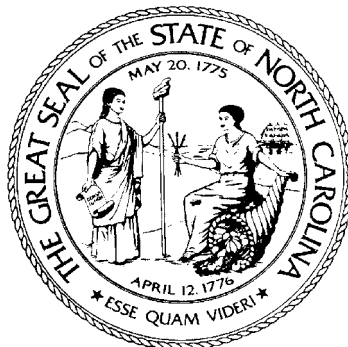


**REPORT OF THE  
NORTH CAROLINA UTILITIES COMMISSION**

**TO THE  
THE JOINT LEGISLATIVE  
UTILITY REVIEW COMMITTEE**

**RE:**

**THE STATUS OF TELECOMMUNICATIONS SERVICE  
IN A CHANGING COMPETITIVE ENVIRONMENT**  
*(Pursuant To General Statutes 62-2, 62-3, 62-110, and 62-133.5)*



**October 2001**

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October 1, 2001

Mr. Steven J. Rose, Committee Counsel  
Joint Legislative Utility Review Committee  
State Legislative Office Building  
Raleigh, North Carolina 27611

Dear Mr. Rose:

The Utilities Commission hereby presents thirty copies of its 2001 Report to the Joint Legislative Utility Review Committee regarding the status of telecommunications service in a changing competitive environment. I understand that you will distribute the copies to the members of the Committee.

The report is being provided pursuant to Section 6.1 of House Bill 161 (Chapter 27 of the 1995 Session Laws) requiring that "[O]n October 1, 1997, and every two years thereafter, the Utilities Commission and the Public Staff shall each provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to the provisions of this act during the preceding two years ending on July 1 immediately preceding the report date." Section 6.1 also directs the reports to recommend whether the provisions of House Bill 161 "should be continued, repealed, or amended."

Thank you for your assistance.

Respectfully submitted,

Jo Anne Sanford  
Chair

JAS/JDL

cc: Robert P. Gruber, Executive Director, Public Staff  
The Honorable Roy A. Cooper, Attorney General

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## Part I.

### ***INTRODUCTION***

On April 6, 1995, the General Assembly ratified House Bill 161 (HB161). A copy of HB161 is included in this report as Appendix A. Section 6.1 of HB161 provides that:

On October 1, 1997, and every two years thereafter, the Utilities Commission and the Public Staff shall each provide a report to the Joint Legislative Utility Review Committee summarizing the procedures pursuant to the provisions of this act during the preceding two years ending on July 1 immediately preceding the report date. The reports shall recommend whether the provisions of this act should be continued, repealed, or amended.

This report has been prepared and is being submitted in compliance with this Section.

The North Carolina Utilities Commission (Utilities Commission or Commission) has not confined this report to matters arising out of HB161 alone. The reason for this is the passage of the Telecommunications Act of 1996 (TA96 or the Act) by Congress, which was signed by the President on February 8, 1996. This momentous and far-reaching legislation was the first major set of amendments to the Communications Act of 1934. TA96 broke down legal barriers to local and other forms of telecommunications competition and established the ground rules, as later interpreted by the Federal Communications Commission (FCC) and the federal courts, which govern matters such as interconnection arbitrations, universal service, and payphone restructuring. In many respects, the provisions of TA96 supplement the provisions of HB161. The Utilities Commission believes that attention to matters addressed by TA96 in addition to those addressed by HB161 is necessary in order to gain a complete perspective on the ongoing revolution in telecommunications regulation.

The major provisions of HB161 include certification of competing local providers (CLPs); an exemption from local competition of local exchange companies (LECs) of less than 200,000 access lines (unless such a company opts for a price regulation plan); price regulation plans for LECs who choose them in place of traditional rate base/rate of return regulation; and the maintenance of universal service.

TA96's major provisions include the removal of market entry barriers to local competition; the negotiation, arbitration, and approval of interconnection agreements between incumbent LECs (referred to as ILECs) and CLPs; the resale of ILEC services and the leasing of ILEC unbundled network elements to CLPs; the maintenance of universal service; and a process by which a Bell operating company, such as BellSouth Telecommunications, Inc. (BellSouth) can enter the in-region interLATA long distance market.

## Part II.

### **COMPETING LOCAL PROVIDER CERTIFICATIONS**

On July 19, 1995, the Utilities Commission issued an Order in Docket No. P-100, Sub 133, promulgating interim rules for certification and regulation of competitive local service providers and posing questions for comments on the appropriate regulatory structure for competitive local providers, resale of local service, and interconnection. After a round of comments and reply comments from interested parties, the Utilities Commission adopted a revised and expanded set of provisions as Commission Rules R17-1 through R17-5, on February 23, 1996. These rules establish the basis on which the competitive local providers or CLPs, as the new entrants are called, are regulated. These include a detailed list of items to be considered in the application of a prospective provider for local exchange and exchange access authority and specific requirements on such things as billing and customer notice. A copy of Commission Rules R17-1 through R17-5 is included in this report as Appendix B.

During the certification process, the Public Staff analyzes the application to determine and assure that the applicant is qualified to provide service to the public and that it demonstrates an understanding of the provisions contained in Commission Rules R17-1 through R17-5. When the application has been sufficiently perfected, the Utilities Commission will generally issue a certificate. However, if the public interest requires and especially if the Public Staff and Attorney General so request, the Commission will hold a hearing to consider the Applicant's fitness.

As of July 1, 2001, a total of 177 companies had been granted certificates by the Commission as compared to 84 companies in July 1999. On July 1, 1999, CLPs were providing service over a total of 134,559 access lines in North Carolina (25,744 residential and 108,815 business). That number increased as of July 1, 2001, with 32 of 70 reporting CLPs now providing service over a total of 356,007 access lines in North Carolina (64,561 residential and 291,446 business). This represents approximately 7.3% of the present number of access lines<sup>1</sup> currently provided in North Carolina by all ILECs and CLPs, an increase from 2.7% in July 1999.

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<sup>1</sup> The Commission has required competing local providers to file reports with the Commission concerning their activities in North Carolina, including the number of access lines, and ruled that such information should be publicly available. Citing confidentiality, the competing local providers appealed. The Commission was reversed in State of North Carolina ex rel Utilities Commission v. MCI Telecommunications Corporation, 514 SE2d 276 (1999). The Court of Appeals held that, on the record before it, the information sought falls within the "trade secret" exception to the Public Records Act. Therefore, the Commission is only able to report aggregate figures.

**Part III.**

***ALTERNATIVE REGULATION - PRICE REGULATION PLANS***

Since House Bill 161 became effective on July 1, 1995, the Utilities Commission has authorized Price Regulation Plans for seven regulated local exchange companies. Four companies — BellSouth, Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), and Verizon, Inc., f/k/a GTE South, Inc. (Verizon) — which are subject to local competition under the provisions of G.S. 62-110(f1), elected price regulation in lieu of rate of return regulation. Concord Telephone Company (Concord), ALLTEL Carolina, Inc. (ALLTEL), and MEBTEL, Inc. (MEBTEL), while exempt from the provisions of G.S. 62-110(f1) because they each have fewer than 200,000 access lines, elected price regulation by agreeing to subject themselves to local competition under G.S. 62-110(f1).

The ILECs under a price regulation plan filed their applications on the following dates:

<b>ILEC</b>	<b>Application Filing Date</b>
BellSouth	October 4, 1995
Carolina and Central	October 23, 1995
Verizon South, Inc., f/k/a GTE South, Inc.	November 1, 1995
Concord	November 1, 1996
ALLTEL	October 15, 1997
MEBTEL	December 31, 1998

For each application, the Commission required that public notice be given to the affected subscribers and held public hearings. By Orders issued May 2, 1996, in the BellSouth, Carolina, Central, and GTE South cases, the Utilities Commission authorized each Price Regulation Plan. Subsequently, by Order of Clarification issued by the Utilities Commission on May 29, 1996, all four Plans became effective on June 24, 1996. By Order issued May 30, 1997, the Utilities Commission authorized Concord's Plan which became effective on September 1, 1997. By Order issued July 8, 1998, the Commission authorized ALLTEL's Plan. The Commission issued an Order on Reconsideration on August 11, 1998, on ALLTEL's Plan and issued an Order Approving ALLTEL's Revised Price Regulation Plan on September 15, 1998. ALLTEL's Plan became effective on December 14, 1998. Most recently, by Order dated September 10, 1999, the Commission authorized MEBTEL's Plan which became effective on January 1, 2000. Each company consulted with the Public Staff and entered into a Stipulation and Agreement with the

Public Staff regarding the parameters of its Plan. Ultimately, the Plan approved by the Utilities Commission for each company was the Stipulated Plan with limited modifications. Consequently, the provisions of each Plan are very similar. In authorizing the Plans, the Commission found that each met the following four major requirements set out in G.S. 62-133.5(a):

- (i) Protects the affordability of basic local exchange service, as such service is defined by the Commission;
- (ii) Reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt;
- (iii) Will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and
- (iv) Is otherwise consistent with the public interest.

The major provisions of the Plans permit each company to determine and set its own depreciation rates, to adjust its prices for service in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices. BellSouth's services are divided into five categories: Basic, Non-Basic 1, Non-Basic 2, Interconnection, and Toll Switched Access Services. The services of the other six companies are divided into four categories, which are the same as BellSouth's categories except for excluding the Toll Switched Access category. Regarding changes in the prices of services, all seven Plans provide for a three-year cap on the initial prices for Residence Basic Local Exchange Service from the effective date of the Plan. For Concord, MEBTEL, and Verizon, the initial prices in the aggregate for Toll Switched Access Services are the maximum that the companies may charge under the Plans. For ALLTEL, the initial prices for Toll Switched Access Services after each of the reductions shown in the Plan, in the aggregate for originating plus terminating, are the maximum that ALLTEL will charge under the Plan. For BellSouth, Carolina, and Central, the prices, in effect for the individual rate elements included in Toll Switched Access Services after each of the Plans' scheduled reductions, are, in the aggregate, the maximum that the companies may charge under the Plans.

Under all seven Plans, there are no constraints on price changes for services in the Non-Basic 2 category. In six of the Plans, the services in the Basic (excluding residential basic local service), Non-Basic 1, and Interconnection categories are limited to an overall price change which cannot exceed the Gross Domestic Product Price Index (GDP-PI) minus a 2% productivity offset. The only exception to the 2% offset is in BellSouth's Plan, which has a 3% offset for the Non-Basic 1 and Interconnection categories. The increase limits for individual rate elements in a category, as opposed to individual services, are the same in the Plans for ALLTEL, Carolina, Central, Concord, MEBTEL, and Verizon. Those limits are as follows:

Service Category	Rate Element Limit Increases
Basic	Change in GDP-PI plus 3%
Non-Basic 1	Change in GDP-PI plus 15%
Interconnection	Change in GDP-PI plus 7%

The rate element limits for BellSouth are the same for the Basic and Interconnection categories, but for the Non-Basic 1 category, the limit is the change in the GDP-PI plus 17%. For all Plans, a company *may*, with the approval of the Utilities Commission, adjust the prices of any service due to the financial impact of governmental actions, such as the implementation of extended area service (EAS). Such increases will not be constrained by the above general pricing rules.

The major differences among the seven Plans relate to rate reductions or rate rebalancing/restructuring. Verizon's Plan does not contain provisions for either rate reductions or rate rebalancing. BellSouth's Plan contains provisions for total revenue reductions of \$60 million to be spread through annual reductions of \$15 million beginning with the effective date of the Plan and on the first, second, and third anniversary dates thereafter. The bulk of the revenue reductions result from eliminating touch-tone rates and reducing toll switched access rates, including eliminating the Originating Carrier Common Line Charge. Carolina's and Central's Plans collectively contain provisions to reduce revenues by \$30 million, with a \$15 million reduction effective on the date of the Plans followed with a \$5 million annual reduction on the first, second, and third anniversary dates thereafter. The bulk of the revenue reductions result from rate changes in the same services included in BellSouth's revenue reduction.

