BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania	))))))	**Docket No. M-00960799**

COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE

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The United States Department of Justice ("Department") hereby submits its comments on the Pennsylvania Public Utility Commission's ("Commission") proposed modifications to the application form for approval of authority to offer, render, furnish or supply telecommunications services to the public in the Commonwealth of Pennsylvania.[1] The Department's comments specifically address the market entry issues raised by Vice Chairperson James H. Cawley. His separate statement requests comments on the best means to reduce the significant delay associated with obtaining a certificate to begin providing telecommunications services in an area served by a rural incumbent local exchange carrier ("ILEC").

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[1] Tentative Order, *Proposed Modifications to the Application Form for Approval of Authority to Offer, Render, Furnish or Supply Telecommunications Services to the Public in the Commonwealth of Pennsylvania*, Pa. P.U.C. Docket No. M-00960799, published in 37 Pa.B. 486 on Jan. 27, 2007 (*"Tentative Order"*).

Vice Chairperson Cawley recognizes that "the market-entry process of telecommunications competitors in Pennsylvania has not been without problems, and, in certain situations, it has taken place only after much delay and litigation costs."[2] In part B of his statement, Vice Chairperson Cawley encourages parties to submit comments responding to Directed Questions in two areas: (1) "whether the Commission should revisit and revise the Consolidated Procedures for market entry and interconnection of competitive telecommunications carriers in the service areas of rural ILECs . . . and in what manner"; and (2) "whether the Commission, absent the agreement of the interested parties to the contrary . . . should impose time limitations for the issuance of Initial or Recommended Decisions, and, if so, what these time limitations should be."[3]

The Department is one of the federal agencies principally responsible for enforcing the antitrust laws and promoting competition, and has had long experience with competition issues in the telecommunications industry. The Department also has expertise in the implementation of the federal Telecommunications Act of 1996 ("Telecommunications Act" or "Act"),[4] having fulfilled its statutory role in reviewing Regional Bell Operating Company applications for entry into long distance pursuant to Section 271 of the Act, and having analyzed the extent to which local telecommunications markets were open to competition. In addition, through its antitrust enforcement activities, the Department has experience with competitive developments in Pennsylvania.

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[2] Statement and Directed Questions of Vice Chairperson James H. Cawley, attached to *Tentative Order.*

[3] *Id.*

[4] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified as amended in scattered sections of 47 U.S.C.).

The Department is concerned that the Commission's current certification process for competitive local exchange carriers ("CLECs") seeking to serve rural areas creates opportunities for abuse, because it allows rural ILECs to delay entry by new competitors simply by filing protests, regardless of the merits of the objections raised, triggering long and expensive administrative processes. Moreover, these delays give rural ILECs leverage to obtain agreements from CLECs that may restrict competition at the expense of consumers. In contrast, the differing procedures for CLEC applications in the *non-*rural areas of Pennsylvania, which the Commission has had in effect for a decade, appear to have allowed for more expeditious CLEC entry.

In these comments, the Department explains its concerns regarding the delays and barriers to entry that the existing rural procedures create, and then proposes possible reforms to reduce entry barriers and encourage facilities-based competition in rural ILEC territories in Pennsylvania.[5] Most importantly, the Department recommends that, for facilities-based CLEC applicants in rural areas that do not seek to remove the ILECs' statutory "rural exemption," the Commission adopt the provisional certification process already used in the non-rural areas. The Department also addresses the value of adopting limitations both on the time permitted for resolving protests to certifications and on the scope of issues in certification proceedings. Finally, the Department explains why its suggestions are in harmony with the Telecommunications Act and do not affect the rights it accords to rural ILECs.

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[5] The Department expresses no opinion on whether these reforms can be implemented in the context of the current proceeding or would require further rulemaking procedures.

