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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW B204  
Washington, DC 20554

RE: CC Docket No. 01-73: *Ex Parte* Response by Chorus  
Communications Group, Ltd. ("*Chorus*") and  
Telephone and Data Systems, Inc. ("*TDS*") to Staff  
Information Request

Dear Ms. Salas:

At our meeting with Commission staff from the Common Carrier Bureau and the Office of the General Counsel on Wednesday May 2, 2001, staff requested that we file additional information regarding the merger between Chorus and an acquisition subsidiary of TDS being considered in the above-referenced docket. This letter responds to staff's request. The information in this letter is based on data and estimates provided to us by our clients as well as publicly available information.

*Overview.* The merger will not result in harm to competition in any relevant market and will yield tangible public interest benefits. We note that:

- No party filed comments in this proceeding and no qualification or competitive concerns have been raised.
- The U.S. Department of Justice and the Federal Trade Commission on January 11, 2001 granted early termination of their examination of the merger following their inquiry under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.<sup>1</sup>

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<sup>1</sup> Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules, 66 Fed. Reg. 9849, 9850 (Feb. 12, 2001). A copy of the relevant notice is attached hereto as **Exhibit A**.

- The Minnesota Public Utilities Commission, which views as its overarching concern when reviewing ILEC mergers the effect of such mergers on competition,<sup>2</sup> approved the merger by order dated March 23, 2001.<sup>3</sup>

As discussed in the parties' application for approval over the transfer of control of Chorus's domestic Section 214 authorizations, the transaction will affect only a small percentage of Wisconsin's access lines, and *de minimis* percentages of Minnesota's local exchange customers and each state's long distance customers.

*Wisconsin ILEC Information.* According to the Wisconsin State Telephone Association ("*WSTA*"), there are approximately 3,454,000 access lines in Wisconsin served by ILECs, of which Chorus's three ILEC subsidiaries serve a total of 44,938.<sup>4</sup> TDS's sixteen ILEC subsidiaries in Wisconsin serve a total of approximately 107,000 access lines. WSTA data also show that the three largest ILECs in Wisconsin are Ameritech Wisconsin with approximately 2.2 million access lines (primarily in Madison and Milwaukee and surrounding areas), CenturyTel with approximately 475,000, and Verizon with approximately 400,000 (mostly in the Madison area).

*Wisconsin CLEC Information.* TDS's CLEC subsidiary, TDS Metrocom, as of April 20, 2001 served 78,784 access lines in Wisconsin, up from 63,000 as of December 31, 2000. While we do not know the size of each CLEC competing in Wisconsin, the FCC's December 2000 Local Telephone Competition report indicated that CLECs served at least 238,306 access lines in Wisconsin as of June 30, 2000.<sup>5</sup> Zip Code Data posted on the FCC's web site by the Industry

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<sup>2</sup> Citizens Util. Co., Docket No. P-5316,407/PA-99-1239, 2000 Minn. PUC LEXIS 54, at \*9 (July 24, 2000). A copy of this decision is attached hereto as **Exhibit B**.

<sup>3</sup> HBC Telecom, Inc., Docket No. P-5835/PA-01-135 (Minn. P.U.C. March 23, 2001). A copy of this decision is attached hereto as **Exhibit C**. Chorus is required to notify the Public Service Commission of Wisconsin ("*WPSC*") that the merger has occurred within ten days of the closing, but no prior authorization is required.

<sup>4</sup> In most cases the data set forth in this letter are as of year-end 2000.

<sup>5</sup> Indus. Analysis Div., Common Carrier Bureau, FCC, Local Telephone Competition: Status as of June 30, 2000, Table 5 (Dec. 2000) ("*Local Competition Report*"). We note that not all carriers are required to report data to the FCC, and it is likely that at least some carriers that were required to report did not in fact do so. Accordingly the cited number is probably low. Information

Analysis Division in connection with the Local Competition Report showed that there were as of June 30, 2000 four to seven CLECs serving parts of the Milwaukee and Madison areas.

*Effect In Wisconsin.* As a result of the transaction, the percentage of ILEC access lines served by TDS ILEC subsidiaries in Wisconsin would increase by an estimated 1.4%, to 4.5%.<sup>6</sup> Looking at both ILEC and CLEC lines served by TDS subsidiaries in Wisconsin, the percentage of total lines would increase by an estimated 1.2%, to 5.8%.<sup>7</sup>

*De Minimis Services.* TDS's and Chorus's long distance subsidiaries serve approximately 0.8% of Wisconsin customers. In Minnesota, the proposed transaction would increase the number of access lines served by TDS subsidiaries by the 727 access lines served by Chorus's Minnesota CLEC, HBC Telecom, Inc., increasing the approximate percentage of access lines in Minnesota served by TDS by 0.02%.

*Exchange Characteristics.* The exchanges served by Chorus's and TDS's ILEC subsidiaries are primarily small and rural. The average number of lines per exchange served by TDS in Wisconsin and Minnesota is 1911 and by Chorus is 5639. The post-transaction average lines per exchange in Wisconsin and Minnesota for the consolidated companies will be approximately 2271.

Most of the area served by both parties is rural. The only partly urban areas served by Chorus, or by TDS's ILECs in either Wisconsin or Minnesota, are in the area of Madison, Wisconsin.<sup>8</sup> Both Chorus's and TDS's ILECs provide service in this area. Attached as **Exhibit F** is a map from the WPSC showing exchange boundaries in Wisconsin. As you can see from the map, Chorus's exchanges in the

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from the report on the numbers of CLECs serving a given area also suffer this problem.

<sup>6</sup> A list of lines served by each of Chorus's ILEC subsidiaries in Wisconsin is attached hereto as **Exhibit D**. A list of lines served by TDS's ILEC subsidiaries in Wisconsin by exchange is attached hereto as **Exhibit E**.

<sup>7</sup> This percentage is derived in part from the 238,302 figure for Wisconsin CLEC access lines as of June 30, 2000 in the *Local Telephone Competition Report*. The actual total CLEC lines in Wisconsin at year-end 2000 is likely to be higher, and thus the merged firm's share is likely to be lower.

<sup>8</sup> Generally this letter uses the Madison area and like terms to cover Dane County, Wisconsin, where Madison is located.

Madison area are close to some of the exchanges operated by TDS's ILEC subsidiaries. However, the number of adjacencies and access lines associated with such adjacencies is far lower than the 71 exchanges with 478,617 access lines identified as being adjacent in the acquisition of Frontier by Citizens.<sup>9</sup>

*Madison Information.* For the area in and around Madison, telephone service is dominated by SBC-Ameritech, which serves the City of Madison and some of the surrounding areas. SBC-Ameritech also dominates telephone service in the Milwaukee area; the two metropolitan areas are close enough that some carriers use facilities in Milwaukee to serve customers in Madison and vice versa.<sup>10</sup> Chorus serves 36,369 ILEC access lines in three exchanges in the Madison area and TDS serves 19,753 ILEC access lines in four exchanges. These exchanges are mostly rural, although some serve increasingly suburban areas as Madison continues to grow. In addition to SBC-Ameritech, Chorus and TDS, a number of other entities provide ILEC service in or around Madison, including Verizon, Century and Mt. Horeb.

