

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-476-C - ORDER NO. 98-993

DECEMBER 14, 1998

IN RE: Application of Myrtle Beach Telephone, L.L.C. for a Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange, Local Exchange, and Exchange Access Telecommunications Services within the State of South Carolina. ) ORDER REVOKING ) RURAL EXEMPTION ) ) ) ) )

This matter comes before the Public Service Commission of South Carolina (Commission") on a Notice filed by Myrtle Beach Telephone, L.L.C. in which Myrtle Beach Telephone, L.L.C. gives notice of its intent to provide local telecommunications service within the service area of Horry Telephone Cooperative, Inc.

Myrtle Beach Telephone, L.L.C. was granted a Certificate of Public Convenience and Necessity to provide local telecommunications service within South Carolina by Order No. 98-101, dated February 11, 1998. Myrtle Beach Telephone, L.L.C. and the South Carolina Telephone Coalition entered a Stipulation dated January 5, 1998, which was approved by Order No. 98-101. The Stipulation stated that Myrtle Beach Telephone, L.L.C. would provide at least 30 days written notice of its intent to provide local service to any customer located in a rural incumbent LEC's service area, during which time the rural incumbent LEC would have the opportunity to exercise all rights afforded it under Federal and State law.

EXHIBIT

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Horry Telephone Cooperative, Inc. filed a Return to Myrtle Beach Telephone, L.L.C.'s Notice in which Horry Telephone Cooperative, Inc. asserted that Myrtle Beach Telephone, L.L.C.'s request was so vague and general as not to constitute a bona fide request for interconnection, services, or network elements. Thereafter, Myrtle Beach Telephone, L.L.C. filed a Response dated September 15, 1998, in which Myrtle Beach Telephone, L.L.C. submitted that its request was bona fide and that Horry Telephone Cooperative, Inc.'s argument was an attempt to delay competition. However, Myrtle Beach Telephone, L.L.C., in order to eliminate Horry Telephone Cooperative, Inc.'s vagueness objection, included in its Response a formal request for interconnection, service, and network elements. Myrtle Beach Telephone, L.L.C. and Horry Telephone Cooperative, Inc. then agreed to treat Myrtle Beach Telephone, L.L.C.'s Response dated September 15, 1998, as the bona fide request for interconnection, services, and network elements pursuant to Section 251 of the Telecommunications Act of 1996, and further agreed that the thirty day notice required by the Stipulation between Myrtle Beach Telephone, L.L.C. and the South Carolina Telephone Coalition approved in Order No. 98-101, dated February 11, 1998, would also begin on September 15, 1998. By Commission Order No. 98-755, dated October 1, 1998, the Commission approved the agreement of Myrtle Beach Telephone, L.L.C. and Horry Telephone Cooperative, Inc. that the September 15, 1998, Response of Myrtle Beach Telephone, L.L.C. should be viewed as the bona fide request of Myrtle Beach Telephone, L.L.C. for interconnection, services, and network elements pursuant to Section 251 of the Telecommunications Act of 1996.

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On October 15, 1998, Horry Telephone Cooperative, Inc. then filed a Second Return to Notice in which Horry Telephone Cooperative, Inc. states that it does not intend to assert a continued rural exemption. While Horry Telephone Cooperative, Inc. acknowledges that it believes it is entitled to continue to assert its automatic rural exemption, Horry Telephone Cooperative, Inc. further acknowledges that it has no duty to negotiate as long as its automatic rural exemption is in place. Horry Telephone Cooperative, Inc. asserts that it could not begin the negotiation of an interconnection agreement until the Commission issues an order terminating the rural exemption. Horry Telephone Cooperative, Inc. further states that it intends to negotiate in good faith with Myrtle Beach Telephone, L.L.C. to reach an interconnection agreement that does not have an adverse impact on the subscribers of Horry Telephone Cooperative, Inc., which does not create an undue economic burden for the company, which is technically feasible, and which is in the public interest. Horry Telephone Cooperative, Inc. also asserts in its Second Return to Notice that the initial terms and conditions proposed by Myrtle Beach Telephone, L.L.C. are not appropriate but further states that during the course of negotiations that many issues will be debated. Horry Telephone Cooperative, Inc. specifically reserves its right to assert any appropriate suspensions and modifications to which it may be entitled, pursuant to Section 251(f)(2) of the Telecommunications Act of 1996.

