



Office of the
Ohio Consumers' Counsel

Robert S. Tongren
Consumers' Counsel

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April 18, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-61

Dear Secretary:

Enclosed please find the original and eleven (11) copies of the Office of the Ohio Consumers' Counsel's Initial Comments to be filed in the above referenced proceeding.

Please date-stamp and return the additional copy in the pre-addressed, postage prepaid envelope to acknowledge receipt.

Thank you for your attention to this matter

Sincerely,

David C. Bergmann
Assistant Consumers' Counsel

DCB/pjm

Enclosure

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**Before The
FEDERAL COMMUNICATIONS COMMISSION**

APR 19 1996

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace.)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended.)

**SUMMARY OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INITIAL COMMENTS**

In its initial filing in this docket, the Office of the Ohio Consumers' Counsel (OCC) comments on Sections V and VI of the March 25, 1996 Notice of Proposed Rulemaking.

With regard to Section V, Separations Requirements for Independent Local Exchange Carrier and Bell Operating Company Provision of "Out of Region" Interstate, Interexchange Services, OCC submits that accounting separations and separate subsidiaries remain appropriate conditions under which the Regional Bell Operating Companies (RBOCs) may be granted nondominant treatment for out of region services. For the smaller independent local exchange companies (LECs), these requirements are needed only if the LEC attains exemption from local competition pursuant to § 251(f) of the Telecommunications Act of 1996.

With regard to Section VI, Rate Averaging and Integration Requirements of 1996 Act, OCC submits that given that the Act clearly forbids rate deaveraging, any Commission rules on this subject should simply carry out that mandate. The Act also

preempts any interexchange deaveraging on the state level. OCC also argues that the Commission's tentative conclusion that self-certification and complaints will be adequate as means of enforcing rate averaging is incorrect; only public disclosure through filed tariffs will adequately inform consumers and competitors. Finally, OCC submits that the statutory prohibition on deaveraging will enhance competition.

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**THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
INITIAL COMMENTS**

The Office of the Ohio Consumers' Counsel (OCC), the statutory representative of Ohio's residential telecommunications consumers (*see* Ohio Rev. Code Chapter 4911), submits these comments in response to the Notice of Proposed Rulemaking (NPRM) issued in this docket on March 25, 1996. This NPRM is part of the range of activity undertaken by the Federal Communications Commission (Commission) subsequent to the passage of the Telecommunications Act of 1996 (Act).¹ The Commission has asked for comments on sections IV, V, and VI of this NPRM by April 19, 1996.

These comments will be brief.² OCC has no initial comments to make regarding section IV, Definition of Relevant Product and Geographic Markets. OCC does reserve its

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *to be codified at* 47 U.S.C. §§ 151 *et seq.* In these Comments, OCC has adopted the Commission's convention for referring to the Act: *See* NPRM at ¶ 1, n. 3.

² OCC will be filing comments on the remainder of the NPRM, pursuant to the Commission's schedule, on April 25, 1996.

right to reply on any topics in this or other sections that have not been addressed in these comments.

OCC has several concerns regarding Section V, Separation Requirements for Independent Local Exchange Carrier and Bell Operating Company Provision of “Out-of-Region” Interstate, Interexchange Services. At ¶ 61 of the NPRM, the Commission inquires whether the separations requirements imposed by the streamlined regulatory procedures for non-dominant carriers established in the Competitive Carrier proceeding³ should be modified or eliminated for independent local exchange carriers (LECs) and then for the regional Bell operating companies (RBOCs). Yet the Commission recently tentatively concluded that the conditions imposed on independent LECs offer a useful model for the RBOCs on an interim basis. CC Docket No. 96-21, *In the Matter of Bell Operating Company Provision of Out of Region Interstate, Interexchange Services* (rel. February 14, 1996) (Out-of-Region NPRM) at ¶ 1. The Out-of-Region NPRM was released February 14, 1995 and the Commission has already received comments and reply comments. However, no Report and Order has been issued in that docket.

As noted in ¶ 61, in the Out of Region NPRM the Commission stated its “intent to consider in [the instant] proceeding whether it may be appropriate *at some future date* to modify ... the separation requirements...” (Emphasis added.) OCC is concerned that the Commission proposes to change its tentative conclusions before releasing an Order regarding the Bell Operating Company provision of Out-of-Region Services. A rule which

³ *Policies and Rules Concerning Rates for Competitive Common Carriers Services and Facilities Authorizations Therefor* CC Docket No. 79-252. The numerous orders in this proceeding are cited at NPRM ¶ 2, n. 6.

has no chance to go into effect is truly “interim” (NPRM at ¶ 60), and one month later is indeed “in the future,” but surely the situation is not quite that fluid.

