20 their other operations. I think you're going to be very
21 narrowly looking at this interconnection agreement
22 between CC Communications and Virtual Hipster, and
23 looking at what's appropriate under these circumstances.

24 So, we are agreeing to have the Commission
25 act as an arbitrator as the Commission would act as an

1 arbitrator in other similar types of instances.

2 CHAIRMAN SODERBERG: So you're making the
3 representation that you're agreeing to whatever order the
4 Commission would come out with, even though we may not
5 actually have the ability to impose it on you if you
6 resisted.

7 MS. McMILLAN: Subject to any other legal
8 rights that other carriers might have, Mr. Chairman.

9 CHAIRMAN SODERBERG: Miss Uttinger, Staff's
10 comments were probably the clearest here. Everybody else
11 seems to want to do ying or yang and you guys were right
12 on it there. So why don't you walk us through where
13 Staff is and make sure that I understood it.

14 MS. UTTINGER: Well, actually I thought you
15 were right on it this morning. There is no
16 representation by Churchill County Communications
17 whatsoever. And frankly, I just received the petition
18 from Miss McMillan last night, or late yesterday
19 afternoon. There's no representation by any principal
20 from Churchill County or the Churchill County Commission
21 that it would be bound by any Commission decision which
22 would be rendered in this instance.

23 And certainly we don't dispute that this
24 Commission certainly has state jurisdiction to do all
25 kinds of arbitrations. And I think we both set forth the

1 statute relative to the state commission, but the issue
2 is whether or not we have regulatory jurisdiction, and in
3 particular subject matter jurisdiction.

4 Frankly, Staff believes that we do not have
5 subject matter jurisdiction. Any arbitration would
6 necessarily involve rates over which this Commission
7 would lack subject matter jurisdiction.

8 And while Miss McMillan sits here today
9 representing Churchill County, I see nothing in the --
10 and I looked very quickly this morning, but closely, I
11 saw nothing from any Churchill County Commissioner or
12 from the body of Churchill County to indicate that it
13 would in fact be bound by any Commission decision.

14 Certainly any other CLEC could enter into
15 any agreement such as the one that Virtual Hipster may
16 have in the future. But putting that aside, Churchill
17 County clearly is a creature of statute over which this
18 Commission has no local jurisdiction.

19 And those would be our comments in the
20 matter.

21 Thank you.

22 CHAIRMAN SODERBERG: Okay. It is my
23 understanding that Virtual Hipster is a certificated
24 CLEC?

25 MS. UTTINGER: That's correct.

1 CHAIRMAN SODERBERG: So there is
2 jurisdiction over Virtual Hipster.

3 MS. UTTINGER: That's correct.

4 CHAIRMAN SODERBERG: But no jurisdiction
5 over Churchill County.

6 MS. UTTINGER: Right. That would be quite
7 a bootstrap.

8 CHAIRMAN SODERBERG: And I understand your
9 concern that at this point we have the representations of
10 Miss McMillan, but we don't have anything official from
11 the Board of County Commissioners with regard to agreeing
12 to abide by this.

13 I guess my second question, and your office
14 typically doesn't look at this, but I would assume you
15 have a good feel for it; I'm curious if I even have the
16 ability to commit Commission resources in an area where I
17 don't have subject matter jurisdiction. I don't know
18 that there is any provision in the NRS that allows me to
19 engage this agency in voluntary proceedings, even if
20 that's what I would like to do to be helpful.

21 MS. UTTINGER: I would agree with that.
22 I'm not aware of any provision to allow this Commission
23 to dedicate state resources, or specifically resources of
24 this agency in a voluntary manner. So I would concur
25 with your remarks. That certainly is a concern. It

1 could be construed as essentially a waste of our agency
2 resources to do so.

3 CHAIRMAN SODERBERG: It's pretty clear to
4 me that this is not something we can do; although there's
5 clearly the desire to be helpful. There's the desire to
6 assist the parties in resolving these differences so they
7 can move forward.

8 But it would be my intention to bring an
9 order to the full Commission declining jurisdiction. And
10 that would allow the parties to move this up to the FCC.