Concord's Plan, ALLTEL's Plan, and MEBTEL's Plan contain rate rebalancing. For Concord, the main features of this part of the Plan are: (1) to establish flat rate local calling where none currently exists among Concord's nine exchanges; (2) to establish the same basic local exchange rates for all exchanges except the Harrisburg exchange, which will have a higher rate due to having EAS to the Charlotte exchange, resulting in basic rate increases for all exchanges; (3) to eliminate charges for touch-tone service; (4) to expand and revise the Metro Calling Plan; and (5) to establish a peak rate of \$0.20 per minute and an off-peak rate of \$0.10 per minute for intraLATA toll calls. The net result of the above changes is to reduce Concord's annual revenues by \$696,500. For ALLTEL, the main features of the rate rebalancing are (1) to modify the Company's local service rates to be similar to the rates of BellSouth in most exchanges; (2) to eliminate charges for touch-tone service; and (3) to make the rates for recurring and nonrecurring services the same in each of the Company's thirty-one exchanges. The rate rebalancing will result in an annual reduction in intrastate revenues of \$7,483,036. The implementation of some one-way EAS routes will result in \$132,000 additional annual intrastate terminating access expense for a total annual reduction to ALLTEL of \$7,615,036. Finally, for MEBTEL, the main features

of the rate rebalancing are (1) to reduce rates for residential single line service in its one exchange; (2) to eliminate charges for touch-tone service; and (3) to reduce annual revenues derived from recurring charges by approximately \$223,618. Decreasing these revenue reductions will be partially offset by increases to Directory Assistance, Operator Assisted Station-to-Station customer dialed calls, and service charges. The net result is to reduce annual revenues for the first year of the plan by \$145,932.

BellSouth's price plan was altered in 2000 due to a Joint Stipulation that was, after modification, adopted by the Commission. The Joint Stipulation reduced access charges as discussed further under Section VIII - Access Charge Reductions. The Joint Stipulation also created a new section to BellSouth's price plan instituting a self-enforcing penalties mechanism wherein BellSouth must meet eight service quality objectives to avoid the imposition of monetary penalties. Further, under the Joint Stipulation, a Commission review of the operation of the price plan was postponed for one year from in advance of June 24, 2001 to in advance of June 24, 2002.

Further, Carolina/Central's price plan was altered effective November 1, 2000, to include a new section substantially identical to the section inserted in the BellSouth price plan which institutes a self-enforcing penalties mechanism wherein Carolina and Central must meet eight service quality objectives to avoid the imposition of monetary penalties.

As previously mentioned, under provisions of all seven price plans, the Commission is to undertake a review of the operation of each Plan in advance of five years from the effective date of the Plan to determine how the operation of the Plan comports with House Bill 161. By Order dated June 12, 2001, the Commission deferred the review of the Carolina, Central, and Verizon price plans to in advance of June 24, 2002, in order to undertake and coordinate such reviews with the review of the BellSouth price plan which was deferred through the Joint Stipulation. Therefore, currently the Commission is scheduled to complete its reviews by the following dates:

<b>ILEC</b>	<b>Commission Review to be Complete in Advance of</b>
BellSouth	June 24, 2002
Carolina and Central	June 24, 2002
Verizon	June 24, 2002
Concord	September 1, 2002
ALLTEL	December 14, 2003
MEBTEL	January 1, 2005

## Part IV.

### **UNIVERSAL TELEPHONE SERVICE**

Section 254 of TA96 discusses and addresses universal telephone service issues. TA96 dictated the formation of a Federal-State Joint Board on universal service with the purpose of reviewing universal service mechanisms and recommending changes to any regulations concerning the provision of universal service. TA96 also outlined seven specific principles on which the Joint Board and the FCC should base policies for the preservation and advancement of universal service (Section 254(b)) and provided a definition of universal service (Section 254(c)). In addition, TA96 allowed for discounts on telecommunications services to schools, libraries, and rural health care providers (Section 254(h)).

In November 1996, the Joint Board presented its recommendations concerning its review of universal service to the FCC as mandated by TA96. After consideration of the Joint Board's recommendations, the FCC released its Report and Order, CC Docket No. 96-45 (Universal Service Order or USO) on May 8, 1997.

With the issuance of the FCC's Universal Service Order, states across the nation have had many responsibilities to perform in carrying out the provisions of the FCC's Universal Service Order. The Utilities Commission has established several dockets and issued orders to effect universal service goals as follows:

**Docket No. P-100, Sub 133a:** By Order dated July 15, 1997, the Utilities Commission permanently adopted interstate discount rates which range from 20% to 90% for schools and libraries as outlined in the Universal Service Order for intrastate services to ensure that North Carolina schools and libraries are afforded the discounts allowed under the FCC's Order. These discounts became available on January 1, 1998.

**Docket Nos. P-100, Sub 133b, and P-100, Sub 133g:** The Utilities Commission split the universal service proceeding into several phases and conducted hearings in two of them. The first phase, Docket No. P-100, Sub 133b, was decided in Orders issued on April 20 and July 2, 1998, by which the Commission approved the cost models and inputs which form the framework for determining the costs of universal service in North Carolina. The second phase, Docket No. P-100, Sub 133g, heard in June 1998, considered more than 25 issues which are central to the Commission's ability to adopt the final rules required by G.S. 62-110(f1). A third phase was scheduled for January 1999 concerning a Public Staff proposal regarding costing methodology but was continued at the request of the parties. It is likely that additional hearings will be required before final rules are adopted.

**Docket No. P-100, Sub 133c:** On August 12, 1997, the Commission issued an Order which required any telecommunications carrier in North Carolina desiring to become

an eligible telecommunications carrier (ETC) in North Carolina to petition the Commission for designation as an eligible carrier. The Commission Order referenced Paragraph 56 of the FCC's Universal Service Order which outlines specific criteria. As of the end of 1997, the Commission had granted the petitions of the sixteen North Carolina incumbent LECs for designation as ETCs.

**Docket No. P-100, Sub 133e:** On October 3, 1997, the Commission issued an Order Designating Interim Service Areas in which the Commission concluded that it was appropriate to designate the existing nonrural service areas of nonrural telephone companies their respective interim service areas. Additionally, the Commission ruled that rural service areas for rural telephone companies should, on an interim basis, consist of their current respective study areas.

**Docket No. P-100, Sub 133f:** In various Orders, the Commission has expanded the eligibility criteria for the Lifeline/Link-Up programs to now include Supplemental Security Income, Food Stamps, Work First or Temporary Assistance for Needy Families, Medicaid, Low Income Home Energy Assistance Program (LIHEAP), and federal housing assistance (Section 8).

Two extensions have been requested by the Commission of the statutory deadline contained in G.S. 62-110(f1) for adoption of final rules concerning the provision of universal telephone service. The reasons for asking for the extensions fell principally into four categories: (1) lack of information as to how much of the costs of universal service will be recovered at the interstate level; (2) sufficient time in which to reach fair resolution of the important issues in this docket; (3) appeals of state and federal decisions; and (4) industry and regulatory resources are currently strained to the maximum in attempting to resolve one major docket after another. The first extension of time was adopted by the General Assembly during the 1999 legislative session. The second extension of time (until July 1, 2003) was adopted by the General Assembly during the 2001 legislative session.

## **Part V.**

### ***INTERCONNECTION AGREEMENTS***

#### ***A. Framework — State and Federal Law; Decisions of the Federal Communications Commission and Federal Appellate Courts***

G.S. 62-110(f1), in pertinent part, authorized the Utilities Commission to adopt rules it finds necessary as follows:

- (1) To provide for the reasonable interconnection of facilities between all providers of telecommunications services;
- (2) To determine when necessary the rates for such interconnection;

- (3) To provide for the reasonable unbundling of essential facilities where technically and economically feasible; and
- (4) To provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable.

Further, G.S. 62-110(f1) instructed the LECs and CLPs to negotiate the rates for local interconnection and directed that, in the event that the parties are unable to agree within 90 days of a bona fide request for interconnection on appropriate rates for interconnection, either party may petition the Utilities Commission for determination of the appropriate rates for interconnection.

In addition, TA96 mandated State Commissions to resolve interconnection issues as petitioned by parties, and to conclude the resolution of any unresolved issues not later than nine months after the date on which the local exchange carrier received the request. On August 8, 1996, in CC Docket No. 96-98, the FCC issued its findings and rules (the Interconnection Order) establishing a national framework for implementation of the local competition provisions of TA96. Recognizing three methods of entry into the local telephone market under the Act — full facilities-based entry, purchasing of unbundled network elements from the incumbent LECs, and resale of the incumbent LEC's retail services — the FCC prescribed certain minimum points of interconnection necessary to permit competitors to choose the most efficient points at which to connect with the local network; adopted a minimum list of unbundled elements that the incumbent LECs must make available to new entrants upon request; set forth a methodology for State Commissions to use when applying the avoided cost standard for setting wholesale prices for retail services; and set forth a methodology for State Commissions to use in establishing rates for interconnection and unbundled network elements. The FCC's pricing rules were predicated on its view that TA96 created a scheme of parallel jurisdiction between federal and state regulators to achieve the purposes of the Act. A number of State Commissions as well as incumbent LECs appealed, challenging this and other aspects of the FCC's Interconnection Order. The case was assigned to the United States Court of Appeals for the Eighth Circuit which rendered a decision on July 18, 1997, vacating the pricing rules on jurisdictional grounds and rejecting certain rules as inconsistent with the Act while upholding others. Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. 1997). Several parties filed petitions for review by the United States Supreme Court.

On January 25, 1999, the United States Supreme Court entered its Opinion in AT&T Corp. v. Iowa Utilities Board, 525 U.S. 366 (1999). The Supreme Court held, in pertinent part, that (1) the FCC has jurisdiction under Sections 251 and 252 of the Act to design a pricing methodology and adopt pricing rules; (2) the FCC's rules governing unbundled access are, with the exception of Rule 319, consistent with the Act; (3) it was proper for the FCC in Rule 319 to include operator services and directory assistance, operational support systems, and vertical switching functions such as caller I.D., call forwarding, and call waiting within the features and services that must be provided to

competitors; (4) the FCC did not adequately consider the Section 251(d)(2) “necessary and impair” standards when it gave requesting carriers blanket access to network elements in Rule 319; (5) the FCC reasonably omitted a facilities-ownership requirement on requesting carriers; (6) FCC Rule 315(b), which forbids ILECs to separate already-combined network elements before leasing them to competitors, reasonably interprets Section 251(c)(3) of the Act, which establishes the duty to provide access to network elements on nondiscriminatory rates, terms, and conditions and in a manner that allows requesting carriers to combine such elements; and (7) FCC Rule 809 (the “pick and choose” rule), which tracks the pertinent language in Section 252(i) of the Act almost exactly, is not only a reasonable interpretation of the Act, it is the most readily apparent. The Supreme Court remanded the cases back to the Eighth Circuit Court of Appeals for proceedings consistent with its opinion.

On June 10, 1999, the Eighth Circuit Court of Appeals entered an Order on remand in response to the Supreme Court’s decision which, in pertinent part, reinstated FCC Rules 501-515, 601-611, and 701-717 (the pricing rules), Rule 809 (the “pick and choose” rule), and Rule 315(b) (ILECs shall not separate requested network elements which are currently combined). The Eighth Circuit also vacated FCC Rule 319 (specific unbundling requirements). The Court set a schedule for briefing and oral argument of those issues which it did not address in its initial opinion because of its ruling on the jurisdictional issues. The Court also requested the parties to address whether it should take any further action with respect to FCC Rules 315(c) - (f) regarding unbundling requirements. Iowa Utilities Board v. FCC (Order filed June 10, 1999).

On July 18, 2000, the Eighth Circuit filed its Order on Petitions for Review of an Order of the Federal Communications Commission. Iowa Utilities Board v. FCC, 219 F.3d 744 (8th Cir. 1999). On its decision on remand, the Eighth Circuit reviewed the merits of the FCC’s forward-looking pricing methodology, proxy prices, wholesale pricing provisions, unbundling rules, rural exemptions, and preexisting agreements. The Court vacated certain FCC rules. Several parties subsequently filed petitions for writs of certiorari with the Supreme Court of the United States.