I. THE COMMISSION'S CLEC CERTIFICATION PROCESS IN TERRITORIES SERVED BY RURAL ILECS UNDULY DELAYS COMPETITIVE ENTRY

A. Competition Policy and the Telecommunications Act Support Minimizing Legal Barriers to CLEC Entry.

Sound competition policy favors minimizing legal barriers to entry. Markets function best when competitors are readily able to enter into a market in response to economic incentives. Public policy over the last three decades has moved toward approaches that rely primarily on markets, not administrative processes, to determine market participants and winners and losers. Market mechanisms provide the most efficient way of sorting out the number and identity of competitors that will best serve the public and are generally superior to administrative processes in this role. Adversarial administrative procedures that can be used to delay or limit entry can harm the economy and consumers by impeding competition. They generate other costs as well, what economists call "costly rent-seeking,"[6] for example wasting resources in litigation.

Historically, administrative control over entry often has led to higher costs and prices than in open entry regimes.[7] As a general matter, using market forces clearly is the best way to determine a competitor's fitness to serve the public and satisfy consumer demand.

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[6] For discussions of rent-seeking, see Jean Tirole, *The Theory of Industrial Organization* 76-77 (1988); Dennis Carlton & Jeffrey Perloff, *Modern Industrial Organization* 144-45 (2d ed. 1994); Richard Posner, *The Social Costs of Monopoly and Regulation,* 83 J. POL. ECON. 807 (1975).

[7] *See* Carlton & Perloff, *supra note* 6, at 898-908 (discussing the effects of deregulation in trucking and airline industries).

Further, administrative processes, which often involve lengthy and complex procedures, in the past generally have proven to be a poor way of determining economic fitness of entrants, as shown in the American experience of regulating and deregulating other industries such as trucking and airlines. It is particularly problematic to allow a dominant incumbent firm, which has incentives to deter or delay entry, to be a "gatekeeper" over entry authorization, with some measure of control over if, how, or when new entrants will be able to challenge its position.

The Telecommunications Act embodies this procompetitive approach to market entry, providing in Section 253(a) that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[8] As this Commission recognized in its 1996 Implementation Orders carrying out the Telecommunications Act, it is necessary for a state to structure its CLEC entry procedures so as to accommodate the procompetitive mandate of Section 253(a).[9]

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[8] 47 U.S.C. § 253(a). The states are permitted to maintain requirements to preserve and advance universal service, protect public safety and welfare, ensure quality of telecommunications services and safeguard consumer rights, but such requirements must be both "competitively neutral" and "necessary." *Id.* at § 253(b).

[9] Order, *In re Implementation of the Telecommunications Act of 1996*, Pa. P.U.C. Docket No. M-00960799, 1996 WL 482990, at *3-5 (June 3, 1996) ("*1996 Order*"); Order on Reconsideration, *In re Implementation of the Telecommunications Act of 1996*, Pa. P.U.C. Docket No. M-00960799, 1996 WL 677528, at *1, 4 (Sept. 5, 1996) ("*1996 Recon Order*").

B. The Commission's CLEC Certification Procedures for Rural ILEC Areas Create Opportunities for ILECs Unnecessarily to Delay Entry.

In its 1996 Implementation Orders, the Commission adopted two distinct certification processes for CLEC competitive entry: (1) an abbreviated process for applications requesting certification in territories served by a non-rural ILEC (which, in Pennsylvania, is principally Verizon);[10] and (2) the Commission's traditional protest process for applications seeking certification in territories served by a rural ILEC.[11] Experience from the last ten years of CLEC entry indicates that, while the Commission's certification process for non-rural areas appears to have accommodated entry, the process in rural areas creates incentives and opportunities for rural ILECs to delay entry, at limited cost to themselves, by routinely protesting applications. As a result of this process, ILECs also are given leverage to pressure entrants to agree – as the price of settling protests – to limit the scope of their competition. The Department submits that modifying the process for facilities-based carriers seeking to serve rural areas to mirror the non-rural certification process would significantly reduce these barriers to competitive entry.[12]

The Commission should be commended for having taken steps since 1996 to narrow the substantive criteria for evaluating CLEC certification. The Commission has

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[10] *1996 Order*, 1996 WL 482990, at *4, 7; *1996 Recon Order*, 1996 WL 677528, at *4.

[11] *1996 Order*, 1996 WL 482990, at *7.

[12] The Department's suggestions regarding modifying the certification process for rural carriers are focused on facilities-based certification applications that are not seeking to remove a rural ILEC's rural exemption and obtain Section 251(c) interconnection rights. The Department explains *infra* in Section III why the Telecommunications Act poses no barrier to modifying the certification process as the Department suggests.

eliminated the requirements to show competitive need or public necessity for facilities-based CLECs in rural areas, thereby limiting the criteria for approval to the statutory fitness grounds.[13] But the Department is concerned that the procedures for entry in rural areas have not also been updated to expedite the resolution of any protests on fitness grounds.

The Department's concerns focus on two key features of the Commission's existing procedures for certification in rural areas. First, the Commission's procedures provide that the filing of any timely protest challenging an application for certification, regardless of the merits, automatically sends the application to the Office of the Administrative Law Judge ("ALJ") for an administrative hearing, which can entail extensive discovery and the presentation of evidence and live witnesses.[14] Indeed, discovery in certification proceedings often involves requests for sensitive business and financial information about a carrier that the ILEC may not be entitled to obtain through

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[13] Pennsylvania law authorizes competitive telecommunications carriers to be certified if it is in the "public interest" and they possess technical, financial and managerial fitness. 66 Pa. C.S.A. § 3019(a). While the rural procedures in the 1996 Implementation Orders initially enabled carriers to challenge applications on traditional grounds, the Commission subsequently eliminated for facilities-based rural entrants the requirements of showing competitive need, *see* Op. and Order, *Amended Application of Vanguard Telecom Corp.*, Pa. P.U.C. Docket Nos. A-310621F0002, A-310621F0003, slip op. at 3 (Aug. 17, 2000) ("*Vanguard Order*"), and public necessity. *See* Op. and Order, *Application of AT&T Communications of Pennsylvania, Inc. and TCG Pittsburgh*, Pa. P.U.C. Docket Nos. A-310125F0002, A-310213F0002, 95 Pa. P.U.C. 277, 278, 2001WL 941820 (Apr. 10, 2001) ("*AT&T/ TCG Order*"). This left only the "public interest," fitness and propensity to comply with Commission orders as criteria for qualification. *See, e.g.*, Op. and Order, *Application of Core Communications, Inc.*, Pa. P.U.C. Docket Nos. A-310922F0002AmA, A-310922F0002AmB, 2006 WL 3523755, slip op. at 34, 36 (Dec. 4, 2006) ("*Core Order*") (applying the Commission's current analysis).

[14] *1996 Order,* 1996 WL 482990, at *2-3, 8-10.

interconnection negotiations, which raises its own competitive issues. Second, in contrast to its rules for non-rural areas, the Commission has not authorized CLECs to enter on a provisional basis in rural areas pending resolution of the certification dispute.[15]

These procedures not only delay entry, but also raise costs for a new entrant, thereby erecting barriers to entry in tension with Section 253(a) of the Telecommunications Act. Indeed, there are a number of examples of applications to provide service in rural areas that the PUC ultimately approved, where ILEC protests significantly delayed entry, even well in excess of a year:

- Vanguard's December 28, 1998, facilities-based application for several rural ILEC areas was not approved until August 17, 2000.[16]
- AT&T/TCG applied in April 2000 for facilities-based entry in several rural ILEC territories and received approval approximately one year later.[17]
- Sprint applied for facilities-based CLEC status on May 4, 2005, to operate in rural ILEC territories as a wholesale provider with cable companies such as Blue Ridge, and it received approval on November 30, 2006.[18]

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[15] *1996 Recon Order,* 1996 WL 677528, at *4 (adopting provisional authority for non-rural areas); *1996 Order,* 1996 WL 482990, at *8-10 (retaining traditional procedures for rural areas).

