



General Services Administration
Office of General Counsel
Washington, DC 20405

RECEIVED

APR 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

April 19, 1996

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

DOCKET FILE COPY ORIGINAL

Subject: 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 the original and eleven copies of the General Services Administration's Reply Comments for filing in the above-referenced proceeding.

Sincerely,

Michael J. Ettner

Michael J. Ettner
Senior Assistant General Counsel
Personal Property Division

Enclosures

cc: International Transcription Service
Janice Myles (Diskette)

No. of Copies rec'd 0411
List ABCDE



RECEIVED

APR 19 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554 OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
Implementation of Section 245(g) of the)
Communications Act of 1934, as amended)
_____)

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION

EMILY C. HEWITT
General Counsel

VINCENT L. CRIVELLA
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

Economic Consultant:

Snavely King Majoros O'Connor
& Lee, Inc.
1220 L Street, N.W.
Washington, D.C. 20005

GENERAL SERVICES ADMINISTRATION
18th & F Streets, N.W., Room 4002
Washington, D.C. 20405

April 19, 1996

Table of Contents

	<u>Page</u>
Summary	I
I. Introduction	1
II. Relevant Markets	2
III. Separation of Interexchange From Local Operations	3
IV. Geographic Rate Averaging	4
V. Conclusion	10

SUMMARY

GSA agrees with the Commission's tentative conclusion to treat interstate, interexchange point-to-point message telephone service within and among the United States and its overseas territories as the single relevant market for purposes of determining whether any carrier is capable of exercising market power. Any distinction with respect to the BOCs' control of access facilities relates to market power exerted over local, not interexchange markets.

Because of the LECs' market power over local exchange services, GSA recommends that the Commission retain its present requirement for structural separation between the local operations of the LECs and any interexchange services that they wish to have classified as nondominant. This requirement should be extended to the BOCs that engage in out-of-region interexchange services.

GSA agrees that the 1996 Act requires that both Federal and state regulation ensure rate averaging, particularly between urban and rural areas. However, GSA notes that the costs of providing service to individual customers are likely to be volume sensitive and therefore not susceptible to geographic rate averaging. Since end users or their contractors can provide private networks that compete with the common carriers, the common carriers must be allowed to respond with customer-specific contract services that match the cost structure of individual customers' requirements. GSA therefore recommends that the Commission exempt customer-specific contract service from the requirement for geographic rate averaging.

RECEIVED

APR 19 1996

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

_____)	
In the Matter of)	
)	
Policy and Rules Concerning the)	CC Docket No. 96-61
Interstate, Interexchange Marketplace)	
)	
Implementation of Section 245(g) of the)	
Communications Act of 1934, as amended)	
_____)	

COMMENTS OF THE
GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA"), on behalf of the customer interests of all of the Federal Executive Agencies, submits these Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 96-123, released March 25, 1996.

I. Introduction

This is the first of two sets of comments filed by GSA in response to the NPRM. The Commission bifurcated the issues discussed in this NPRM, requesting comments on Sections IV, V, and VI by April 19 and the remainder of the NPRM by April 25. Section IV deals with the definition of relevant product and geographic markets, Section V addresses the need to maintain separate subsidiaries to provide local and interexchange services, and Section VI considers the rate averaging and integration requirements of the

Telecommunications Act of 1996 ("1996 Act").¹

II. Relevant Markets

In Section IV of the NPRM, the Commission tentatively concludes that it will continue to treat interstate, interexchange point-to-point service within and among the United States and its overseas territories as the single, relevant market for purposes of determining whether any carrier is capable of exercising market power.² The Commission suggests that the requirement for geographic rate averaging and the applicability of access price regulation inhibit the exercise of market power over specific routes.³ GSA agrees with these tentative conclusions and the supporting rationale.

In ¶53, the Commission expresses concern that the Bell Operating Companies' ("BOCs") control of access facilities may convey to them market power with respect to their in-region interexchange services. GSA agrees that this is a legitimate concern, but it does not relate to the interexchange services market. Rather, any market power exercised by the BOCs flows from their control of the local access market and from their ability to tie that control to the offering of interexchange services. For purposes of examining this form of market power, the Commission should focus on local exchange, not interexchange services.

¹ Telecommunications Act of 1996, Pub. L. No 104-104, 110 Stat. 56 (1996).

² NPRM, ¶¶ 41, 42.

³ Id., ¶¶ 51, 52.

III. Separation of Interexchange From Local Operations.

In Section V of the NPRM, the Commission inquires whether it should modify its current rules which require that independent Local Exchange Carriers ("LECs") seeking to be classified as non-dominant interexchange service providers must maintain separate subsidiaries with separate facilities, ownership and books of account. It extends this inquiry to the provision of out-of-region interexchange services by the BOCs.