On January 22, 2001, the Supreme Court entered an Order granting the petitions for certiorari limited to the following questions:

1. Whether the Court of Appeals erred in holding that 47 U.S.C. Section 252(d)(1) of the Telecommunications Act of 1996 forecloses the cost methodology adopted by the FCC, which is based on the efficient replacement cost of existing technology, for determining the interconnection rates that new entrants into local telecommunications markets must pay incumbent local telephone companies.
2. Whether the Court of Appeals erred in holding that neither the Takings Clause nor the Telecommunications Act of 1996 requires

incorporation of an incumbent local exchange carrier's "historical" costs into the rates that it may charge new entrants for access to its network elements.

3. Whether 74 U.S.C. Section 251(c)(3) prohibits regulators from requiring that incumbent local telephone companies combine certain previously uncombined network elements when a new entrant requests the combination and agrees to compensate the incumbent for performing that task.

The Supreme Court has calendared this matter for oral argument on October 10, 2001.

### ***B. Negotiation and Arbitration***

In the initial round of arbitrated interconnection proceedings in 1996 and 1997, seven petitions for arbitration were decided by the Commission. In addition to the interconnection agreements which had been filed in compliance with orders in arbitration proceedings, 178 negotiated agreements between companies had been approved by the Commission as of July 1, 1999. During the two-year period ending July 1, 2001, the Commission approved six additional interconnection agreements through the arbitration process and 155 additional negotiated interconnection agreements. Furthermore, as of July 1, 2001, there were 17 negotiated agreements pending approval and four arbitrated agreements pending approval. The arbitration proceedings consistently involved many complex and highly technical issues.

### ***C. Reciprocal Compensation***

An indirect result of the proliferation of Internet traffic has been a rise in the number of disputes between LECs and CLPs concerning reciprocal compensation for the termination of traffic to Internet service providers (ISPs). Section 251(b)(5) of TA96 obligates all LECs to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." Such reciprocal compensation arrangements apply to local traffic. As a result of this provision, the interconnection agreements between LECs and CLPs generally provide for the payment of a fee for termination of local traffic.

Many CLPs have been aggressive in pursuing the ISP market niche and signing up ISP providers as customers. This means that the CLP terminates calls to that ISP. The CLPs have argued that the LECs must pay them compensation for the termination of such traffic because it is local. Such charges have often totaled in the millions of dollars. The LECs argue that they are not obligated to pay this compensation because calls to the ISPs are not truly local calls but rather, due to the nature of the Internet, should be considered interstate and long distance.

The Commission has decided several disputes under existing interconnection agreements related to reciprocal compensation and, in common with other states that have examined the question, has held that the language of the interconnection agreements provided that the calls to ISP providers should be considered local and thus subject to reciprocal compensation. See, e.g. Docket No. P-55, Sub 1027 (US LEC of North Carolina, Inc. v. BellSouth), Docket No. P-55, Sub 1096 (Intermedia Communications, Inc. v. BellSouth), and Docket No. P-55, Sub 1094 (MCImetro Access Transmission Services, Inc. v. BellSouth), and Docket No. P-504, Sub 8 (Intermedia Communications, Inc. v. GTE). These cases have been appealed by the LECs.

After the Commission made the above rulings, the FCC addressed the jurisdictional nature of ISP traffic in an Order adopted in CC Docket No. 96-98 on February 25, 1999, at least on a prospective basis (Declaratory Ruling). While holding that “ISP bound traffic is jurisdictionally mixed, and appears to be largely interstate,” the FCC appeared to defer to existing State Commission decisions and applied this holding to new, as opposed to existing, interconnection agreements. The FCC also sought comments on the nature and extent of future compensation arrangements for ISP traffic and will issue a ruling at some point in the future. To further complicate matters, on March 24, 2000, the Court of Appeals for the District of Columbia Circuit vacated certain provisions of the Declaratory Ruling and remanded the matter for the FCC.

With respect to reciprocal compensation in the context of interconnection agreements entered into after the Declaratory Ruling, the Commission held in a series of cases that reciprocal compensation should be paid for ISP traffic in the same manner and at the same rate as other local traffic, with the exception that ISP traffic would be subject to true-up once the FCC issued its subsequent ruling and the Commission had implemented it. See, e.g., Docket No. P-472, Sub 15 (Time Warner/BellSouth Arbitration); Docket No. P-582, Sub 6 (ICG/BellSouth Arbitration); Docket No. P-55, Sub 1178 (BellSouth/Intermedia Arbitration); and Docket No. P-500, Sub 10 (ITC^DeltaCom/BellSouth Arbitration).

In CC Docket 96 - 98 (ISP Traffic Remand Order, on April 27, 2001), the FCC issued its follow-up Order to the Declaratory Ruling which also sought to resolve the issues remanded by the Court of Appeals. The FCC concluded that telecommunications traffic delivered to an ISP is interstate access traffic, specifically “information access” and is not subject to reciprocal compensation, but, rather than immediately scrapping the current system, the FCC established a transitional cost recovery mechanism for the exchange of this traffic. The basic structure of the interim, transitional recovery scheme for reciprocal compensation is as follows:

- For the first six months following the effective date of the FCC Order, intercarrier compensation of ISP-bound traffic will be capped at a rate of \$.0015/minute-of-use (mou). For the next 18 months thereafter, the rate will be capped at \$.0010/mou. Thereafter, the rate will be capped at \$.0007/mou.

- The rate caps for ISP-bound traffic apply only if an incumbent local exchange carrier offers to exchange all local traffic at the same rate.
- A cap will be imposed on total ISP-bound minutes for which a LEC may receive this compensation equal to the number of ISP-bound minutes for which that LEC was previously entitled to compensation, plus a ten percent growth factor.
- To identify ISP-bound traffic, the FCC adopted a rebuttable presumption that traffic exchanged between carriers that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to the compensation mechanism set forth in the Order.

The FCC Order and rule revisions became effective on June 14, 2001.

In response to the ISP Traffic Remand Order, the Commission has proceeded to require compliance with it as to interconnection agreements entered into after the issuance of that Order. Moreover, from the prospective nature of its application, the Commission solicited comments in Docket No. P-100, Sub 133m, regarding the viability of the true-up mechanism for interconnection agreements entered into between the first FCC Order and the second. On August 15, 2001, the Commission issued an Order Eliminating the True-Up Requirement.

## **Part VI.**

### ***UNBUNDLED NETWORK ELEMENTS AND COLLOCATION***

TA96 has required the Commission to address interconnection issues critical to local competition. Among those issues are: (1) unbundled network elements (UNEs) which can be defined as specific network components such as a switch; and (2) collocation which is the process by which CLPs place their equipment in the central offices of the ILECs to interconnect and provide local telephone service.

The Commission established permanent prices for UNEs by Order dated March 13, 2000. However, on June 7, 2001, the Commission issued a Recommended Order wherein the Commission considered the effects of the UNE Remand<sup>2</sup> and Line

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<sup>2</sup> In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, CC Docket No. 96-98, November 5, 1999.

Sharing<sup>3</sup> Orders of the FCC, as well as issues raised in arbitration proceedings<sup>4</sup> and deferred to the docket.

The Commission addressed the following UNE issues in its June 7, 2001 Order:

- (1) Loops;
  - (a) Inside Wiring;
  - (b) xDSL Loops and Loop Conditioning;
  - (c) Dark Fiber;
  - (d) IDLC and Attached Electronics;
  - (e) High-Capacity Loops; and
  - (f) Loop Qualification Information and Cross-Connects (including splitters).
- (2) Network Interface Device (NID);
- (3) Local Switching;
- (4) Vertical Features;
- (5) Interoffice Transmission Facilities;
  - (a) dedicated transport (including dark fiber); and
  - (b) shared transport.
- (6) Signaling Networks and Call-Related Databases;
- (7) Operations Support Systems (OSS) and OSS Access to Loop Qualification Data;
- (8) Operator Services/Directory Assistance (OS/DA) (availability of customized routing);
- (9) Line Sharing and Spectrum Management;
  - (a) set the price of the high frequency portion of the loop;

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<sup>3</sup> In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Dockets 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, December 9, 1999.

<sup>4</sup> ICG Telecom Group, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-582, Sub 6; ITC^DeltaCom Communications, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-500, Sub 10; Intermedia Communications, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-55, Sub 1178; BlueStar Networks, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-847, Sub 1; MCImetro Access Transmission Service, LLC/BellSouth Telecommunications, Inc. Arbitration, Docket No. P-474, Sub 10; and AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket Nos. P-140, Sub 73 and P-646, Sub 7.

- (b) determine which technologies are acceptable for deployment (provisioning);
  - (c) determine the disposition of known disturbers; and
  - (d) implementation schedule.
- (10) Address each of the UNE issues raised in the ICG Arbitration;
- (a) the enhanced extended loop (EEL) as a UNE;
  - (b) packet switching capabilities as UNEs; and
  - (c) volume and term discounts for UNEs.
- (11) Address each of the UNE issues raised in the ITC^DeltaCom Arbitration;
- (a) Provision of unbundled loops using IDLC technology;
  - (b) UNEs and combinations BellSouth should be required to provide;
  - (c) Charges to ITC^DeltaCom for use of BellSouth's OSS;
  - (d) Provision of EELs and loop-port combinations;
  - (e) Recurring and nonrecurring rates for ADSL/HDSL loops, SL1 and SL2 loops, extended loops, and loop-port combinations;
  - (f) Disconnection charge; and
  - (g) Charges when customers are converted from resale to UNEs.
- (12) Address each of the UNE issues raised in the Intermedia Arbitration; and
- (a) What is the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b)?
  - (b) Should BellSouth be required to provide access to EELs at UNE rates?
  - (c) Should BellSouth be required to allow Intermedia to convert existing special access services to EELs at UNE rates?
  - (d) Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface (UNI); (ii) Network-to-Network Interface (NNI); and (iii) Data Link Control Identifiers (DLCI), at Intermedia-specified committed information rates (CIR)?
  - (e) What are the appropriate charges for interconnection trunks between the Parties' frame relay switches?
  - (f) What are the appropriate charges for frame relay NNI ports?
  - (g) What are the appropriate charges for permanent virtual circuit (PVC) segments (i.e. DLCI and CIR)?
  - (h) What are the appropriate charges for requests to change a PVC segment or PVC service order record?
- (13) Subloops.

Exceptions to the June 7, 2001 Recommended Order were filed and are currently pending decision before the Commission.

By Order dated September 1, 1999, the Commission established a generic collocation proceeding in Docket No. P-100, Sub 133j. In its Order, the Commission acknowledged that the provisioning of collocation is crucial to CLPs in providing local exchange telephone service in North Carolina.

The Commission requested that the CLPs form an Industry Task Force open to all CLPs and ILECs in North Carolina which wished to participate. The Commission also requested that the Public Staff participate on the Task Force and invited the Attorney General to participate on the Task Force if he so chose. The Commission instructed the Task Force to attempt to collectively stipulate to and resolve as many specific collocation issues as possible and file any stipulated collocation standards or rules with the Commission. The Commission requested that the Task Force file a report with the Commission outlining the specific issues on which the Task Force could not reach agreement and which should be addressed and considered by the Commission in the context of further proceedings in the docket.

On May 19, 2000, the Task Force filed its Third and Final Report with the Commission. The Report detailed a Standard Collocation Offering that the Parties had created and outlined the issues that remained in dispute between the Parties. The Commission scheduled and held an evidentiary hearing in the docket and received Proposed Orders and Briefs in February 2001. A decision on the docket is currently pending.

## **Part VII.**

### ***BELLSOUTH INTERLATA SERVICE APPLICATION***

Section 271 of TA96 sets out the procedure by which a Bell Operating Company (BOC) such as BellSouth can receive authority from the FCC to provide in-region interLATA long distance service. Ever since the breakup of AT&T Communications of the Southern States, Inc. (AT&T), BOCs have been forbidden to offer such service.