Chorus provides a limited amount of service (1463 access lines) in Wisconsin as a CLEC in areas served by SBC-Ameritech and Century. Besides the 727 access lines served by HBC Telecom in Minnesota, the 1463 access lines in Madison are Chorus's only CLEC lines. As of April 20, 2001, TDS Metrocom served 78,784 access lines in Wisconsin, focusing primarily on the areas served by SBC-Ameritech in the Milwaukee and Madison areas. About 41,154 of these access lines are located in and around Madison.

Although focused on serving the SBC-Ameritech areas, TDS Metrocom also serves customers in two of Chorus's ILEC exchanges (Middleton and West Towne).<sup>11</sup> TDS's headquarters is located in the Middleton exchange and TDS and its subsidiaries are the largest telecommunications users in both exchanges. In

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<sup>9</sup> See *Ex Parte* Presentation Letter from John Adams and William Sill to the FCC of Mar. 28, 2001 ("*Global Crossing Ex Parte*"), App. C, Global Crossing Ltd., 2001 FCC LEXIS 2097 (Common Carrier Bureau, Int'l Bureau, Wireless Telecomm. Bureau Apr. 16, 2001) ("*Citizens-Frontier*").

<sup>10</sup> TDS Metrocom uses its facilities in the Madison area to provide service in the Milwaukee area and in northern Illinois as well.

<sup>11</sup> TDS Metrocom treats the Middleton and West Towne exchanges as a single CLEC exchange. At our May 2, 2001 meeting we were not aware that the lines served by TDS Metrocom in Chorus exchanges were spread out over two Chorus exchanges.

these two exchanges as of April, 2001, TDS Metrocom served 3756 non-TDS business lines, 340 residential lines (some of which are to TDS employees) and 4048 business lines that serve TDS and its subsidiaries. The Middleton and West Towne exchanges cover a mix of rural and suburban areas, with Middleton located west of the City of Madison and West Towne, which is adjacent to Middleton, covering a portion of the west side of the City of Madison.

TDS Metrocom provides service almost exclusively (96%) to business lines in this area, and of those lines more than half are to TDS and its subsidiaries. In contrast, more than sixty percent of the lines served by Mid-Plains (Chorus's ILEC subsidiary in the Madison area) are residential lines. Moreover, the high-volume businesses in the Middleton/West Towne area are concentrated in a small number of office parks (such as Middleton Business Park and Greenway Center) and the downtown center, areas that are attractive to CLECs serving the Madison area.

In October, 1999, the Chicago Tribune concluded that Madison's competitive environment "looks a lot like [the Telecom Act] envisioned it would."<sup>12</sup> The area has only become more competitive since then. The Zip Code Data posted on the FCC's website in connection with the Local Competition Report (with data as of June 30, 2000) indicates that four to five CLECs are providing services in the listed Madison area zip codes.<sup>13</sup> KMC Telecom, McLeod and Choice One, in addition to Chorus and TDS, provide competitive local exchange service in or around Madison. For example, in 1999 the Capital Times reported the bidding between Chorus and KMC Telecom to provide local, long distance and Internet access service to a Madison area retirement community,<sup>14</sup> and KMC Telecom continues to bid on opportunities to provide service to office parks and similar developments in the Middleton and West Towne exchanges. Charter Communications, the major cable television operator in the Madison area, has been upgrading its cable plant with two-way capability including in the Middleton and West Towne exchanges, offers high-speed Internet access in many parts of the Madison area and has announced plans to provide telephone services using its two-

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<sup>12</sup> Jon Van, Competitive Ring to this Plan, Chi. Trib., Oct. 12, 1999, Bus. at p. 1. A copy of this story is attached hereto as **Exhibit G**.

<sup>13</sup> The figures cited are likely to be understated, as carriers serving fewer than 10,000 access lines were not required to report (and it is not clear that all CLECs that were required to report have actually reported).

<sup>14</sup> Jeff Richgels, Custom Phone System Has Oakwood Buzzing, Capital Times (Madison, WI), May 14, 1999, at 1C.

way plant. Mid-Plains has entered into six interconnection agreements for its service area. In Wisconsin generally, more than seventy CLECs have been authorized to provide service<sup>15</sup> and, according to the WPSC's web site, ILECs have entered into nearly 300 interconnection agreements.

In addition to incumbent, competitive and other carriers and service providers operating in Madison, carriers and service providers that provide service in Milwaukee should also be viewed as market participants in the Madison area. Madison and Milwaukee are less than eighty miles from each other and lines in Madison can be, and in some cases are, served using equipment in Milwaukee and vice versa in the case of TDS Metrocom.

*Wireless Services.* Chorus does not provide wireless service in its or TDS's service areas.<sup>16</sup> TDS's controlled affiliate, United States Cellular Corporation ("USCC"), provides cellular service in many parts of Wisconsin (and elsewhere), including in areas served by TDS and Chorus.<sup>17</sup> However, Chorus's customers make up a minuscule portion of the population of USCC's service areas in Wisconsin and would have no effect on any decision by USCC to provide fixed wireless or other services; moreover, TDS's ILEC subsidiaries and TDS Metrocom already provide local exchange service to significantly more lines in USCC's service area than Chorus does. Chorus's ILEC subsidiaries provide service to 44,938 lines in a state where USCC has over 4.3 million POPs.<sup>18</sup> In any event, TDS uses separate facilities, and billing, branding and operational resources from USCC.

*Conclusion.* Given the number of participants in this market and Chorus's small size, the merger will not reduce the level of competition in any relevant market and, in fact, will strengthen TDS's ability to compete against the larger ILECs, CLECs and long distance carriers serving Wisconsin and Minnesota. TDS Metrocom has long considered its affiliation with neighboring ILECs as a

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<sup>15</sup> See Local Phone Service Ringing Up Choices, Wis. State J., Mar. 14, 2001, at A10. A copy of this story is attached hereto as **Exhibit H**.

<sup>16</sup> Chorus owns a 75 percent interest in PCS Wisconsin, LLC, an F-Block licensee that is authorized to (but does not currently) provide service in the Madison area, including in areas served by Chorus and TDS. The Commission is currently considering Chorus's application for approval to transfer this interest to an unaffiliated third party in File No. 0000398367.

<sup>17</sup> **Exhibit H** is a map showing USCC's service area in Wisconsin.

<sup>18</sup> **Exhibit I** shows USCC's POPs and subscribers in Wisconsin.

