STATEMENTS OF POLICY

Title 4—ADMINISTRATION

PART II. EXECUTIVE BOARD

[4 PA. CODE CH. 9]

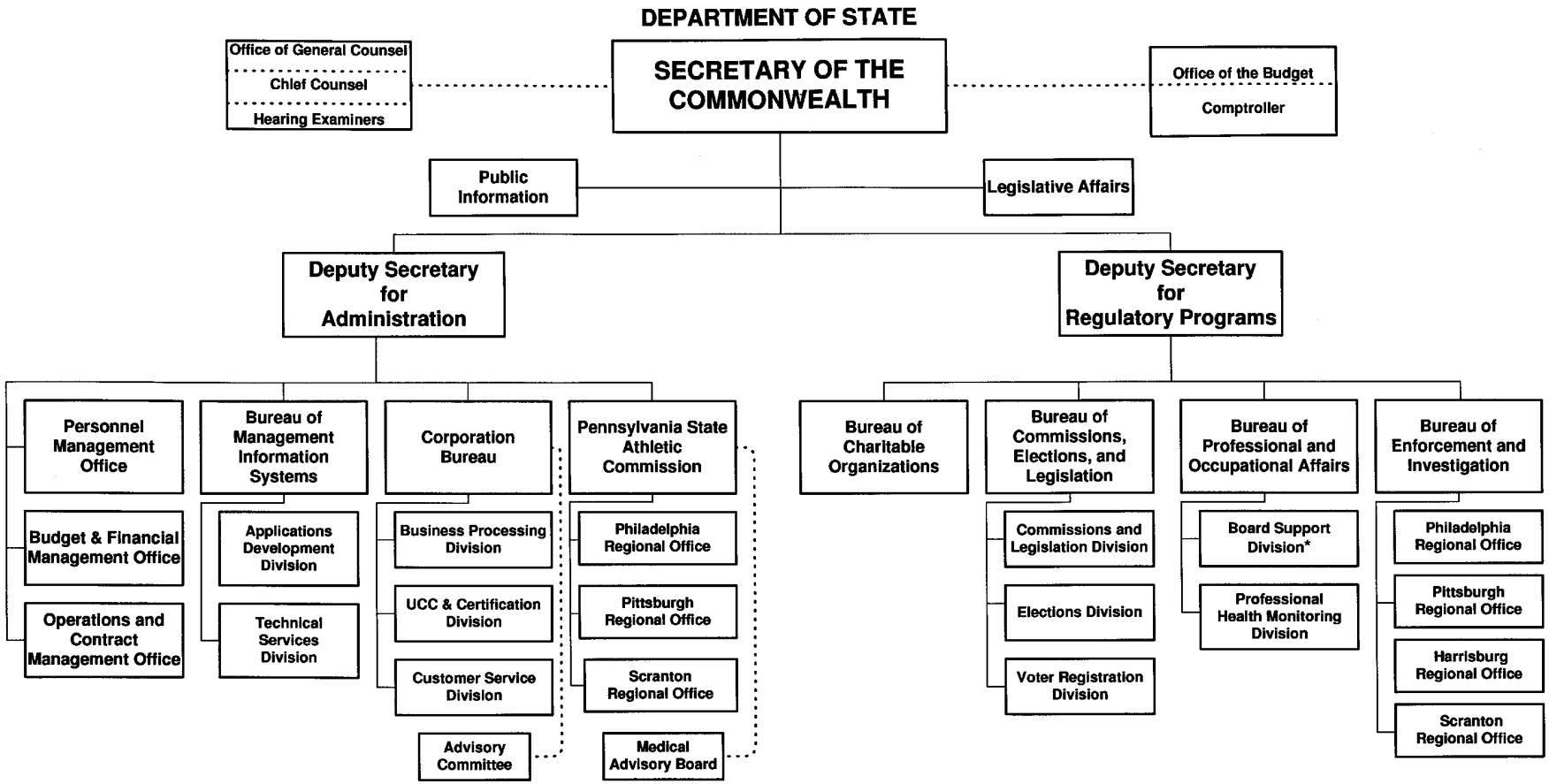
Reorganization of the Department of State

The Executive Board approved a reorganization of the Department of State effective July 24, 1996.

The organization chart at 26 Pa.B. 3850 (August 10, 1996) is published at the request of the Joint Committee on Documents under 1 Pa. Code § 3.1(a)(9) (relating to contents of code).

(*Editor's Note*: The Joint Committee on Documents has found organization charts to be general and permanent in nature. This document meets the criteria of 45 Pa.C.S. § 702(7) as a document general and permanent in nature which shall be codified in the *Pennsylvania Code*.)

[Pa.B. Doc. No. 96-1300. Filed for public inspection August 9, 1996, 9:00 a.m.]



Professional & Occupational Affairs Licensing Boards and Commissions (27)

***Board Support Division provides direct administrative support to the following Professional Licensing Boards and Commissions.**

State Board of Accountancy
State Architects Licensure Board
State Board of Auctioneer Examiners
State Board of Barber Examiners
State Board of Chiropractic
State Board of Cosmetology
State Board of Dentistry
State Board of Funeral Directors
State Board of Landscape Architects
State Board of Medicine
State Board of Vehicle Manufacturers, Dealers, and Salespersons
Navigation Commission for the Delaware River
State Board of Nursing
State Board of Examiners of Nursing Home Administrators
State Board of Occupational Therapy, Education and Licensure
State Board of Optometry
State Board of Osteopathic Medicine
State Board of Pharmacy
State Board of Physical Therapy
State Board of Podiatry
State Registration Board for Professional Engineers
State Board of Psychology
State Real Estate Commission
State Board of Social Work Examiners
State Board of Examiners in Speech-Language and Hearing
State Board of Veterinary Medicine
State Board of Certified Real Estate Appraisers

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION
[52 PA. CODE CH. 69]

[M-960799]

Rescission of Policy Statement; Implementation of Telecommunications

The Pennsylvania Public Utility Commission (Commission) on May 23, 1996, adopted an order that rescinded the policy statement at § 69.311 (relating to expanded interconnections for intrastate special access—statement of policy). The Commission's action is due to the implementation of the Telecommunications Act of 1996. The contact person is Maureen Scott, Assistant Counsel, Law Bureau, (717) 787-3639.

Public Meeting held
May 23, 1996

Commissioners Present: John M. Quain, Chairperson, Dissenting in part—Statement follows; Lisa Crutchfield, Vice Chairperson; John Hanger; David W. Rolka, Statement follows; Robert K. Bloom

Order

By the Commission:

A. *Introduction*

On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 (Act) into law. As the first legislative reform of the nation's telecommunications industry in 62 years, the Act is a landmark piece of legislation designed to establish a National policy framework to lead the United States into the 21st century. While the Act is generally consistent with the Public Utility Code, including Chapter 30, which, in 1993, provided for telecommunications regulatory reform at the state level, the Act is far reaching and requires all 50 states to take action to accommodate and implement its provisions.

In recognizing the Act's immediate impact, this Commission acted quickly and on March 14, 1996, entered a Tentative Decision at M-00960799 identifying a variety of issues pertaining to the effects and necessary implementation of the Act. While as to some issues the Act's effects seemed relatively clear, the Commission felt it was appropriate to seek comment from interested parties on all issues before finalizing our view on any issue. In the Tentative Decision, the Commission stated as follows:

> Within this scenario, there are many provisions of the Act which raise questions as to what steps, if any, the Commission must take to assure that its regulation of the telecommunications industry is fully consistent with Federal law. These provisions of the Act can be divided into two categories for purposes of discussion. First, there are preemptive provisions which appear to eliminate or restrict the ability of the Commission to regulate or act in a certain manner. Second, there are enabling provisions of the Act which assign new areas of activity to the states and appear to assign new responsibilities to the Commission in participating in the implementation of the national policy framework.
>
> In this regard, although the ultimate goal of the Act is to move toward a deregulated, competitive environment, the transition process envisioned by the Act is clearly one involving very complex and far reaching regulatory activity by both the FCC and various state commissions—regulatory activity which appears, at least on its face, to be more complex and resource and time consuming than previously encountered by the Commission in some areas. While ultimately, through development of a fully competitive business environment in all telecommunications markets, the Commission's and FCC's regulatory roles should start to significantly decrease, the period of transition involves a quickly changing but extremely active role by the Commission in participating in the implementation of both state and Federal law.

In issuing the Tentative Decision, the Commission solicited public comment in two separate formats. First, on April 3, 1996, the Commission held a public forum on all Federal Act implementation issues. Many interested parties actively participated in the public forum and provided a lively discussion of the Tentative Decision and surrounding issues.