The role of the Commission with respect to the aforementioned process is set out in Section 271 (d)(2)(B) where it is provided that the FCC shall consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the BOC with the requirements of Subsection (c). Subsection (c) sets out the requirements that a BOC must satisfy before being granted in-region long distance authority. The FCC has indicated that it intends to rely heavily on the States in its determinations under Section 271 and has requested the States to compile a detailed evidentiary record. The Commission has established Docket No. P-55, Sub 1022, in which

to consider BellSouth's Section 271 application prior to consultation with the FCC. In order to allow for sufficient time to hold an evidentiary hearing, the Commission required that BellSouth make its filing with the Commission 120 days prior to the date it intends to make its Section 271 filing with the FCC.

On August 5, 1997, BellSouth filed with the Commission a Notice of Intent to File a Section 271 Application for InterLATA Authority with the FCC. In its notice, BellSouth requested that the Commission set this matter for hearing to respond to the FCC's request for consultation pursuant to Section 271(d)(2)(B) of TA96; to consider, evaluate, and approve BellSouth's Statement of Generally Available Terms (SGAT) pursuant to Section 252(f) of TA96; to find that BellSouth's SGAT meets the requirements of the 14-point checklist set forth in Section 271(c)(2)(B) of TA96; to establish an information-gathering process to determine the presence in North Carolina of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers; and to find that the request of BellSouth Long Distance, Inc. (BSLD) to enter the long distance market in North Carolina is consistent with the public interest, convenience, and necessity in accordance with Section 271(d)(3)(C) of TA96.

The Commission conducted evidentiary hearings in Docket No. P-55, Sub 1022, on BellSouth's Section 271 filing. The evidentiary hearings began on September 22, 1997, and ended October 1, 1997.

On December 23, 1997, the Commission issued an Order Regarding SGAT which stated that BellSouth's SGAT, as revised by BellSouth on August 28, 1997, and September 4, 1997, be permitted to take effect; provided, however, that the Commission may approve, disapprove, or require BellSouth to revise or modify the SGAT in future Orders issued pursuant to the Commission's authority under Section 252(f)(4) of the Act.

On January 14, 1998, the Commission issued an Order Regarding Section 271 Requirements. In its Order, the Commission stated that, except as set out below, BellSouth is providing or generally offering each and every one of the 14-point checklist items:

- a. With respect to checklist item (i), BellSouth is not currently providing or generally offering interconnection and access to local tandems and physical collocation in accordance with the requirements of Sections 251(c)(2) and 252(d)(1); and
- b. With respect to checklist item (ii), BellSouth has not fully developed adequate performance measurements to demonstrate that the electronic interfaces through which the CLPs will access the Operations Support Systems (OSS) are being provided in a nondiscriminatory manner. BellSouth, in conjunction with its Section 271 filing with the FCC, shall provide a set of performance standards and measurements which clearly

demonstrate that BellSouth is providing nondiscriminatory access to its OSS functions.

The Commission further stated in its Order that BellSouth's entry into the interLATA long distance market in North Carolina, through its affiliate BSLD, is consistent with the public interest, convenience, and necessity in accordance with Section 271(d)(3)(C) of TA96 and should be authorized by the FCC as soon as BellSouth meets all Section 271 requirements. Furthermore, the Commission ordered that BellSouth's revised SGAT would be allowed to continue in effect.

BellSouth filed a Petition for Approval of Revised SGAT on July 22, 1998. BellSouth asserted in its Petition that through said filing, BellSouth was submitting a Revised SGAT that: (1) addresses the concerns noted by the Commission in its January 14, 1998 Order such that the entire Revised SGAT can now be approved by the Commission under Section 252(f); (2) amends the SGAT now in effect to reflect the decisions by the United States District Court in the appeals by AT&T and MCI of their respective Commission arbitration orders; and (3) revises the SGAT to reflect discussions between BellSouth and the FCC staff concerning the requirements for obtaining Section 271 relief.

On August 21, 1998, the Commission issued an Order Scheduling Hearing regarding only the revisions to BellSouth's SGAT. The hearing was scheduled to begin on December 1, 1998. The Order stated that the Chair did not believe that it was appropriate to re-examine BellSouth's entire SGAT and noted that the Commission has already devoted extensive resources to a comprehensive investigation of BellSouth's Section 271 application. Further, the Order stated that it is entirely appropriate and judicially efficient for the Commission to examine only those revisions to the SGAT that BellSouth has proposed.

ICG Telecom Group, Inc.; Interpath Communications, Inc.; Intermedia Communications, Inc.; ITC^DeltaCom; and KMC Telecom Group, Inc. (collectively, New Entrants) filed a Motion to Expand and Reschedule Hearing on November 3, 1998. The New Entrants contended that a current factual record should be assembled. The New Entrants also urged the Commission to apply current FCC guidelines as developed in the FCC's South Carolina and Louisiana decisions to a current factual record to assess BellSouth's compliance with its Section 271 obligations.

On November 12, 1998, the Commission issued an Order Continuing Hearing which concluded that the interests of justice and judicial economy would be best served by a continuance of the hearing scheduled to begin on December 1, 1998, pending further Order. The Order stated that the continuance would give BellSouth the opportunity to consider revisions to its SGAT in light of decisions made by the FCC in its October 13, 1998 Louisiana decision.

On April 12, 2001, BellSouth filed Notice of Intent to File Section 271 Application with the Federal Communications Commission and Request for Procedural Order. By Order issued May 9, 2001, the Commission scheduled the matter for hearing beginning on October 29, 2001.

## **Part VIII.**

### **ACCESS CHARGE REDUCTIONS**

On July 28, 1999, AT&T filed a complaint seeking a reduction in the rates charged by BellSouth for intrastate switched access service. In its complaint, AT&T alleged that BellSouth's rates for switched access service in North Carolina were the highest in the nine-state, BellSouth region and well above their cost. AT&T further alleged that these rates were discriminatory and anticompetitive and requested that BellSouth's switched access rates be reduced to \$.01 a minute.

On February 15, 2000, AT&T, BellSouth, and the Public Staff (the Stipulating Parties) filed a Joint Stipulation settling AT&T's complaint, revising BellSouth's Price Plan, establishing an enhanced infrastructure fund to further deployment of Asymmetric Digital Subscriber Line (ADSL) technology, and adopting service objectives with self-enforcing penalties.

A major feature of the Joint Stipulation included a substantial phased-in reduction of BellSouth's intrastate switched access charges, and AT&T's commitment to flow through those reductions to its North Carolina long distance customers on a dollar-for-dollar basis. On February 16, 2000, the Public Staff filed a Petition requesting the Commission to require facilities-based interexchange carriers (IXCs) to flow through, on a dollar-for-dollar basis, the intrastate switched access charge reductions made by BellSouth pursuant to the Joint Stipulation.

After hearing and further orders, the Commission approved a phased-in reduction of BellSouth's current composite switched access per minute rate of \$.062658<sup>5</sup> to be reduced to a composite rate of \$.02 per minute, resulting in a total reduction of approximately \$83 million. This reduction began June 24, 2000, and will end December 31, 2002. The Commission also ordered facilities-based long distance carriers such as AT&T, MCI WorldCom, and Sprint Communications Company to reduce their toll rates to offset the intrastate switched access reductions on a dollar-for-dollar basis.

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<sup>5</sup>As a result of the reductions in BellSouth's Price Plan which provided for scheduled rate and revenue reductions, BellSouth's switched access rates went from \$.1016 per minute at the inception of the Plan to \$.0648 per minute on the third anniversary of the Plan. For further information regarding reduction of access charges through Price Plans, see Section III, Price Regulation Plans.

On March 1, 2001, AT&T filed a complaint against Sprint Communications Company, Carolina Telephone and Telegraph Company, and Central Telephone Company (collectively Sprint) in Docket No. P-89, Sub 75, requesting that the Commission reduce Sprint's intrastate switched access rates because they are inflated, anticompetitive, discriminatory, and economically inefficient. A hearing to consider this matter was scheduled for August 29, 2001. On August 23, 2001, AT&T and Sprint filed a Joint Motion for Postponement of Hearing in this docket for at least 30 days. The Movants represented that they had reached an agreement in principle and needed additional time to finalize this work. An Order Postponing Hearing was issued on August 24, 2001. On September 6, 2001, AT&T filed a Notice of Withdrawal of Complaint. The Commission has not, to date, taken final action regarding this matter.

## **Part IX.**

### **QUALITY OF SERVICE ISSUES**

#### **A. *Billing Reform***

On June 23, 1998, in response to a Petition for Rulemaking filed by the Attorney General, the Commission opened Docket No. P-100, Sub 140, In the Matter of Petition for Rulemaking to Revise Billing and Collections Procedures for Telecommunications Companies Regarding Local Disconnection and Toll Denial.

In summary, the Petition stated that other sellers of goods or services may not lawfully refuse to provide customers one essential product as a means to extract payment for a separate product, and there is no sound public policy reason why local telephone companies should be able to do it. Further, it is neither fair nor reasonable to threaten vital local services as a method for leveraging collection of non-local charges. Moreover, local disconnection and toll blocking are contrary to both the national and North Carolina policies of promoting competition in telecommunications and related markets. The Commission should prohibit these practices because they harm consumers and impede universal service and competition. Finally, they invite and reward fraud and other unscrupulous practices by third-party providers, all with no countervailing public benefit.

On October 8, 1999, in response to an Order requesting negotiations to determine whether a consensus could be reached among the parties to this docket on an appropriate proposal for the Commission, the Attorney General, the Public Staff, the North Carolina Justice and Community Development Center (NCJCDC), and the Telecommunications Industry Group (TIG) filed a Submission of Joint Settlement Proposal (Joint Settlement Proposal). Under the settlement, the central principles agreed to were (1) disconnection of local telephone service will no longer be allowed for nonpayment of non-local charges and (2) global toll denial will be allowed for nonpayment of long distance charges, and certain requirements pertaining to bill format. After extensive review by the Commission, a final Order Promulgating Rules in this matter was issued on April 3, 2000, with the Commission strongly encouraging the companies, if possible, to complete implementation

of the billing changes before July 1, 2000. The Commission, Public Staff, and Attorney General continue to monitor compliance issues relating to billing format. A copy of the relevant rules is set out in Appendix C.

## **B. Service Standards**

### **2000 Service Quality Presentations**

On January 12, 2000, the Chair of the Utilities Commission sent letters to BellSouth, Carolina, Central, and Verizon stating that the Commission had become increasingly concerned about the quality and level of service provided by various public utilities. The letter explained that the Commission was concerned about what it perceived to be a general deterioration in the quality of service provided to ILEC customers. The letter noted that the concern was prompted by the increasing number of complaints received by the Commission and the Public Staff, as well as available information concerning compliance with certain of the service objectives specified in Commission Rule R9-8. Therefore, the Chair requested that representatives of BellSouth, Carolina, Central, and Verizon appear before the Commission to discuss the issues of service quality.

During the first quarter of 2000, BellSouth, Carolina, Central, and Verizon appeared before the Commission to discuss their compliance with the service objectives outlined in Rule R9-8.

### **Commission Rule R9-8**

On December 20, 1988, the Commission adopted Rule R9-8 — Service Objectives for Local Exchange Telephone Companies, which outlined 19 specific service objectives for LECs to meet. At the time the Rule was adopted, no formal reporting was required.

On September 20, 2000, the Commission issued an Order Revising Rule R9-8 to Adopt a Reporting Requirement. Through its Order, the Commission:

1. Revised, effective the date of the Order, Rule R9-8 to incorporate a new subsection (d) as follows:

(d) Reporting Requirement - Each local exchange telephone company shall file an original and five (5) copies of a report each month with the Chief Clerk of the Commission detailing the results of its compliance with each of the uniform service objectives set forth in this rule. Each company shall report its performance result for each objective for its state service area as a whole and whenever possible, by exchange or district. This report shall be filed no later than twenty (20) days after the last day of the month covered by the report.