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significant advantage from both an operational and a reputational standpoint in competing against SBC-Ameritech. The acquisition of Chorus expands this advantage. In addition, the combination will achieve economies of scale and scope that would not otherwise have been available to Chorus. The potential cost savings and efficiencies that the merger will create (such as by significantly reducing Chorus's operating and overhead costs, allowing TDS to obtain the services of the skilled Chorus employee base in a very tight labor market, making available better purchasing opportunities for equipment and better recruiting opportunities for personnel, etc.) may also result in lower fees for usage of Chorus's local exchange network.

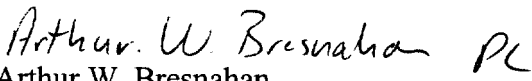
The parties also note that there is no noncompetition agreement at issue here; no CLEC will be precluded from entering markets across the U.S. as was true in Citizens-Frontier. Moreover the potential areas of competition between Chorus and TDS are much smaller than those approved in Citizens-Frontier and are *de minimis* compared to the other few ILEC mergers the Commission has gotten involved in.

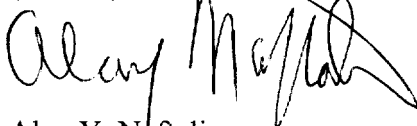
The transaction is in the public interest and we request that it be approved as soon as possible.

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*Ex Parte Status.* Finally, we note that the public notice initiating this proceeding announced that this docket would be governed by "permit-but-disclose" *ex parte* procedures under 47 C.F.R. § 1.206(a).<sup>19</sup> For purposes of compliance with that rule, TDS and Chorus believe that they should be treated (at least for joint presentations) a single "party" pursuant to Note 3.<sup>20</sup> Therefore they and the Commission may freely make presentations to each other and need not comply with the disclosure requirements of paragraph (b) of the rule. However, to allow an orderly distribution of this letter, we are filing the original and two copies with the Secretary as provided for in 47 C.F.R. § 1.206(b)(1) with respect to written presentations for which disclosure is required.

Very truly yours,

  
Arthur W. Bresnahan  
Skadden, Arps, Slate, Meagher & Flom  
(Illinois), counsel for Chorus

  
Alan Y. Naftalin  
Peter Connolly  
Holland & Knight LLP, counsel for TDS

cc: James Bird (OGC)  
John Branscome (WTB)  
William Dever (CCB)  
Neil Dellar (OGC)  
Aaron Goldberger (CCB)

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<sup>19</sup> See Chorus Communications, Ltd., DA-01-715, CC Docket No. 01-73 (Mar. 20, 2001)(public notice).

<sup>20</sup> See 47 C.F.R. §1.206(a), Note 3 (2000).



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Nandan Joshi (OGC)

Janice Myles (CCB)

Elizabeth Nightengale (IB)

Joel Rabinovitz (OGC)

Kimberly Reindl (OGC)

Jeff Tobias (WTB)

International Transcription Service (ITS)

### **List of Exhibits**

- Exhibit A Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules, 66 Fed. Reg. 9849 (Feb. 12, 2001).
- Exhibit B Citizens Util. Co., Docket No. P-5316,407/PA-99-1239, 2000 Minn. PUC LEXIS 54 (July 24, 2000).
- Exhibit C HBC Telecom, Inc., Docket No. P-5835/PA-01-135 (Minn. P.U.C. March 23, 2001).
- Exhibit D Chorus ILEC Access Lines
- Exhibit E TDS ILEC Exchanges
- Exhibit F WPSC Map of Wisconsin Exchange Boundaries
- Exhibit G Jon Van, Competitive Ring to this Plan, Chi. Trib., Oct. 12, 1999, Bus. at p. 1
- Exhibit H Local Phone Service Ringing Up Choices, Wis. State J., Mar. 14, 2001, at A10.
- Exhibit I Map of USCC Wisconsin Service Area
- Exhibit J USCC POPs and Subscribers



jointly entered into resale agreements with AirCell, Inc., to furnish system capacity for the provision of cellular service on a secondary, conditional basis to airborne terminal units using technology developed by AirCell, Inc. The waiver also gives AirCell the authority to operate a specially designed mobile cellular telecommunications unit for use aboard general aviation aircraft. The AirCell system gives the public greater access to safety-related data and wireless telephone services for general aviation and equips pilots with a transmission facility that can provide a method of receiving real-time information about changing weather conditions, navigation, telemetry, and aircraft operations.

Federal Communications Commission,  
**Magalie Roman Salas,**  
*Secretary.*  
 [FR Doc. 01-3520 Filed 2-9-01; 8:45 am]  
 BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

[DA 01-188]

**Process to Update the International Bureau's Records for Carriers That Provide International Telecommunications Services, Correction**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; correction.

**SUMMARY:** This document contains corrections to the Notice which was published in the *Federal Register* on Monday, February 5, 2001 (66 FR 8972). The date announcing the commencement of the 90-day period was incorrect. This document corrects that error.

**DATES:** The 90-day filing period commences on February 5, 2001.

**ADDRESSES:** Federal Communications Commission, Secretary, 445 12th Street, SW., Room TW-B204F, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Rebecca Arbogast, International Bureau, (202) 418-1460.

**SUPPLEMENTARY INFORMATION:** The FCC published a document in the *Federal Register* on February 5, 2001 (66 FR 8972). In that document (page 8972, column 2) and (page 8973 column 2), the dates for the commencement of the 90-day period are incorrect. The correct date is February 5, 2001.

Federal Communications Commission,  
**Magalie Roman Salas,**  
*Secretary.*  
 [FR Doc. 01-3519 Filed 2-9-01; 8:45 am]  
 BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

[Report No. 2463]

**Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings**

February 2, 2001.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of those documents are available for viewing and copying in Room CY-A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857-3800. Oppositions to these petitions must be filed by February 27, 2001. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

**Subject:** Federal-State Joint Board on Universal Service (CC Docket No. 96-45), Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming.

**Number of Petitions Filed:** 2.

**Subject:** Federal-State Joint Board on Universal Service (CC Docket No. 96-45).

**Number of Petitions Filed:** 1.

**Subject:** Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations. (Strattanville and Farmington Township, Pennsylvania) (MM Docket No. 99-58, RM-9461, RM-9611)

**Number of Petitions Filed:** 1.

**Subject:** Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Alva, Mooreland, Tishomingo, Tuttle, and Woodward, Oklahoma) (MM Docket No. 98-155, RM-9082, RM-9133)

**Number of Petitions Filed:** 1.

Federal Communications Commission,  
**Magalie Roman Salas,**  
*Secretary.*  
 [FR Doc. 01-3517 Filed 2-9-01; 8:45 am]  
 BILLING CODE 6712-01-M

**FEDERAL TRADE COMMISSION**

**Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules**

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the *Federal Register*.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to those proposed acquisitions during the applicable waiting period.