Second, the Tentative Decision was published at 26 Pa.B. 1456 (March 30, 1996) and established a 30-day public comment period from the date of publication. Comments to the Tentative Decision were filed by the Office of Small Business Advocate (OSBA), GTE North, Inc. (GTE), the Pennsylvania Telephone Association (PTA), the Office of Consumer Advocate (OCA), the Pennsylvania Cable and Telecommunications Association (PCTA), the Telecommunications Resellers Association (TRA), Vanguard Cellular Systems, Inc. (Vanguard), Teleport Communications Group, Inc. (TCG), AT&T Communications of Pennsylvania, Inc. (AT&T), the Competitive Telecommunications Association (CompTel), Nextlink Pennsylvania, L.P. (Nextlink), Eastern Telelogic Corporation (ETC), MFS Intelenet of Pennsylvania, Inc. (MFS), The United Telephone Company of Pennsylvania and Sprint Communications Company, L.P. (Sprint/United), the Central Atlantic Payphone Association (CAPA), ALLTEL Pennsylvania, Inc. (ALLTEL), MCI Telecommunications Corporation (MCI) and Bell Atlantic—Pennsylvania, Inc. (Bell). Generally speaking, the comments were well developed and were extremely responsive to the issues and concerns raised by the Commission.

The Tentative Decision structured the debate over implementation of the Act into nine separate sections. We will structure this order similarly in addressing the comments of the parties and in finally resolving these issues.

B. *Discussions of Issues*

1. **Entry**

a. *Traditional Procedures*

Historically, the Commission has regulated the entry of telecommunications carriers through review of entry applications filed under section 1101 of the Public Utility Code, 66 Pa.C.S. § 1101. Notice of filing is required to be published in the *Pennsylvania Bulletin* and newspapers of general circulation in the proposed service territory pursuant to Commission regulations at 52 Pa. Code § 5.14(a).[1]

Pursuant to 52 Pa. Code § 5.14(b), upon publication, applications are subject to a 15-day protest period. If no protests are filed, the application is reviewed by the Commission on the documents. If one or more protests is filed, the application is referred to the Office of Administrative Law Judge for oral hearing. In either case, the

[1] In 1993, an exception to this general rule was established through exercise of 52 Pa. Code § 5.14(a)(4) for interexchange resellers. Under this exception, resellers' applications are not required to be published and the only required notice is service on the OCA and OSBA.

Commission ultimately formally adjudicates the applications at Public Meeting and, by statute, may not approve an application unless it finds that grant of the application is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa.C.S. § 1103(a).

In applying the "necessary or proper" standard, the Commission has traditionally reviewed the fitness of the entrant (both technical and financial) to provide the proposed services in the application area and the need for the service, taking into account public policy concerns pertaining to the appropriate amount of competition, if any, in various telecommunications markets. Under this scenario, there has historically been two distinct types of protests brought before the Commission—fitness protests challenging the fitness of the application and competitive protests challenging the need or the appropriateness of the service proposed by the applicant.

Under these procedures, applications decided on the documents typically were adjudicated at Public Meeting 90—120 days from the date of filing. Applications decided through the oral hearing process typically were adjudicated at Public Meeting 7—12 months from the date of filing.

b. *Provisions of the Federal Act*

In the Tentative Decision, we acknowledged the likelihood that the Act would require some modification of traditional entry procedures applicable to telecommunications carriers. We noted that interpretation of the extent of required modification was focused on the interplay between Section 253(a) of the Act and Section 253(b) of the Act. In this regard, Section 253(a) of the Act provides as follows:

> (a) IN GENERAL.—No state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

As read together with Section 253(b) which provides:

> (b) STATE REGULATORY AUTHORITY.—Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services and safeguard the rights on consumers.

Upon initial review of these subsections, we suggested that Section 253(a) could be accommodated through conversion of the traditional certification process to a registration process and requested comment on this issue. Virtually all commentators provided input on the entry issue. The recommendations covered a wide range of potential modifications to the Commission's entry process and contained many helpful suggestions.

OSBA, AT&T, MCI, TRA and ETC opine that Section 253(a) has preempted the certification process and that the Commission must convert to a registration process. Bell, Sprint/United, GTE, ALLTEL and PTA take the position that the certification process can survive as long as the Commission takes steps to abbreviate and streamline entry procedures. OCA argues that certification procedures should not be modified and that a full fitness review and adjudication should continue as a service condition, on a competitively neutral basis. All carriers argue that even if the Commission converts to a registration process, existing carriers should not have to file any additional forms.

c. *New Entry Procedures*

After careful consideration, we believe that a proper balance can be achieved which accommodates Section 253(a)'s prohibition against entry barriers while still safeguarding consumers from potential predatory and illegal practices by irresponsible carriers. The entry procedures we will adopt for all interexchange carrier entrants (both facilities based and resellers) and all local service entrants to non-rural service areas[2] (both facilities based and resellers) are as follows:

1. New entrants seeking to commence the provision of intrastate service in Pennsylvania will file an application with the Commission following the form of application attached as Appendix A to this order. The form of application contains the information required by the Commission to monitor the carrier's activities on an ongoing basis. The form of application includes a fitness affidavit in which the carrier must swear and affirm its ability and commitment to providing the proposed service in full compliance with all provisions of Pennsylvania law. The application shall be accompanied by a proposed or interim tariff, consistent with Commission tariff rules and regulations.

2. An original and two copies of the application must be filed with the Commission's Secretary accompanied by a check for payment of a filing fee in the amount of $250.

3. The new entrant will serve a copy of the application on the OCA, the OSBA, the Commission's Office of Trial Staff and the Attorney General's Bureau of Consumer Protection.

4. The new entrant may commence the provision of service included in the application immediately upon filing and service.

5. Each application will initially be assigned to the Secretary's Office.

6. Consistent with 52 Pa. Code § 5.14(b), a 15-day protest period will be established commencing on the day the application is filed and served. Any interested party may file a protest to an application. However, protests or interventions may only be filed if the protesting party is contesting the fitness of the entrant. Competitive protests or protests opposing other aspects of the entrant's provision of service may not be filed and, if submitted, will be returned by the Commission. Protests shall fully comply with 52 Pa. Code § 5.52(a) and shall "set out clearly and concisely the facts from which the alleged" challenge to the fitness of the applicant is based. An applicant may file an answer to the protest within 10 days of filing. Protests which do not fully comply with Section 5.52(a) will not be accepted for filing by the Commission's Prothonotary. The Commission may consider the imposition of sanctions for parties who are found to intentionally attempt to misuse the protest process.

7. If no legitimate protest is received, the Secretary's Office will schedule the application for consideration by the Commission at Public Meeting as soon as possible with a recommendation that the Commission adopt a Secretarial Letter which issues a certificate of public convenience to the new entrant consistent with the application.

8. Upon approval by the Commission, the Secretarial Letter and a certificate of public convenience will be issued to the carrier. Within 10 days of receiving a certificate of public convenience, the carrier shall file a

[2] Procedures for carriers seeking local service entry into rural service areas will be discussed subsequently.

final tariff which is identical in content to the proposed or interim tariff with the Commission's Tariffs Division.

9. Following the filing of a protest, the application shall be assigned to the appropriate bureau. Staff shall review the protest and determine if the protest raises legitimate concerns as to the fitness of the new entrant. If legitimate concerns as to the fitness are not present, the staff will prepare a recommendation for Commission consideration dismissing the protest and granting the application. If legitimate concerns are raised, the application shall be transferred to the Office of Administrative Law Judge for the conduct of hearings.

10. Any party desiring to oppose either an applicant's proposed or interim tariff or the entrant's final tariff may file a complaint with the Commission which will be treated consistent with existing procedures except as set forth in the following paragraph.

11. The applicant may continue to operate during the pendency of Commission consideration of the application or interim tariff unless the presiding administrative law judge or the Commission determines that public safety and welfare or the protection of consumer rights requires that the applicant cease operations.

Overall, it is clear to us that these new entry procedures strike a fair balance between Section 253(a) and Section 253(b). These procedures cannot reasonably be considered barriers to entry, but maintain adequate procedures to allow the Commission to exercise its very important residual authority. To the extent any of the procedures established today may be viewed as inconsistent with any provision of the Public Utility Code or Commission regulations, we find that continued compliance with such provisions would result in inconsistency with or violation of the Federal Act.

d. *Effect on Pending Applications*

There are presently several telecommunications carrier applications pending before the Commission for which either protests or interventions have been filed. To the extent any pending protest or intervention is not contesting the fitness of the new entrant, the protestant or intervenor shall withdraw the protest or intervention within 5 days of the date this order is entered. If the protest or intervention is intended to contest fitness, the protestant or intervenor shall file a motion within 5 days of the date this order is entered setting forth specific factual allegations which form the basis for the fitness challenge.

If withdrawal of protests or interventions results in a given application becoming unopposed, the application should be treated consistent with the new entry procedures contained herein. If any pending applications remain contested, the applications shall be referred to staff to determine if the protests or interventions contain legitimate fitness issues. In either case, the applicants may commence operations immediately pending administrative review. Carriers which have not filed proposed tariffs with their applications shall do so within 10 days of the date this order is entered.

e. *Rural Telephone Company Exemption.*

In our March 14, 1996 Tentative Decision, we discussed in significant detail the provisions of the Federal Act which specifically address rural telephone companies as follows:

> Another important exception to the removal of intrastate entry barriers by Section 253(a) is found at Section 253(f) of the Act. Section 253(f) appears to establish a limited exception to the preemptive provisions of Section 253(a) applicable only to telephone companies as defined in the Act. Section 253(f) provides in relevant part as follows:
>
> (f) RURAL MARKETS—It shall not be a violation of this section for a state to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements of section 214(e)(1) for designation as an eligible telecommunications carrier for that area being permitted to provide such service . . ..
>
> Section 214(e)(1), referenced in Section 253(f), establishes a designation of eligibility process for universal service funding purposes, as will be discussed in more detail hereafter, which requires carriers to offer basic universal service throughout a given service area and advertise the availability of such service offerings to the consuming public in the service area.[9] Subsection (e)(1) expressly incorporates by reference the requirements contained in subsections (e)(2) and (e)(3). Section 214(e)(2) provides as follows:
>
> (2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS—A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) designated by the State commission. Upon request and consistent with the public interest, a State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional carrier meets the requirements of paragraph (1). Before designating an additional telecommunications carrier for an area served by a rural telephone carrier, the State commission shall find that the designation is in the public interest.
>
> Accordingly, in addition to the obligation to serve commitment required as a prerequisite to universal service support eligibility under subsection (e)(1), subsection (e)(2) requires the state commission to find, for rural telephone companies, that designation is in the public interest.
>
> Finally, Section 251(f) exempts rural telephone companies [footnote omitted] from interconnection requirements and procedures, the details of which will be discussed hereafter, until such time as the rural telephone company receives a bona fide request for interconnection, at which time the state commission is apparently directed to conduct an inquiry to determine whether to require the rural telephone company's compliance with general interconnection requirements. In reaching its determination, the state commission is to consider whether the request for interconnection is unduly economically burdensome, technically

[9] Section 253(f) is a permissive provision, not a mandatory provision. However, the Act appears to envision a potential situation in which entry to a rural service market would be linked to a readiness to serve throughout the service area.

feasible and consistent with universal service principles—a public interest type standard [footnote omitted]. The Commission, at least with regard to the interconnection determination under Section 251(b), is required to act upon the request within 120 days.

While for non-rural telephone companies universal service funding eligibility is considered independently from entry, for rural telephone companies it appears that universal service eligibility and interconnection requirements may be merged into consideration of the appropriateness of entry into a rural telephone company's local service and access service markets as an exception to the entry preemption [footnote omitted]. Under the provisions of the Act cited above, it appears a state commission could consider competitive entry into a rural telephone company's local and access markets at the same time and under the same standard (a public interest finding) as interconnection and universal service funding eligibility for the competitive local exchange carrier seeking to service the rural area.[13] Under this scenario, in applying the public interest standard, the Commission would include in its consideration the "economically burdensome," "technically feasible" and universal service criteria expressed in Section 251(f)(1)(B).

[13] This view is supported by Section 252(g) of the Act which expressly authorizes state commissions to consolidate entry, interconnection and universal service funding eligibility proceedings for rural telephone companies, "to reduce administrative burdens on telecommunications carriers, other parties to the proceedings, and the State Commission in carrying out its responsibilities under this Act."

While there may be a variety of ways to administer the rural telephone company exception to the removal of entry barriers, one of the simplest and most logical ways would be to maintain the existence of rural telephone certificates of public convenience (assuming other § 1101 certificates are cancelled) and to require new entrants into rural telephone company local and access service markets to file an application under Section 1103 which would be reviewed by the Commission within the context of the "necessary or proper" or public interest standard as appears to be required by the Act. Interconnection and universal service funding eligibility for the new entrant would be evaluated through the same application process.[14] The public interest standard employed by the Commission in the consolidated proceeding would be consistent with all express considerations required by the Act as discussed above.

[14] It appears that the 120-day time limitation of Section 251(b) would not be applicable to a consolidated proceeding. Parties should comment on this issue.

In the PTA's comments to the Tentative Decision, the PTA formally informed the Commission that all Pennsylvania incumbent local exchange carriers, with the exception of GTE and Bell, qualified as rural telephone companies under Section 3 of the Federal Act.[3] The PTA further indicated that 32 of the remaining 36 companies qualified because they were companies eligible for streamlined regulation under 66 Pa. C.S. § 3006 in that they served less than 50,000 access lines. The other four carriers, ALLTEL, Commonwealth Telephone Company (Commonwealth), North Pittsburgh Telephone Company (North Pittsburgh) and United claimed qualification under one or more of the three remaining standards in the definition. Three of the four, ALLTEL, Commonwealth and United, claimed qualification only under subsection 47(D) on the basis that by their assessment, each company had "less than 15 percent of its access lines in communities of more than 50,000" on the date of enactment.

In order to resolve this issue, the Commission issued a Secretarial Letter on May 3, 1996 to ALLTEL, Commonwealth, North Pittsburgh and United requiring each carrier to supplement the PTA's comments and "to explain in detail the grounds on which rural telephone company status is claimed." The Commission further required that, to the extent the carrier was relying on subsection 47(D), the carrier should specifically identify how the company defined the term "communities" and to identify all communities served by the carrier which exceeded the subsection 47(D) standard. The carriers were required to serve their responses on all active parties at this docket.

On May 8, 1996, United, Commonwealth and North Pittsburgh each filed responses which indicated that they had defined "communities" as the municipalities listed in their respective tariffs and that under this standard, none of the companies served any community with more than 50,000 inhabitants. ALLTEL filed a response on May 10, 1996 which contained a similar explanation.

On May 17, 1996, AT&T, ETC, MCI and OCA filed responses to the supplemental comments. Both AT&T and OCA contest the ILEC interpretation and application of the definition and argue that the definition should be interpreted more restrictively.

We have closely reviewed the Act's definition of "rural telephone company" and find it extremely difficult to identify the intent of the express language. The language of the definition is poorly drafted and arguably internally contradictory. We understand that this is a significant issue and are reluctant to interpret the provision and apply it on a Pennsylvania specific basis at this time, given that we may benefit from additional clarity that may become available as the implementation effort proceeds. It does not appear necessary to reach a definitive conclusion at this time. Furthermore, it will be valuable to monitor the actions of other states in addressing this issue.

Overall, we are satisfied that North Pittsburgh qualifies as a rural telephone company; however, we will defer a decision on the remaining ILECs and, when appropriate, will issue an order resolving this issue either at this docket or at the *Universal Service* docket. In the meantime, interested parties may provide additional input on this issue provided such information is served on all parties on the service list at this docket.

With the exception of the issue of which carriers qualified for rural telephone company status, the comments to the Tentative Decision either accepted or favored the Commission's proposed consolidated procedures under Section 252(g) for review of entry, interconnection and universal service eligibility. We continue to believe that use of such consolidated procedures when appropriate is

[3] Under Section 3(a)(47)(A), a rural telephone company is a local carrier which provides service to an area which does not include:

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

in the best interests of administrative efficiency and is otherwise in the public interest. However, at least at this time, we are not convinced that use of consolidated procedures for the larger rural telephone companies is appropriate and believe the consolidated procedures should initially be applied only to the carriers with under 50,000 access lines.[4]

This does not mean that any other rural telephone companies do not receive the general benefits of rural telephone company status as expressly set forth in Sections 251, 253 and 254.[5] It merely means that we will not exercise the option provided state commissions under Section 252(g) for these carriers at this time.

Accordingly, we will adopt our discussion in the Tentative Decision, as recited previously, for all rural telephone companies with less than 50,000 access lines (small LECs). Under these consolidated procedures, a carrier seeking entry into the service territory of a LEC that is eligible for streamlined regulation must file a bona fide request for interconnection under Section 251(f)(1)(A) with the small LEC and a request for universal service eligibility designation under Section 214(e)(2) committing to an obligation to serve throughout the small LEC's service territory with the entry application.[6] Entry applications for small LECs will be subject to normal procedures under 66 Pa.C.S. §§ 1101 and 1103, with publication notice requirements and broader ability to protest, as traditionally utilized.[7] The result will be the degree of protection envisioned by both Congress and our General Assembly for these small, rural carriers.

Implementation of these procedures will have an effect on pending applications. Presently, the Commission has several statewide local service applications pending before it. In order to comply with these procedures, these applicants must either withdraw the portion of their applications which seek entry into small carrier service territories or, in the alternative, supplement their applications with bona fide interconnection requests for each small LEC and a request for universal service eligibility designation for each small LEC's service territory. If an applicant chooses to supplement its application, the statewide application must be bifurcated to accommodate the different procedural requirements and review standards for the small company service area component of the application.

An applicant withdrawing the small LEC service area part of its pending application shall do so within 10 days of the date this order is entered. An applicant supplementing its application shall provide notice of filing of the supplement within 10 days of entry and shall file a supplement within 30 days of entry.

f. *Terms and Conditions of Service—Obligation to Serve in Non-Rural Service Areas and Joint Marketing*

On October 4, 1995, the Commission entered an order in *Application of MFS Intelenet of Pennsylvania, Inc. et al., (MFS),* A-310203F.002, which for the first time certificated four carriers, MFS, MCI, TCG and ETC, to compete in Pennsylvania local service markets. All four certificates restricted the provision of local service to all or part of Bell's service territory. In granting these four applications, the Commission imposed on the carriers a certificated area wide obligation to serve and prohibited "joint package" marketing of their telecommunications services. In our Tentative Decision, we requested comment as to whether these two requirements should be preserved, post enactment of the Federal Act, as terms and conditions of service under Section 253(b).