2. Revised, effective the date of the Order, Rule R9-8 to eliminate the “Public Paystations Found Out-Of-Order” objective since the service quality of payphones is now governed by the Rules in Chapter 13.
3. Required all ILECs and CLPs actually providing service to customers in North Carolina to file with the Commission by November 15, 2000, clear, detailed explanations of their measurement procedures for each service objective outlined in Rule R9-8.
4. Required ILECs and CLPs actually providing service to customers in North Carolina to report statewide results on the service objectives outlined in Rule R9-8 beginning with results for the month of December 2000. Companies were instructed to create a report format to provide information, whenever possible, on each service objective by exchange or district.
5. Stated that the Commission will hold semiannual service quality presentations wherein a company will be required to make a presentation before the Commission outlining its results on the service quality objectives outlined in Rule R9-8, explaining the reasons for any monthly failures to satisfy the objectives in Rule R9-8, and stating how the company intends to remedy any deficiencies in its performance.
6. Noted that the first of these semiannual service quality presentations would be held on August 15, 2001, at which time, BellSouth, Carolina, Central, and Verizon would each be required to make a presentation before the Commission.

The Commission received a Motion for Reconsideration on its September 20, 2000 Order. By the Motion, the Parties requested that the Commission issue an order either (1) exempting CLPs from the new reporting and presentation requirements of revised Rule R9-8 and the September 20, 2000 Order, or (2) clarifying that the revised rule and requirements of the September 20, 2000 Order apply to CLPs only insofar as they are offering services to residential customers.

After the submission of comments on the Motion for Reconsideration, the Commission issued an Order on November 29, 2000, denied the Motion for Reconsideration but clarified the Commission’s September 20, 2000 Order.

Through its Order, the Commission amended Rule R9-8 to read as follows:

- (d) Reporting Requirement - Each local exchange telephone company actually providing basic local residential and/or business exchange service to customers in North Carolina shall file an original and five (5) copies of a report each month with the Chief Clerk of the

Commission detailing the results of its compliance with each of the uniform service objectives set forth in this rule. Each company shall report its performance result for each objective for its state service area as a whole and whenever possible, by exchange or district. This report shall be filed no later than twenty (20) days after the last day of the month covered by the report.

The Commission also concluded that all ILECs and CLPs actually providing basic local residential and/or business exchange service to customers in North Carolina should file clear, detailed explanations of their measurement procedures for each service objective outlined in Rule R9-8 by December 29, 2000. The Commission found that all ILECs and CLPs actually providing basic local residential and/or business exchange service to customers in North Carolina should file their service quality results beginning with the results for the month of February 2001 on March 20, 2001, and monthly on the 20th thereafter. Further, the Commission concluded that resellers of basic local residential and business exchange service and companies that purchase UNEs from ILECs to provide basic local residential and business exchange service are expected to comply with the reporting requirements. Finally, the Commission also specified that the Commission intended in its September 20, 2000 Order only to reserve the right to require a company to make a semiannual service quality presentation before the Commission. The Commission noted that only if the Commission determined that a company's monthly service quality reports indicated problems and/or concerns would the Commission require the company to make a presentation before the Commission.

On March 22, 2001, the Commission issued another Order Amending Rule, Forming an Industry Task Force, Requesting Independent Evaluation by the Public Staff, and Revising Reporting Requirement. By this Order, the Commission:

1. Amended Rule R9-8 to delete the Regrade Application Held Orders Not Completed Within 30 Days objective.
2. Granted the ILEC Coalition's request for the Commission to establish an Industry Task Force.
3. Requested that the Industry Task Force establish a uniform set of measurement procedures for only 10 of the objectives outlined in Rule R9-8. The Commission required that the Task Force file the uniform set of measurement procedures with the Commission no later than June 21, 2001.
4. Requested the Public Staff to perform an evaluation on Rule R9-8, service quality, and appropriate measures and file a report with the Commission detailing its evaluation and providing specific recommendations by no later than June 21, 2001. The Commission required that the Public Staff specifically consider self-enforcing penalties and accuracy of directory

assistance and provide specific recommendations on those issues in its report.

5. Concluded that the companies should continue to file reports on the Rule R9-8 service objectives, but that the reporting requirement should be limited to cover only 10 of the Rule R9-8 service objectives. The 10 service objectives that the companies are required to report are listed below:

- (1) Operator "O" answertime
- (2) Directory assistance answertime
- (3) Business office answertime
- (4) Repair service answertime
- (5) Initial customer trouble reports (excluding repeat reports)
- (6) Repeat reports
- (7) Out-of-service troubles cleared within 24 hours
- (8) Regular service orders completed within 5 working days
- (9) New service installation appointments not met for Company reasons
- (10) New service held orders not completed within 30 days

In response to a Motion for Extension of the Filing Date for its Report filed by the Public Staff, the Commission issued an Order Extending the Time for the Filing Date on June 20, 2001. In its Order, the Commission granted the Public Staff's Motion for Extension of Time to file its Independent Evaluation Report. The Report is now due no later than January 30, 2002. The Commission also requested the Industry Task Force to file a Report by no later than September 28, 2001, setting out proposed revisions to the service quality objectives it believes are necessary, describing how those revisions serve the public interest, and specifying a set of uniform measurement procedures for the revised objectives.

A current copy of Commission Rule R9-8 is attached as Appendix D.

### **2001 Service Quality Presentations**

By Order dated June 26, 2001, the Commission rescheduled the semiannual service quality presentations for September 6, 2001. At that time, BellSouth, Carolina, Central, and Verizon each appeared before the Commission and made a presentation of their results on the service quality objectives outlined in Rule R9-8, explained the reasons for any monthly failures to satisfy the objectives in Rule R9-8, and stated how the companies intend to remedy any deficiencies in their performance.

### **C. *Slamming and Cramming***

Two of the most troublesome and irritating abuses in the telecommunication field are slamming and cramming. Slamming occurs when a customer's telephone service is transferred from one carrier to another without the customer's informed consent. Cramming occurs when a carrier bills a customer for services the customer has not requested.

The number of slamming complaints received by the Public Staff's Consumer Services Division fluctuates from year to year. In 1998, there were over 1,000 slamming complaints. In 2000, approximately 450 complaints about slamming were received. If anything, these figures understate the problem.

The FCC has had a series of Orders addressing the slamming problem and has instituted rules specifying how carrier authorizations may lawfully be changed. The FCC has offered the states provisory responsibility for enforcing the FCC slamming regulations (FCC Rules 64.1100-.1195), and on September 26, 2000, the Commission and Public Staff notified the FCC that the Commission was electing to assume such responsibility. Among the provisions of the rules where the Commission has assumed responsibility to enforce, an unauthorized carrier can be required to refund 150% of any payments it has received from a slammed customer. The refund is made to the authorized carrier, which retains 100% and returns the remaining 50% to the customer. While in most cases, this will be sufficient to make the customer and authorized carrier whole and to provide a small additional recovery to compensate for the inconvenience, the Public Staff and Commission believe that penalties may have a strong additional deterrent effect to slamming and cramming.

To that end, the Public Staff proposed in Docket No. P-100, Sub 148, and the Commission endorsed a new Rule R20-1 intended to crack down on slamming and cramming and related abuses in the marketing of telecommunications services. The new rule explicitly prohibits slamming and cramming and provides that, in addition to the remedies available under the FCC rules, the Commission may require additional refunds applicable to intrastate service and may impose penalties of up to \$1000 per day for both slamming and cramming, in accordance with G.S. 62-310 on the unauthorized provider. Each day that the unauthorized provider continues to make its service available to the customer constitutes a separate offense regardless of whether the customer actually makes a call on that day. The rule also clarifies and toughens requirements regarding customer solicitation and consent.

A copy of Rule R20-1 can be found in Appendix E.

## **Part X.**

### ***NUMBERING ISSUES***

Since 1999, the telecommunications market in North Carolina, as well as the nation, has changed dramatically with the increasing number of service providers competing to provide local telephone services. The increasing number of service providers across the state has resulted in the depletion of numbering resources, which becomes evident by the level of area code relief taking place. In an attempt to help manage the demand for numbering resources, a significant regulatory instrument titled Numbering Resource Optimization (NRO) Order, CC Docket No. 99-200, was issued by the FCC on March 31, 2000. The purpose for the NRO was twofold: (1) to ensure that the limited numbering resources of the North American Numbering Plan are used efficiently; and (2) to ensure that all carriers have the numbering resources they need to compete.

North Carolina continues to undergo area code changes as well as manage the introduction of FCC numbering conservation measures. As new telecommunications entrants come into the North Carolina marketplace, coupled with the ever changing demographics of the state, area code exhaust and subsequent relief planning will play an increasing role in providing adequate numbering resources to ensure the delivery of quality services to consumers. Also, the conservation of numbering resources is being monitored through two new programs recently introduced within the industry. One of the programs deals with the reclamation of central office codes not being used by various carriers, while the other deals with the assignment of numbering resources to telecommunications service providers in blocks of one thousand telephone numbers rather than in ten thousand blocks.

On March 15, 2001, North Carolina placed its first all-services distributed overlay in-service in the 704 Numbering Plan Area (NPA) due to area code exhaust. The new 980 area code provides additional numbering resources, central office codes and telephone numbers, and serves the exact same geographic area as the 704 area code. The 704 and 980 NPAs provide numbering resources for the Charlotte area of the state. Also, the 984 NPA, which is an all-services distributed overlay, has been approved for implementation for the 919 NPA. The chief disadvantage to the implementation of an all-services distributed overlay is the requirement of ten-digit dialing to complete local calls. Additionally, the 336 NPA, which is composed of the Tri-City area, is moving toward a state of area code exhaust with numbering resource relief forecasted as being required within the next two years.

Area code exhaust occurs when nearly all of the central office codes (NXX) in a given area code have been assigned to telephone companies. This does not mean that all line numbers within the NXX codes have been assigned to customers. With the advent of competition in the local telephone service market, there can be several telephone companies providing service in a given area or local market area which may be composed of one or more rate centers, and each company must obtain an NXX code for each rate

center. Rate centers are most commonly used to determine distances for long distance message services which are both distance and time sensitive. The demand and assignment of NXX codes by competing local service providers has caused a shortage in the supply of NXX codes. Additionally, the introduction of new services based on new technologies has also increased the demand for telephone numbers, which in turn increases the demand for NXX codes.

In an attempt to increase the efficiency of numbering resource usage, the Utilities Commission accepted delegated authority from the FCC to implement a reclamation procedure for NXXs from service providers not having made use of numbering resources to provide telecommunications services. The reclamation procedure was established in the Commission Order dated December 21, 2000, titled Order Establishing the Reclamation Procedure for Unused Central Office Codes. As outlined in the Order, the Commission is notified by the North American Numbering Plan Administrator (NANPA) that a specific service provider has not activated an NXX within six months after the NXX assignment. After receiving this notification, the Commission then notifies the service provider that it has 15 business days to respond to the Commission why the subject NXX should not be reclaimed. The Commission, based upon information received during the response interval, will either grant an extension of time to activate the NXX, if the NXX code has not been activated, or reclaim the NXX and return it to NANPA to be placed in the numbering resource inventory for future industry assignment and use. Since December 2000, the Commission has reclaimed approximately 40 NXXs from various service providers. Additionally, since the Commission established the reclamation procedure in North Carolina, a number of service providers are now voluntarily returning excess NXX numbering resources to NANPA rather than have numbering resources reclaimed by the Commission.

Another numbering resource conservation measure which the Commission has implemented in two NPAs is Thousands-Block Number Pooling. On July 20, 2000, the FCC issued an Order (Delegation Order) addressing several petitions for additional delegated authority to implement numbering resource optimization strategies filed by State Commissions. In summary, the FCC conditionally granted North Carolina authority to institute Thousands-Block Pooling in two area codes (704 and 919). On February 19, 2001, and on May 23, 2001, the Commission issued Orders implementing Thousands-Block Pooling in the 704/980 and 919/984 NPAs, respectively. Because both of these pooling trials preceded the implementation as well as the naming of the administrator for the national pooling program, Telcordia Technologies, Inc., served as the trial pooling administrator in North Carolina. Since the start-up of these two trials, the FCC has since named NeuStar, Inc., as the national thousands-block pooling administrator. As of August 20, 2001, NeuStar, Inc., became the administrator of the North Carolina trials. Also, in response to NCUC's petition to the FCC dated October 20, 2000, for delegated authority in the 336 NPA, the FCC issued its Order (Delegation) on August 24, 2001, granting North Carolina delegated authority to implement thousands-Block Pooling in the 336 NPA. On September 13, 2001, the Commission in its Order directing NeuStar, Inc.,

the National Pooling Administrator, to implement Thousand-Block Pooling in the 336 NPA by February 15, 2002.