[16] Vanguard applied for certification in rural and non-rural areas on May 5, 1998. The request to bifurcate the proceeding was made on July 31, 1998, and no protest was filed for the non-rural areas, so that certification was granted in those areas on January 22, 1999. Vanguard limited its request to facilities-based certification for the rural areas on December 28, 1998. *Vanguard Order*, slip op. at 2-3.

[17] *AT&T/TCG Order*, 95 Pa. P.U.C. at 278-279.

[18] Op. and Order, *Application of Sprint Commc'n Company, L.P.*, Pa. P.U.C. Docket Nos. A-310183F002AMA, A-310183F002AMB, A-310183F002AMC, 2006 WL 3675279, slip. op. at 1 (Dec. 1, 2006) ("*Sprint Order*").

- Service Electric Telephone Company's ("Service Electric") first application for rural facilities-based entry, filed September 29, 2000, was approved on October 9, 2001,[19] and its second application to expand its territory, filed in September 2005, took almost a year to approve.[20]

In addition, the possibility to delay entry by filing a protest and initiating an ALJ hearing creates opportunities for ILECs to exact anticompetitive terms and conditions from the entrant. The entrant may be willing to pay this price to settle the dispute earlier, rather than wait for resolution through a full contested hearing. Beyond this abuse of the regulatory process, such agreements by competitors or prospective competitors to divide territories or not compete in certain territories are among the most serious antitrust law problems.

There are examples of such agreements to limit the territories in which CLECs will compete. The settlement with the rural ILEC that was filed with the Commission resolving protests to Service Electric's 2000 application for certification limited this CLEC to entry in five specified exchanges and precluded it from making a broader

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[19] Initial ALJ Decision, *Application of Service Electric Telephone Co., LLC*, Pa. P.U.C. Docket No. A-31065F0002, slip op. at 1 (Aug. 6, 2001) ("*Service Electric Initial Decision*"); Final Order, *Application of Service Electric Telephone Co., LLC*, Pa. P.U.C. Docket No. A-310651F0002, slip op. at 2 (Oct. 9, 2001) ("*Service Electric Final Order*").

[20] Order, *Application of Service Electric Telephone Co., LLC*, Pa. P.U.C. Docket Nos. A-310651F0002AMA, A-310651F0002AMB, A-310651F0002AMC, A-310651F0002AMD, A-310651F0002AME, A-310651F0002AMF, A-310651F0002AMG, 2006 WL 2432024 (Aug. 21, 2006) ("*Service Electric Order*"). Neither of the Service Electric proceedings involved a full administrative process with resolution of disputed issues by the Commission, but both were shortened because the entrant and the protesting ILECs reached settlements.

application to serve the rest of the ILEC's territory for three years.[21] More recently, as discussed in the Commission's order granting certification, Service Electric entered into settlement agreements with three rural ILECs to resolve their protests of its 2005 application, pursuant to which Service Electric limited the geographic scope of its certification request to its current cable television franchise areas in the ILECs' territories.[22] Similarly, Blue Ridge Digital Phone Company ("Blue Ridge") also applied for facilities-based certification in the territories of certain rural ILECs in 2006, and in a settlement with one ILEC filed with the Commission agreed to limit its certification to areas where it has a cable television franchise.[23] Significantly, although these settlements resolved protests and thereby permitted certification, their published terms appear to have no direct bearing on the "fitness" of the applicants that putatively was the reason for both the protests and the extensive administrative procedures that followed.

II. THE COMMISSION SHOULD APPLY THE NON-RURAL ENTRY PROCEDURES TO FACILITIES-BASED APPLICATIONS IN RURAL TERRITORIES AND ADOPT TIME LIMITATIONS TO AMELIORATE COMPETITIVE CONCERNS

The Department recommends that the Commission extend its non-rural procedures to facilities-based entrants in rural areas by (1) granting provisional operating authority and (2) providing that protests by rural ILECs should be reviewed by Commission staff before the matter is referred to an ALJ, to determine if they raise

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[21] *Service Electric Final Order*, slip op. at 1; *Service Electric Initial Decision*, slip op. at 2.