Many parties filed comments and provided discussion at the public forum on these two issues. The comments can generally be divided into two categories. Predictably, the IXC/CLEC community opined that under the Federal Act, the obligation to serve could not be imposed as an entry requirement for non-rural LEC service territories and could not be included as a mandatory term and condition until such time as the entrant seeks universal service support eligibility under Section 214(e)(2). The IXC/CLECs also argued that the Commission is preempted from imposing "joint package" marketing restrictions as an entry requirement and that imposing such restrictions as a term or condition of service was generally inconsistent with the Federal Act. Just as predictably, ILEC commentators argued that the Commission could impose both obligation to serve and "joint package" marketing restrictions on all CLECs as entry requirements.

We have carefully considered both of these issues and have determined that in both cases, our prior policies should be modified. As to the obligation to serve, we stated as follows in our October 4, 1995 order at A-310203, F.002:

> In conclusion, MFS must expend the same effort to serve a residential customer who requests service as a business customer to whom MFS' marketing strategy is targeted. This shall be characterized as a conditional obligation to serve, pending completion of the incumbent LEC's unbundling of its local loops. Once the local loop is unbundled so that MFS and co-carriers can lease facilities to serve customers, they [all competitive local exchange carriers] should have an unconditional obligation to serve.

While there are important public policy concerns reflected in requiring and promoting obligation to serve commitments, which concerns are shared by the Federal Act—the Federal Act imposes obligation to serve commitments in a different manner than under our initial policy—at least for non-rural LEC service areas. Under the Federal Act, the obligation to serve is expressly divorced from the entry process and is not included as a mandatory initial service commitment. Instead, the obligation to serve commitment is addressed through universal service support eligibility procedures. Under the Federal Act it is envisioned, if not required,[8] that carriers be permitted to initially compete in non-rural service areas without an obligation to serve commitment. An obligation to serve would only be required as a prerequisite to receiving universal service support.[9]

Whether or not we have any option to do otherwise, we will adopt the Federal approach, reconsider and rescind

[4] This decision is supported by Chapter 30 which sets forth the legislative interest in establishing more streamlines regulation for carriers with less than 50,000 access lines. 66 Pa.C.S. § 3006.

[5] Under Section 254(f)(2), local exchange carriers with fewer than 2% of the nation's subscriber lines, which likely would include North Pittsburgh, ALLTEL and Commonwealth, may petition the Commission for suspension of modification of interconnection requirements, including otherwise mandatory unbundled access, resale and collocation. The Commission's review of any such petitions must be completed within 180 days of filing and is subject to a public interest type standard.

[6] Under Section 253(f)(1), consolidation of universal service support eligibility designation with an entry application to serve areas which are served by rural LECs is not appropriate if the rural LEC obtains exemption from the resale requirements of Section 254(c)(4). Accordingly, we will not utilize consolidation procedures for streamlined LECs which obtain a resale requirement exemption.

[7] Consolidated procedures will not be subject to the 120-day time limitation addressed by Section 251(f)(1)(B) of the Act since consolidated procedures will address a wide variety of issues justifying greater time for administrative review.

[8] Section 253(f), as recited previously, expressly indicates that it is not a violation of the Federal Act to impose the obligation to serve requirements of Section 214(e)(1) in the entry process for rural telephone company markets unless the rural telephone company has obtained a resale requirement exemption. The natural inference drawn from such language is that it would be a violation of the Act to impose obligation to serve requirements on carriers entering non-rural markets.

[9] It is unlikely that in the long run a carrier could compete effectively in rural serving areas without being eligible for universal service support.

the language imposing an obligation to serve as an entry requirement and as a term and condition of service in our October 4, 1995 order at A- 310003,F.002 and address the obligation to serve commitment in the universal service eligibility context.[10]

As to "joint package" marketing restrictions, in our October 4, 1995 order at A-310203,F.002 we stated that, "Upon the grant of co-carrier status pursuant to this Opinion and Order, MFS [and other CLECs] shall be subject to the same restrictions on interLATA toll service packaging . . . applicable to the other LECs in Pennsylvania absent a specific waiver."[11] Such a marketing restriction was designed to obviate the advantages of CLEC "joint marketing" activities for local, intraLATA and interLATA toll services, since certain ILECs, including Bell, were prohibited from providing interLATA toll services.

The purpose of past imposition of marketing restrictions on LEC long distance reseller affiliates was to decrease any competitive advantage over other long distance carriers a LEC affiliated reseller had with the LEC's customers—particularly since in a monopoly setting the LEC completely controls the presubscription interexchange carrier (PIC) process and has the ability to influence consumer decisions through incomplete or inaccurate disclosure. Upon further review, it appears to us that such a concern becomes less significant as local competition develops. Furthermore, we must keep in mind that in a competitive environment our objective is to decrease regulation for all carriers rather than impose existing requirements on new carriers, except where the requirements are imposed by statute or remain necessary to the public interest.

Of course, we have a desire to treat all carriers competing in a given market fairly. However, pertaining to marketing restrictions, such an objective can be achieved by eliminating any relevant marketing restrictions on a LEC or its affiliate at the time a competing local carrier or carriers enters the LEC's service territory. Such an approach is consistent with both principles of fairness and our desire to reduce regulation where appropriate. Accordingly, we will adopt such an approach in the future and will not impose mandatory restrictions on CLECs entering LEC service territories.

The present marketing restrictions imposed in our *MFS* order raise different concerns because those restrictions only apply to carriers competing in Bell's service territory. Of course, at the present time, Bell cannot provide interLATA service and eliminating marketing restrictions on Bell would be a meaningless gesture.

However, in addressing the issue of whether carriers competing in Bell's local service markets should be subject to continuing market restrictions it is helpful to evaluate the approach taken by the Federal Act in addressing this issue. In this regard, Section 271(e)(1) of the Act provides as follows:

> Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

Accordingly, in addressing the exact issues governing competitive fairness, Congress determined that it was only appropriate and necessary to impose marketing restrictions on carriers competing in Bell's local service territory if the carrier serves greater than 5% of the nation's presubscribed access lines. While we do not believe we are required to adopt such an approach, upon review, such an approach appears to be wise and adequately addresses our concerns with competitive fairness. Therefore, we will adopt the Federal approach and will modify the language in our *MFS* order to be consistent with the discussion herein.

g. *Chapter 63 and 64 Requirements*

In the Tentative Decision, the Commission requested parties to identify any provision of Chapter 63 or 64 which is subject to potential preemption by the Federal Act. No commentator identified any provision which could be reasonably viewed as subject to preemption. We agree.

h. *Equity Transfers and other Financial Transactions*

In the Tentative Decision, we requested interested parties to comment on whether the Act has a preemptive effect on the regulatory approval of equity transfers and other financial transactions required by the Public Utility Code. No party has argued that the Federal Act has any preemptive effect on these required regulatory approvals. Several parties argue that existing procedures should be streamlined. Sprint/United argues that although not preempted, affiliated interest transaction approvals should be eliminated as unnecessary.

Whether or not affiliated interest transaction review by the Commission continues to be necessary, such review is required by statute and remains mandatory absent legislative intervention.[12] As to abbreviation of procedures, we will continue to evaluate ways to streamline existing procedures consistent with our enabling statute.

2. **Interconnection**

One of our areas of increased responsibility under the Federal Act involves review of interconnection agreements between carriers. As discussed in detail in the Tentative Decision, Commission development and Commission review of interconnection agreements is divided into three phases: 1) the negotiations phase, 2) the arbitration phase and 3) the adjudication phase.[13]

a. *The Negotiations Phase*

The development of an interconnection agreement commences on the day a carrier receives a request for interconnection from another carrier (day 1). It is absolutely essential, and through this order we will require that each carrier requesting an interconnection agreement from another carrier shall file a copy of the request with the Commission at the requesting carrier's A-docket. If the requesting carrier does not have an A-docket, an A- docket shall be assigned by the Commission's Secretary at the time of filing of the interconnection agreement.

[10] As to rural telephone companies with over 50,000 access lines, where Section 253(f) expressly authorizes the Commission to include the obligation to serve as an entry requirement but where we have initially determined not to utilize consolidated procedures, we will refrain from deciding whether we will impose an obligation to serve as a mandatory term and condition and will address this issue at the time a carrier makes a bona fide request for interconnection to these ILECs.

[11] Historically, the Commission has readily accepted the structural separation between ILECs and their reseller affiliates or subsidiaries that offer interLATA and intraLATA toll services. Furthermore, the Commission has established and imposed competitive safeguards requiring LEC interLATA affiliates to market services in a manner that conveys to current and potential customers that the long distance entity is a separate and distinct company from the local carrier.

[12] Unlike the FCC, the Commission has not been given forbearance authority.

[13] Under Section 251(f) of the Act, separate procedures are established for carriers seeking to interconnect with a rural telephone company.

