

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
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  
Part I      **DOCKET FILE COPY ORIGINAL**

**COMMENTS OF GTE**

GTE Service Corporation and its affiliated  
domestic telephone operating companies

Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 463-5214

April 19, 1996

THEIR ATTORNEY

*[Handwritten signature]*  
\_\_\_\_\_  
Gail L. Polivy

## TABLE OF CONTENTS

|   |    |
|---|----|
| I. THE COMMISSION'S PROPOSED DEFINITIONS OF THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS PROVIDE THE NECESSARY TOOLS TO PROPERLY ASSESS MARKET POWER. ....   | 3  |
| II. INDEPENDENT LECs SHOULD BE CONSIDERED NONDOMINANT BOTH OUT-OF-REGION AND IN-REGION WITHOUT THE IMPOSITION OF SEPARATION REQUIREMENTS. ....  | 6  |
| A. Separation Requirements for Independent LEC Out-of-Region Operations are Unnecessary. ....   | 7  |
| B. Even In-Region, the Separation Requirements are Unnecessary. ....  | 7  |
| 1. Independent LECs have no Market Power in the Interexchange Market and are Competing Against Strong, Entrenched Competitors. ....   | 7  |
| 2. Separation Requirements are not Needed to Protect Competition. ....  | 10 |
| 3. Separation Requirements Impose Substantial Costs on Independent LECs not Incurred by Competitors. ....   | 12 |
| III. THE COMMISSION SHOULD ADOPT ITS RATE AVERAGING AND RATE INTEGRATION PROPOSALS WITH CERTAIN MODIFICATIONS. ....   | 13 |
| A. The Commission's Preemptive Authority is Less in the Case of Rate Integration Than in the Case of Rate Averaging, and Therefore may not Require Integration of Intrastate Rates Across State Lines. .... | 14 |
| 1. The Commission Should Limit any Preemption of State Intrastate Rate Averaging Regulations to Those that are Inconsistent with Federal Rules. ....  | 14 |
| 2. The Commission may not Require Rate Integration of Intrastate, Interexchange Rates Across States. ....   | 15 |
| B. Carriers Should Have the Option of Demonstrating Their Compliance with the Rate Averaging and Integration Requirements by Filing Either a Tariff or a Basic Price List. ....                             | 17 |
| C. Extension of Rate Integration to U.S. Insular Territories will Moot the Currently Pending Proceedings. ....  | 19 |

## SUMMARY

The interstate, domestic, interexchange market has changed substantially since the initiation of the *Competitive Carrier* proceeding. To better accommodate these changes and to provide the Commission the necessary tools to properly assess when market power exists in either a product or a geographic market, GTE supports the proposed use of the *Merger Guidelines* to define the relevant product market and the flexibility to examine point-to-point geographic markets.

GTE wholeheartedly supports the elimination of separate affiliate requirements for Independent LECs when operating outside their local exchange areas. The separation requirement is an unnecessary impediment to the entry of the Independent LECs into the interstate, interexchange market. Separation conditions are equally unnecessary for Independent LEC in-region interexchange operations. There is no possibility that a newly entering Independent LEC could exert market power, even in-region, in the interstate, interexchange product market occupied by strong, entrenched competitors. Furthermore, the separation requirements are administratively burdensome and create unnecessary inefficiencies.

Although GTE supports geographical rate averaging, GTE does not interpret the 1996 Act to mean that rural and urban areas in different states must have the same intrastate rates. GTE submits that the 1996 Act permits state utility commissions to enforce geographic rate averaging within their states so that urban and rural areas within individual states have geographically averaged rates.

The method used to implement rate integration for insular points should vary depending on the circumstances encountered in the individual locations, *i.e.*, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa. GTE believes that there is significantly more to rate integration of these insular points than appropriate mechanisms. The Commission must once again re-address the distance sensitivity issue (*i.e.*, the costs of serving these points because of their distance from the U.S. Mainland), examine the makeup of the carriers providing originating service from these points and the impact of rate integration on them, and ensure that competition is advanced rather than impeded by any actions taken in rate integrating these points.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF GTE**

GTE Service Corporation ("GTE") and its affiliated domestic telephone operating companies submit the following comments regarding Sections IV, V and VI of the *Notice of Proposed Rulemaking* ("*Notice*" or "*NPRM*") in the above-captioned proceeding, FCC 96-123, released March 25, 1996. In this *Notice*, the Commission seeks to implement a number of provisions of the Telecommunications Act of 1996 ("1996 Act").

**INTRODUCTION**

In Section IV of the *NPRM*, the Commission (at ¶140) reexamines its use of the *Competitive Carrier*<sup>1</sup> definition of the relevant product and geographic market for

---

<sup>1</sup> *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, Notice of Inquiry and Notice of Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983),

interstate, domestic, interexchange carriers. As to the relevant product market, the Commission contemplates changing to one more in line with the U.S. Department of Justice/Federal Trade Commission 1992 Merger Guidelines ("*Merger Guidelines*"). The *Merger Guidelines* allow for a narrower definition of the relevant product market which, in turn, provides the Commission a more realistic method of assessing market power.