[22] *Service Electric Order,* slip op. at 3.

[23] Joint Petition for Settlement, *Application of Blue Ridge Digital Phone Company*, Pa. P.U.C. Docket Nos. A-311397F0002AMA, A-311397F0002AMB, A-311397F0002AMC, slip op. at 3 (Jan. 26, 2007).

legitimate issues. In addition to these extensions of existing procedures, the Department recommends that the Commission adopt time limits to speed the ALJ hearing process. Doing so would go far to eliminate the opportunities for delaying entry and the associated ability of ILECs to leverage anticompetitive side agreements.

Most importantly, as in non-rural territories, the Commission should permit facilities-based entrants in rural territories to "commence the provision of service included in the application"[24] at the time its application "has been accepted for filing."[25] This would enable the new entrant to continue to operate even if protests are filed, pending the completion of administrative review. Protests challenging certification applications thus are likely to be curtailed significantly because, absent opportunity to delay entry through a baseless protest, the ILECs will have a reduced incentive to file protests at all. Significantly, the Department understands that there have been few if any protests filed in non-rural areas.

In addition to extending provisional authority to rural applicants, the Commission should apply the same "screening" process for protests as its 1996 Implementation Orders provide for protests in non-rural areas, which do not automatically cause the application to be sent to an ALJ for hearing. Instead, the Commission's orders provided that staff would review the protest to determine if it raises any "legitimate concerns as to the fitness of the new entrant."[26] If the protest fails such review, the staff recommends that

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[24] *1996 Order,* 1996 WL 482990, at *4.

[25] *1996 Recon Order,* 1996 WL 677528, at *4.

[26] *1996 Order,* 1996 WL 482990, at *4.

the Commission dismiss the protest and grant the application. Only if the staff identifies what it considers to be legitimate fitness concerns is the application referred to the ALJ for hearing.[27] Adopting this same process for rural territories would further reduce incentives for ILECs to file baseless protests and could eliminate fitness issues before discovery and full hearing. The Department notes that CLECs that have already been certified in other parts of Pennsylvania are accorded a rebuttable "presumption of fitness" now when entering rural territories.[28] This presumption would be especially useful to employ at the preliminary stage, for staff or the ALJ to avoid full hearings on issues where the ILEC has not presented substantial evidence of its own indicating that the CLEC is unfit but merely objects to the sufficiency of the information the CLEC has provided.

In short, extending these procedures for non-rural territories to rural territories would significantly ameliorate the barriers to entry the current procedure permits. With provisional operating authority and the absence of the automatic referral to an ALJ and associated costly hearing and delay, the Commission will facilitate the rapid entry of competition in rural areas.

Moreover, as suggested by Vice Chairperson Cawley, another valuable reform of the CLEC certification process would be the adoption, by Commission rule or internal guidelines, of time limits for the resolution of protested applications, including ALJ review and appeals to the full Commission. Other states have adopted time limits for approval of CLEC certification applications. For example, the Iowa Utilities Board must

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[27] *Id.*

[28] *See, e.g., Core Order,* slip op. at 34-39 (describing rebuttable presumption of fitness and finding Core entitled to rebuttable presumption).

resolve CLEC applications within 90 days of submission of an application, with an optional extension for not more than 60 days.[29] Similarly, Minnesota's state commission must make a determination on an application for certification within 120 days of filing; an amended certificate to expand the service territory of a CLEC in the state is deemed approved in 20 days if no objection is filed, and even if there is an objection, the State commission can utilize its expedited processing procedure to resolve the issue promptly.[30] Time limits are consistent with the spirit of the Telecommunications Act, which, by prohibiting any requirements that have the effect of barring entry, signaled that the entry process should not be unduly burdensome or prolonged.[31]

III. EXPEDITED PROCEDURES FOR FACILITIES-BASED ENTRY IN RURAL AREAS WILL BE CONSISTENT WITH THE TELECOMMUNICATIONS ACT AND COMMISSION PRECEDENT

The Department submits that the provisions of the Telecommunications Act related to rural areas, which are cited in the Commission's Implementation Orders, do not

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[29] *See* IOWA CODE § 476.29(2) (2006).