The negotiations phase, as established by the Act, is the first 135 days of development of the interconnection agreement. From our perspective, the negotiations phase must be restricted to the contracting parties. Under Section 242(a)(2), at any point during the negotiations, either of the parties may request the Commission "to participate in the negotiations and to mediate any differences arising in the course of the negotiations." The Act gives no further guidance as to how the role of mediator should be accomplished.

The formal role of mediator is a new role for the Commission for which we have little prior experience although the Commission does engage in similar type activity through its alternative dispute resolution process. GTE and TRA suggest that the Commission adopt provisions of existing mediation and arbitration rules to structure the dispute resolution process. Both parties have suggested reference to the American Arbitration Association (AAA) Commercial Mediation and Commercial Arbitration Rules.

Upon review of AAA Commercial Mediation Rules, we are satisfied that adoption of many of its provisions will serve us well. Consistent with the AAA rules, we will adopt the following procedures applicable to Commission mediation of interconnection disputes:

1. Under Section 252(a)(2), either of the contracting parties may file a formal request for mediation with the Commission. The request shall be filed at the A-docket of the carrier seeking an interconnection agreement.

2. (AAA Commercial Mediation Rule # 3) A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses and phone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall file an original and two copies of the request with the Commission and shall serve a copy of the request on the other party to the dispute.

3. The Commission will designate a member of Commission staff or an outside party to fulfill the role of mediator on its behalf.

4. The mediator will schedule mediation sessions.

5. (AAA Commercial Mediation Rule # 9) At least ten days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties. At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement such information.

6. (AAA Commercial Mediation Rule # 10) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution or the dispute between the parties. If the mediator determines that the mediation should be terminated, the mediator shall prepare and submit a report to the Commission providing a summary of the mediation and explaining the reasons why the mediation was not completely successful. The report should also be provided to the parties.

7. (AAA Commercial Mediation Rule # 7) Mediation sessions are private. The contracting parties and their representatives and members of Commission advisory staff may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

8. (AAA Commercial Mediation Rule # 12) Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

(a) views expressed or suggestions made by another party with respect to a possible settlement of the dispute;

(b) admissions made by another party in the course of the mediation proceedings;

(c) proposals made or views expressed by the mediator; or

(d) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

9. (AAA Commercial Mediation Rule # 13) There shall be no stenographic record of the mediation process.

10. (AAA Commercial Mediation Rule # 14) The mediation shall be terminated:

(a) by the execution of an agreement by the parties which is subsequently approved by the Commission;

(b) by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or

(c) by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

11. If a settlement agreement is reached and executed, the mediator shall prepare and submit a report to the Commission summarizing the mediation and explaining and making recommendations regarding the terms of the settlement. The report shall be made public and shall be provided to the parties to the mediation. The parties shall jointly file an interconnection agreement which reflects the terms of the settlement agreement, the settlement agreement, the mediator's report and a petition requesting Commission approval of the settlement agreement and the interconnection agreement with the Commission within 30 days of execution of the settlement agreement.

12. Notice of the filing of the above-referenced documents will be published in the *Pennsylvania Bulletin*. Interested parties may file comments to the interconnection agreement within 20 days of publication. The Commission will adjudicate the petition for adoption of the settlement agreement and will either approve or reject the interconnection agreement within 90 days of the filing pursuant to Section 252(e)(4).[14]

These procedures appear to be efficient and effective in carrying out the Commission's mediation role and com-

[14] We will also follow these procedures for interconnection agreeements which are negotiated without the use of Commission mediation.

mencing and adjudicating negotiated interconnection contracts. Accordingly, we are satisfied that these rules will suffice in fulfilling our mediation responsibilities as envisioned in the Federal Act.

b. *The Arbitration Phase*

Pursuant to Section 252(b), if the parties are unsuccessful in negotiating an interconnection agreement, with or without mediation, either party may file a petition with the Commission from day 135 to day 160 to arbitrate the contractual dispute. The arbitration process is intended only to address those issues which have not been negotiated by the parties. Pursuant to Section 252(b)(2), the petitioner must submit with its petition "all relevant documentation concerning—(i) the unresolved issues; (ii) the position of the parties with respect to those issues; and any other issue discussed and resolved by the parties." The petition must be served on the other negotiating party on the filing date. Pursuant to Section 252(b)(3), responses to the petition must be filed with the Commission within 25 days of the filing date. The Commission may require the parties to provide any information relevant to resolving the disputed issues. Pursuant to Section 252(b)(4)(c), the Commission must arbitrate and resolve all disputed issues within 270 days of the date of the interconnection request.[15]

In the Tentative Decision, the Commission requested comment from interested parties regarding the appropriate procedural details of the arbitration process which will be required to carry out the express statutory provision. Much of the discussion in the comments pertained to the openness of the arbitration process and who should be permitted to participate. Generally speaking, the OCA and the competitive industry recommended an open process in which all interested parties could participate actively in any given arbitration. In contrast, the ILEC industry supported a more closed process in which only the contracting parties could participate. Upon review, we will establish a process which attempts to accommodate the views of all parties and also satisfies our very serious concerns regarding the short timeframes established by Congress for state commission arbitration.

After careful consideration, we will establish the following procedures to govern all arbitrations:

1. Each contracting party shall file a report with the Commission at the A-docket number of the party seeking interconnection, no later than day 125 from the date of the interconnection request, which provides the status of the negotiations and provides an assessment of whether each party believes it will be necessary to petition for arbitration.

2. Either contracting party may file an original and two copies of a petition with the Commission requesting arbitration of disputed issues in the 25-day window from day 135 to day 160 from the date of the interconnection request. Petitions must comply with Section 252(b)(2)(A) of the Act. Petitioning parties should err on the side of providing too much documentation rather than not enough documentation. Petitions which do not include adequate documentation may be dismissed by the Commission. The petition shall be filed at the A-docket number of the party requesting an interconnection.

3. The arbitration petition shall be served on the other contracting party, the OCA, the OTS and the OSBA on the day of filing. We recognize the statutory right of the OCA, OTS and OSBA to participate throughout the arbitration process. No other party may participate in the arbitration process until later in the process as described hereafter. However, at the same time, all arbitration proceedings will be public in nature. The contracting parties, the OCA, the OTS and the OSBA may file answers with the Commission within 25 days of the filing date consistent with Section 252(b)(3).

4. The Commission will designate a member of Commission staff or an outside party to fulfill the role of arbitrator on its behalf.

5. The arbitrator will schedule a preliminary conference to identify and discuss the issues to be resolved, to stipulate to uncontested facts and to consider any other matters designed to expedite the arbitration proceedings. If no party raises disputed facts or if the arbitrator determines that the disputed facts raised are not material, the remainder of the arbitration will be conducted on the documents consistent with a schedule established at the preliminary conference by the arbitrator.

6. If disputed, material facts are present, the arbitrator will schedule oral arbitration proceedings required to resolve the disputed material facts. Oral arbitration proceedings shall be strictly confined to the material facts disputed by the parties. Other advocacy or evidence will not be permitted. Any oral arbitration proceedings shall be transcribed.

7. Regarding oral arbitration proceedings, the arbitrator is delegated authority to determine the format for conduct of the proceedings. The format and conduct of the proceedings shall be designed with the primary objective of decreasing the time and resources associated with the proceedings. The authority delegated to the arbitrator shall include but not be limited to determinations as to whether evidence must be submitted under oath, whether evidence should be prefiled, whether preliminary documentary statements should be required and whether memoranda or briefs are necessary.

8. Parties to the arbitration proceeding shall submit evidence in support of their position regarding material, disputed facts consistent with the procedural format adopted by the arbitrator.

9. The arbitrator shall be the sole judge of the relevance and materiality of the evidence pertaining to resolution of material,disputed facts. Conformity to legal rules of evidence shall not be necessary.

10. Following the proceedings as directed by the arbitrator, the arbitrator shall prepare a recommended decision which, as required by Section 252(b)(4)(c) of the Act, "resolves each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement, and shall conclude the resolution of any unresolved issues . . . ."[16] The recommended decision shall be concise and is not required to provide unnecessary discussion of the background of the proceedings or the positions of the parties. The recommended decision shall specifically identify and discuss each disputed, material fact and the arbitrator's recommended resolution of the factual dispute as well as the effect of the resolution on the terms and conditions of the interconnection agreement. The recommended decision will be issued no later than day 220 from the date of the request for interconnection.

[15] The amount of time the Commission actually has to arbitrate an interconnection agreement is dependent upon when in the 25-day window between day 135 and day 160 the arbitration petition is filed. In the worst case scenario, if the petition is filed on day 160, the Commission will only have 110 days to complete its arbitration.

[16] The standards for arbitration to be applied by the arbitrator are extensive and are set forth at Section 252(c).

11. The recommended decision shall be served on the parties to the proceeding. A notice of the issuance of the recommended decision shall also be served on each party on the service list at this docket (M-00960799). Interested parties desiring to receive notice of interconnection agreement recommended decisions shall enter their appearance at this docket.

