

1 ***History of Telecom Competition***

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3 **Q. Can you further explain some of the provisions of the 1996 Federal Act that are**
4 **designed to promote competition?**

5 A. Section 251(a)(1) imposes on all carriers the duty “to interconnect directly or indirectly with the
6 facilities and equipment of other telecommunications carriers.” With certain exceptions, Section
7 251(c) requires incumbent local exchange carriers to make available to competitors
8 “nondiscriminatory access to network elements on an unbundled basis” and to “offer for resale
9 at wholesale rates any telecommunications service that the carrier provides at retail to
10 subscribers.” Section 253(a) of the 1996 Act effectively preempts states from precluding
11 carriers from providing competitive interstate or intrastate telecommunications services
12 wherever they choose—including in rural areas.

13 No State or local statute or regulation, or other State or local legal requirement,
14 may prohibit or have the effect of prohibiting the ability of any entity to provide
15 any interstate or intrastate telecommunications service.
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18 **Q. Not all of these provisions apply to the ILECs in this proceeding, do they?**

19 A. Section 251(f)(1)(A) of the 1996 Act temporarily exempts rural telephone companies from the
20 ILEC obligations of Section 251(c) until the rural company receives a bona fide request for
21 interconnection. As stated above, the 251(c) obligations are the duty to negotiate, and provide
22 interconnection at any technically feasible point, unbundled access to network elements, resale
23 at wholesale rates, notice of changes regarding the network and collocation. Once the rural
24 telephone company has received a bona fide request, the state commission must conduct an
25 inquiry to determine whether the exemption should be continued or terminated. Pursuant to
26 Section 251(f)(1)(B), the state commission “shall” terminate the exemption if the bona fide

1 request is (1) not unduly economically burdensome, (2) is technically feasible and (3) consistent
2 with specific principles set forth in section 254 of the 1996 Act, which deal with universal
3 service.

4 Therefore, if AT&T/TCG were to submit a bona fide request to rent UNEs from the
5 ILECs, or to resell their retail services at wholesale rates, the Commission would be faced with
6 the decision of whether to lift the ILECs' Section 251(f) exemption. However, in this
7 proceeding I understand that the applicants are only seeking authority to engage in facilities-
8 based competition, and thus the Commission need not address the rural exemption issue in this
9 proceeding

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11 **Q. Has the FCC addressed the issue of facilities-based competition in rural areas?**

12 A. Yes, to a limited degree. Hyperion of Tennessee, L.P. ("Hyperion"), is a facilities-based
13 competitive local exchange carrier operating in Tennessee. In March of 1995, the Tennessee
14 Public Service Commission (TPSC) citing state law, limited Hyperion's recently-granted
15 certificate to only those areas of Tennessee that are served by companies having 100,000
16 access lines or more within the state. The TPSC explained that, under Tennessee law,
17 incumbent LECs serving fewer than 100,000 access lines were protected from competition
18 "until the incumbent LEC either ' . . . voluntarily enters into an interconnection agreement with a
19 Competing Telecommunications Service Provider' or the incumbent LEC . . . 'applies for a
20 certificate to provide telecommunications services in an area outside its service area.'" [See,
21 FCC Order 99-100, Docket 98-92, p. 2]. Hyperion then petitioned the Commission to extend
22 its certificate into the territory of a rural Tennessee ILEC. Citing the same law it previously
23 relied upon, the TPSC denied the petition.

24 Hyperion filed a petition with the FCC, asking the FCC to preempt the TPSC's order
25 and the Tennessee law relied upon by the TPSC. The TPSC apparently agreed that its actions

1 and the Tennessee law could not survive section 253(a) considered in isolation, but insisted that
2 the statutory provision and its order fall within the reservation of state authority provided in
3 253(b), which provides:

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5 Nothing in this section shall affect the ability of a State to impose, on a
6 competitively neutral basis and consistent with section 254, requirements
7 necessary to preserve and advance universal service, protect the public safety
8 and welfare, ensure the continued quality of telecommunications services, and
9 safeguard the rights of consumers.

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11 The FCC concluded that, in denying Hyperion the right to provide competing local exchange
12 service in the area served by the rural ILEC, Tenn. Code Ann. § 65-4-201(d) and the TPSC's
13 "Denial Order" violate section 253(a). [Id., p. 7]. The FCC further concluded that , because
14 these state and local legal requirements shield the incumbent LEC from competition by other
15 LECs, the requirements are not competitively neutral, and therefore do not fall within the
16 reservation of state authority set forth in section 253(b). [Id.]