

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
Union Telephone Company ) CC Docket No. 96-61  
)  
Petition for Waiver of Sections 64.1903(a)(2) and )  
64.1903(b) of the Commission's Rules )

MAR 14 2007

MAR 20 2007

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## ORDER

Adopted: March 14, 2007

Released: March 14, 2007

By the Chief, Wireline Competition Bureau:

1. In this Order, we deny Union Telephone Company's (Union) petition for waiver of sections 64.1903(a)(2) and 64.1903(b) of the Commission's rules to allow the continued provision of long distance services to its rural customers without structural changes.<sup>1</sup> Specifically, Union stated in its petition that it owns transmission facilities in Colorado, Utah, and Wyoming and was seeking a waiver of the requirement that all incumbent local exchange companies, except "pure" resellers, must establish a separate subsidiary for the purpose of providing in-region interexchange telecommunication services.<sup>2</sup> We conclude that the issues raised in this proceeding are being considered in the Commission's *Structural Separation* proceeding and that Union presents no special circumstance to warrant a waiver of the Commission's rules.<sup>3</sup>

2. In the Commission's *Structural Separation* proceeding, the Commission sought comment on, among other things, whether the application of the separate affiliate requirement for incumbent independent local exchange carriers (LECs) serves the public interest.<sup>4</sup> In a further notice of proposed rulemaking, the Commission sought comment on, among other things, whether it should classify independent LECs as non-dominant or dominant in their provision of in-region, interstate and international interexchange telecommunications services absent adherence to the separate affiliate requirements currently imposed on independent LECs.<sup>5</sup>

<sup>1</sup> See Union Telephone Company; Petition for Waiver of Sections 64.1903(a)(2) and 64.1903(b) of the Commission's Rules, CC Docket No. 96-61, Petition for Waiver of Union Telephone Company (filed Aug. 30, 1999) (Petition); see also *Pleading Cycle Established for Comments on Union Telephone Company Petition for Waiver of Sections 64.1903(a)(2) and 64.1903(b) of the Commission's Rules*, CC Docket No. 96-61, Public Notice, 14 FCC Rcd 16244 (1999).

<sup>2</sup> Petition at 1-2.

<sup>3</sup> See Section 272(f)(1) *Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112; CC Docket No. 00-175, Further Notice of Proposed Rulemaking, 18 FCC Rcd 10914 (2003) (*Structural Separation Further Notice*) (citing 2000 Biennial Regulatory Review *Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, Notice of Proposed Rulemaking, 16 FCC Rcd 17270 (2001) (*Structural Separation Notice*)).

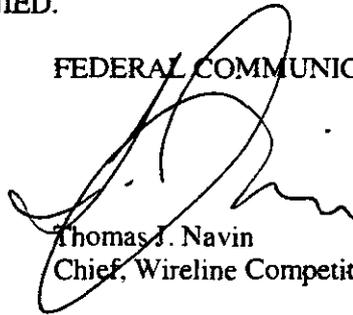
<sup>4</sup> See *Structural Separation Notice*, 16 FCC Rcd at 17273, para. 8.

<sup>5</sup> See *Structural Separation Further Notice*, 18 FCC Rcd at 10934-36, paras. 41-43.

3. Union has not demonstrated good cause to justify a waiver.<sup>6</sup> In particular, we find that Union has not carried its burden of demonstrating special circumstances that would distinguish it from similarly situated independent LECs and warrant a waiver of the rules.<sup>7</sup> The Commission is considering in the *Structural Separation* proceeding the issues raised in Union's petition as they apply to all similarly situated incumbent LECs. Thus, Union's concerns will be addressed in the context of that broader proceeding, and we conclude that granting Union a waiver of section 64.1903(a)(2) and 64.1903(b) of the Commission's rules would not serve the public interest.

4. Accordingly, IT IS ORDERED that pursuant to sections 4(i)-(j), 201, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), 201, and 303(r), and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that the above-referenced petition for waiver is DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Thomas J. Navin  
Chief, Wireline Competition Bureau

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<sup>6</sup> The Commission may waive its rules when good cause is demonstrated. 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972). The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> Commission rules are presumed valid and an applicant for waiver bears a heavy burden. See *WAIT Radio*, 418 F.2d at 1157. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest. See *id.* at 1159.