

COMMONWEALTH OF PENNSYLVANIA



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APR 19 1996
FEDERAL COMMUNICATIONS COMMISSION

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April 18, 1996

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Policy And Rules Concerning The Interstate,
Interexchange Marketplace
Implementation Of Section 254(G) Of The
Communications Act of 1934, As Amended
CC Docket No. 96-61

Dear Mr. Caton:

Enclosed please find an original and six copies of the Comments Of The Pennsylvania Office Of Consumer Advocate, for filing with the Commission in the above-referenced matter.

Please indicate your receipt of this filing on the additional copy provided and return to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,

Philip F. McClelland
Assistant Consumer Advocate

Enclosure

cc: Janice Myles (with diskette)
International Transcription Services, Inc
Dorothy Conway
Timothy Fain

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

APR 19 1996

In the Matter of

POLICY AND RULES CONCERNING
THE INTERSTATE, INTEREXCHANGE
MARKETPLACE

CC Docket No. 96-61

IMPLEMENTATION OF SECTION
254(G) OF THE
COMMUNICATIONS ACT OF 1934,
AS AMENDED

COMMENTS OF THE
PENNSYLVANIA OFFICE OF
CONSUMER ADVOCATE

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DATED: April 18, 1996

I. INTRODUCTION AND SUMMARY

On March 25, 1996, the Federal Communications Commission (Commission or FCC) released its Notice of Proposed Rulemaking (NOPR) requesting comments in this docket concerning the elimination of tariffs for interexchange carriers (IXCs) and other issues affecting IXCs arising from the Telecommunications Act of 1996 (Act). The Pennsylvania Office of Consumer Advocate (PaOCA) files these Comments in response to that NOPR.

The Pennsylvania Office of Consumer Advocate is an Office created by the Pennsylvania General Assembly to represent the interests of consumers before state and federal agencies and courts which regulate the activities of Pennsylvania public utilities. 71 Pa. Stat. Ann. § 309-4(a) (Purdon's Supp. 1995). As the FCC is now considering issues related to the rates of IXCs which consumers pay, this is a matter that will affect Pennsylvania consumers and PaOCA files these Comments as a result. The PaOCA will address below two separate but interrelated issues, i.e. detariffing IXC services and maintaining average prices

It is the PaOCA position that the FCC should maintain a price list for residential services, even if FCC tariff reviews are no longer required. This will allow consumers to more easily determine the best carrier prices and provides a positive consumer benefit.

The maintenance of price lists will also allow the FCC to enforce compliance with the average rate requirement. Such rate averaging is also a part of the recently passed Act and the FCC should not now attempt to waive that provision. Such rate averaging presents a significant benefit to rural areas.

II. COMMENTS

A. The FCC Should Maintain Price Lists For Residential Interexchange Service Even If Such Services Are No Longer Subject To Tariff Review.

The PaOCA addresses in these Comments the FCC's determination that it is no longer necessary to require interexchange carriers to file tariffs with the Commission in order to provide consumer protection. NOPR at ¶ 29. The PaOCA recognizes that there are disadvantages associated with mandatory tariff filings which are set forth in the NOPR. However, the PaOCA also asserts that consumers require the maintenance of pricing information for residential services offered by these companies in order to adequately protect consumer interests. Thus, the maintenance of pricing information at the FCC continues to be "necessary for the protection of consumers" under the terms of the Telecommunications Act of 1996 and so price lists must be maintained to conform to the Act. Act at § 401, NOPR at ¶ 17.

As IXC rates become increasingly complex, consumers are often confused as to what the applicable rate is and how to compare that rate to the rate of other IXCs. This problem is compounded by the great amount of advertising in which the IXCs engage. One night of television viewing can inform the viewer that each IXC offers the lowest rate. The PaOCA suggests that IXC rates to residential consumers have fragmented into a multitude of discount plans and special rates so that it is extremely difficult to compare one to the other. The PaOCA's own experience in responding to consumer complaints verifies that consumers are often confused as to what IXC plan they participate in and how that affects their rates. They are also frequently unable to compare the rates of one IXC with another. The PaOCA is concerned that removing all pricing information from the FCC will only compound the confusion that consumers currently experience.

The Telecommunications Act of 1996 is intended to open up the “information age” to consumers throughout the United States as part of the Act’s universal service requirements. 47 U.S.C. § 254. However, the FCC NOPR in its broadest form would eliminate consumer pricing information from the FCC. The PaOCA submits that the FCC must maintain a ready source of residential pricing information. Moreover, the PaOCA suggests that, rather than eliminating all IXC pricing information from the FCC’s files, the FCC should attempt to make that information more readily available to consumers, possibly through on line access.

Pricing information will also continue to be important for consumers if a complaint arises as to the rates charged. Often disputes arise as to whether a consumer was charged the appropriate rate by an IXC consistent with the appropriate discount plan selected.¹ The fact that these prices are now maintained by both the FCC and the relevant IXC serves as a safeguard which encourages the maintenance of accurate pricing information.

Allowing the IXC to act as the sole repository of pricing information will place consumers in a disadvantageous position. Consumers would then have to go to each IXC to request the pricing information necessary for any purpose.² Moreover, it will also be increasingly difficult for any independent consumer oversight group that might wish to monitor rates and advise consumers. In short, the elimination of IXC residential pricing information from the FCC will eliminate important

¹ The PaOCA also recognizes that the same difficulty may apply to business customers as well. However, the PaOCA recognizes that business customers are more likely to have the capability of independently determining current IXC rates even if they are not kept at the FCC. Thus, the PaOCA has limited its proposal to rates applicable to residential customers.