11 From the comments I heard, I understand
12 there's probably been a lack of communication. I don't
13 think I'm exceeding my bounds as Chairman if I make
14 hearing room B available to you, since you're all here,
15 to maybe take an opportunity to work this out, because I
16 know the FCC process is a little cumbersome, and it might
17 take a long time if you have to go through that. So I
18 would make that room available to you.

19 And if there's anything that can be gained
20 from talking, from offers that may be on the table that
21 haven't been responded to, or even a narrowing of the
22 issues when this moves up to the FCC from where you are
23 now. But it would be my intention at the next agenda
24 meeting or the agenda meeting subsequent, to bring a
25 proposed order declining jurisdiction in this matter.

1 MS. McMILLAN: Mr. Chairman, may I ask a
2 question at this point?

3 CHAIRMAN SODERBERG: Sure.

4 MS. McMILLAN: And I'm asking you as
5 Chairman Soderberg, not the Commission at this point, if
6 the parties were to discuss this matter and decide that
7 they might want to have it mediated, would you be in a
8 position to be able to entertain such a request?

9 CHAIRMAN SODERBERG: I don't know that I
10 have any ability to be a mediator separate from the
11 arbitration that has been handed down to us.

12 And secondly, because I don't believe we
13 have subject matter jurisdiction, again that would just
14 be a voluntary act on the agency. Quite frankly, we do
15 that from time to time, but they're usually by executive
16 order the assisting of fellow agencies, which is
17 implicit. But I don't know that we have the ability to
18 do that, even if it's advisory, even if it's just to be
19 assisting. I would have no problem if members of our
20 Staff sat in that meeting with you and maybe helped
21 people discuss what's reasonable.

22 But I think at this point that's as far as
23 we can go without out-stepping our bounds.

24 With that, this prehearing conference is
25 adjourned. And like I said, the room next door is

1 available to you and use it as much or as little as you
2 feel is necessary.

3 MR. CROWELL: Thank you, Chairman.

4 MS. McMILLAN: Thank you.

5 MS. UTTINGER: Thank you.

6 (The prehearing conference was adjourned at 9:18 a.m.)

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STATE OF NEVADA,)
)
COUNTY OF WASHOE.) SS.

I, JERRY J. SILVEN, Certified Court Reporter #55, do hereby certify:

That on Wednesday, November 1, 2000 at 9:02 a.m., at 1150 East William Street, Hearing Room A, Carson City, Nevada, I was present and took stenotype notes of the prehearing conference held before the Public Utilities Commission of Nevada in the within-entitled matter, and thereafter transcribed the same as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said hearing.

Dated at Reno, Nevada, this 2nd day of November 2000.



Jerry J. Silven, CCR #55

EXHIBIT “E”

1 PROPOSED ORDINANCE REGULATING MAINTENANCE
2 OF TELECOMMUNICATIONS EQUIPMENT

3 BILL NO. 92-E

4 ORDINANCE NO. 68

5 SUMMARY: AN ORDINANCE GRANTING CHURCHILL COUNTY TELEPHONE SYSTEM
6 WITH THE EXCLUSIVE MAINTENANCE AND REPAIR RIGHTS FOR ALL
7 PRIVATE AUTOMATIC BRANCH EXCHANGE SYSTEMS, ALONG WITH
8 ASSOCIATED COMMUNICATION DISTRIBUTION AND TRANSMISSION
9 SYSTEMS, WITH THE ABILITY TO SERVE 400 OR MORE TELEPHONE
10 STATIONS CONNECTED TO THE CHURCHILL COUNTY TELEPHONE
11 SYSTEM.

12 TITLE: AN ORDINANCE TO AMEND TITLE 2 BY ADDING A CHAPTER TO THE
13 CHURCHILL COUNTY CODE TO GRANT CHURCHILL COUNTY TELEPHONE
14 SYSTEM WITH THE EXCLUSIVE MAINTENANCE AND REPAIR RIGHTS
15 FOR ALL PRIVATE AUTOMATIC BRANCH EXCHANGE SYSTEMS, ALONG
16 WITH ASSOCIATED COMMUNICATION DISTRIBUTION AND
17 TRANSMISSION SYSTEMS, WITH THE ABILITY TO SERVE 400 OR
18 MORE TELEPHONE STATIONS CONNECTED TO THE CHURCHILL COUNTY
19 TELEPHONE SYSTEM.