12. Any interested party, including parties which have not participated in the arbitration proceeding previously, may file exceptions to the recommended decision within 15 days of the date of issuance of the recommended decision. No reply exceptions will be permitted.

13. The Commission will issue an arbitration order which finally resolves all material disputed facts and finally arbitrates all disputed terms and conditions of the interconnection agreement by no later than day 270 from the date of the interconnection request.

Again, we are satisfied with these procedures in that they balance the concerns of all interested parties. While fulfilling our new responsibilities pertaining to arbitration of interconnection agreements will undoubtedly be difficult, we are convinced that adoption of these arbitration procedures will further our ability to address these important issues in a timely fashion.

c. *Adjudication Phase*

Although not specifically addressed in Section 252, it is clear that the Act envisions that upon resolution of all terms and conditions of interconnection, whether through negotiation and mediation or arbitration, the contracting parties must reduce the agreement to writing and execute the agreement.[17] Pursuant to Section 252(e), the executed agreement must then be filed with the state commission to conduct the adjudication phase of the proceeding.

The Act does not give any express guidance as to when agreements must be filed with the state commission. However, since the period for negotiations concludes on day 160, we conclude that an executed, negotiated interconnection agreement accompanied by a joint petition for adoption of the agreement shall be filed by no later than 30 days following the close of the negotiations phase or by day 190 following the request for interconnection. As to arbitrated agreements, the executed agreement accompanied by a joint petition for adoption shall be filed with the Commission no later than 30 days following the entry of the Commission order finally arbitrating the agreement. In either case, although an original and two copies of the papers shall be filed with the Commission at the A-docket of the party requesting interconnection, the papers shall also be served on all parties on the service list at this docket.

Pursuant to Section 252(c)(4) of the Act, the Commission must approve or reject the agreement, consistent with the standard set forth in Section 252(e) by no later than 90 days from filing for negotiated agreements and 30 days from filing for arbitrated agreements. To accommodate these time deadlines, we will establish a 20-day response period for the filing of comments by interested parties to negotiated agreements and a 7-day response period for the filing of comments by interested parties to arbitrated agreements. The Commission will issue an order approving or rejecting each agreement within the required timeframe established by the Act. Pursuant to Section 252(h), the Commission will make each approved agreement available for public inspection and copying within ten days of the entry date of the Commission's order finally approving the agreement. Although we will not establish a fee schedule or fee requirement for interconnection agreement proceedings at this time, our normal copying charges will be applied to requests for a copy of any interconnection agreement.

3. **Statement of Generally Available Terms**

Under Section 252(f) of the Act, Bell may file and seek approval of a statement of generally available interconnection terms and conditions with the Commission. The statement must be reviewed by the Commission and may not be finally approved unless the statement complies with Section 252(d), as quoted previously, Section 251, any FCC regulations promulgated under Section 251 and any relevant state law requirements. Pursuant to Section 252(f)(3), if the Commission does not complete its review of the statement within 60 days of filing or within the time extension agreed to by Bell, the Commission must allow the statement to become effective subject to further review.

In our Tentative Decision, we suggested that filing and review of these statements appeared to be consistent with existing tariff filing procedures as provided for by 66 Pa. C.S. § 1308(a) and (b) and requested interested party comment on the appropriateness of use of existing tariff procedures. Many of the parties objected to the use of Section 1308(a) and (b) procedures for different or even opposite reasons.

However, upon further review, we find that the Act's procedural requirements for filing and review of a generally available terms statement by Bell are virtually identical to existing tariff procedures. Accordingly, we will formally adopt Section 1308(a) and (b) procedures for filing and review of a Bell statement under Section 252(f) of the Act with the single modification that the Commission may not suspend the terms statement during the 60-day review period and must allow the statement to become effective if review is not completed.

4. **Resale Restrictions**

In our Tentative Decision, we requested comment on the meaning of the resale restriction imposed by Section 251(c)(4) of the Act. Since the issuance of the Tentative Decision, this issue has come before us in a different docket, R-00963578, and we will address this issue at that docket.

5. **Pre-enactment Interconnection Agreements**

One of the most controversial issues we must resolve is how to implement Section 252(a) of the Act pertaining to filing of pre- enactment interconnection agreements. Section 252(a) provides as follows in relevant part:

> . . . The agreement [any negotiated interconnection agreement], including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection(e) of this section.

Section 252(e), as discussed previously, would require the Commission to review each agreement for compliance with the standards set forth in Section 252(c)(2)(A) and issue a decision approving or rejecting the agreement within 90 days of filing.

The Tentative Decision concluded that Section 252(a) appeared to include existing EAS agreements and cellular or mobile carrier intercinnection contracts with ILECs and requested comments as to how to best manage

[17] Since state commission arbitration is expressly compulsory and binding by law, the contracting parties must reduce arbitrated agreements to writing and execute each agreement even if one or both of the parties is not satisfied with the arbitration.

implementation of the apparent requirements and procedures. The comments focused a great deal of attention on this issue. The competitive industry favors immediately requiring filing of all pre-enactment agreements, including EAS and cellular carrier interconnection agreements with ILECs.[18] The ILEC commentators just as strongly opposed requiring the filing of any pre-enactment interconnection agreement as being inconsistent with the policies and objectives underlying the Act.

We focus our attention on this issue with great caution since the outcome could create a very significant administrative burden for our agency. Although we have carefully reviewed the comments of the ILECs on this issue, in the end we can only return to the clear language of Section 252(a) which is difficult to reasonably interpret other than as requiring the filing and approval of all pre-enactment interconnection agreements.

All of the ILECs argue that only competitive, pre-enactment interconnection agreements be interpreted as subject to Section 252(a)'s requirements because competitive scenarios are the clear focus of Section 251.[19] However, no such qualification can be drawn from the express language of Section 252(a). Furthermore, we are mindful of Section 252(i) which requires that the terms and conditions of all interconnection agreements approved by the Commission, including pre-enactment interconnection agreements, be made available to any other requesting telecommunications carrier.[20] Accordingly, it appears that Congress intended that Section 251 require the elimination of pre-existing agreements which do not meet the Act's requirements to assure that agreements between all carriers, except Section 201 agreements, including agreements between ILECs, are competitively neutral and are made generally available.

While acknowledging the express language of Section 252(a), this issue is complicated further by a number of factors. First, it appears there may be hundreds of pre-enactment interconnection agreements between ILECs and between ILECs and wireless carriers in the Commonwealth. Furthermore, it appears possible, if not likely, that requiring filing of these contracts, particularly EAS contracts, would not result in filing but would result in cancellation of many of the contracts.[21] Such a situation would have a serious impact on the continued provision of service, particularly in EAS situations.[22] While we are aware that several states have taken action to require filing of all pre-enactment agreements, we are reluctant to resolve this issue and to take substantive action until we fully understand the potential administrative burden and repercussions caused by any potential action.

Accordingly, we will require the submission of further information on this subject. Within 30 days of the date this order is entered, all interested parties, including all carriers potentially subject to the filing of pre-enactment interconnection agreements under Section 252(a), shall file with the Commission at this docket an original and nine copies of a statement which includes the following:

1. A list of all pre-enactment interconnection agreements. In preparing the list, the term "interconnection agreement" should be interpreted broadly to include EAS agreements, collocation agreements, cellular and mobile carrier agreements, shared network facilities agreements (SNFAs) and others.

2. Discussion of why specific agreements or specific types of agreements identified on the list should not be included as interconnection agreements for purposes of implementation of Section 253(a).

3. Discussion of proposals for scheduling or planning of the filing and review of pre-enactment agreements.

4. Identification and discussion of which agreements or types of agreements the carrier would consider cancelling if filing were required and when such cancellations might occur and whether such cancellation may impact the continuous provision of telecommunications services to the public in a transparent fashion.

5. Discussion of the potential ramifications of cancellation of any contracts or other ramifications resulting from potential implementation of Section 253(a).

6. Discussion of the issues that may arise if the Commission does not evaluate and review pre-enactment agreements.

We expressly direct all carriers to be forthright and complete in preparation of their statements. Only through such disclosure can the Commission resolve this issue in an orderly well-balanced fashion consistent with the public interest.

6. **Collocation Policy Statement**

In our Tentative Decision, we raised the issue of whether the Commission's policy statement at 52 Pa. Code § 69.311 governing collocation for intrastate special access was affected by enactment of Section 251(c)(6) of the Act. Section 251(c)(6) requires that all collocation, both intrastate and interstate and special and switched, be made available on a physical basis unless the local carrier demonstrates to the Commission that "physical collocation is not practical for technical reasons or because of space limitations."

While several commentators, without rational reason, argued that our collocation policy statement was unaffected by Section 251(c)(6), Bell's comments provide the most reasonable approach to this issue. Bell argues that the collocation policy statement is either preempted or irrelevant. Bell informs the Commission that it intends to file an intrastate collocation tariff with the Commission in the near future which will make proposals pertaining to which central offices require physical collocation exemptions and that for Bell this issue should be comprehensively addressed at that future docket.

We agree that Bell's approach to this issue is a wise one and would encourage other ILECs to address this issue in comprehensive rather than in piecemeal fashion.[23] As to our policy statement, we will act to rescind our policy statement at 52 Pa. Code § 69.311, attached as Annex A hereto, upon publication of this Order.