Trans#	Acquiring	Acquired	Entities
<b>TRANSACTIONS GRANTED EARLY TERMINATION—01/08/2001</b>			
20005155	Atmos Energy Corporation	Citizens Communications Company	Citizens Communications Company.
20010375	Winn-Dixie Stores, Inc.	Bruckmann, Rosser, Shemil & Co., L.P.	Delchamps, Inc., debtor-in-possession Interstate Jitney Jungle Stores, Inc., debtor-in-possession. Jitney Jungle Stores of America, Inc., debtor-in-possession. P&S Operations, Inc., debtor-in-possession.

Trans#	Acquiring	Acquired	Entities
			Pump & Save, Inc., debtor-in-possession. Southern Jimmy Jungle Company, Inc., debtor-in-possession. Supermarket Cigarette Sales, Inc., debtor-in-possession.

**TRANSACTIONS GRANTED EARLY TERMINATION—01/09/2001**

20011034	Aventis	aaI Pharma Inc	aaI Pharma Inc.
20011075	U.S. Concrete, Inc	Blue Circle Industries, PLC	Blue Circle Materials Inc.
20011106	University Community Hospital, Inc	Sun Coast Hospital, Inc	Sun Coast Hospital, Inc.
20011113	Total Fina Elf S.A	Dickerson L. Whitney, Jr	McGean—Rohco Worldwide, Inc. McGean-Rohco, Inc
20011177	Westboro Properties LLC	Bunge International Limited	Bunge First Capital Limited

**TRANSACTIONS GRANTED EARLY TERMINATION—01/11/2001**

20011081	General Electric Company	R. Mark Bostick	Comcar Leasing, Inc.
20011103	Madison Dearborn Capital Partners IV, L.P	Burt I. Harris, Sr	Hamscope of Los Angeles, Inc
20011130	Paul Levy	Rational Software Corporation	Rational Software Corporation
20011154	The Kroger Co	Fleming Companies, Inc	Baker's Food Group, Inc
20011159	iBasis, Inc	Pricelnteractive, Inc	Pricelnteractive, Inc
20011162	Aurora Equity Partners II L.P	Har Technologies, Inc	Har Technologies, Inc
20011178	Infogrames Entertainment SA	Hasbro, Inc	Hasbro, Inc.
20011180	Telephone and Data Systems, Inc. Vol-Ing Trust.	Chorus Communications Group, Ltd	Chorus Communications Group, Ltd
20011164	Sola International, Inc	Charles E. Crews	Oracle Lens Manufacturing Corporation
20011188	Thomas H. Lee Equity Fund III, L.P	Covance Inc	Covance Clinical and Penapproval Services Ltd. Covance Pharmaceutical Packaging Services AG. Covance Pharmaceutical Packaging Services Inc.
20011190	Polycom, Inc.	Accord Networks, Inc.	Accord Networks, Inc.
20011191	KINO Management, LLC	IFCO Enterprises, Inc.	IFCO Enterprises, Inc.
20011192	Anheuser-Busch Companies, Inc.	La Jolla Capital, Inc.	La Jolla Capital, Inc.
20011193	United Auto Group, Inc.	George C. Andreas	Lantzsach-Andreas Enterprises, Inc
20011196	Citizens Communications Company	Berkshire Telephone Company	Berkshire Telephone Company
20011198	Business News Publishing Company II, LLC.	Elsevier NV	Reed Elsevier Inc.
20011199	McLeodUSA Incorporated	OSPG III, Inc.	OSPG III, Inc
20011201	Michael S. Smith	Stone Energy Corporation	Stone Energy Corporation
20011202	Western Distributing Company	Zulanas Partners	Zulanas Distributors, Inc
20011206	Kent P. Dauten	Paul B. Steeter, Sr	Freed's Bakery, Inc
20011208	Bessemer Securities L.L.C.	Stanley G. Pride	Pride Manufacturing Company and Pride Golf Tee Company
20011215	American Express Company	Pacific Century Financial	Pacific Century Financial
20011218	ITOCHU Corporation	Allied Products Corporation	Allied Products Corporation
20011223	Kearny Mesa Financial Credit Union	Santel Federal Credit Union	Santel Federal Credit Union
20011229	Berkshire Hathaway Inc	Manville Personal Injury Settlement Trust	Johns Manville Corporation

**TRANSACTIONS GRANTED EARLY TERMINATION—01/17/2001**

20011115	Hampshire Equity Partners II, L.P.	Connector Service Corporation	Connector Service Corporation
20011140	Northwestern Corporation	The Montana Power Company	The Montana Power Company
20011152	Dominion Resources, Inc	Powergen pic	LG&E Westmoreland Altavisa LG&E Westmoreland Hopewell LG&E-Westmoreland Southampton Reynolds Metals Company NECX com LLC Converge, Inc
20011210	Michael W. Lynch	Alcoa Inc.	Alcoa Inc.
20011203	Converge, Inc	Vertical Net, Inc	Vertical Net, Inc
20011204	VerticalNet, Inc	Converge, Inc	Converge, Inc
20011213	GATX Corporation	El Camino Resources International, Inc	El Camino Resources, Ltd
20011214	Plum Creek Timber Company, Inc	Georgia-Pacific Corporation	GPW Timber, Inc., LRFP Timber, Inc., NPC Timber Inc
20011216	Transcore Holdings, Inc	M. Albin Jubitz	N. America Timber Corp., NPI Timber, Inc., GNN Timber, Inc.
20011217	Transcore Holdings, Inc	Frederick K. Jubitz	EuroDAT Services, s c a EuroDAT, Ltd. Jubitz Corporation EuroDAT Services, s c a EuroDAT, Ltd Jubitz Corporation.

Trans#	Acquiring	Acquired	Entities
20011225	Tyco International Ltd	Pactiv Corporation	Pactiv Corporation
20011230	George Abi Zeid	AT&T Corp.	AT&T Corp
20011231	Inter-Tel, Incorporated	Convergent Communications, Inc	Convergent Communications Services, Inc
20011232	Eni SpA	LASMO pic	LASMO pic
20011235	SHC investment Partnership	Donald R. Danner	Leland-Powell Fastners, Inc
20011236	SHC Investment Partnership	Joseph R. Exum	Leland-Powell Fastners, Inc
20011242	Steven B. Klinsky	Ron and Beverly Bailey	Strayer Education, Inc.
20011245	M. Francois Pinault	Eugene M. Winner	Electric Supply Company of Asheville, Inc.
20011246	Virginia Wadsworth Wirtz Trust	U.S. Bancorp	U.S. Bancorp.
20011247	GTCR Fund VII, L.P	SBC Communications Inc	SecurtyLink from Ameritech, Inc
20011248	J.R. Shaw	Randall L. Moffat	Moffat Communications Limited
20011253	Bernard Arnaut	Donna Karan and Stephan Weiss	Gabrielle Studio, Inc.
20011263	Frank Lyon, Jr. Trust	U.S. Bancorp	U.S. Bancorp.