20 THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF
21 CHURCHILL, STATE OF NEVADA, DOES HEREBY FIND AND ORDAIN
22 THAT

23 WHEREAS, THE NEVADA STATE LEGISLATURE AUTHORIZED CHURCHILL
24 COUNTY TO OWN AND OPERATE ALL TELEPHONE AND RELATED COMMUNICATIONS
25 WITHIN THE BOUNDARIES OF CHURCHILL COUNTY, AND

26 WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF CHURCHILL COUNTY
27 CREATED THE CHURCHILL COUNTY TELEPHONE SYSTEM IN 1889 TO CARRY ON
28 THE EXCLUSIVE TELEPHONE AND RELATED COMMUNICATION BUSINESS IN
29 CHURCHILL COUNTY, AND

30 WHEREAS, THE CHURCHILL COUNTY TELEPHONE SYSTEM HAS SINCE 1889
31 BEEN THE SOLE AND EXCLUSIVE PROVIDER OF TELEPHONE SERVICE WITHIN
32 CHURCHILL COUNTY, AND

33 WHEREAS, CHURCHILL COUNTY IS LOCATED IN WESTERN NEVADA AND IS
34 APPROXIMATELY 60 MILES FROM RENO, NEVADA WHICH IS THE CLOSEST
35 METROPOLITAN AREA CAPABLE OF PROVIDING MANY OF THE MORE TECHNICAL
36 COMMUNICATION MAINTENANCE SERVICES TO COMPLEX EQUIPMENT IN

1 CHURCHILL COUNTY, NEVADA, AND

2 WHEREAS, IN ORDER TO PROVIDE ADEQUATE AND RELIABLE TELEPHONE
3 SERVICE WITHIN CHURCHILL COUNTY, THE CHURCHILL COUNTY TELEPHONE
4 SYSTEM HAS BEEN REQUIRED TO EMPLOY COMPETENT EMPLOYEES TO PERFORM
5 MAINTENANCE WORK TO BE ABLE TO MEET ALL OF THE NEEDS OF ITS
6 SUBSCRIBERS WHICH AMONG OTHER THINGS INCLUDES THE ABILITY TO REPORT
7 INFORMATION RELATED TO BOTH PERSONAL AND PUBLIC SAFETY ON A 24-
8 HOUR, 7-DAY PER WEEK BASIS, AND

9 WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF CHURCHILL COUNTY
10 DOES HEREBY FIND THAT BECAUSE OF THE POPULATION AND LOCATION OF
11 CHURCHILL COUNTY NEVADA, IT IS NOT ECONOMICALLY FEASIBLE FOR MORE
12 THAN ONE ENTITY TO BE PROFESSIONALLY STAFFED AND HAVE THE REQUIRED
13 EQUIPMENT AVAILABLE TO PROVIDE MAINTENANCE SERVICES FOR ALL PRIVATE
14 AUTOMATIC BRANCH EXCHANGE SYSTEMS, ALONG WITH ASSOCIATED
15 COMMUNICATION DISTRIBUTION AND TRANSMISSION SYSTEMS, WITH THE
16 ABILITY TO SERVE 400 OR MORE TELEPHONE STATIONS CONNECTED TO THE
17 CHURCHILL COUNTY TELEPHONE SYSTEM, AND

18 WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF CHURCHILL COUNTY
19 DOES HEREBY FIND THAT COMPETITIVE MARKET CONDITIONS FOR THE
20 MAINTENANCE AND REPAIR OF LARGE PRIVATE AUTOMATIC BRANCH EXCHANGE
21 SYSTEMS ALONG WITH ASSOCIATED COMMUNICATION DISTRIBUTION AND
22 TRANSMISSION SYSTEMS WILL CREATE UNFAIR AND UNREASONABLE
23 COMPETITION TO THE DEGREE THAT THE CHURCHILL COUNTY TELEPHONE
24 SYSTEM WOULD NO LONGER BE ABLE TO PROVIDE SATISFACTORY MAINTENANCE
25 SERVICE TO ALL CUSTOMERS AND MAINTAIN UNIVERSAL TELEPHONE SERVICE
26 TO THE RESIDENTS OF CHURCHILL COUNTY, AND