As proposed in the *NPRM*, the definition of the relevant geographic market would be all calls between two particular points. As in *Competitive Carrier*, the Commission tentatively concludes that the relevant geographic market should be a single nationwide market. However, if credible evidence pointing to a lack of competition is presented, the Commission would re-assess the market power in particular point-to-point markets.

In Section V of the *NPRM*, the Commission proposes to modify or eliminate the separate affiliate requirement imposed upon an Independent LEC as a condition for nondominant treatment as an interstate, interexchange carrier when operating outside its local exchange areas. The Commission also questions whether or not the Regional Bell Operating Companies ("*RBOCs*") should be afforded the same treatment as Independent LECs.

---

*vacated AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied*, *MCI Telecommunications Corp. v. AT&T*, 113 S Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984); Sixth Report and Order, 99 FCC 2d 1020 (1985), *vacated MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) ("*Competitive Carrier*").

Section VI of the *Notice* addresses the rate averaging and integration requirements of the 1996 Act. As noted (at ¶68), the 1996 Act requires geographic rate averaging. Rate integration for Hawaii, Alaska, Puerto Rico and the U.S. Virgin Islands was effected in *DOMSAT II* and was based entirely on the use of domestic satellite facilities.<sup>2</sup> The key issue that the Commission must address in this proceeding is how to rate integrate insular points, specifically, Guam, the Commonwealth of the Northern Mariana Islands (the "CNMI") and American Samoa, not served by domestic satellites. The Commission must address the significant difference in rates charged for international versus domestic satellite service when establishing rules for the rate integration of these insular points.

**I. THE COMMISSION'S PROPOSED DEFINITIONS OF THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS PROVIDE THE NECESSARY TOOLS TO PROPERLY ASSESS MARKET POWER.**

For years, the Commission has relied on the criteria established in the *Competitive Carrier* proceeding to assess the market power of interstate, domestic, interexchange common carriers. *Competitive Carrier* established one relevant product market — interstate, domestic, interexchange telecommunications services — and one relevant geographic market — the United States.<sup>3</sup> As recently as last year, the Commission continued its reliance on the *Competitive Carrier* criteria in determining

---

<sup>2</sup> See *NPRM* at ¶74.

<sup>3</sup> See *NPRM* at ¶40.

that AT&T lacked sufficient market power to continue to be classed as a dominant carrier.<sup>4</sup>

In light of the significant changes in telecommunications since the *Competitive Carrier* proceeding in the early 1980's, the criteria established in *Competitive Carrier* may no longer be adequate for the changed interstate, domestic, interexchange market. GTE submits that the *Merger Guidelines*' definition of the relevant product market<sup>5</sup> and reliance on demand substitution factors would be more appropriate for the current environment in the interstate, interexchange market. The Commission's proposed definition of a relevant product market<sup>6</sup> based on the *Merger Guidelines* is more closely aligned with conditions in today's marketplace. Although GTE does not have any specific recommendations for relevant product markets other than all interstate, interexchange telecommunications services at this time, GTE supports the change in definition because it provides the Commission the flexibility to accommodate a rapidly evolving technology-driven environment. Some future services may require a separate product market from all interstate interexchange telecommunications services.

---

<sup>4</sup> See *Motion of AT&T Corp. To be Reclassified as a Non-Dominant Carrier*, FCC 95-427 (released October 23, 1995), *Petitions for Recon. pending*.

<sup>5</sup> "[T]he product or group of products such that a hypothetical profit maximizing firm that was the only present and future seller of those products ('monopolist') would impose at least a 'small but significant and nontransitory' increase in price." *NPRM* at ¶45.

<sup>6</sup> "[A]n interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other but for which there are no other close substitutes." *Id.* at ¶46.

Adoption of the proposed definition would permit the Commission to assess the ability of particular service providers to exert market power in new product markets.

GTE also agrees with the Commission's decision to rely on the *Merger Guidelines* for the definition of the relevant geographic market: "all calls from one particular location to another particular location."<sup>7</sup> Although the Commission reasons that geographic rate averaging combined with regulated access prices and an overabundance of transmission capacity are sufficient to prevent service providers from exercising market power, GTE believes that the possibility exists for certain service providers to take advantage of their market power for some point-to-point calling. Thus, the Commission's proposal to "examine a particular point-to-point market (or group of markets) for the presence of market power if there is credible evidence that there is or could be a lack of competition . . . and . . . geographic rate averaging will not sufficiently mitigate the exercise of market power"<sup>8</sup> is necessary to ensure that instances where this type of market power is possible are prevented or quickly eliminated.

GTE does not support the separation of geographic markets into Major Trading Areas, Basic Trading Areas, or Metropolitan Statistical Areas ("MSAs"). These geographical areas are not traditionally associated with interstate, interexchange

---

<sup>7</sup> *Id.* at ¶49.