**TRANSACTIONS GRANTED EARLY TERMINATION—01/18/2001**

20011176	Baxter International Inc	Sera-Tec Biologicals Limited Partnership	Sera-Tec Biologicals Limited Partnership
20011187	Asyst Technologies, Inc	Glenn A. Hoberson, Jr	Semifab, Inc.
20011228	CarrAmerica Realty Corporation	FrontLine Capital Group	HQ Global Holdings, Inc
20011237	Centennial Communications Corp.	Hector R. Gonzalez	TPC Communications PR, Inc
20011251	Emulex Corporation	GigaNet, Inc.	GigaNet, Inc

**TRANSACTIONS GRANTED EARLY TERMINATION—01/19/2001**

20011135	Ralcorp Holdings, Inc	T&C Holdings Corporation	T&C Holdings Corporation
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**FOR FURTHER INFORMATION CONTACT:**

Sandra M. Pouy or Parceliona P. Fielding, Contact Representatives, Federal Trade Commission, Promerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326-3100.

By Director of the Commission,

Donald S. Clark,

Secretary.

[FR Doc. 01-1495 Filed 2-9-01; 8:45 am]

BILING CODE 0750-01-M

**FEDERAL TRADE COMMISSION**

[File No. 991 0301]

**The Dow Chemical Company, et al.;  
Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 7, 2001.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,

Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:**

Rhott Krulla, FTC/S-3105, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326-2608.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for February 5, 2001), on the World Wide Web, at <http://www.ftc.gov/os/2001/02/index.htm>. A paper copy can be obtained from the FTC Public Reference Room, H-130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3 1/2 inch diskette

containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of the Complaint and Proposed Consent Order To Aid Public Comment**

**I. Introduction**

The Federal Trade Commission ("Commission") has accepted for public comment a Decision and Order ("Order"), pursuant to an Agreement Containing Consent Orders ("Consent Agreement") against The Dow Chemical Company ("Dow") and Union Carbide Corporation ("Carbide") (collectively "Respondents"). The Order is intended to resolve anticompetitive effects stemming from the proposed merger of Dow and Carbide (the "Merger"). As described below, the Order seeks to remedy anticompetitive effects of the merger in polyethylene, ethyleneamines, ethanolamines and methyldiethanolamine ("MDEA"). The Order remedies those anticompetitive effects by requiring Respondents to divest and license certain intellectual property and other assets relating to polyethylene to BP Amoco plc ("BP"); to divest Dow's worldwide businesses in ethyleneamines to Huntsman International LLC ("Huntsman"); and to divest Dow's worldwide ethanolamines



2000 Minn. PUC LEXIS 54 printed in FULL format.

In the Matter of the Joint Petition of Citizens Utilities Company and GTE Corporation for Approval of Citizens' Acquisition of GTE Telephone Properties

DOCKET NO. P-5316,407/PA-99-1239

Minnesota Public Utilities Commission

2000 Minn. PUC LEXIS 54

July 24, 2000

CORE TERMS: customer, interconnection, public interest, trouble, modification, measurement, telecommunications, notice, telephone, repair, proposed sale, closing date, carrier, calendar, monthly, installation, signature, wireless, traffic, rate cap, residential, competitive, completion, modified, internet, modify, acquisition, surveyed, approve, certificate of authority

PANEL:

[\*1] Gregory Scott, Chair; Edward A. Garvey, Commissioner; Joel Jacobs, Commissioner; Marshall Johnson, Commissioner; LeRoy Koppendrayner, Commissioner

OPINION:

ORDER APPROVING SALE, GRANTING ETC STATUS, AND ISSUING CERTIFICATE OF AUTHORITY AND REQUIRING FILINGS

PROCEDURAL HISTORY

On August 27, 1999, Citizens Utilities Company (Citizens) and GTE Corporation (GTE) and their respective subsidiaries, Citizens Telecommunications Company of Minnesota, Inc. (CTC-Minnesota) and Contel of Minnesota, Inc. d/b/a GTE Minnesota (GTE Minnesota) filed a Joint Petition, pursuant to Minn. Stat. @ 237.23, seeking Commission approval of the sale of GTE Minnesota's local telephone operations and associated assets in Minnesota to Citizens Minnesota. The petition also sought a certificate of authority for Citizens to operate in Minnesota pursuant to Minn. Stat. @ 237.16 and designation of Citizens as an Eligible Telecommunications Carrier (ETC).

On February 25, 2000, the following parties filed comments: the Department of Commerce (the Department), the Office of the Attorney General Residential and Small Business Utilities Division (RUD-OAG), and certain competing local exchange companies (CLECs) that have [\*2] interconnection agreements with GTE. n1

-Footnotes-

n1 The CLECs' comments reflect the views of Ace Telephone Association, HomeTown Solutions, LLC, Hutchinson Telecommunications, Inc., Integra Telecom of Minnesota, Inc., Local Access Network, Mainstreet Communications, LLC, NorthStar Access, Otter Tail Telecom, LLC, Paul Bunyan Rural Telephone Cooperative, Runestone Telephone Association, Tekstar Communications, Inc., U.S. Link, Inc., West Central Telephone Association, and WETEC LLC.

-End Footnotes-



On March 28, 2000, the Mayor of the City of Independence filed a letter seeking the Commission's intervention regarding the deployment of high-speed data lines as ownership of GTE-Minnesota's properties changes hands to Citizens Utilities.

On May 11, 2000, the Department, the RUD-OAG, GTE, CTC-Minnesota, Citizens Utilities and several small CLECs filed a Joint Stipulation and Agreement. The stipulating parties stated that their Joint Stipulation and Agreement outlines numerous conditions and commitments designed to ensure that the sale of properties [\*3] meets the public interest standard contemplated by Minnesota law.

On May 23, 2000, GTE filed the Agreement to Modify and Assign Interconnection Resale and Unbundling Agreement it sent to competitive local exchange carriers indicating that Citizens did not have the same abilities as GTE to perform interconnection, resale and unbundling obligations entered into by GTE.

On June 6, 2000, the Commission received a letter from Senator Douglas Johnson to which was attached a request from a resident in Crane Lake exchange for local calling to the Orr exchange as part of this case.

On June 6, 2000, GTE filed a letter it had sent to the CLECs with which it has interconnection agreements. The letter noted that GTE had received several suggestions from CLECs about certain portions of the Agreement to Modify and Assign Interconnection, Resale, and Unbundling Agreement which was enclosed with the May 23, 2000 letter. The June 6, 2000 letter clarified those portions of the May 23, 2000 letter and included a revised Agreement to Modify and Assign Interconnection, Resale, and Unbundling Agreement. Finally, the letter noted that some carriers had already signed and returned the original modifications [\*4] and requested that all interconnectors sign and return the revised modifications.