Commission Chair Jo Anne Sanford continues to participate in the North American Numbering Council, which is a federal advisory committee to the FCC composed of representatives of the telecommunications industry, consumer groups, and state regulatory commissions. It is the Commission's goal, along with other regulators at the state and federal levels, to minimize area code changes. The long-term benefit of conserving the numbering resources under the North American Numbering Plan will result in needed numbering resources being made available to service providers in delivering various telecommunications services to end-users.

## **Part XI.**

### ***RECOMMENDATIONS***

Section 6.1 of HB161 requests the Utilities Commission to recommend "whether the provisions of this act should be continued, repealed or amended." The Utilities Commission recommends that HB161 be continued without change.

## **Part XII.**

### ***APPENDICES***

- Appendix A:** House Bill 161  
An Act to Provide the Public With Access to Low-Cost Telecommunications Service in a Changing Competitive Environment *(Please contact the Chief Clerk's Office for a copy.)*
- Appendix B:** Commission Rules R17-1 through R17-5  
Pertaining to the Provision of Local Exchange and Exchange Access Competition
- Appendix C:** Commission Rules R12-17, R12-3(b), R12-8, R12-9(e), R17-2(n), and R17-2(o)  
Pertaining to the Disconnection, Denial and Billing of Telephone Service
- Appendix D:** Commission Rule R9-8  
Service Objectives for Local Exchange Telephone Companies
- Appendix E:** Commission Rule R20-1  
Slamming, Cramming and Related Abuses in the Marketing of Telecommunications Services

## Chapter 17. Provision of Local Exchange and Exchange Access Competition.

Rule R17-1. Definitions.

Rule R17-2. Requirements and limitations regarding certification of competing local providers.

Rule R17-3. Universal service requirements.

Rule R17-4. Interconnection.

Rule R17-5. Number portability and number assignment.

### Rule R17-1. Definitions.

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

(a) Basic Local Exchange Service. — The telephone service comprised of an access line, dialtone, the availability of touchtone, and usage provided to the premises of residential customers or business customers within a local exchange area.

(b) Certificate. — A certificate of public convenience and necessity to provide local exchange and/or exchange access service as a public utility as defined in G.S. 62-3(23)a.6.

(c) Commission. — The North Carolina Utilities Commission.

(d) Competing Local Provider or CLP. — Any person applying for a certificate to provide local exchange or exchange access services in competition with a local exchange company.

(e) Exchange Access Service. — Switched or special access service provided by a LEC or CLP to a customer which facilitates a connection between an end-user and an interexchange carrier.

(f) Local Exchange Service Area. — The geographic area within which a CLP or LEC is authorized to provide local exchange or exchange access service.

(g) Local Exchange Company or LEC. — Any person, holding on January 1, 1995, a certificate to provide local exchange services or exchange access services, excluding telephone membership corporations.

(h) Local Exchange Service. — Switched service offered by a CLP or LEC, without the payment of long distance charges; or dedicated service connecting two or more points within an exchange as defined on an exchange service area map of a LEC or CLP.

(i) Number Portability. — The technical capability to allow customers to retain their telephone numbers when they change providers of local exchange service but do not change locations.

(j) Price List. — The prices charged for services by a CLP which are on file with the Commission.

(k) Universal Service. — The provision of affordable basic local exchange service, part of which may be subsidized through a universal service fund. (NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 3/5/96.)

**Rule R17-2. Requirements and limitations regarding certification of competing local providers.**

(a) Any CLP applying for a certificate shall make a satisfactory showing to the Commission:

- (1) That it is fit, capable and financially able to render such service;
- (2) That the service to be provided will reasonably meet the service standards set out in Rule R9-8;
- (3) That the provision of the service will not adversely impact the availability of reasonably affordable local exchange service;
- (4) That it will participate to the extent it may be required to do so by the Commission in the support of universally available telephone services at affordable rates; and
- (5) That the provision of the services will not otherwise adversely impact the public interest.

(b) Any CLP applying for a certificate to provide competing local exchange or exchange access services shall include in its application the following:

- (1) The name of the CLP, the address of the corporate headquarters, and the names and addresses of the CLP's principal corporate officers;
- (2) If different from above, the names and addresses of all officers and corporate officers located in North Carolina, the names and addresses of employees responsible for North Carolina operations, and if COCOT service will be provided, the address to be used by the serving LEC in billing for PTAS lines or trunks and by the CLP in meeting COCOT notice requirements;
- (3) Information about the structure of the business organization and, where applicable, a copy of any articles of incorporation, partnership agreement, or by-laws of the CLP, and a copy of a license to do business in North Carolina; if an office is not maintained in North Carolina, the name and address of agent for service of process in North Carolina;
- (4) Repair and maintenance information including the name, address and telephone number of a contact person responsible for and knowledgeable about the CLP's operations;

- (5) A list of other states where the CLP or any of its affiliates is authorized to operate and a list of those states which have denied any requested authority and an indication of the nature of such denial;
  - (6) A showing as to the CLP's financial, managerial and technical ability to render local exchange or local exchange access services:
    - (a) As a minimum requirement, a showing of financial ability shall be made by attaching the CLP's most recent stockholders' annual report, its most recent SEC 10K or, if the company is not publicly traded, its most recent financial statements;
    - (b) To demonstrate managerial experience, the CLP shall attach a brief description of its history of providing local exchange or exchange access or other telecommunications services and shall list the geographic areas in which it has been and is currently providing such services. A newly created company shall list the experience of each principal officer in order to show its ability to provide services; and
    - (c) Technical ability shall be indicated by a description of the CLP's experience in providing telecommunications services, or in the case of a newly created company, the applicant may provide other documentation which supports its technical ability.
  - (7) Notice that the application has been served on the LECs in the CLP's proposed service territory;
  - (8) A statement setting forth with particularity the proposed geographic areas to be served together with maps in sufficient detail to designate the actual geographic area or areas to be served initially;
  - (9) The types of local exchange and exchange access services to be provided; and
  - (10) A statement that the CLP agrees to abide by all applicable statutes and all applicable Orders, rules, and regulations entered and adopted by the Commission.
- (c) The application shall be verified. The CLP shall file the original and 25 copies of its application with the Chief Clerk of the Commission in accordance with Rule R1-5 and a statutory filing fee of \$250.
- (d) Falsification or failure to disclose any required information in the petition for certification may be grounds for denial or revocation of any certificate.

(e) All CLPs shall be willing as a condition to certification to provide support for universal service in a manner determined by the Commission. This requirement shall not be construed as prohibiting the granting of a certificate before the universal service issues are finally determined by the Commission.

(f) In the public interest evaluation of a CLP's petition for a certificate to provide local exchange services, the Commission shall at a minimum require the CLP, either directly or through arrangements with other carriers, to be willing to provide as a condition to certification the following:

- (1) Access to emergency service and services for the hearing and speech impaired;
- (2) Access to local and long distance directory assistance and provision of local telephone directories to end-users;
- (3) Access to operator services;
- (4) Access to all standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA calls;
- (5) Compliance with Commission basic services standards as defined in any applicable rules and decisions of the Commission;
- (6) Free blocking of 900 and 976-type services and other pay-per-call services, including but not limited to calls to 700 and 800 numbers, for which charges are made by the service provider and billed by the CLP;
- (7) Free per-call and per-line blocking in accordance with Orders of the Commission applicable to LECs; subscribers must be advised by bill insert or direct mailing of the availability of these free features at least once per year; and
- (8) Number portability where technically and economically reasonable.

(g) The provisions of Commission Rule R9-8 and R12-1 through R12-9 shall apply to CLPs.

(h) All CLPs shall file price lists relating to the provision of basic local exchange services. Initial price lists must be filed by a CLP as soon as practicable upon receiving a certificate. Price lists by a CLP and amendments thereto are presumptively valid and become effective on the same day as filed. Price list filings shall be made to the North Carolina Utilities Commission addressed as follows: Public Staff — North Carolina Utilities Commission, Communications Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520.

A CLP may petition for a waiver of the above price list requirement at any time after March 1, 1998.

(i) CLPs shall maintain their books of account in accordance with Generally Accepted Accounting Principles (GAAP).

(j) Financial reports are not required to be routinely filed by CLPs. However, the CLP shall submit specific financial information upon request of the Commission or the Public Staff.

(k) By the 15th day of each month, each CLP shall file a report with the Chief Clerk reflecting the number of local access lines subscribed to at the end of the preceding month by business and residence customers in each respective geographic area served by the CLP. Other operating statistics are not required to be filed except upon specific request of the Commission or the Public Staff.

(l) CLPs shall be required to participate in the telecommunications relay service.

(m) CLPs shall be subject to the provisions of Chapter 62A of the General Statutes, the Public Safety Telephone Act, applicable to service providers.

(n) The public utility services provided by a CLP shall not be disconnected because of a customer's failure to pay for services other than those local exchange or exchange access services provided by the CLP or those services billed by a CLP for a certified interexchange carrier. Partial payments shall be credited to regulated services first unless otherwise instructed by the customer.

(o) The billing statement of a CLP shall show all charges for its local exchange and exchange access services on a separate page from other billed services. On each bill page where nonutility services are stated, the name of the service provider offering the service shall be clearly shown. The following statement must also appear on each bill page where charges for nonutility services appear:

**NONPAYMENT OF ITEMS ON THIS PAGE WILL NOT RESULT IN DISCONNECTION OF YOUR LOCAL TELEPHONE SERVICE; HOWEVER, COLLECTION OF UNPAID CHARGES MAY BE PURSUED BY THE SERVICE PROVIDER.**

A contact telephone number for the service provider shall also appear on the bill.

(p) Billing services for intrastate long distance calls may be offered by a CLP only to long distance carriers certified by the Commission or to clearinghouses acting on behalf of certified long distance carriers. The name of the service provider shall be clearly stated on each page of the bill, and a contact telephone number for questions on the service shall appear on the bill. If billing is done through a clearinghouse, the name of the clearinghouse shall also appear on each page of the bill.

(q) A notice by bill insert or direct mailing shall be given by a CLP to all affected customers at least 14 days before any public utility rates are increased and before any public utility service offering is discontinued. Notice of a rate increase shall include at a minimum the effective date of the rate change, the existing rates and the new rates.

(r) A CLP must abide by the provisions adopted by the Commission for the handling of problems arising from billing of 900 calls; other pay-per-call services, including but not limited to calls to 976, 700 and 800 numbers, for which charges are made by the service provider and billed to the caller by the CLP, shall be subject to the same provisions as are applicable to 900 calls.

(s) Usage charges and per-call rates for switched local exchange services provided by a CLP shall not apply unless the call is answered. Timing of a call shall not begin until the call is answered and shall end when either the calling party or the answering party disconnects.

(t) The provisions of Commission Rule R13, with the exception of R13-3(a), (b) and (c) shall apply to the offering of public payphone service by a CLP. A CLP has the authority by virtue of its CLP certificate to offer both non-automated collect and automated collect service under the provisions of R13. When the term COCOT Certificate Number is referred to in R13, the docket number in which the CLP was certified shall be utilized, and when the term COCOT certificate or certificate is referred to in R13, the CLP certificate shall be used.

(u) CLPs are responsible for payment of the regulatory fee in accordance with G.S. 62-302 and Commission Rule R15. (NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96.)

**Rule R17-3. Universal service requirements.**

(a) Each LEC shall be the universal services provider in the area in which it is certificated to operate on July 1, 1995, unless otherwise determined by the Commission in further interim or permanent rules.

(b) The Commission will establish a Universal Service Fund, designate a permanent universal service provider for each service area, and determine applicable payment mechanisms in compliance with G.S. 62-110(f1). Interim rules governing universal services shall be in place by December 31, 1996. Any CLP offering telecommunications services in North Carolina will be required to participate in such fund.

(c) To the extent required, the establishment of the Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone services and the calculation of the subsidy required to support those basic local exchange telephone services which the Commission may decide are appropriate. (NCUC Docket No. P-100, SUB 133, 7/19/95; 2/23/96.)

