

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Classic Telephone, Inc. ) CCBPol 96-10  
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 )

ORDER

Adopted: December 7, 2000

Released: December 12, 2000

By the Commission:

1. In this Order, we vacate the *Preemption Order*<sup>1</sup> and the *Order Denying Relief*<sup>2</sup> in this proceeding in light of our decision to terminate the underlying proceeding as moot.<sup>3</sup> In the *Preemption Order*, the Commission preempted decisions by the cities of Bogue and Hill City, Kansas (the Cities) denying the local telephone franchise applications filed by Classic Telephone, Inc. (Classic). In the *Order Denying Relief*, the Commission denied Classic’s request that the Commission take action to enforce the *Preemption Order*. Both Classic and the Cities petitioned for reconsideration of the *Order Denying Relief*. Classic subsequently asked the Commission to dismiss its petition for reconsideration as moot, stating that it no longer planned to provide local telephone service in Bogue or Hill City. The Common Carrier Bureau (Bureau) granted Classic’s request, terminating this proceeding as moot, and the Commission subsequently affirmed the Bureau’s decision.<sup>4</sup> The Cities have petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the *Preemption Order*, the *Order Denying Relief*, and the *Dismissal Order*.<sup>5</sup>

2. Consistent with the principles established in *United States v. Munsingwear*,<sup>6</sup> we vacate the *Preemption Order* and the *Order Denying Relief*. In *Munsingwear*, the Supreme Court held that when a case on appeal is dismissed as moot, the decision below is to be vacated to prevent an unreviewable decision from spawning any legal consequences for parties that could not obtain review. Vacating these two underlying orders will ensure that these decisions will not have

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<sup>1</sup> *Classic Telephone, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 13082 (1996) (*Preemption Order*).  
<sup>2</sup> *Classic Telephone, Inc.*, Order, 12 FCC Rcd 15619 (1997) (*Order Denying Relief*).  
<sup>3</sup> *Classic Telephone, Inc.*, Order on Reconsideration, 14 FCC Rcd 19974 (1999) (*Dismissal Order*), *aff’g Classic Telephone, Inc.*, Order, 14 FCC Rcd 960 (Com. Car. Bur. 1999) (*Bureau Dismissal Order*). In terminating the proceeding, the Bureau also dismissed the Cities’ petition for reconsideration of the *Order Denying Relief* as moot. *Id.*  
<sup>4</sup> See *supra* note 3.  
<sup>5</sup> *City of Bogue v. FCC*, Nos. 96-1432 and 99-1521 (D.C. Cir. filed Nov. 22, 1996 and Dec. 13, 1999).  
<sup>6</sup> 340 U.S. 36 (1950) (*Munsingwear*). The federal courts have applied the *Munsingwear* doctrine to rulings by administrative agencies on review in federal courts. See, e.g., *A. L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324 (1961); *American Family Life Assurance Co. v. FCC*, 129 F. 3d 625 (D.C. Cir. 1997).

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legal consequences for the Cities.

3. Accordingly, IT IS ORDERED that the *Preemption Order* and the *Order Denying Relief* in this proceeding ARE hereby VACATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary