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Ms. Mary Anne Creech
Town Administrator
Town of Pineville
P.O. Box 249
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Dear Mary Anne:

I'm writing to follow up on your recent request that I determine what requirements, if any, the North Carolina Utilities Commission has established with regard to the Telephone Board which apparently oversees the Town of Pineville's telephone operations. Our research has disclosed no orders or rulings by the Commission which establish any requirements or limitations concerning this board.

As you will recall, the Utilities Commission's regulation of Pineville's telephone operations was caused by a 1971 dispute between the Town and Southern Bell regarding Southern Bell's plan to serve the Raintree Development. The dispute arose when Southern Bell filed a revised Charlotte Exchange Service Area Map reflecting its plan for serving the Raintree Subdivision (NCUC Docket No. P-55, Sub 663). The Town intervened and objected to Southern Bell's filing. The Commission held a hearing in that docket and ruled that while the Town of Pineville had operated a telephone system since March of 1938, it was not a "public utility." Based on these findings the Commission ruled that Southern Bell could provide service to the area it proposed to serve.

The Town appealed to the North Carolina Court of Appeals. That Court reversed the Commission's ruling and sent the case back for further hearings, based on the Court's conclusion that the Utilities Commission had not allowed Pineville to present all of its evidence at the first hearing. *Utilities Commission v. Town of Pineville*. 13 N.C. App. 663, 187 S.E.2d 473 (1972). Interestingly, in that ruling the Court of Appeals noted:

[In its] brief, the Town of Pineville and Pineville Telephone Company are referred to as if they were two separate entities; however, it is not revealed in the record what kind of legal entity the Pineville Telephone Company is, if any. Upon the oral

argument before this Court, the attorney for the Town of Pineville stated that the "Pineville Telephone Company" was not a corporate entity, a partnership, or an individual, but was an 'unincorporated association of people.'

13 N.C. App. at 670.

The Commission conducted further hearings after the case was sent back by the Court of Appeals. The Commission issued a second order with the same result as the first; again ruling that Southern Bell could provide service to the Raintree Subdivision. Apparently, based on the Court of Appeals' remand on the first appeal, the Commission's second order contained the following findings of fact:

7. The Town of Pineville has owned and operated a telephone system as a municipality in the area of the [proposed Southern Bell service area] since the telephone system was purchased by the Town on March 28, 1938. The designations 'Pineville Telephone Company' or 'Pineville Telephone & Electric Company' are simply designations in the nature of trade names variously used to identify telephone operations of the Town of Pineville, a municipal corporation.
11. There is no separate legal entity under the designation 'Pineville Telephone Company' or 'Pineville Telephone & Electric Company' as a partnership, a co-operative association, business corporation, non-profit corporation, or an unincorporated association of people.

The Town appealed the second ruling as well, but the Court of Appeals affirmed the Commission's ruling. *Utilities Commission v. Town of Pineville*. 17 N.C. App. 522, 524, 195 S.E.2d 76, cert. denied 283 N.C. 394 (1973). In the second appeal, the Court of Appeals agreed that the evidence established that the Town of Pineville was not a "public utility" but was a municipality specifically exempted from the definition of "public utility" under G.S. § 62-3(23)(d).

With regard to the question as to whether the Town of Pineville, a municipal corporation, or some other legal entity was actually providing telephone service, the Court of Appeals noted:

The Appellant Town of Pineville admits that it owns the telephone system which serves its citizens

and others living outside but near its municipal borders but continues to insist that the system is operated by a separate legal entity known as 'Pineville Telephone Company' or 'Pineville Telephone & Electric Company' and that this separate legal entity is a public utility within the meaning of Chapter 62 of the general statutes....The evidence, however, is to the contrary. The finding by the Commission that there is no separate legal entity under the designation 'Pineville Telephone Company' or 'Pineville Telephone Electric Company' is fully supported by competent, material and substantial evidence in view of the entire record as submitted.

17 N.C. App. at 525-26.

I find no Commission order in the Southern Bell docket which imposes any requirements on the Town or the telephone board. This is not surprising, since the Commission's decision in the Southern Bell dispute was premised on its conclusion that it had no authority to regulate Pineville because it was a municipality.

Apparently as a result of the Commission's ruling in the Southern Bell dispute, on May 8, 1973 the North Carolina General Assembly amended the Public Utilities Act to provide that the Town of Pineville's telephone system would be subject to the jurisdiction of the North Carolina Utilities Commission. That legislation also directed the Commission to grant a franchise to the Town of Pineville for the area within its then existing town limits and allow the town to further apply for a Certificate of Public Convenience and Necessity to serve an area that was then proposed to be annexed by the Town. On October 24, 1973, the Commission issued an Order granting Pineville Telephone Company a Certificate of Public Convenience and Necessity to operate in the town limits of Pineville as they existed on May 8, 1973.

The Town (not Pineville Telephone Company) filed an application for authority to serve the area planned for annexation. Hearings were subsequently held and on January 23, 1976, the Commission issued a Certificate of Public Convenience and Necessity authorizing Pineville Telephone Company to provide service in the area which the Town then proposed to annex. I find no order in the certification docket which imposes any requirements on the Town governing telephone operations.

It thus appears that the Town of Pineville's telephone operations are conducted under the name Pineville Telephone Company, although there is actually no separate incorporated entity with that name. Since there is no actual corporation named Pineville Telephone Company, there

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can be no "board of directors" in the same sense that a corporation has a board of directors. Instead, it appears that the Pineville telephone board is in the nature of the commissions and boards which municipalities commonly utilize to oversee particular matters.

In testimony to the Commission relating to Pineville's application for a Certificate, witnesses on behalf of the Town indicated that the Town's telephone operations would be governed by a board of directors. The Commission's January 1976 Order granting Pineville a Certificate of Public Convenience and Necessity for that area made reference to testimony by members of the "Board of Directors of the Pineville Telephone Company." However, neither that Order nor any other Commission order which I have seen contains any requirement or limitation regarding this board or the number of "directors" which may serve on the board governing the Town's telephone operation.

While you would want to check with the Town's regular municipal counsel to confirm the applicability of this statute, it appears that G.S. § 160A-146 authorizes the Pineville Town Council to "create, change, abolish . . . boards, commissions. . . and generally organize and reorganize the city government in order to promote orderly and efficient administration of city affairs...." Assuming this provision is applicable to the Town, then it appears that the Town Council can create, change or abolish the Town's telephone board.

Please call me if you have any questions regarding our conclusions.

With best regards, we remain

Sincerely yours,

BURNS, DAY & PRESNELL, P.A.

Daniel C. Higgins