27 WHEREAS, THE BOARD OF COUNTY COMMISSIONERS DOES HEREBY FIND
28 THAT THE INABILITY OF THE CHURCHILL COUNTY TELEPHONE SYSTEM TO

1 PROVIDE MAINTENANCE SERVICES TO ALL CUSTOMERS IS NOT IN THE PUBLIC
 2 INTEREST AND WILL COMPROMISE THE HEALTH, SAFETY AND GENERAL WELFARE
 3 OF THE CITIZENS OF CHURCHILL COUNTY, AND

4 WHEREAS, THE BOARD OF COUNTY COMMISSIONERS OF CHURCHILL COUNTY
 5 DOES HEREBY FIND THAT, IN ORDER TO CONTINUE TO PROVIDE REASONABLY
 6 ADEQUATE SERVICE TO ALL OF ITS TELEPHONE SUBSCRIBERS AND TO
 7 MAINTAIN UNIVERSAL TELEPHONE SERVICE IN CHURCHILL COUNTY, IT IS
 8 NECESSARY AND PROPER TO PROVIDE THAT THE CHURCHILL COUNTY TELEPHONE
 9 SYSTEM BE THE SOLE PROVIDER OF MAINTENANCE AND REPAIR SERVICES FOR
 10 ALL PRIVATE AUTOMATIC BRANCH EXCHANGE SYSTEMS, ALONG WITH
 11 ASSOCIATED COMMUNICATION DISTRIBUTION SYSTEMS, WITH THE ABILITY TO
 12 SERVICE 400 OR MORE TELEPHONE STATIONS CONNECTED TO THE CHURCHILL
 13 COUNTY TELEPHONE SYSTEM IN CHURCHILL COUNTY, NEVADA.

14 THEREFORE, PURSUANT TO THE AUTHORITY GRANTED BY THE NEVADA
 15 LEGISLATURE IN NRS SECTION 710.010-710.140 ET SEQ. AND NRS CHAPTER
 16 244, THE BOARD OF COUNTY COMMISSIONERS OF CHURCHILL COUNTY DOES
 17 HEREBY ORDAIN AS FOLLOWS:

18 SECTION 1

19 Purpose. To provide and maintain universal telephone service to
 20 the residents of Churchill County, it is necessary that the
 21 Churchill County Telephone System be the sole and exclusive
 22 provider of maintenance and repair services for all private
 23 automatic exchange systems, along with associated communication
 24 distribution and transmission systems, with the ability to serve
 25 400 or more telephone stations connected to the Churchill County
 26 Telephone System.

27 SECTION 2

28 Definitions. Definitions given in this section govern the

1 construction of this ordinance.

2 1. "Private Automatic Branch Exchange (PABX)" means the local
3 automated telephone office serving stations in a business complex
4 and providing access to public and/or private networks.

5 2. "Communication Distribution and Transmission Systems" means all
6 equipment and facilities, as defined by the FCC in the Code of
7 Federal Regulations, Title 47, Part 32, Section 32.2230 through
8 32.2441 inclusive, that transmit information between two or more
9 points by means of radio, wire, copper cable, fiber cable,
10 satellite, or other media.

11 SECTION 3

12 Churchill County Telephone System has the exclusive right to
13 provide maintenance and repair services for all private automatic
14 branch exchange systems, along with associated communication
15 distribution and transmission systems, with the ability to serve
16 400 or more telephone stations connected to the Churchill County
17 Telephone System.

18 As the sole and exclusive provider of maintenance and repair
19 services for all such systems, Churchill County Telephone System
20 shall furnish reasonably adequate service and the charges made for
21 such service must be just and reasonable as determined by the Board
22 of County Commissioners of Churchill County, Nevada.

23 SECTION 4

24 If any section of this ordinance or portion thereof is for any
25 reason held invalid or unconstitutional by any court of competent
26 jurisdiction, such holding shall not invalidate the remaining parts
27 of this ordinance.

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SECTION 5

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

PROPOSED on this 15th day July, 1992.