On June 21, 2000, the Commission's Executive Secretary requested additional information from Citizens regarding its request for Eligible Telecommunications Carrier (ETC) status. Specifically, he requested that Citizens provide 1) an affidavit certifying that it satisfied the federal requirements for ETC status and 2) an update of the deployment of SS7 technology in GTE's exchanges.

On June 22, 2000, the Commission's Executive Secretary sent a Notice of Commission Meeting and Opportunity to File Comments to carriers with interconnection agreements with GTE. The Notice was also copied to all parties of record. The Notice specifically asked that carriers objecting to the proposed modifications, or wishing to make other comments, do so in writing to the Commission no later than Monday June 26, 2000. The Notice provided the Commission fax number to facilitate the filing of comments. No comments were received.

The Commission met to consider this matter on June 28, 2000.

#### FINDINGS AND CONCLUSIONS

#### I. JOINT PETITION FOR APPROVAL OF THE SALE OF LOCAL TELEPHONE EXCHANGES

##### A. Commission Review [\*5] of Proposed Sale

Minn. Stat. @ 237.23 prohibits any telephone company, such as Citizens, from

acquiring any property or rights of any telephone company doing business within the state, such as GTE, without the consent of the Commission. The Commission approves such a purchase if the Commission finds that the purchase is in the public interest.

B. Description of Proposed Sale

GTE and Citizens have entered in to an Asset Purchase Agreement dated August 27, 1999, whereby Citizens will purchase for cash 116 rural local exchanges, with approximately 127,000 access lines from GTE. Citizens' total commitment to purchase GTE exchanges in Minnesota, Arizona, and California is \$ 664 million totaling 187,000 access lines.

Citizens has incorporated a wholly-owned subsidiary called Citizens Telecommunications Company of Minnesota, Inc. (CTC-Minnesota), which will be the operating company for the exchanges acquired from GTE. Citizens will continue to operate and be regulated as a rate of return company.

C. Joint Petitioners' Public Interest Claims for the Sale

GTE and Citizens asserted several public interest benefits of the proposed sale:

- 1) Citizens's business plan is to [\*6] offer its customers advanced communications services in rural and suburban markets;
- 2) Citizens will invest \$ 24 million per year for at least three years to upgrade central offices to be able to offer SS7 signaling services, more dollars in advanced technology than might an RBOC or other large company; n2
- 3) Citizens will provide bundled local, long-distance, and Internet access, and may expand this package to include cellular, paging and personal communications services;
- 4) Citizens will adopt GTE's existing tariff offerings, but in the future will be able to utilize its management expertise to provide both technological improvement and competitive rates;
- 5) Citizens provides benefits to its employees consistent with those provided by leading US Companies and it supports its local communities;
- 6) Citizens will provide the best customer relations in the industry;
- 7) Citizens expects to maintain the same level of staffing as GTE to serve its existing customers; and
- 8) Citizens expects that the sale will not affect the regulatory authority of the Commission over the services being offered to customers in the transferred exchanges.

- - - - -Footnotes- - - - -

n2 Subsequent events have altered this commitment by Citizens regarding expenditures for SS7 services. In an Order dated April 4, 2000 in Docket No. P-999/CI-93-1176, the Commission accepted and directed GTE to implement a plan under which GTE committed to deploy SS7 technology in 21 of its exchanges by July 2000 pursuant to a detailed schedule of in-service dates for the new switches in these exchanges. In a report to the Commission dated June 26, 2000, Citizens reported that GTE had kept to that schedule as of that date and anticipated replacing the last set of switches on July 26, 2000. By the Commission's April 4, 2000 Order in the 1239 Docket, Citizens is obligated to complete any SS7 deployment in the 21 exchanges that GTE has not completed

when Citizens closes on the purchase of GTE's exchanges.

- - - - -End Footnotes- - - - -  
[\*7]

D. Initial Objections to Proposed Sale

On February 25, 2000, the RUD-OAG, the Department, and several CLECs filed comments:

. The CLECs, among other things, questioned Citizens' ability to provide adequate service support for the CLECs. The CLECs predicted a significant degradation of service that would impose additional costs on them and threaten their ability to offer timely and competitive services.

. The RUD-OAG and the Department argued that the sale raised significant public interest concerns, and that the sale, without appropriate conditions, could cause significant rate increases as well as declines in service quality.

. In addition, the RUD-OAG and the Department asserted that the Companies had not demonstrated that there were public interest benefits from the sale, such as additional investment in the network or the increased provisioning of advanced communications services.

All commenting parties urged the Commission to approve the sale only after imposing conditions to ensure that the sale was in the public interest.

E. Stipulation and Agreement

On May 11, 2000, all the parties to this matter (GTE, Citizens, Citizens Minnesota, the RUD-OAG, the Department, [\*8] and the several represented CLECs) filed a Joint Stipulation and Agreement that they said was designed to ensure that the transaction between Citizens and GTE is in the public interest.

The Joint Stipulation and Agreement contained a number of conditions and commitments that the parties stated would protect Minnesota consumers from the sale's risks and advance the public interest in affordable, high quality service, competitive choice and access to advanced, high speed telecommunications services. Subjects addressed by the conditions and commitments included the following: reporting requirements, acquisition adjustment and deferred income taxes, rate cap, exceptions to the rate cap due to a change in the cost of service, advanced services and internet access, service standards, repair commitments, service quality reports, and interconnection agreements. A copy of the Joint Stipulation and Agreement is attached, marked Attachment 1.

The parties agreed that the proposed sale, as modified by the Joint Stipulation and Agreement, is consistent with the public interest. Consistent with this conclusion, the parties jointly recommended expeditious approval of the sale with the conditions [\*9] and commitments specified in the Stipulation and Agreement.

F. Commission Analysis

The Commission's approval must be predicated upon a public interest evaluation

of the proposed sale. Such evaluation involves consideration of the state goals that the legislature directed the Commission to consider as it executes its regulatory duties with respect to telecommunications services. n3 Where necessary, the Commission's public interest authority and extensive telecommunications enforcement experience enables it to impose and enforce certain conditions, as necessary, to tilt the balance and result in a sale that is in the public interest.

-Footnotes-

n3 Minn. Stat. @ 237.011.