[30] *See* MINN. STAT. §§ 237.16(c), 237.16(c) subdiv. 4, & 237.61 (2007).

[31] Though the Telecommunications Act does not contain a specific time frame for certification, it does, as the Commission has recognized in its Implementation Orders, *see 1996 Order,* 1996 WL 482990, at *3-5; *1996 Recon Order,* 1996 WL 677528, at *3-5, bar any regulation that "may prohibit *or have the effect of prohibiting* the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a) (emphasis added). Moreover, the Telecommunications Act evidences an intent to resolve entry issues rapidly, as reflected in the specific periods that the law mandates for resolution of interconnection disputes by the State commissions in less than a year's time. Under Section 252(e)(4) of the Telecommunications Act, if a State commission has not acted to approve or reject an agreement within 90 days for a negotiated agreement, or within 30 days for an arbitrated agreement, with the period for completing arbitration limited to nine months from the date of request to negotiate under 252(b)(4)(C), the agreement is deemed approved. *See* 47 U.S.C. §252(e)(4).

support retaining the current application process for facilities-based CLECs. In particular, the Act's special provisions that the Commission was concerned about accommodating,[32] the rural exemption of Section 251(f) and Section 253(f)'s reference to the eligible telecommunications carrier status requirements, are not implicated by facilities-based entry. These provisions of the Act are limited and do not justify imposing broad restrictions on competitive entry beyond their specific terms, given the procompetitive mandate of Section 253(a).

The rural exemption in Section 251(f)(1) of the Act does not address CLEC certification in rural ILEC territories, but merely exempts ILECs from the Section 251(c) obligations,[33] unless and until such exemption is removed by the state. Facilities-based carriers seeking only interconnection and other rights pursuant to Sections 251(a) and (b) of the Act do not implicate the rural exemption, as the Commission has recognized.[34] In

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[32] In its *1996 Order*, the Commission reasoned from the Act's rural provisions that "it appears that universal service eligibility and interconnection requirements may be merged into the consideration of the appropriateness of entry into a rural telephone company's local service and access markets." *1996 Order,* 1996 WL 482990, at *6.

[33] These obligations include various technical interconnection duties, the provision of unbundled network elements, resale of services at a wholesale discount, and collocation. *See* 47 U.S.C. §251(c).

[34] *See Vanguard Order*, slip op. at 28-29. It is also possible for a State commission under Section 251(f)(2) to suspend the requirements of Section 251(b), for local exchange carriers with less than two percent of the nation's subscriber lines, upon finding of necessity to avoid a significant economic impact on users, or avoid imposing requirements that are unduly economically burdensome or technically infeasible, if suspension is also consistent with the public interest. This "rural suspension" relief, unlike the rural exemption from 251(c), requires affirmative action by the State commission in response to a carrier's petition, and the Department understands it is not currently in force in Pennsylvania. Although the Commission initially granted a Section 251(f)(2) suspension of the Section 251(b) obligations for a limited period of time to certain rural ILECs, the Commission refused to extend and eliminated the Section 251(f)(2) suspensions in 2003. *See* Order, *In re Rural Incumbent Local Exchange Carriers,* Pa. P.U.C. Docket No. P-00971177, 87 Pa. P.U.C. 383, 1997 WL 1050749

other words, if a facilities-based carrier is not seeking removal of the rural exemption, the statutory exemption should not affect the entry process and provides no reason to retain different procedures for entry than in non-rural areas.