**Rule R17-4. Interconnection.**

(a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.

(b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs.

(c) Interconnection arrangements must be made available pursuant to a *bona fide* written request. No refusal or unreasonable delay by any LEC to another carrier will be allowed.

(d) Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed for approval as soon as practicable but in no event later than 30 days from the date of conclusion of negotiations. Parties may operate on an interim basis under a negotiated interconnection agreement which has been filed with the Commission and which is publicly available as a public record pending Commission action on the filing. Interim operations under a negotiated interconnection agreement shall begin no earlier

than the date upon which the agreement is filed with the Commission and shall be undertaken, at the risk of the parties, subject to the right of the Commission to approve or disapprove the agreement.

(e) In the event the parties are unable to agree within 90 days of a *bona fide* request, either party may petition the Commission for a determination of the appropriate rates and terms for interconnection.

(f) Unbundled functional elements of an LEC's network that are made available throughout interconnection agreements should also be made available on an individual tariffed basis. (NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96; 6/18/96.)

**Rule R17-5. Number portability and number assignment.**

(a) End-users shall have number portability regardless of their chosen LEC or CLP.

(b) True number portability shall be made available when technically and economically reasonable.

(c) Interim number portability arrangements shall be utilized until true number portability is available. The LEC and CLP shall include interim number portability issues in interconnection negotiations.

(d) To the extent feasible, the LEC shall provide the CLP with reservations for a reasonably sufficient block of numbers for their use. (NCUC Docket No. P-100, Sub 133, 7/19/95; 2/23/96.)

**Chapter 12 of the Commission Rules is amended by adding a new Rule R12-17 as follows:**

**Rule R12-17. Disconnection, denial and billing of telephone service**

- (a) For purposes of this rule, the following definitions shall apply:
- (1) For purposes of this rule, "Local service" includes basic local exchange service (including extended area service [EAS]), expanded local calling (ELCA), and any other NCUC-regulated telephone service offered by a single corporate entity within a single LATA, except for unbundled Message Telecommunications Service (unbundled MTS).
  - (2) "Charges for local service" include charges for local service, as defined in Rule R12-17(a)(1), the state sales tax and federal excise tax associated with local service, the subscriber line charge (SLC), the primary interexchange carrier charge (PICC) applied by and on behalf of the local carrier, the local number portability (LNP) charge, and state and federal universal service surcharges applied by and on behalf of the local carrier. "Charges for local service" do not include charges applied by the local carrier on behalf of another carrier or entity, the E911 and telecommunications relay service surcharges or other nonregulated charges, e.g., charges for voicemail, Internet service, inside wiring, customer premises equipment, and wireless service.
  - (3) "Bundled local service" is a combination of local service, as defined above, and one or more other services, either regulated or nonregulated, which are offered either by a local service provider alone, or by a local service provider jointly with one or more other entities.
  - (4) "Toll denial" is the blocking of an end user's ability to place intraLATA and interLATA toll calls. Such intraLATA and interLATA toll calls include all interexchange calls which are not included in an end user's charges for local services. "Toll service" includes the provision of such interexchange calls, whether charged to the end user on a per call or flat fee basis. "Global toll denial" occurs when the local service provider blocks the end user's access to toll services, whether offered by the local service provider or an interexchange carrier, by

restricting dialing patterns that access toll services in accordance with Rule R12-17(d)(3). "Selective toll denial" occurs when access is blocked to one carrier's toll facilities, but the end user is able to access another carrier's facilities for completion of toll calls.

- (5) "Unbundled MTS" is intraLATA measured toll service not provided on a significantly discounted or flat rate basis as part of a package with local service.
- (b) No telephone utility may disconnect local service or bundled local service to residence customers for nonpayment of past due charges except in accordance with these principles:
- (1) Local service may be disconnected for nonpayment of past due charges for local service provided by the telephone utility as a single corporate entity.
  - (2) Bundled local service may be disconnected for failure to pay the total past due charges for the service.
  - (3) Before the local service portion of bundled local service is disconnected, the telephone utility will provide the customer with the opportunity of maintaining local service by paying the regulated past due balance owed for local service or a surrogate amount equal to or less than the past due balance owed for local service.
  - (4) If the regulated past due balance owed for local service or the surrogate amount has been paid in full or is sufficiently current, the telephone utility will continue to provide the customer with the customer's current local service. If regulated toll service charges remain unpaid, global toll denial may be imposed, after appropriate notice under Commission rules. The notice of global toll denial will also advise the customer that they may subscribe to any local services, as defined in Rule R12-17(a)(1), offered by the utility in accordance with the tariffs on file with the Commission.
  - (5) If a customer's local service has been disconnected for nonpayment, the telephone utility will re-establish local service with the local service option of the customer's choice, provided that the customer pays the regulated past due balance owed for local service. This provision applies whether service was disconnected before or after implementation of this rule.

- (6) If the telephone utility does not provide local service on an unbundled basis, Rules R12-17(b)(3)-(5) will not apply, and the telephone utility may require the customer to pay the past due balance owed (excluding amounts billed by the telephone utility on behalf of third parties for service other than the bundled service) before bundled local service is restored.
  - (7) A telephone utility may not disconnect a customer's local service, nor impose global toll blocking, for nonpayment of disputed charges.
  - (8) If a residence customer under global toll denial incurs charges for toll service which are billed on the customer's local telephone bill, by abuse or fraud, which includes the obtaining, or attempting to obtain, or assisting another to obtain or to attempt to obtain, toll service message telecommunications service by rearranging, tampering with, or making connection with any facilities of the telephone utility, or by any trick, scheme, false representation, or false credit device, or by or through any other fraudulent means or device whatsoever, with intent to avoid the payment, in whole or in part, of the regular charge for such service, the telephone utility may discontinue the customer's local service.
- (c) Partial payments to telephone utilities.
- (1) Partial payments to local service providers will be allocated as follows: first to local service, second to other regulated service, and third to nonregulated service.
  - (2) Partial payments to long-distance carriers that are not local service providers and do not bill for local service will be allocated as follows: first to regulated long-distance service, and second to nonregulated service.

- (d) Global toll denial for residential telephone customers.
  - (1) A local service provider may impose global toll denial for failure to pay any of the following charges:
    - (A) Charges for unbundled interLATA toll service and unbundled intraLATA MTS (whether carried by the preferred interexchange carrier (PIC) or by using dial-around services (101XXXX));
    - (B) Charges for collect interLATA and intraLATA toll calls;
    - (C) Charges for interLATA and intraLATA toll service that is provided by a third party as part of a bundle offered jointly with the local service provider;
    - (D) Charges for toll calls made through 8XX toll-free numbers which result in charges for regulated services being billed back on the local service provider bill; or
    - (E) Charges for international calls to information service providers (ISPs) on the third occasion as addressed in Rule R12-17(g) below.
  - (2) A local service provider may not impose global toll denial for failure to pay the following charges:
    - (A) Charges for calls to 900 numbers and other nonregulated charges; or
    - (B) International calls to ISPs on the first and second occasion as addressed in Rule 12-17(g) below.
  - (3) When global toll denial is imposed, the local service provider may block the customer's ability to place interLATA and intraLATA toll calls. The customer's current local service will not be impaired and the utility will provide the customer with local service in accordance with Rule R12-17(b)(4). Further, the global toll denial mechanism may not block 8XX toll free numbers; except that a local service provider may choose, at its discretion, to block certain 8XX toll free numbers that result in toll charges being billed on the customer's local

telephone bill. Local service providers may also provide, at their discretion other blocking services to a customer when global toll blocking is imposed, such as blocking of all 8XX toll free numbers, if the customer affirmatively chooses such blocking services.

- (4) Global toll denial will not block access to expanded local service or toll service that is included along with local service in a bundle of services for which the customer pays a flat monthly rate.
- (5) Global toll denial includes billed number screening.

(e) Regulated service may not be discontinued for failure to pay nonregulated charges, except in the case of nonregulated services included in bundled local service offered by a carrier which does not offer unbundled local service.

(f) No telephone utility providing local telecommunications service or intrastate long distance service shall discontinue a customer's service for nonpayment of Designated Services. For purposes of this rule, the term "Designated Services" means 900 service, 976 service, or 500 or 700 service when such service is used in a 900-like manner. In such cases the telephone utility shall follow these procedures:

- (1) If the subscriber is willing to make payments, the telephone utility shall attempt to make reasonable arrangements for payment.
- (2) If the subscriber challenges the bill or is otherwise unwilling or unable to pay, the telephone utility shall remove the charges from the customer's bill on the first occasion and shall offer the subscriber free blocking of Designated Services. If the subscriber declines to allow the free blocking, the telephone utility must inform the subscriber in writing that any charges incurred after that date will result in blocking of Designated Services.
- (3) On the second occasion that the subscriber challenges the bill, or is unwilling or unable to pay, the telephone utility shall remove the charges from the subscriber's bill and shall impose free blocking of Designated Services on the subscriber.

(g) No telephone utility providing local telecommunications service or intrastate long-distance service shall discontinue a customer's service for nonpayment of international calls to information service providers except as provided herein. In such cases, the telephone utility shall follow these procedures:

- (1) If the subscriber is willing to make payments, the telephone utility shall attempt to make reasonable arrangements for payment.
  - (2) If the subscriber challenges the bill, or is otherwise unwilling or unable to pay, the telephone utility shall remove the charges from the subscriber's bill on the first occasion. The local carrier shall offer the subscriber free global toll denial.
  - (3) If, after the first occasion, the subscriber incurs additional charges for international calls to information service providers and challenges the bill, or is unwilling or unable to pay, even in installments, the telephone utility shall remove the charges from the subscriber's bill. The local carrier shall offer the subscriber free global toll denial and shall advise the subscriber in writing that any additional charges incurred will not be removed and will result in imposition of global toll denial unless the charges are paid. If the IXC does its own billing and intends eventually to apply selective toll denial for nonpayment of such charges, the IXC shall advise the subscriber in writing that any additional charges incurred will not be removed and will result in imposition of selective toll denial unless the charges are paid.
  - (4) If the subscriber incurs additional charges for international calls to information service providers after charges have been removed on two previous occasions, and after written notice as described above, and the subscriber refuses to pay the additional charges or to commit to and honor reasonable payment arrangements for the additional charges upon demand, the local carrier may impose global toll denial on the subscriber's lines and the IXC may impose selective toll denial.
- (h) Treatment of debts for telephone service that are more than three years old.

- (1) No telephone utility may deny local service to a customer for nonpayment of charges that were incurred more than three years prior to the date of such denial, unless the utility filed and is actively pursuing a pending court action or has secured a valid court judgment for nonpayment of local charges within three years of the date when such charges were incurred. No telephone utility may deny bundled local service to a customer for nonpayment of charges that were incurred more than three years prior to the date of such denial; provided that the utility may deny bundled local service to a customer for nonpayment of charges for local or bundled local service if it filed and is actively pursuing a pending court action or has secured a valid court judgment against the customer for nonpayment of such charges within three years of the date when the charges were incurred.
  
- (2) A telephone utility may deny unbundled toll service to customers for nonpayment of outstanding charges for unbundled toll service that are more than three years old only through selective toll denial. Provided, that this provision shall not impose an affirmative duty on the utility to suspend global toll denial on its own initiative after such three year period. However, if a customer requests that the utility suspend global toll denial after such time, the utility may not continue to impose global toll denial for nonpayment of such a debt. A telephone utility may impose global toll denial for debts that are more than three years old if the utility filed and is actively pursuing a pending court action or has secured a valid court judgment for nonpayment of such charges within three years of the date when such charges were incurred.
  - (i) Disconnect notices, billing statements and bill inserts for telephone utilities.
  
- (1) Disconnect notices.
  - (A) Local carriers.
    - (i) Disconnect notices for residence customers shall state clearly the minimum amount that must be paid in order to maintain local service and the minimum amount that must be paid in order to maintain both local and toll service.