PASSED on the 6th day of August, 1992.

AYES: Cyril Schank

James Regan

James Carter

NAYS: None

ABSENT: None

BY: Cyril Schank
Chairman

Attest:

Ruby Anderson
Ruby Anderson, Clerk of the Board

EXHIBIT “F”



CHURCHILL COUNTY TELEPHONE & TELEGRAPH SYSTEM

P.O. BOX 1390 • 50 WEST WILLIAMS AVENUE • FALLON, NEVADA 89407-1390
(702) 423-7171

THE ONLY COUNTY OWNED TELEPHONE SYSTEM

97 NOV 25 PM 4:05

November 24, 1997

Jeanne Reynolds
Commission Secretary
Public Utilities Commission of Nevada
727 Fairview Drive
Carson City, NV 89710

PUBLIC UTILITIES COMMISSION
DOCKET No. <u>97-11053</u>
<u>JCA-LTE-CTT</u>

Re: Application of Churchill County Telephone & Telegraph System
for Designation as Eligible Telecommunications Carrier
Our File No.

Dear Ms. Reynolds:

Enclosed for filing please find an original and nine copies of the captioned application, together with a check for \$200.00 as the filing fee. Also enclosed is a tenth copy of the document, which we ask that you stamp and return in the enclosed envelope.

This application does not precisely fit any of the categories on your schedule of fees. If some other filing fee is more appropriate, please advise the undersigned. Please also call with any questions about the filing.

Sincerely,

Don Mello,
General Manager

Enclosures

cc: Kelley Jackson, PUCN
Sharon Thomas, PUCN
Bureau of Consumer Protection

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In the Matter of the Application of)
Churchill County Telephone &)
Telegraph System to be Designated)
as an Eligible) Docket No.
Telecommunications Carrier)

**APPLICATION OF CHURCHILL COUNTY TELEPHONE & TELEGRAPH
SYSTEM**

1. Churchill County Telephone & Telegraph System, Inc. (Churchill) respectfully presents its application to the Commission for designation as an "Eligible Telecommunications Carrier" (ETC) entitled to receive federal universal service support pursuant to section 254 of the Telecommunications Act of 1996 (TA 96) and the rules set forth in the Federal Communication Commission's Report and Order on Universal Service (FCC 97-157). Churchill is an incumbent "rural telephone company" under the criteria specified in TA96. Churchill meets the requirements established by the Nevada Public Utilities Commission (NPUC) of a small provider of last resort. Churchill is operated by Churchill County and is authorized to provide service in its service territory by the Churchill County Board of County Commissioners. Communications with respect to the within application should be directed to Churchill's General Manager.

Don Mello, General Manager
Churchill County Telephone & Telegraph System
P.O. Box 1390
Fallon, Nevada 89407-1390
Telephone 702/423- 7171
Facsimile 702/423-2326

2. Section 214 (e) of TA 96 provides for state commissions, upon their own motion or upon request, to designate common carriers which satisfy applicable criteria as ETCs under TA 96. In the case of rural telephone companies such as Churchill, the ETC designation is to apply to the company's entire service area, which corresponds to its "study area" under FCC rules and procedures. The Commission on November 6, 1997 adopted new provisions of the Nevada Administrative Code dealing with the ETC designation process. Churchill has prepared this application to be consistent with these recently adopted rules. However, because of the short time for the company's review, should the Commission determine it necessary Churchill will amend or supplement the application to conform to the final rules.

3. Churchill hereby certifies to the Commission that it meets the FCC and Federal statutory requirements and the Commission's rules for designation as an ETC.

(a) Churchill uses its own facilities to provide the services supported by federal universal service funding within its service area. Churchill does provide and will provide throughout its service territory the following services consistent with their definitions in FCC Order 97-157: (1) single party voice grade access to the public switched network, (2) local usage, (3) dual tone multi-frequency signaling or its functional equivalent, (4) access to emergency services, (5) access to operator services, (6) access to interexchange services, (7) access to directory assistance, and (8) toll blocking. For technical reasons, Churchill is not able to offer the "toll control" portion of the FCC's toll limitation service and requests a waiver of that requirement as set forth below.