Managing the transition to competitive markets is a crucial task for the Commission. A market in which competition is emerging cannot immediately control the behavior of companies who have wide name recognition throughout an entire region and are dominant in their monopoly local markets in those regions. Thus OCC would urge the Commission to continue to manage the transition by requiring accounting separations and separate subsidiaries for the RBOCs if they wish to have nondominant treatment.

With regard to the independent LECs, many of them will qualify for status as “rural telephone companies” (1996 Act at § 101 [adding § 251(f)(1)]) or as “rural carriers” (*id.*, adding § 251(f)(2)). To the extent that exemptions from the competitive conditions of the Act (*id.*, adding § 251(b) and (c)) are accorded such carriers, their local operations will be shielded from full competition. With such protection, a separation requirement for such a carrier’s interstate services seems appropriate. On the other hand, OCC has no reason to believe that a small independent LEC facing *effective* local competition would be able to engage in behavior favoring its interstate operations. The question remains open for larger independents, whether or not they face local competition

As to section VI, OCC submits that the plain language of the Act mandates rate averaging nationwide. The Commission refers to “geographic rate averaging” and to “rate integration” separately. The distinction is a fine one. Both policies are covered by the Act. Section 101 of the 1996 Act (adding 254(g)) requires the Commission to

adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by

each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to subscribers in any other State.

Thus to a significant extent, the “general” comments requested by NPRM ¶ 67 on this subject are constrained by the specific requirements of the Act. The Commission’s rules on this subject should be as simple and clear as possible.⁴ The Commission’s rules must straightforwardly carry out the Act’s specific dictates. Given that fact, and given that the Act imposes stricter conditions on AT&T than its commitments in the Reclassification proceeding, AT&T must be bound by the rules adopted herein rather than its pre-Act commitments. NPRM at ¶ 73.

The Act also clearly preempts state authority to permit toll rate deaveraging. NPRM ¶ 68. Within the constraints of the Act and the Commission’s rules implementing the Act’s prohibition on deaveraging, the states should exercise their traditional discretion and jurisdiction.

Enforcement of such rules will be a difficult but necessary task. The Commission is incorrect in assuming that a self-certification process followed by a complaint process will be enough to ensure compliance. NPRM at ¶¶ 70 and 78. At least for the near term, in the emerging competitive vertical marketplace, those consumers and competitors who are adversely affected by a violation of § 254(g) will be able to enforce their statutory rights

⁴ The Commission has asked for comments on whether there may be competitive conditions that would justify regulatory forbearance and allow geographic deaveraging. NPRM ¶ 69. OCC submits that such consideration would be extremely premature.

only if there is public disclosure of prices and terms and conditions of service. As will be more fully explained in OCC's April 25, 1996 Comments, tariffs are a key component of the move to full system-wide competition.⁵

Promotional plans, given their transient nature, need not be tariffed. Yet some regulation is nonetheless needed. OCC strongly recommends that the Commission require promotional plans to be made available and advertised throughout a carriers' service area (NPRM at ¶ 72), so that promotional plans do not become permanent only in certain more competitive markets.

A strongly enforced policy against deaveraging is a key component of the growth of true and full nationwide telecommunications competition. Whether the carrier is a coast-to-coast full service provider or a local limited-market provider, the need to maintain uniform prices will prevent carriers from burdening consumers in less competitive markets to cut prices in more competitive markets. This requirement can only serve to enforce increased efficiency upon all providers and will enhance overall societal benefits. This is in addition to the reasons behind the Commission's long-standing support of geographic rate averaging. NPRM at ¶ 66.⁶ The Commission's informal policy (NPRM at ¶ 67) has been supplanted by the Act's codified requirement.

⁵ The tariffs referred to here are filings effective on the date of submission.

⁶ It is interesting that all of the reasons disfavoring deaveraging of interexchange services also apply to deaveraging of intraexchange services. In comments filed December 14, 1995 with the Public Utilities Commission of Ohio in Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, OCC supported (at 17) a presumption against deaveraging of intraexchange services, with any allowed deaveraging acting only to reduce rates in areas facing competition, not increasing rates elsewhere.

In conclusion, OCC urges the Commission to maintain a proper balance between regulatory forbearance and necessary regulation based on the increasing convergence of the relatively competitive interexchange market with the nascent state of local exchange competition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the Initial Comments of the Office of the Ohio Consumers' Counsel have been served by overnight mail to the International Transcription Service, and, in diskette form to Janice Myles on this 18th day of April, 1996.



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