- (ii) Disconnect notices for residence customers who are subject to the imposition of global toll denial shall clearly describe the type of toll blocking that will be imposed if charges for toll services are not paid. The notice shall offer the customer the option of maintaining his or her choice of available local service options and shall inform the customer as to what local service will be provided by the carrier if the customer does not express a preference. The notice shall also advise the customer of his responsibility for paying for any calls that appear on his bill as a result of not blocking ELCA calls.
    - (iii) For carriers that offer local service on an unbundled basis, disconnect notices for residence customers of offerings that include both local service and other services shall explain the customer's option of maintaining local service by paying the regulated past due balance owed for local service only, and shall specify the amount due to maintain local service. For carriers that offer only bundled local service, disconnect notices shall clearly state the minimum amount that must be paid in order to maintain the bundled local service, and shall state that basic local service is available from at least one other provider.
  - (B) IXCs. Disconnect notices shall clearly state the minimum amount that must be paid in order to maintain toll service.
  - (C) Periodic notification of disconnect policy. Carriers that bill customers for local service and IXCs that bill customers directly shall provide periodic notification of the disconnect policy established by this Rule to all customers through a bill insert or special mailing issued immediately after the implementation of these rules and annually thereafter.
- (2) Billing statements.
- (A) On each bill page where nonregulated services are stated, or where the services of any provider other than the billing utility are stated, the name of the service provider offering the

service and a toll-free contact number or numbers for the service provider shall be clearly shown. The toll-free contact number for the service provider may be a number of the company that handles the inquiry function for the service provider.

- (B) Language must appear on the bill clearly explaining the consequences of failing to pay particular charges shown on the bill. Such language must be prominently displayed either on the summary page of the bill or in close proximity to the specific charges to which it applies.
- (C) Language, prominently displayed, must also appear on the bill clearly identifying those charges for which nonpayment will not result in disconnection of local service, as well as those charges for which nonpayment will not result in disconnection of any regulated service.
- (D) If a telephone utility bills for a bundle of services offered in part by a third-party provider, the name of the third-party provider must be identified on the bill as a co-provider of the bundle.
- (E) The billing format must be in accordance with the FCC's Truth in Billing regulations. However, prior to or after the adoption of the FCC regulations, parties in this docket are free to seek additional billing format changes in the public interest.
- (F) Nonregulated charges will be shown: (i) on a separate page of the bill; or (ii) in a separate section of the bill, if the charges are clearly and prominently labeled as such and the section in which they appear is set apart from the regulated charges section; or (iii), subject to approval by the Commission, using other formats, so long as the proposed format results in appropriate consumer understanding regarding the nature of the charges. On the same page where the charges appear, customers will be notified that they cannot lose local or other regulated service for nonpayment of these charges, except in the case of bundled local service offerings as identified in Rule R12-17(a)(3).

- (3) Bill inserts. Whenever a residence customer subscribes to bundled local service, the customer's first billing statement must be accompanied by a bill insert as set forth below, and a similar bill insert must be sent to the customer annually thereafter. The bill insert shall read as follows:
- (A) For local carriers who offer unbundled local service:
- You are a subscriber to a bundled local telephone service. Please note that if you do not pay your entire bill for bundled local service, all components of the bundled local service are subject to disconnection. However, before your bundled local service is disconnected, you will be offered the option of maintaining local service by paying the regulated past due balance owed for unbundled local service.
- (B) For local carriers who offer only bundled local service:
- You are a subscriber to a bundled local telephone service. **Please note** that if you do not pay your **entire** bill for bundled local service, all components of the bundled local service are subject to disconnection. You do not have the right to retain selected components of the bundled local service by paying for only those components.
- (C) Modification of bill insert requirements may be requested to address jurisdictional conflicts and other legitimate issues on an individual basis.

Rule R12-3(b) is rewritten as follows:

- (b) Subject to the additional requirements of Rule R12-17 for telephone utilities, a customer who fails to pay a bill within a reasonable period after it becomes due and who further fails to pay such bill within five (5) days after presentation of a discontinuance of service notice for non-payment of bill (regardless of whether or not service was discontinued for such nonpayment) may be required to pay such bill, together with a reasonable reconnection charge, if service was discontinued after notice as provided in Rule R12-8, and reestablish his credit by depositing the amount prescribed in Rule R12-2 of these rules in case the conditions of service or basis on which credit was originally established have materially changed.

Rule 12-8 is rewritten as follows:

No utility shall discontinue service to a customer or impose toll denial for nonpayment of bill without first having diligently tried to induce the customer to pay the same and until after at least five (5) calendar days written notice of discontinuance of service to the customer. The written notice may be given by first-class mail, or by other delivery to the premises served, or by other legal means of service of process, and the five (5) days notice period shall begin to run from the day following deposit of the notice in the post office or from the day of otherwise delivery of the notice to the premises served, or from the day of other legal service. Provided, however, that in the case of any customer who has a record of abuse of or excessive use of metered or toll service for which the customer's deposit would not furnish security for such five (5) days notice period, service may be discontinued after 24-hour notice. Further provided, that in the case of any residential telephone customer who has a record of abuse of or excessive use of toll service for which the customer's deposit would not furnish security for such five (5) days notice period, local service may not be discontinued but toll service may be globally denied after 24-hour notice. A report of all such service disconnections or toll denials made on such 24-hour notice under this proviso shall be filed with the Utilities Commission within thirty (30) days after the discontinuance of service.

Rule R12-9(e) is rewritten as follows:

(e) Acceleration of Past Due or Delinquent Date in Rare Cases and with Good Cause -- If a utility with good cause determines that the credit rating of a customer has been jeopardized by unusually extensive use of a metered or toll service, such as long distance telephone service, or by other factors which indicate the likelihood that the customer cannot pay his outstanding bill, and for which the customer's deposit, if there be one, does not furnish adequate security, the utility may accelerate the past due or delinquent date and proceed with disconnect or toll denial procedures under N.C.U.C. Rule R12-8 and R12-17; provided, however, that it must state to the customer in writing its cause for so doing and file a copy of said statement with the Commission.

Rule R17-2(n) is rewritten as follows:

(n) A CLP must abide by all applicable provisions adopted by the Commission for disconnection, partial payments, global toll denial, nonregulated charges, 900 and similar charges, treatment of stale debts, disconnect notices, periodic notification of disconnect policy and billing statements as set forth in Commission Rule R12-17.

Rule R17-2(o) is rescinded.

**Rule R9-8. Service objectives for local exchange telephone companies.**

Each regulated local exchange telephone company shall perform and provide service in accordance with the following uniform service objectives:

(a) Service Objectives.

DESCRIPTION	OBJECTIVE
Intraoffice completion rate	99% or more
Interoffice completion rate	98% or more
Direct distance dialing completion rate	95% or more
EAS transmission loss	95% or more between 2 and 10db
Intrastate toll transmission loss	95% or more between 3 and 12db
EAS trunk noise	95% or more 30 dbrnc or less
Intrastate toll trunk noise	95% or more 33 dbrnc or less
Operator "0" answertime	90% or more within 10 seconds or an *EAA in seconds
Directory assistance answertime	85% or more within 10 seconds or an *EAA in seconds
Business office answertime	90% or more within 20 seconds or an *EAA in seconds
Repair service answertime	90% or more within 20 seconds or an *EAA in seconds
Initial customer trouble reports (excludes subsequent reports)	4.75 or less per 100 access lines
Repeat reports	1.0 report or less per 100 access lines
Out-of-service troubles cleared within 24 hrs	95% or more
Regular service orders completed within 5 working days	90% or more
New service installation appointments not met for Company reasons	5% or less
New service held orders not completed within 30 days	0.1% or less of total access lines

\*EAA = Equivalent Average Answertime

(b) Exceptions. The following are exceptions to the uniform general service objectives set forth above:

- (1) Customer trouble reports (initial reports only) for Contel of North Carolina shall be 6.0 or less per 100 access lines.
- (2) Repeat trouble reports for Contel of North Carolina shall be 1.3 reports or less per 100 access lines.

(c) This rule shall not preclude flexibility in considering future circumstances that may justify changes in or exceptions to these service objectives.

(d) Reporting Requirement - Each local exchange telephone company actually providing basic local residential and/or business exchange service to customers in North Carolina shall file an original and five (5) copies of a report each month with the Chief Clerk of the Commission detailing the results of its compliance with each of the uniform service objectives set forth in this rule. Each company shall report its performance result for each objective for its state service area as a whole and whenever possible, by exchange or district. This report shall be filed no later than twenty (20) days after the last day of the month covered by the report. (NCUC Docket No. P-100, Sub 99, 12/20/88; 09/20/00; 11/29/00; 03/22/01.)

**Rule R20-1. Slamming, cramming and related abuses in the marketing of telecommunications services.**

(a) No telecommunications provider shall submit, or cause to be submitted, a change order for preferred intraLATA interexchange carrier, interLATA interexchange carrier or local exchange carrier to any telecommunications company unless and until the submitting provider has obtained express authorization from the customer or the customer's representative for each change.

(b) If the Commission determines that a telecommunications provider has submitted, or caused to be submitted, a change order and cannot demonstrate that it has complied with subsection (a), the Commission:

- (1) Shall make available to the customer the remedies authorized by the regulations of the Federal Communications Commission, with respect to both interstate and intrastate service, and for this purpose the customer's authorized carrier may be made a party to the proceeding;
- (2) With respect to intrastate service, may require the unauthorized provider to make any additional payments, beyond those required by the regulations of the Federal Communications Commission, that are necessary to ensure that the customer is fully reimbursed for all payments made to the unauthorized provider and any other charges imposed by a telecommunications utility because of the unauthorized change in carrier; and
- (3) With respect to intrastate service, may require the unauthorized provider to pay a penalty in accordance with G.S. 62-310 for each day the provider continues to make an unauthorized service available to the customer, even if the customer does not actively make use of the service.

(c) Upon request of the customer or the customer's representative, any offer to provide telecommunications services shall be sent to the customer in written form describing the rates, terms and conditions of service. Such request shall not be deemed to be acceptance of an offer to provide telecommunications services.

(d) No telecommunications provider shall provide any service to any customer for compensation, or submit or authorize any billing, unless and until the customer or the customer's representative has clearly, expressly and affirmatively agreed to purchase the service; provided, however, with respect to dial-around charges or per-use charges associated with vertical feature offerings of local providers and subject to forgiveness policies relating to the billing of charges, use of such services by an employee of the

customer or by a member or guest of the customer's household shall be deemed to have been made under the authority of the customer. For purposes of this subsection, each day the provider continues to make the service available to the customer for compensation constitutes a separate violation, even if the customer does not actively make use of the service.

(e) Any telecommunications provider's telemarketing, direct mail or other forms of solicitation to change a customer's preferred local exchange carrier, intraLATA interexchange carrier, or interLATA interexchange carrier shall include the following disclosures:

- (1) Identification of the telecommunications provider soliciting the change in the preferred local exchange, intraLATA long distance or interLATA long distance carrier;
- (2) That the purpose of the call or direct mail or other solicitation is to solicit a change of the customer's preferred carrier of local exchange, intraLATA long distance or interLATA long distance service (or, if applicable, that the outcome of the call or direct mail or other solicitation will be a change of the customer's preferred carrier of local exchange, intraLATA long distance or interLATA long distance service);
- (3) That the customer's preferred local exchange, intraLATA long distance or interLATA long distance carrier may not be changed unless and until the requested change is confirmed in accordance with this section and the regulations of the Federal Communications Commission; however, no specific citation to this rule or the regulations of the Federal Communications Commission is required; and
- (4) Notice to the customer that a charge may be imposed upon the customer for processing the change in the customer's preferred local exchange carrier, intraLATA interexchange carrier or interLATA interexchange carrier.

(f) As used in this section:

- (1) "Express authorization" means an express, affirmative act by the customer or the customer's representative clearly agreeing to the change in preferred intraLATA interexchange carrier, interLATA interexchange carrier or local exchange carrier, in a manner consistent with this section and the regulations of the Federal Communications Commission.

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- (2) "Customer" means the party in whose name the telecommunications service is provided.
- (3) "Customer's representative" means any adult person authorized by the customer to change telecommunications services, or contractually or otherwise lawfully authorized to represent the customer.
- (4) "Telecommunications provider" means any public utility that provides telecommunications service.