Section 253(f) of the Act permits, but does not mandate, that a state commission require new entrants in rural areas to satisfy the criteria for eligible telecommunications carrier ("ETC") status, as set forth in Section 214(e)(1), as a prelude to being certified. But by its terms, Section 253(f) is inapplicable if the carrier in the area where entry is sought has a rural exemption and thus is not required to resell its services at a wholesale discount as set forth in Section 251(c)(4).[35] Therefore, where the applicant for entry in a rural area is a facilities-based carrier that is not seeking to lift the ILEC's rural exemption, Section 253(f) does not apply either, so that there is no reason for a state to require that the new entrant satisfy the ETC requirements to obtain certification in a rural area. Pennsylvania rural ILECs do still typically have their rural exemptions, and the Commission has allowed facilities-based carriers in rural areas to enter without satisfying the ETC requirements.[36]

(July 10, 1997) (granting exemption of the Section 251(b) obligations to certain rural carriers pursuant to Section 251(f)(2)); Order, *In re Rural Incumbent Local Exchange Carriers*, Pa. P.U.C. Docket No. P-00971177, 98 Pa. P.U.C. 29, 2003 WL 1563644 (Jan. 15, 2003) (eliminating 251(b) exemption under Section 251(f)(2) for 28 identified rural ILECs).

[35] *See* 47 U.S.C. §253(f).

[36] In the *AT&T/TCG Order*, the Commission approved the application for certification of a facilities-based CLEC seeking to enter the territories of several rural ILECs with fewer than 50,000 lines, without placing an eligible carrier requirement on the applicant. *AT&T/TCG Order*, 95 Pa. P.U.C. at 286.

Indeed, this Commission has endorsed facilities-based competition in rural areas in Pennsylvania, as stated in its *Citizens* decision:

> Pursuant to TA-96 as well as our Implementation Order, the Commission's review of facilities-based applications should be very narrow. The intent of TA-96 is to promote competition. Facilities-based service is competition in its truest sense and is clearly a part of what the Congress envisioned in the federal act. The burden is on the facilities-based CLEC to make a go of its business. Its performance in the market will dictate the success or failure of that business.[37]

Therefore, it is critical to ensure, consistent with Section 253(a) of the Telecommunications Act and the Commission's own procompetitive policies for facilities-based competition, that the entry process for certification of facilities-based CLECs in rural areas is expeditious and no more burdensome than necessary.

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[37] Order, *Citizens Telephone Co. of Kecksburg,* Pa. P.U.C., Docket No. P-00971229, 92 Pa. P.U.C. 334, 338, 1999 WL 632812 (Apr. 28, 1999) (certifying Armstrong as both a facilities-based and non-facilities-based carrier in Citizens' rural ILEC territory), *aff'd, Armstrong Commc'n Inc. vs. Pennsylvania P.U.C.*, 768 A.2d 1230 (2001).

IV. CONCLUSION

The Commission's current practices of certifying CLECs in areas served by a rural telephone company in Pennsylvania appears to be slowing the deployment of competitive telecommunications services by allowing protests of rural ILECs that typically result in unduly delayed certification. These delays can deny consumers the substantial benefits of additional competition, and are not justified by any countervailing legal or policy concern where the entrants are facilities-based and do not seek changes to any of the special rights afforded to rural ILECs under the Telecommunications Act. The Department encourages the Commission to modify its CLEC applications procedures in rural areas to prevent such delays and facilitate prompt competitive entry.

Respectfully submitted,

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March 27, 2007

Certificate of Service

I, Kathleen S. O'Neill, hereby certify that on this 27th day of March 2007, I have delivered for filing an original and fifteen (15) copies of the foregoing document via overnight federal express to Secretary James J. McNulty, Pennsylvania Public Utility Commission, 400 North Street, Commonwealth Keystone Building, Second Floor, Harrisburg, PA 17120. I further certify that I have served a true and exact copy of the foregoing comments via electronic mail to the persons listed below:

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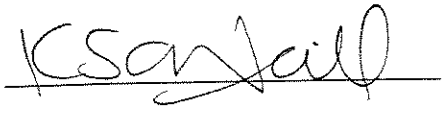

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