(b) Churchill will also provide Lifeline and Link Up services to its qualifying low income customers, in accordance with FCC requirements and the requirements of this Commission. As a designated ETC, Churchill will not disconnect Lifeline customers for non-payment of toll charges and will not collect service deposits from customers who elect toll blocking. Churchill has submitted to its County Commissioners for approval, modifications to its existing Lifeline and Link Up programs to make them in compliance with the revised requirements and to be effective on January 1, 1998.

(c) Churchill intends to advertise, at least every 3 months, the availability of its services supported by the federal universal service program and the rates and charges applicable to those services through prominent presentation in one or more forms of media of general distribution, including, without limitation, newspapers, television or radio.

4. Churchill requests waiver by the Commission of the criteria for Toll Control. Churchill is unable to offer the defined "toll control" service. The technology required to provide toll control is not available at the present time in the telephone industry. Toll control would require the ability of the local exchange carrier to offer both real-time rating of calls from all toll providers and the ability to interrupt calls in progress when the customer-specified dollar limitation of toll services was met. Neither the hardware nor the software that would be required to provide this service now exists, and for that reason it is not available to Churchill or any other local exchange carrier. Further, even if the necessary systems were to

be developed, it is unknown whether all toll carriers would be willing to provide toll usage data to Churchill and other local exchange carriers due to the proprietary nature of toll usage in the competitive marketplace.

The FCC has been apprised of the lack of availability of the technology needed to provide toll control and has been asked to modify its overall toll limitation requirement. Until the FCC and the Commission act to clarify requirements in this area, it is unlikely that the new technologies needed to provide toll control will be developed. Churchill believes that the lack of availability of the required technology and the uncertainty whether the technology will be developed and what its cost would be if it were developed constitutes “exceptional circumstances” justifying a waiver under the terms of FCC Order 97-157 and the Commission’s rules. Churchill asks the Commission to provide a 24 month waiver of the requirement that Churchill provide toll control and further require submission of a status report to the Commission Secretary on toll control at the end of 18 months, so it can be determined whether the service can be offered within the 24 month waiver period or whether an additional extension will be required.

WHEREFORE, Churchill prays that the Commission act upon and grant the foregoing application and:

- (1) Designate Churchill County Telephone & Telegraph System as an eligible telecommunications carrier under section 214 (e) of the Telecommunications Act of 1996

and as a rural telephone company under the Act, with respect to Churchill's entire service area;

(2) Grant Churchill the 24 month waiver of the toll control requirement as requested above in this application; and

(3) Grant such other and further relief as may be proper in the premises.

Respectfully submitted this November ____, 1997.

**CHURCHILL COUNTY TELEPHONE &
TELEGRAPH SYSTEM**

By _____
Don Mello
Its General Manager

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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In re Filing of Application by)
Lincoln County Telephone System,)
Inc. pursuant to 47 U.S.C. Section)
214(e) for designation as an)
Eligible Telecommunications Carrier)
_____)

Docket No. 97-11024

In re Filing of Application by Rio)
Virgin Telephone Company pursuant to)
47 U.S.C. Section 214(e) for)
designation as an Eligible)
Telecommunications Carrier)
_____)

Docket No. 97-11025

In re Filing of Application by Rural)
Telephone Company pursuant to)
47 U.S.C. Section 214(e) for)
designation as an Eligible)
Telecommunications Carrier)
_____)

Docket No. 97-11030

In re Filing of Application by Filer)
Mutual Telephone Co. pursuant to)
47 U.S.C. Section 214(e) for)
designation as an Eligible)
Telecommunications Carrier)
_____)

Docket No. 97-11041

In re Filing of Application by)
Churchill County Telephone &)
Telegraph System, Inc. pursuant to)
47 U.S.C. Section 214(e) for)
designation as an Eligible)
Telecommunications Carrier)
_____)

Docket No. 97-11053

At a general session of the Public
Utilities Commission of Nevada, held
at its offices on December 30, 1997.