-End Footnotes-

The Commission has thoroughly reviewed the proposed sale in light of the parties filings and arguments. The parties' Joint Stipulation and Agreement added several important conditions and commitments to the Companies' original proposal, including the following:

1. CTC-Minnesota committed that it would not seek intrastate rate recovery of the acquisition [\*10] adjustment resulting from the excess of purchase price over net book value from Minnesota ratepayers. See Stipulation and Agreement, Section III, A.
2. CTC-Minnesota committed that it would adopt all GTE's Minnesota intrastate tariffs and cap those rates for a period of four years from closing, with certain specified exceptions. See Stipulation and Agreement, Section IV.
3. CTC-Minnesota committed to deploy high-speed data service of at least 256 kbps in ten specified exchanges within three years of the closing date and, during the same period, to survey customer need for such service in 15 other exchanges (to be identified in conjunction with the Department and the RUD-OAG). If at least 20-percent of the surveyed customers in a particular exchange express a willingness to purchase the service at the surveyed price, CTC-Minnesota will implement high-speed data service in that exchange within five years from the closing date. In addition, the company will ensure toll-free access to at least one Internet service provider in all of its exchanges within one year after the sale closing.
4. CTC-Minnesota committed to comprehensive service quality standards and appropriate remedies [\*11] and penalties for violations of the service standards. The Stipulation and Agreement outlines the service quality standards for held orders, trouble reports, answer time, installation commitments, out of service, repair commitments, and trouble report and includes the penalties and/or remedies when service quality standards are not met. The set of service commitments will begin on January 1, 2001 and remain in effect until December 31, 2004, unless it is superceded by another set of service standards developed in the context of an Alternative Form of Regulation (AFOR) plan.
5. CTC-Minnesota committed to quarterly reports to the Commission, the Department and the RUD-OAG beginning at the end of the first quarter of the first measurement year. The reports will be submitted no later than 30 days after the end of the quarter and will include data for each month in the quarter. In general, the reports will include the number of complaints; percentage of the installation commitments met within 2 calendar days; total

number of orders held for over 30 days; the percentage of calls answered within 20 seconds, the number of calls answered, the number of abandoned calls, and the number of [\*12] calls receiving a busy signal; percentage of out-of-service trouble reports for regulated services cleared within 24 hours. The service quality reports are tailored to measure service standard compliance and to facilitate the calculation of any remedies and/or penalties.

The Commission approves the Joint Stipulation and Agreement and finds that they add important public interest value to the proposed sale.

In addition to the public interest benefits added by the Joint Stipulation and Agreement, a key public interest consideration when evaluating a proposed sale is whether it will have a negative impact upon competition in the local market. The Commission has a particular relationship to this public interest concern because the Minnesota Legislature has identified fair and reasonable competition for local exchange telephone services as a priority public interest goal and has given the Commission major responsibilities for promoting that goal. Minn. Stat. @ 237.16, subd. 1. Consequently, this consideration will receive special attention and discussion.

Sale of an incumbent local exchange company (ILEC) to another company causes natural concern about the potential for negative impacts [\*13] upon local competition. The successor company (purchaser) will occupy the ILEC role, a role which (due to the reliance of competing companies on the ILEC through the interconnection agreements) is so important in this stage of the development of local competition. In this case, the performance of the succeeding company (CTC-Minnesota) in its new role as the ILEC in GTE's former exchanges will directly impact the 28 competing local exchange companies (CLECs) that currently have existing or pending interconnection agreements with GTE.

In their initial comments, eight of the 28 CLECs having interconnection agreements with GTE raised significant concerns about the sale's impact upon local competition. These CLECs reported that the proposed new ILEC, Citizens, had refused to be bound by any of the existing interconnection agreements and proposed to require CLECs to renegotiate new interconnection agreements, imposing added costs on CLECs. The commenting CLECs also alleged that Citizens did not have even a rudimentary system for handling CLEC business, that this would impose additional costs on CLECs to do business in a Citizens exchange and threaten the ability of CLECs to offer timely [\*14] and competitive services. The CLECs indicated, however, that if the Commission imposed appropriate conditions, the sale could be made acceptable.

Subsequently, the eight commenting CLECs participated in the negotiation, drafting, and submission of the Joint Stipulation and Agreement, which (as indicated previously) agrees that the sale, as modified and conditioned in the Joint Stipulation and Agreement, is consistent with the public interest and recommends that the Commission approve it.

Regarding the views of the twenty CLECs who have interconnection agreements with GTE but who were not party to the Joint Stipulation and Agreement, the record indicates that they 1) were notified of the proposed sale to CTC-Minnesota and the changes that CTC-Minnesota has proposed to their interconnection agreements and 2) have made no objection to the sale or to CTC-Minnesota being GTE's successor on their interconnection agreements.

. On May 23, 2000, GTE sent a letter to all the CLECs that have an interconnection agreement with GTE, describing the proposed modifications and enclosing an "Agreement to Modify and Assign Interconnection, Resale, and Unbundling Agreement" (Agreement). Subsequently, [\*15] some CLECs signed and returned the Agreement to GTE.

. On June 6, 2000, GTE sent a follow-up letter to these CLECs stating that due to several suggestions from CLECs about the Agreement it had revised the Agreement. GTE explained the changes in the Agreement and asked all the CLECs, even those who had already signed and returned the original Agreement, to sign the revised Agreement and return it to GTE.

. On June 22, 2000, the Commission sent a Notice of Commission Meeting (June 28, 2000) and Opportunity to File Comments to carriers with interconnection agreements with GTE. The Notice was also copied to all parties of record. The Notice specifically asked that carriers objecting to the proposed modifications, or wishing to make other comments, do so in writing to the Commission no later than Monday June 26, 2000. The Notice provided the Commission fax number to facilitate the filing of comments. No comments were received.

The Commission concludes, given this degree of notice to the CLECs and their lack of objection, that the affected CLECs believe that the sale of GTE to CTC-Minnesota and the changes that CTC-Minnesota has proposed to the interconnection agreements pose no [\*16] threat to their ability to compete with CTC-Minnesota. In short, the CLECs' silence is persuasive evidence that the proposed sale, in fact, will not have a negative impact upon local competition in the CTC-Minnesota exchanges. n4

-----Footnotes-----

n4 The Commission clarifies that its conclusion here that the sale does not jeopardize local competition in what will be the former GTE exchanges is not the equivalent of approving the modifications proposed by CTC-Minnesota to the CLECs interconnection agreements. Those modifications must be approved by the Commission and will be reviewed in separate proceedings at a later date.

-----End Footnotes-----

G. Commission Action

Based on its review, then, the Commission concludes that the proposed sale, as modified and conditioned by the Joint Stipulation and Agreement, is consistent with the public interest. The conditions and commitments contained in the Joint Stipulation and Agreement protect Minnesota consumers from the sale's risks and advance the public's interest in affordable, high quality service, and competitive [\*17] choice. Citizens' timetable for providing access to advanced, high speed telecommunications services is less than desired, but does not tilt the balance against this sale. Accordingly, the Commission will approve it.

Moving forward requirements: GTE and Citizens will be required to file a joint affidavit of sale completion within 30 days of the sale completion and to file the accounting journal entries that each company recorded to reflect the sale of assets transaction within 90 days from the date of closing. The companies will

submit a proposed customer notice about the intended sale for the Commission Staff review and GTE will send the approved notice with a bill insert in the last bill (or next to last) to be rendered by GTE.

