

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of AT&T's petition ) Application No. C-1400  
for arbitration pursuant to )  
§252(b) of the Telecommunications ) MOTION DENIED  
Act of 1996 to establish an )  
interconnection agreement with )  
GTE of the Midwest, Inc. ) Entered: October 15, 1996

APPEARANCES:

For GTE of the Midwest:  
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For the Commission Staff:  
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Legal Counsel  
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Lincoln, NE 68508

For AT&T Communications:  
Wallace Richardson  
Knudsen, Berkheimer, et al  
1400 NBC Center  
Lincoln, NE 68508

On August 16, 1996, AT&T of Denver, Colorado filed a petition for arbitration pursuant to §252(b) of the Telecommunications Act of 1996 (the "Act") to establish an interconnection agreement with GTE of the Midwest, Inc.

Notice of the filing of the petition was published pursuant to the provisions of the Commission's Rules and Regulations. Notice of the application appeared in the Omaha Daily Record on August 21, 1996.

In its petition for arbitration, AT&T requests the Nebraska Public Service Commission (the "Commission") to arbitrate issues which remain unresolved in the interconnection negotiations between AT&T and GTE of the Midwest, Inc.

On August 30, 1996, GTE of the Midwest, Inc. filed a Motion for Dismissal of all § 251(c) claims filed in this petition. Oral arguments were held September 25, 1996 in the Commission Hearing Room with Commissioner Rod Johnson chairing the proceeding. Appearances were made on behalf of GTE of the Midwest, Inc., AT&T, and the staff.

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The Act, under 47 USC 251(f), exempts rural telephone companies from the obligations imposed on incumbent local exchange carriers in 47 USC 251(c). GTE claims that it fits the federal definition of a rural telephone company found in 47 USC 153(47)(C) and (D) and therefore, should be exempted from the requirements of §251(c). Moreover, GTE argues its exemption is within the spirit, as well as the letter of the Act.

AT&T argues that the Commission should deny GTE's motion. AT&T contends that it was Congress' intent to focus on companies at the holding company level and not at the subsidiary level. Furthermore, AT&T contends that GTE has waived its right to continue to claim its exempt status as a rural telephone company under §251(c) by virtue of its silence for three months, and by virtue of its active participation in negotiations.

#### O P I N I O N   A N D   F I N D I N G S

The Commission believes that the intent of the Act is clear. The Federal Communication Commission ("FCC") in its recent interconnection order provided that, under §251(f)(2) of the Act, the test for suspension or modification of §251 requirements should be examined at the holding company level. The FCC further found that any other interpretation would permit almost any company, including Bell Atlantic, Ameritech and GTE affiliates, to take advantage of the provisions. CC Docket No. 96-98, First Report and Order at 605, Paragraph 1264 (FCC August 8, 1996).

Furthermore, the Conference Report issued by a joint meeting consisting of members of the U.S. Senate and the House of Representatives, clearly demonstrate that the Senate intended §251 to provide a level playing field, particularly when a company or carrier to which this subsection applies faces competition from a telecommunications carrier that is a large global or nationwide entity. The legislative history of §251(f)(1) clearly suggests the rural exemption was intended for those companies facing competition that do not have the nationwide financial and technological resources as that of the competitor. House Report, 104-458, P. 254 (January 31, 1996).

Though there is not a specific rule under §251(f)(1), GTE of the Midwest (an affiliate of GTE Corporation) should not be considered a rural telephone company. The GTE Corporation is a multinational conglomerate, with large financial resources. GTE is the largest local telephone provider in the United States, and is a recognized leader in the development of telecommunication technology.

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Upon consideration of the motion, and being fully advised, the Commission is of the opinion that GTE of the Midwest does not qualify for the rural exemption, and the motion should be denied.

O R D E R

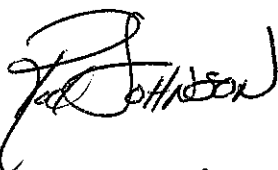
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion for Dismissal of §251(c) claims made by GTE under Application No. C-1400 be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska this 15th day of October, 1996.

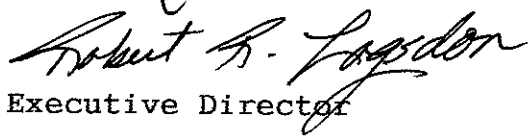
COMMISSIONERS CONCURRING:

  
//s//Rod Johnson  
//s//Frank Landis

NEBRASKA PUBLIC SERVICE COMMISSION

Chairman 

ATTEST:

  
Executive Director