[18] Vanguard, the only cellular provider filing comments, strongly recommended that the Commission require the filing of all cellular interconnection contracts with ILECs.

[19] GTE points out that the Conference Report accompanying Senate Bill 652 indicates that the review of interconnection agreements was not intended to include Section 201 agreements governing the provision of interexchange service. We agree. However, EAS contracts involve the provision of local service not interexchange service and are not Section 201 agreements. GTE also argues that the Section should be interpreted to only apply to agreements which were negotiated pre-enactment but were not executed until after enactment. However, the clear language of Section 252(a) does not support such an interpretation.

[20] Bell makes the argument that if the filing of pre-enactment contracts are required and approved by the Commission for EAS contracts that the terms and conditions in each agreement be made generally available only for the specific route(s) governed by each respective agreement. While such an interpretation is not unreasonable, we will defer resolution of interpretation of Section 252(i) until such time as we fully understand the complexities of this issue.

[21] For example, Ameritech, one of the seven Regional Bell Operating Companies, has exercised certain contractual rights to cancel EAS compensation agreements between its ILEC subsidiaries and other ILECs.

[22] Such interruptions of service will not be tolerated by this Commission under existing applicable regulations.

[23] Smaller ILECs may also seek general exemption from Section 251(c)(6) pursuant to Section 251(f)(2).

7. **Universal Service**

We raised many issues regarding the Act's effects on our pending universal service dockets. All parties submitted relatively comprehensive comments on the universal service issues. We will address these issues at our pending rulemaking and investigative dockets at L-00950105 and I-00940035.

8. **In-Region InterLATA Services for Bell**

In the Tentative Decision, we also discussed the Commission's role in the FCC's review of any future application filed by Bell or its affiliate to provide in-region interLATA services. Under Section 271(d)(2)(B) of the Act, the FCC must "consult with the state commission that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)" which establishes a competitive checklist which must be met before a Bell in-region interLATA service application can be approved by the FCC.

In addressing this issue in the Tentative Decision, we stated as follows:

> Review of any future Bell affiliate in-region interLATA application before the FCC, given the expected highly contentious nature of any such application, is placed on an extremely fast track and will involve statutorily required consultation between the Commission and the FCC—an unprecedented process—to address whether the competitive checklist has been met. Accordingly, interested parties should provide comment identifying how it is envisioned this process will operate and should address what factors should be considered by the Commission in reviewing whether the Bell affiliate has complied with the competitive checklist. Commenters should specifically address what input, if any, should be received by the Commission from interested parties during the application process in developing the Commission's positions for purposes of consultation with the FCC. If outside input is warranted, commenters should address how the opportunity for input should be procedurally structured.

Many of the commenters comprehensively addressed this issue. Most commentators requested some type of formal proceeding by the Commission to allow the Commission to develop its position for purposes of consultation with the FCC. Bell commented that "consultation" is a very informal process which does not require any formal Commission review.

Upon review, we will withhold making a final determination on this issue at this time. Clearly, the Act envisions that formal review and consideration of third party input occur at the federal level. As for the level and intensity of state review, we should coordinate our efforts in interpreting this provision with our FCC colleagues. It appears that the structure of the consultation process should be designed to the mutual satisfaction of the states and the FCC, to maximize the effective implementation of the statutory framework of review contemplated under Section 271.

This does not mean that the Commission is restricted in collecting information and considering the views of interested parties in its role of FCC consultant. Pursuant to normal procedures under authority of 66 Pa. C.S. §§ 505 and 506, the Commission can collect the required information to fulfill its role. Furthermore, the Commission or its staff can confer with interested parties on an informal basis to understand various views of Bell's competitive checklist compliance.

We must be mindful that the time constraints imposed by the Act must be a governing consideration of the state consultative process. Pursuant to Section 271(d)(3) of the Act, the FCC must make a final determination within 90 days of the filing of an application by Bell. The consultation process with the state commission must be accommodated within that 90 days.

9. **Bell IntraLATA Imputation Requirement**

Under Section 271(e)(2) of the Act, Bell must make intraLATA presubscription available to all of its customers prior to or at the time its in-region interLATA affiliate commences the provision of interLATA services. At the state level, Bell is required to implement intraLATA presubscription by no later than June 30, 1997. *Investigation into IntraLATA Interconnection Arrangements*, I-00940034 (December 14, 1995). Accordingly, it appears likely that Bell will attempt to secure FCC approval of an in-region interLATA application and commence interLATA business through an affiliate by June 30, 1997, or at the time it implements intraLATA presubscription.

In our *IntraLATA Investigation* order, we refrained from imposing an imputation requirement on Bell and other LECs providing intraLATA toll services at the time intraLATA presubscription becomes available and significant intraLATA competition becomes a reality. However, Section 272(e)(3) of the Act imposes an imputation requirement on Bell for all services which utilize its own access services, including intraLATA toll services. In the Tentative Decision, the Commission requested comment on whether the *IntraLATA Investigation* Order required modification to be consistent with federal law.

All parties commenting on this issue except for Bell support modification of our prior order and imposition of an imputation requirement on Bell's provision of intraLATA toll services. Bell argues that modification is unnecessary since the imputation requirement does not become effective until Bell, through an affiliate, commences the provision of interLATA services.[24]

However, as indicated previously, Bell will likely attempt to commence the provision of interLATA services at the same time as intraLATA presubscription becomes available and our decision not to apply an imputation requirement becomes effective. Such a scenario would clearly create inconsistency between state and federal requirements. Even if Bell experiences undesirable delay in receiving FCC approval to provide interLATA services, our *IntraLATA Investigation* Order does not accommodate the requisite imposition of an imputation requirement at whatever time its affiliate commences service. Accordingly, through this order, we will reconsider and modify our December 14, 1995 order at I-00940034 so as to impose an imputation requirement on the provision of intraLATA services on Bell, consistent with that imposed by Section 272(e)(3) of the Act, at the time Bell's affiliate commences the provision of in-region interLATA services.

Furthermore, although the Federal Act does not require it, we now find that all noncompetitive intraLATA toll services provided by any local carrier should be subject to an imputation requirement at the time intraLATA presubscription becomes available in that service territory—either in July of 1997 or the close of 1997, depending on the size of the ILEC serving a given area.

[24] In addition, we note that the imputation requirement for Bell is an issue that is being addressed by this Commission in the *Competitive Safeguards* proceeding at Docket No. M-00940587.

Accordingly, we will modify our *IntraLATA Investigation* Order to impose an imputation requirement on noncompetitive intraLATA toll services consistent with the foregoing discussion.

10. **InterLATA EAS for Bell and GTE**

In the Tentative Decision, the Commission raised the issue of the effect of the Act's supersession of the AT&T and GTE consent decrees on prior Commission regulatory requirements in the EAS context. More specifically, 52 Pa. Code § 63.75(6) requires GTE and Bell to seek consent decree waivers when necessary to implement interLATA EAS. Since consent decree waivers are no longer pertinent, Section 63.75(6) is clearly outdated and obsolete. Accordingly, we will act to rescind the regulation through incorporation of this issue into our pending docket, *Rulemaking to Rescind Obsolete Regulations Regarding Telephone Service*, at L-00960113. However, nothing in this Order should be interpreted to relieve GTE and Bell from seeking any federal regulatory approvals which may be necessary to implement interLATA EAS at any given time.

11. **Interexchange Service Rate Deaveraging**

Section 254(g) of the Act enacts a general prohibition against interexchange service rate deaveraging which is to be implemented by the FCC through the adoption of rules or regulations. In this regard the FCC has opened a rulemaking docket to implement Section 254(g) at CC Docket No. 96-61.

Although, in the Tentative Decision, the Commission requested comment regarding interpretation of this provision, the Commission acknowledged that it was the FCC, not the Commission, which Congress has assigned implementation responsibility. The Commission has filed comments with the FCC regarding the rate averaging issue and has advocated the approach taken by 66 Pa. C.S. § 3008(d) under which interexchange rate deaveraging should be broadly prohibited with the flexibility for the FCC or state commission to permit temporary or permanent service offerings, which could be viewed as including rate deaveraging terms, on a case-by-case basis. The Commission will await the outcome of the FCC's rulemaking docket and will interpret the rate deaveraging prohibition consistent with the FCC's ultimate approach.

12. **Health Care Providers, Libraries and Education Providers**

In the Tentative Decision, the Commission requested comment on how it should fulfill its responsibilities under Section 254(h) of the Act pertaining to reasonably comparable universal service rates for rural health care providers and discounted universal service rates for libraries and education providers. Although we emphasized our desire for comprehensive comment on these issues, very little useful comment was received.

We remain particularly concerned regarding our responsibility under Section 254(h)(1)(B) to establish the level of discounts to intrastate rates to be made available to libraries and educational providers. If necessary, we will consider the establishment of a generic docket in the foreseeable future to address these important issues.