II. DESIGNATION OF CITIZENS AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

The Joint Petition filed by GTE and Citizens asked the Commission to designate CTC-Minnesota as an Eligible Telecommunications Carrier (ETC). n5

-Footnotes-

n5 The federal Telecommunications Act of 1996 is designed to open the nation's telecommunications markets to competition. Its universal service provisions are designed to keep competition from driving rates in rural, insular, and high cost areas to unaffordable levels, by subsidizing them. Only carriers that have been designated eligible telecommunications carriers (ETCs) are eligible to receive these subsidies.

-End Footnotes-

[\*18]

To function as an ETC, a common carrier must offer and advertise throughout its designated service area the services the FCC has decided to support with universal service funding. It must provide these services using at least some of its own facilities. n6 Responsibility for designating eligible telecommunications carriers rests with the state commissions, except in cases in which they lack jurisdiction over the applicant. n7

-Footnotes-

n6 47 U.S.C. @ 214 (e).

n7 47 U.S.C. @ 214 (e) (6).

-End Footnotes-

In support of its request for ETC designation, Citizens Minnesota provided an affidavit attesting that within its service territories in Minnesota it would use its own facilities or a combination of its own facilities and resale of another carrier's services, to offer the services that are supported by the federal universal service support mechanism, which include:

- . voice grade access to the public switched network;
- . local usage;
- . dual tone multi-frequency signaling or its functional equivalent;
- . single-party service or its functional [\*19] equivalent;
- . access to emergency services;
- . access to operator services;
- . access to interexchange services;
- . access to directory assistance;
- . toll limitation for qualifying low-income customers.

In addition, CTC-Minnesota committed that it would advertise the availability of these services (and the charges therefor) using general media distribution. No party objected to the Company's request.

The Commission finds that the Company's request meets the federal requirements and is in the public interest. The Commission will, therefore, designate CTC-Minnesota an ETC.

III. CERTIFICATE OF AUTHORITY

GTE and Citizens requested that the Commission consider the joint petition of August 27, 2000 as Citizens' request for a certificate of authority pursuant to Minn. Stat. @ 237.16 and Minn. Rules, Part 7812.0300.

The Commission notes that the information submitted by the parties on behalf of the sale is equivalent to what is required under Minn. Rules, Part 7812.0300, subp. 2 for a petition for authority to provide local facilities-based service.  
n8

-----Footnotes-----

n8 A certificate to provide local facilities-based service authorizes the provision of all forms of local service, interexchange service, and local niche service in Minnesota. Minn. Rules, Part 7812.0200, subpt. 2.

-----End Footnotes-----

[\*20]

Based on its review of this material, taking into account the criteria set forth in Minn. Rules, Part 7812.0300, subp. 3, the Commission concludes that Citizens has established that it has the financial, technical, and managerial capability to provide, the services it proposed to provide, consistent with the public interest, including the requirements of Minn. Rules, Part 7812, Minn. Stat. @ 237.16, and all other applicable laws, rules, and Commission Orders.

Accordingly, the Commission will grant Citizens a Certificate of Authority to provide telephone service in Minnesota pursuant to Minn. Stat @ 237.16. The Commission clarifies that despite this award of a Certificate of Authority, Citizens must file tariffs for the services it proposes to provide before providing service and will be directed to do so.

IV. EXTENDED AREA SERVICE BETWEEN THE CRANE LAKE AND ORR EXCHANGES

A. Background

On June 6, 2000, the Commission received a letter from Senator Douglas Johnson which referenced and attached a letter from Ms. Susan Hankner. Ms. Hankner, a GTE customer in the Crane Lake exchange, indicated that calls beyond an 8-mile radius of Crane Lake were toll calls. Ms. Hankner [\*21] also indicated that business conducted over the Internet involved long distance charges and that it would be beneficial if Citizens were required to provide customers in Crane Lake with local calling access to Orr. Ms. Hankner stated that people in Crane Lake have circulated petitions for EAS to Orr but that the process may take as long as two years.

On June 9, 2000, Citizens and GTE responded to a Commission information request, saying that they would have no objection if the Commission chose to accept Ms. Hankner's letter, forwarded by Senator Johnson, as a substitute for an initial petition to implement an EAS proceeding.



On June 27, 2000, Ms. Hankner provided the Commission with petitions signed by approximately 33 of GTE's 380 Crane Lake customers: approximately 9 percent.

#### B. Commission Analysis

The number of customers signing the Crane Lake petition is less than the number required by the Commission's EAS procedures: 15 percent. In a February 26, 1996 Order denying reconsideration of its October 24, 1995 ORDER REACTIVATING THE PROCESSING OF EAS PETITIONS in Docket No. P-999/CI-94-296, the Commission established the procedure for processing EAS petitions. The guideline [\*22] prescribes filing requirements for the EAS petition as follows:

Customers that desire installation or removal of extended area service from an exchange shall file a petition with the commission. A copy shall be served on the telephone company that serves the exchange and on the telephone company that serves the exchange to which the installation or removal of extended area service is desired. The petition shall be on a form supplied by the commission. Blank forms shall be available from the commission and in the offices of all telephone companies. The petition shall include:

- A. the name of the telephone company serving the petitioners' exchange;
- B. the name of the telephone company serving the exchange to which the installation or removal of extended area service is desired;
- C. the name of each exchange and the principal city in each exchange;
- D. the name, address, and telephone number of the person representing the petitioners to whom correspondence and the commission's order shall be sent;
- E. the name, address, and telephone number of each person signing the petition; and
- F. a statement that the signing customers desire to have extended area service [\*23] either installed or removed from the named exchanges.

The petition shall be signed by 15 percent or more of the customers or 600 customers, whichever is less, in the petitioning exchange. There shall be one signature per billing number. In the case of a business customer, a duly authorized agent or representative must sign. The sponsor of the petition shall certify that the signatures on the petition are valid. The petition shall be kept on file and made available to the public at the department and in the local exchange office of the telephone companies. Anyone who wishes to challenge the validity of the signatures on the petition shall file a written protest, and shall identify the grounds therefor with the commission within 30 days of service of the petition. Copies of the protest shall be sent to the petition sponsor and to the telephone companies. The commission and the telephone companies shall use customer billing records to check the validity of the signatures.

The Department's consistent practice has been to require compliance with these provisions before beginning the EAS qualification process, i.e. before requesting the telephone company serving the petitioning [\*24] exchange to prepare traffic studies of the rate of calling between the petitioning and petitioned exchanges. n9 This practice is sound and comports with the Commission's intent. In short, the usual practice is for the threshold EAS petition requirements (quoted above) to be met before companies are asked to prepare and file information necessary to determine compliance with the further (more substantive) EAS requirements: adjacency, adequate traffic, and adequate customer support.