These separation requirements relate to the LECs' market power over local exchange services. LECs are in a position to extract monopoly prices from their subscribers if they can persuade their state regulators that the rates are justified by cost. They thus have an incentive to shift costs incurred to provide interexchange service to their local exchange operations. Moreover, because LECs have ubiquitous access to the telephone subscribers in their service territories, they are in a position to "tie" interexchange services to local service through joint marketing or through the provision of bundled service offerings. LECs also have access to the interexchange calling records of their subscribers, which is valuable marketing intelligence generally not available to their competitors. For these reasons, no local exchange carrier can be considered "nondominant" in the market for interexchange services if it is also providing local exchange service in that same market. Only a complete structural separation can ensure against cross-subsidy and abuse of marketing advantages. This conclusion was appropriate in the past, and in GSA's view it continues to be appropriate as long as the LECs exert market power over local exchange services. The prospect of BOCs' offering out-of-region interexchange service does not change these conclusions. Indeed,

given the greater scope of the BOCs' service territories and their more extensive interoffice facilities, their opportunity to cross-subsidize through cost shifting is, if anything, greater than that of the independent LECs. Moreover, integration of in-region local exchange service with out-of-region interexchange services will build the impetus for a similar in-region integration. In GSA's view, such integration would be devastating to competition within the respective BOC regions.

Accordingly, GSA urges the Commission to retain its present separation requirements for independent LECs seeking to provide interexchange service as nondominant carriers. GSA recommends that these requirements be extended to the BOCs' out-of-region interstate, interexchange services.

IV. Geographic Rate Averaging.

Section VI discusses the 1996 Act's requirement that rates for interexchange telecommunications services to subscribers in rural and high cost areas be no higher than rates charged to subscribers in urban areas.⁴ The Commission inquires whether the 1996 Act allows Federal preemption of state regulations inconsistent with this provision, and it asks whether there may be competitive conditions that could justify Commission forbearance from enforcing geographic rate averaging.⁵

In light of the language of the Joint Explanatory Statement quoted in ¶68 of the NPRM, it seems fairly evident that Congress conveyed to the Commission the limited

⁴ The Act a § 101 (adding § 254(g)).

⁵ NPRM, ¶ 69.

authority to preempt any state rule or regulation that is inconsistent with the Commission's requirements for geographic rate averaging.

The second issue, exceptions to rate averaging, is far more difficult. Rate averaging is a form of cross-subsidy. Low-cost, predominantly urban areas pay rates higher than the costs incurred, while high-cost, principally rural areas pay rates below their costs. This arrangement poses no problem if there is a ubiquitous monopoly provider, as was the case prior to 1984 under the Bell System.⁶ It can also operate in a competitive market, provided all competitors are ubiquitous. If all carriers offer service to all points, then it is feasible to require each carrier to rate-average throughout its network. The cross-subsidies are borne by all participants in the market.

In the initial years of interstate competition, there was concern that the new carriers would "cream-skim" the dense, high-volume routes and leave low-volume (particularly rural) service to the incumbent. The effect, it was feared, would be an erosion of the nationwide interstate toll rate structure into a two or three-tiered schedule of prices that discriminate against subscribers in small towns and rural areas. New competitors would decline to participate in geographic cross-subsidies.

Fortunately, cream-skimming was not the profitable business option that it appeared to be. AT&T's two major competitors, MCI and Sprint, have incurred substantial costs to reach most of the exchanges in the nation through their own facilities. GSA believes that

⁶The Bell System was not, of course, the only provider of interexchange services, nor was it ubiquitous. However, the system of intercarrier toll revenue settlements that AT&T administered effectively created a nationwide monopoly network of interexchange service providers.

this push for ubiquity relates to the desire to control service quality and cost by using one's own facilities rather than leasing facilities from other carriers.

Undoubtedly, another major consideration was the need to hold out to potential subscribers the ability to deliver calls over their own facilities to any location in the nation. A new competitor cannot predict the calling patterns of the customers it is seeking to enlist as subscribers. Ubiquity of service coverage over one's own facilities is therefore an important marketing tool to any new entrant into the interstate common carrier market.

The same may not be true, however, of new entrants into the private carriage market. While the calling patterns of unspecified potential subscribers may be unknown, the call structure of a single, large customer may be very predictable. This is particularly true if the customer has a relative handful of call origin/destination nodes among which most of its traffic flows. For such a customer, it may be feasible to construct a non-ubiquitous telecommunications system that provides facilities to serve only the highest density routes and nodes. These portions of the customer's requirements are served at a very low cost which more than offsets the high charges to low-density points or to locations off the network.