² The PaOCA notes that the FCC will now be required to enforce a rate averaging provision concerning IXC toll service. NOPR at ¶ 71. If consumers are required to go to each IXC to check on rate averaging, any opportunity to file a complaint or provide meaningful oversight will be all but impossible.

consumer pricing information.

The PaOCA also suggests that, given the IXCs' competitive interests, it is quite likely that each IXC will be likely to maintain competitive pricing lists of one another even if this information is not maintained at the FCC. As the rates are publicly charged, it will be accessible to other telecommunications carriers through their own research. However, it is unlikely that the typical consumer will also conduct independent research in order to maintain his or her own data base of relevant IXC rates. Thus, the likely effect of eliminating all pricing information from the FCC is that the residential consumer will lose access to this information but not IXC competitors.

The PaOCA recognizes that there is value in allowing IXCs to file price changes rapidly in response to competition without any delay associated with the tariff filing process. The FCC suggests in its NOPR that maintaining the tariff filing requirement may discourage innovation and slow the IXCs ability to respond to the market. NOPR at ¶ 29. The PaOCA does not propose that the FCC should delay or even rule upon an IXC's price change. The PaOCA submits that IXCs should be able to revise prices and initiate new programs as rapidly as they wish. However, they should continue to file their residential rates so that the public will have access to this information.

The PaOCA does not propose the maintenance of price lists by the FCC in order to regulate rates or profits. Rather, the PaOCA proposes that such price lists should be maintained in order to better inform the residential consumer and the general public as to what the applicable rates are. The FCC also suggests that competitive markets will serve consumers' interests such that tariffing is no longer necessary. NOPR at ¶ 29. However, the PaOCA submits that a lack of consumer information is a significant barrier to the operation of competitive markets. This is an issue separate and apart from the necessity for a tariff review process.

Moreover, significant consumer problems have continued with telecommunications carriers even when many providers exist in the market because a great deal of confusion continues as to consumer options available. Notably, Optional Service Providers, which provide service at pay phones, continue to present problems where consumers are confused as to which carrier will carry their calls and the applicable rates. Multiple providers in the pay phone environment continue to be a source of and not a solution to consumer problems. Allegations of price gouging can best be eliminated by making pricing information increasingly available, not by eliminating that material entirely. In this respect, price lists in the residential market will promote and not detract from competitive goals.

Finally, as noted below, the filing of price information is necessary to ensure that the statutory prohibition against rate deaveraging is met.

B. The FCC Should Strictly Enforce The Rate Averaging Requirement

The Commission has also requested comments in its NOPR concerning the rate averaging requirement at 47 U.S.C. § 254(g). NOPR at ¶ 64. The Act clearly indicates that rates “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.” Id. This same requirement is applied to rates charged in each state.³ Id. Thus, it seems very clear that the Congress intended that consumers of long distance services should pay the same rates for comparable service no matter where they originate their call. The PaOCA has supported the FCC’s position regarding rate deaveraging. NOPR at ¶ 68.

³ The NOPR addresses this issue with regard to services in any one state, i.e. rate averaging, and with regard to services offered in different states, i.e. rate integration. The PaOCA considers rate averaging and rate integration an aspect of the same issue and its position with respect to rate integration is the same as that advocated with regard to rate averaging.

However, the waiver of an averaging requirement would be directly contradictory to § 254(g). Such a requirement should not be waived as it is evident that Congress intended through the recent passage of the Act that this requirement should go into effect.

The FCC also raises the issue of how it can make certain of compliance with regard to deaveraging if it eliminates all IXC tariffing requirements. NOPR at ¶ 70. As noted above with respect to residential services, PaOCA submits that it is appropriate to continue to maintain a price list which the FCC can then use to ensure compliance. Moreover, the PaOCA suggests that, as IXC services continue to become more complex, a simple self-certification requirement may be inadequate to make certain that rates are everywhere the same. As IXCs continue to be placed under pressure to shift costs onto the least competitive geographic areas, complete deferral to carrier self-certification is inadequate. Given that the Congress has enacted a specific statute to mandate rate averaging, the FCC should do more than simply request certification and instead should maintain sufficient price information to independently verify that fact. Otherwise, the rate averaging requirement becomes an empty safeguard with no capability for any real enforcement.

The FCC also raises the issue of whether the rate averaging requirement prohibits offering discount plans in selected geographic areas. NOPR at ¶ 72. The PaOCA is familiar with the problem where the undiscounted rate may be the same in all geographic areas but a discount plan which leads to substantial price reductions is only available in selected geographic areas. This has been the source of consumer complaints where consumers believe that such selective discounting is unfair to them. The PaOCA submits that the rates which Congress determined should be averaged

are the rates actually paid and not the undiscounted rate. Thus, it is imperative that in order to maintain the deaveraging prohibition set forth at 47 U.S.C. § 254(g), discount plans must be offered in all geographic regions.⁴

⁴ The PaOCA wishes to make clear that it does not assert that all customers must also receive the opportunity to participate in the same discount plan. IXCs regularly offer discount plans selectively to their high volume users. The PaOCA suggests that this is an appropriate competitive activity and such plans need not be offered to all customers. However, if a plan is offered to high volume users in one geographic area but not another, this would violate the averaging requirement of 47 U.S.C. § 254(g).

III. CONCLUSION

The PaOCA requests that the FCC should issue regulations consistent with these
Comments.

Respectfully submitted,



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