PRESENT: Chairman Judy M. Sheldrew
Commissioner Timothy Hay
Commissioner Lucy Stewart
Commission Secretary Jeanne Reynolds

ORDER

The Public Utilities Commission of Nevada ("Commission") makes the following findings of fact and conclusions of law:

1. On November 17, 1997, Lincoln County Telephone System, Inc. ("Lincoln") and Rio Virgin Telephone Company ("Rio") filed applications with

- Single-party service;
- Access to emergency services;
- Access to operator services;
- Access to interexchange service;
- Access to directory assistance; and
- Toll limitation services for qualifying low-income consumers.

2. Applicants are certificated providers of Last Resort. Applicants state that they are rural carriers and that their Nevada service areas are the same as their study areas. Applicants further state that, with the exception of toll limitation, they each provide the services required by 47 CFR Section 54.101, they each offer these services using their own facilities, and they each intend to advertise the availability of such services and the charges therefor using media of general distribution. In order to complete necessary network upgrades, Applicants each request a two-year waiver of the requirement to provide toll limitation service.

3. The applications come within the authority and jurisdiction of the Commission pursuant to 47 U.S.C. Section 214(e) and Chapters 703 and 704 of the Nevada Revised Statutes ("NRS") and Nevada Administrative Code ("NAC"), including the Commission's Rule on Universal Service adopted in Docket No. 97-5018 on November 6, 1997.

4. The Commission issued a public notice and pendency of hearing of Lincoln, Rio, and Rural's applications for comment and intervention on November 24, 1997. A public hearing for Lincoln was set for December 23, 1997, a public hearing for Rio was set for December 22, 1997, and a public hearing for Rural was set for December 19, 1997. No Protests or Petitions for Leave to Intervene were received on or before the deadline of December 17, 1997. The Commission issued a public notice and pendency of hearing of Filer's application for comment and intervention on December 3, 1997 and for Churchill's application on December 4, 1997. Public hearings for Filer and Churchill were set for December 29, 1997. No Protests or Petitions for Leave to Intervene for either carriers' application were received on or before the

deadline of December 24, 1997. Pursuant to the provisions of NRS 703.320, the Commission may dispense with the hearings under these circumstances.

5. The Regulatory Operations Staff of the Commission ("Staff") has completed its review of these applications. Staff concludes that, with the exception of toll limitation, each Applicant provides all the services required by 47 U.S.C. Sections 214(e) and 254(c). Staff believes that exceptional circumstances exist such that Applicants should each be granted a two-year exemption from the provision of toll control services. Staff recommends that the applications be granted and that the Commission issue an Order designating each of Lincoln County Telephone System, Inc., Rio Virgin Telephone Company, Rural Telephone Company, Filer Mutual Telephone Co., and Churchill County Telephone & Telegraph System, Inc. as an Eligible Telecommunications Carrier with a two-year exemption from providing toll control services.

6. It is in the public interest to accept Staff's recommendations and designate each of Lincoln County Telephone System, Inc., Rio Virgin Telephone Company, Rural Telephone Company, Filer Mutual Telephone Co., and Churchill County Telephone & Telegraph System, Inc. as an Eligible Telecommunications Carrier with a two-year exemption from providing toll control services.

THEREFORE, based upon the foregoing findings and conclusions, it is ORDERED that:

1. The applications of Lincoln County Telephone System, Inc., Rio Virgin Telephone Company, Rural Telephone Company, Filer Mutual Telephone Co., and Churchill County Telephone & Telegraph System, Inc. designated as Docket Nos. 97-11024, 97-11025, 97-11030, 97-11041, and 97-11053, respectively, are hereby GRANTED.

2. Lincoln County Telephone System, Inc., Rio Virgin Telephone Company, Rural Telephone Company, Filer Mutual Telephone Co., and Churchill County Telephone & Telegraph System, Inc. are hereby each DESIGNATED as an Eligible Telecommunications Carrier.

3. Lincoln County Telephone System, Inc., Rio Virgin Telephone

Company, Rural Telephone Company, Filer Mutual Telephone Co., and Churchill County Telephone & Telegraph System, Inc. are hereby each GRANTED a two-year exemption from providing toll control services.

4. The Commission retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order.

By the Commission,

Jeanne Reynolds

JEANNE REYNOLDS, Commission Secretary

Dated: Carson City, Nevada

12/30/97

(SEAL)