The common carriers' response to the potential competition of these non-ubiquitous private carriers is contract service. Contract service mimics the cost structure of the private carrier, offering low charges on high-density routes and for terminations into heavy call concentration nodes, and higher charges to lower density points. The highest charges of all are to "off-net" locations.

The Federal Government has contracts for such services. Typically, the Government pays call origination and termination charges that are inversely related to the total volume of traffic at the end-point service delivery locations. Calls within the system pay lower rates than calls originating or terminating off the network. Often, there is a per-minute charge for use of the transport system which is volume sensitive but not directly related to distance.

These contract services are not "geographically averaged," in the conventional sense. That is, the rates bear no direct relationship to distance; calls of the same distance and duration can incur very different charges. To the knowledge of GSA, there is no systematic disparity between the charges for Federal Government telephone services to urban locations versus rural areas. However, it is conceivable that an analysis of the Government's charges could turn up such a disparity. If so, it would be a coincidence, the fallout of a pricing system that focuses on relationship of cost to its respective drivers, the greatest of which is volume, not distance.

Rarely, if ever do Federal agencies dictate to their contractors how they should physically respond to the Government's telecommunications service requirements. Bidders have the choice of building a stand-alone system, integrating the Government system into their common networks, or employing some combination of dedicated and common facilities. The key ingredient to the pricing, however, is the specific cost of responding to the Government's service requirements.

These considerations pose a dilemma to the Commission. By opening the telecommunications market to all entrants, the 1996 Act permits any end-user or its

contractor to build a private or virtual private network. These private networks will be most economical if they focus on the densest routes of the customer's traffic. As a result, they will not be geographically rate-averaged.

The Commission must allow the common carriers to respond to the competition of these private networks. Otherwise, the private carriers will syphon off traffic from the common carriers' lowest cost routes and increase the overall cost of common carrier service. For this reason, the contract networks installed by the common carriers in response to the competition of private carriage cannot be subject to any rate averaging. In order to preserve low-cost, national coverage by telecommunications common carriers, contract services must be exempted from the rules requiring geographic rate averaging.

In short, the Commission cannot hope to enforce geographic rate averaging down to the level of the individual customer. If common carriers are forced to maintain geographically averaged rates for all forms of telecommunications service, then the likely result will be a secondary market for private networks, isolated from common carriage. The low-cost components of these private networks will be provided by end-users or their independent contractors through their own facilities or through facilities leased from the common carriers. The high-cost elements will be provided through the wholesale rates that the 1996 Act requires that common carriers offer. The "cream skimming" that earlier proved to be an unrealized concern will become a reality.

GSA strongly urges the Commission to exempt customer-specific contract carriage from the requirement for geographic rate averaging. This proposal has important implications with respect to detariffing, the other major issue addressed by the NPRM. If

there are no tariffs, then there is no mechanism for distinguishing between conventional common carrier service and customer-specific contract service. As GSA will discuss in its April 25 filing, detariffing deprives the Commission of its ability to monitor -- and therefore to enforce -- the policies that the 1996 Act has prescribed as its responsibility.

V. Conclusion

As the agency vested with the responsibility for acquiring telecommunications services on a competitive basis for the use of the Federal Executive Agencies, GSA urges the Commission to retain its present product and geographic definition of the interstate interexchange market, to retain its present separation requirements between the local and interexchange operations of LECs, and to exempt contract services from the requirement for geographic rate averaging.

Respectfully Submitted,

EMILY C. HEWITT
General Counsel

VINCENT L. CRIVELLA
Associate General Counsel
Personal Property Division



MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
18th & F Streets, N.W., Rm 4002
Washington, D.C. 20405
(202) 501-1156

April 19, 1996

CERTIFICATE OF SERVICE

I MICHAEL J EYTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 19th day of April, 1996, by hand delivery or postage paid to the following parties:

Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

International Transcription Service, Inc.
Suite 140
2100 M Street, N.W.
Washington, D.C. 20037

Paul Schwedler, Esquire
Asst. Regulatory Counsel, Telecommunications
Defense Info. Agency, Code AR
701 South Courthouse Road
Arlington, VA 22204-2199

Edith Herman
Senior Editor
Communications Daily
2115 Ward Court, N.W.
Washington, D.C. 20037

Telecommunications Reports
11th Floor, West Tower
1333 H Street, N.W.
Washington, D.C. 20005

SERVICE LIST
(CONT'D)

Richard B. Lee
Vice President
Snively King Majoros O'Connor
& Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

Michael J. Etkin
