

STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH

OFFICIAL COPY

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Local Exchange and Exchange Access ) ORDER ALLOWING INTERIM OPERATION  
Competition ) UNDER INTERCONNECTION AGREEMENTS

BY THE COMMISSION: On June 7, 1996, the Public Staff filed a Motion Concerning Interconnection Agreements. The Public Staff noted that parties were already entering into local service interconnection agreements and that, in its opinion, there is no legal or practical reason to delay operation under negotiated interconnection agreements that have been submitted to the Commission and are a matter of public record. The Public Staff argued that third-party competitors will not be disadvantaged since, under the Telecommunications Act of 1996 (TA96), the local exchange companies (LECs) must make interconnection available to them under the same terms and conditions as those provided in the agreements that are negotiated. TA96 also favors the introduction of competition as rapidly as possible. TA96 requires Commission approval or disapproval of a negotiated interconnection agreement within 90 days of submission by the parties or the agreement is deemed approved.

After careful consideration, the Commission concludes that good cause exists to amend Rule 17-4(d) as set out below to allow operation on an interim basis under negotiated agreements that have been submitted to the Commission pending approval by the Commission. The Public Staff has astutely observed that Rule R17-4(d) requires the submission of interconnection agreements but does not provide for Commission approval, while TA96 provides for state commission approval but is silent on when these agreements must be submitted to the state commissions and whether the parties may operate under the agreements during the 90-day period pending commission action.

The Commission emphasizes, however, that this grant of authority to operate under a negotiated interconnection agreement pending approval by the Commission is at the risk of the parties, and later disapproval of the interconnection agreement may give rise to liabilities for one or both of the parties. The Commission further notes that the grant of interim authority to operate under the agreement pending Commission decision applies only to those interconnection agreements that have been filed as public records. Although Sec. 252(h) of TA96 provides that the agreement becomes available for public inspection and copying within 10 days after it is approved, TA96 is silent on the possible confidential status of a negotiated interconnection agreement prior to approval. This provision makes clear that the ability to operate on an interim basis pending approval is contingent upon the parties not claiming confidentiality for the agreement prior to approval.

Accordingly, the Commission concludes that Rule R17-4(d) should be rewritten to read as follows:

(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.

Rule R17-4(d), as so amended, shall become effective as of the date of this Order and shall apply to all negotiated interconnection agreements filed with the Commission as public records, including those interconnection agreements filed prior to the date of this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 18<sup>th</sup> day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION

  
Geneva S. Thigpen, Chief Clerk

(SEAL)