13. **Marketing Practices and Consumer Education**

Another issue should be raised in context with enforcement of the Commission's service quality regulations, which requirements are clearly preserved by Section 253(b) as necessary to protect the public welfare, ensure the continued quality of services and safeguard the rights of consumers. Undoubtedly, consumers will face many potentially confusing decisions as more service providers enter the telecommunication markets and engage in potentially high pressure marketing activities. No parties in this proceeding commented on what role service providers have in consumer education.

Clear, consistent and unambiguous marketing language should be adopted by all entities marketing telecommunication services in Pennsylvania. Local exchange companies (LECs) and interexchange carriers are already required to submit language for certain communications with their customers to the Bureau of Public Liaison for a plain language review. Such a procedure will be too burdensome with the addition of many new entrants in a highly competitive atmosphere.

To be better informed and educated, telecommunications customers must have accurate complete and comparable information about products, prices and quality when making choices in the competitive telecommunications marketplace. The definition of basic service for one service provider must be the same for all service providers. The definition of marketing terminology must be mutually understandable for consumers and service providers to minimize customer confusion or inevitably Formal Complaints will follow.

To avoid these problems and the very real burden that a large increase in complaints would have on Commission resources, a task force consisting of representatives of the Commission's Bureau of Public Liaison, the Bureau of Consumer Services, and the telecommunications industry wil be established immediately. The task force will be organized and administered by the Bureau of Public Liason and shall be charged with developing definitions of marketing terminology that will be universally accepted and, more importantly, used in the actual marketing of telecommunication services.

14. **Payphone Issues**

Although not raised in the Tentative Decision, CAPA filed comprehensive comments addressing and requesting Commission attention to the effects of the Act on the provision of payphone services by Bell and independent payphone providers. Specifically, CAPA focuses on Section 276 of the Act which establishes various requirements and competitive safeguards on Bell's provision of payphone service and its service offerings to independent payphone providers.

Under Section 276, the FCC is required to promulgate regulations implementing Congressional payphone requirements and policies within nine months of enactment. Under Section 276(c), state payphone requirements which are inconsistent with the FCC's regulation will be preempted. Accordingly, it is premature for the Commission to consider modification of its requirements applicable to payphones until the FCC finalizes its regulations. However, upon final promulgation, the Commission invites CAPA to file a petition with the Commission advocating modifications to payphone requirements or Bell service offerings which, in its view, are inconsistent with the FCC's regulations.

15. **Notice of FCC Filings**

In the Tentative Decision, the Commission voiced concern with its need to keep abreast of federal issues as they progress at the FCC and suggested that all FCC filings be copied on the Commission. Many parties commented that requiring service of all FCC filings was unnecessary and costly.

Upon further review, we will modify our tentative approach and attempt to accommodate the views of the

parties. We will, through issuance of this Order, direct all jurisdictional carriers to serve the Commission with a copy of all FCC filings made under Title II of the Communications Act. However, as to other filings, we will merely require that carriers file with the Commission a one-page notice of filing which includes the docket number of the filing and a description of the document filed.

All of these documents shall be filed at this docket. In order to administer the receipt of these documents, we will direct the Prothonotary to segregate this docket into subdockets and to establish corresponding document folders for each ILEC, CLEC, facilities-based IXC, and one for all other carriers.

C. *Conclusion*

Overall, we are satisfied that, through this Order, we have accomplished the important objective of taking the initial steps necessary to implement the Federal Act in an orderly and timely fashion. While undoubtedly this will not be our last action pertaining to implementation, the comprehensive nature of our action today will result in timely coordination with the Federal government of the Congressional national policy framework;

Therefore,

It Is Ordered That:

1. Entry procedures described in the body of this Order are hereby adopted for all telecommunications carriers.

2. Our Opinion and Order entered October 4, 1995, in *Application of MFS Intelenet of Pennsylvania, Inc., et al.* at A- 310203F.002 is hereby modified consistent with the discussion herein.

3. Any joint marketing restrictions presently imposed on incumbent local exchange carriers by prior Commission orders will be rescinded upon the entry and interconnection of any competing local carrier in the incumbent local exchange carrier's service territory.

4. The procedures discussed herein governing development and review of interconnection agreements are hereby adopted.

5. Procedures for continued Commission evaluation pre- enactment interconnection agreement filings are adopted consistent with the discussion herein.

6. A policy statement proceeding is hereby instituted at this docket.

7. The Commission's policy statements are hereby amended by deleting § 69.311 to read as set forth in Annex A.

8. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

9. The Secretary shall deposit this order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* effective immediately.

10. Our Order entered December 14, 1995, in *Investigation into IntraLATA Interconnection Agreements* at I-00940034 is hereby modified consistent with the discussion herein.

11. Rescission of 52 Pa. Code § 63.75(6) is incorporated into our pending rulemaking docket, *Rulemaking to Rescind Obsolete Regulations Regarding Telephone Service* at L-00960113.

12. A task force is hereby established consisting of representatives of the Bureau of Public Liason, the Bureau of Consumer Services and the telecommunications industry to develop definitions of marketing technology that will be universally accepted and used in the marketing of telecommunications services. The task force shall be organized and administered by the Bureau of Public Liason.

12. The Secretary's Office is directed to serve this Order on all parties on the Executive Director's telecommunications mailing list which are not parties on the service list for this docket.

JOHN G. ALFORD,
Secretary

(*Editor's Note*: The "Sample Application Form for Parties Wishing to Offer, Render, Furnish or Supply Telecommunication Services to the Public in the Commonwealth of Pennsylvania" may be obtained from the Secretary of the Commission, P. O. Box 3265, Harrisburg, PA 17105-3265.)

STATEMENT OF COMMISSIONER DAVID W. ROLKA

This Order reflects this agency's commitment to prompt and coordinated implementation of our responsibilities under the Telecommunications Act of 1996. This new law promotes competition in all segments of the telecommunications markets. At the same time, the law recognizes that regulatory oversight is required to facilitate a fair and prompt transition to competition. The Implementation Order recognizes that the Federal Act required some modifications to our present policies to assure consistency between the federal and state rules. In addition, this Order signals that we have procedures in place that will enable this agency to undertake our new responsibilities prescribed in the Act. The Order also acknowledges that additional information is required to develop appropriate policies for the certain classifications of rural telephone carriers, and for the review of pre-enactment interconnection agreements. Clearly the implementation of this landmark legislation will be an evolving process at both the state and federal level, which must be coordinated

One key area of concern to the states is Section 253(a), concerning removal of barriers to entry and its relationship to the preservation of state authority set forth in Section 253(b). The streamlined entry procedures set forth in this Order strike an appropriate balance contemplated by these subsections. The Joint Conference Report provides some guidance:

> Existing State laws or regulations that reasonably condition telecommunications activities of a monopoly utility and are designed to protect captive utility ratepayers from the potential harms caused by such activities are not preempted under section. However, explicit provisions on entry by a utility into telecommunications are preempted under this section.

Chapter 30 expressly removed any express prohibition against local exchange competition and sets forth that a public interest standard governs such entry. The procedures set forth in this Order give effect to the public interest standard and provide a competitively neutral framework for assuring the preservation of the public safety and welfare, and quality of service.

DISSENTING STATEMENT OF CHAIRPERSON JOHN M. QUAIN

I support the Order which the Commission issues today except for one determination reached by the majority. Generally speaking, the Order which we issue represents an extremely important step in implementation of the Telecommunications Act of 1996 (Federal Act) at the state

level. The Order will allow us to fulfill our new responsibilities under the Federal Act in an orderly and timely fashion.

However, I cannot support the majority's determination that incumbent local exchange carriers (ILECs), other than Bell, should be subject to an imputation requirement applicable to their provision of intraLATA toll services at the time presubscription becomes available. While I acknowledge that the Federal Act requires modification of our decision in the *IntraLATA Investigation* Order to include an imputation requirement on Bell, no such modification is required, or even suggested, by the Federal Act for the provision of intraLATA services by ILECs other than Bell.

I generally favor the notion of regulatory parity and would support an imputation requirement if the Commission had authority to impose it on the provision of all intraLATA services by all carriers. However, as I stated in my Motion issued in consideration of the *IntraLATA Investigation* Order, such uniform application is not possible under state law since intraLATA services provided by interexchange carriers are classified as competitive and are removed from any Commission price oversight, including enforcement of an imputation requirement. In this context, expanding the application of the imputation requirement to ILECs other than Bell, as a matter of state policy and not as a matter of federal law, is not consistent with my notion of regulatory parity since, generally speaking, ILECs, particularly small ILECs, will not be competing with each other in the foreseeable future.

Instead, application of an imputation requirement on smaller ILECs will merely place unnecessary pressure on the pricing strategies of the smaller ILECs without any significant corresponding benefit. It is clear to me that the Commission should complete the generic dockets currently pending which pertain to the development of local competition prior to considering whether such an imputation requirement is necessary or desirable for ILECs other than Bell. Accordingly, I dissent from the majority's determination on this issue.

Fiscal Note: 57-175. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED UTILITY SERVICES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

§ 69.311. (Reserved).

[Pa.B. Doc. No. 96-1301. Filed for public inspection August 9, 1996, 9:00 a.m.]