47 U.S.C. § 251(f)(1)(B) provides, in part, that “the State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption

under subparagraph (A)<sup>1</sup>.” The Commission has conducted an inquiry pursuant to 47 U.S.C. § 251(f)(1)(B) for the purpose of determining whether to terminate Horry Telephone Cooperative, Inc.’s rural telephone exemption.

The Telecommunications Act of 1996, 47 U.S.C. § 251(f)(1)(B), provides in part:

Within 120 days after the State commission receives notice of [a bona fide request for interconnection, services, or network elements], the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

In light of Horry Telephone Cooperative, Inc.’s position on this matter, the Commission has no basis upon which to make a finding that the request is unduly economically burdensome, not technically feasible, or inconsistent with the provision of universal service. Therefore, the Commission finds that Horry Telephone Cooperative, Inc.’s automatic rural telephone company exemption should be terminated.

However, the Commission’s action in terminating the automatic rural telephone company exemption should not be taken or viewed as an endorsement of the bona fide request for interconnection, services, and network elements made by Myrtle Beach Telephone, L.L.C. Based on the position of Horry Telephone Cooperative, Inc. that it does not intend to assert a continued rural telephone company exemption and that it is willing to negotiate in good faith to reach an interconnection agreement with Myrtle Beach Telephone, L.L.C., the Commission recognizes that the automatic rural telephone company exemption must be removed for negotiations to commence. If the rural

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<sup>1</sup> Subparagraph (A) of 47 U.S.C. § 251(f)(1)(A) contains the exemption of rural telephone companies from, among other things, the duty to negotiate interconnection, unbundled access, and resale.

telephone company from whom interconnection is sought is willing to negotiate in good faith with the requesting carrier, as evidenced by Horry Telephone Cooperative, Inc., a continued automatic exemption serves no purpose. Of course, any negotiated agreement must be submitted to the Commission for approval, and an agreement may be rejected by the Commission pursuant to 47 U.S.C. § 252(e)(2)(A)(ii) if implementation of the agreement is not consistent with the public interest, convenience, and necessity.

Additionally, as noted by Horry Telephone Cooperative, Inc. in its Second Return, Horry Telephone Cooperative, Inc. has the right to assert any appropriate suspensions and modifications to which it may be entitled, pursuant to Section 251 (f)(2) of the Telecommunications Act of 1996, as issues may arise during the course of negotiations.

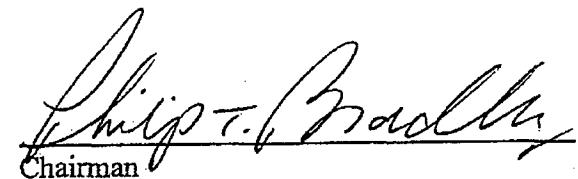
Finally, 47 U.S.C. § 251 (f)(1)(B) requires the State Commission upon termination of the exemption to establish an implementation schedule for compliance with the request. In accordance with this requirement, the Commission finds that the appropriate schedules as set forth in Section 252 of the Telecommunications Act of 1996 shall apply.

Therefore, the Commission concludes that, as of the date Horry Telephone Cooperative, Inc. receives a copy of this Order, the rural exemption as it pertains to Horry Telephone Cooperative, Inc. is terminated and the time period for negotiating an agreement will commence.

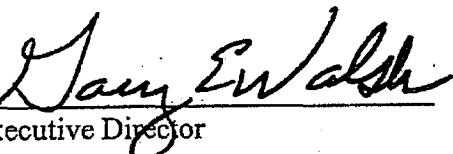
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IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Philip T. Bradley  
Chairman

ATTEST:

  
Gary E. Walsh  
Executive Director

(SEAL)