

customers for service in metropolitan locations.”² Contrary to SouthEast’s claim, the Commission established rules in full recognition of the fact that some CLECs might provide service in both rural and nonrural areas (even incidentally). Thus, the Commission stated that “if any portion of a CLEC’s access traffic originates from or terminates to end users located within either of these two types of [nonrural] areas, the carrier will be ineligible for the rural exemption to our benchmark rule.”³ The Commission could not be clearer: providing **any** service in a nonrural area disqualifies a carrier from obtaining the rural exemption. The Commission could have adopted a rule that permitted 1 percent or 2 percent or 5 percent or some other arbitrary percentage of the CLEC’s traffic to originate or terminate in a nonrural area, but it did not. Instead, after thorough review of the record, the Commission adopted a bright-line test as serving the public interest. SouthEast has presented nothing new to call into question the wisdom of the Commission’s order or that would justify a waiver.

Indeed, SouthEast provides no factual information to support its petition. Simply stating that 95 percent of their customers are in a rural area does not provide any indication of the amount of nonrural traffic SouthEast terminates or originates. All that a carrier need do to have substantial nonrural traffic is to serve a call center, a repair center, a service center or an ordering facility for a single business in a nonrural area. In such a scenario, all of the carrier’s customers except one could be rural, but the traffic volumes would reflect a substantially different mix.

Apart from the absence of factual data to support the waiver request, SouthEast provides no suggestion as to how the waiver would be administered. Most certainly, SouthEast’s business is not static. Whatever circumstances characterize the business today will inevitably change.

² SouthEast Petition at 5.

³ *CLEC Access Charge Order*, 16 FCC Rcd at 9954, ¶ 76.

SouthEast does not indicate how it would advise the Commission that over time it continues to qualify for the waiver, if such a waiver were granted, or what facts would trigger the cessation of the waiver. SouthEast makes no attempt to address the data reporting that would be necessitated by grant of such a waiver. Simply put, the administrative complications associated with the type of waiver sought by SouthEast are precisely the headaches the Commission sought to avoid by establishing the bright-line test for the rural exemption.

SouthEast's petition fails to make a compelling case for a waiver. Instead, it is an invitation for the Commission to create an administrative morass surrounding the rural exemption. The one certainty is that, were the Commission to grant SouthEast a waiver, notwithstanding the absence of support, then there will be a flood of similar requests, each stretching the rural exemption to meet each specific carrier's circumstance. Eventually the waivers would effectively eliminate the rule.

Accordingly, the Commission should deny SouthEast's request.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of April 2004 served the parties of record to this action with a copy of the foregoing **BELLSOUTH'S OPPOSITION** via U.S. Mail or electronic mail to the following parties:

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