<sup>8</sup> *Id.* at ¶53.

calling<sup>9</sup> and would add confusion to the existing market. Intrastate calling should be regulated by appropriate state agencies that are more familiar with regional characteristics and would be in a better position to assess the ability of particular service providers to exercise market power within a particular geographic region. This Commission should focus its attention on interstate routes where a particular provider may have the ability to exert market power.

**II. INDEPENDENT LECs SHOULD BE CONSIDERED NONDOMINANT BOTH OUT-OF-REGION AND IN-REGION WITHOUT THE IMPOSITION OF SEPARATION REQUIREMENTS.**

In accordance with the *Fifth Report and Order*, to be treated as a nondominant carrier, the Independent LEC must maintain separate books of account, have no jointly owned transmission or switching facilities with the LEC, and purchase access services from the LEC at tariffed rates, terms and conditions.<sup>10</sup> GTE strongly supports the Commission's decision (at ¶61) to re-address the separation requirement for Independent LECs for nondominant treatment. GTE urges the Commission to eliminate this requirement for a separate affiliate because the separation is irrelevant, unnecessary and burdensome. While the Commission is considering this issue for out-of-region operations, it has deferred the issue of in-region operation for both

---

<sup>9</sup> MSAs, for example, are extremely numerous, do not cover all areas, and mostly fall within the intrastate calling market.

<sup>10</sup> 98 FCC 2d at 1198.

Independent LECs and BOCs. GTE believes that there is adequate reason at this time to remove this requirement in-region, as well as out of region, for Independent LECs.

**A. Separation Requirements for Independent LEC Out-of-Region Operations are Unnecessary.**

For out-of-region operations, these conditions clearly are irrelevant and unnecessary. There are no jointly owned facilities to share when the exchange carrier is operating in another LEC's service area. The exchange carrier will, out of necessity, be required to purchase access from the incumbent LEC, either an RBOC or another Independent LEC, or from an alternative LEC in order to obtain access. Further, any claim that an Independent exchange carrier, as a new interexchange entrant without any presence in the market, would have market power, is absurd. There is no possibility that a GTE telephone company, for example, could substantially influence the interexchange market when it enters the market with a zero market share. Accordingly, given that jointly-owned facilities do not exist and access *must* be purchased at tariffed rates, there is nothing to be gained by requiring Independent LECs to maintain separation requirements

**B. Even In-Region, the Separation Requirements are Unnecessary.**

**1. Independent LECs have no Market Power in the Interexchange Market and are Competing Against Strong, Entrenched Competitors.**

Separation conditions are equally unnecessary for Independent LEC in-region interexchange operations. Given the name recognition of the three largest carriers, AT&T, MCI and Sprint, their established customer base and their existing facilities-based networks, it would be impossible for an Independent LEC entering the

interexchange market to exert market power even in its in-region operating areas. The criterion for a determination of nondominance is market power in the relevant product market. In this case, the relevant product market is interstate, interexchange service. An Independent LEC in an interexchange start-up environment would be competing against at least three well entrenched, nationwide carriers and numerous regional interstate, interexchange carriers with an established market presence, as well as other Independent LECs and, eventually, the RBOCs. There is no possible way that a newly entering Independent LEC could exert market power, even in-region, in the interstate, interexchange product market.

As a rule, Independent LECs do not control large contiguous geographical areas, do not operate in major metropolitan areas, and do not have facilities in-place or even readily available to exercise market power either in-region or out-of-region for interstate, interexchange calling. Interstate, interexchange calling will in most cases require Independent carriers such as GTE to purchase facilities from an existing interstate, interexchange carrier for the completion of calls. For example, there are few point-to-point markets that GTE could serve with its own facilities. Even in those few cases where GTE's operating area crosses state lines, the point-to-point markets are not major metropolitan areas, but small rural communities.

What the Independent LEC brings to the interexchange market is another experienced telecommunications entrant that should be encouraged to join the interexchange competition. The Commission has long established the precedent of promoting new entrants into the interstate, interexchange market. In order to enable

new entrants to effectively compete with AT&T, the Commission provided large discounts for non-Feature Group D carriers, put in place the equal charge per minute of use rule, structured transport rates to protect new carriers, and established asymmetric regulation to provide further protection for these carriers.<sup>11</sup> The scenario is completely different now. Those new entrants that the Commission so vigorously protected have turned into strong, efficient competitors that, for the most part, are able to hold their own against AT&T. The result of the Commission's actions was an interstate, interexchange market where, with the reclassification of AT&T, there are no national dominant carriers. The Commission does not need to protect this competitive market from Independent LECs.

If the Commission imposes asymmetric regulations as a result of classifying Independent LECs as dominant carriers, it would be protecting the entrenched incumbents in what the Commission has determined to be a fully competitive marketplace. The Independent LECs have no market share, few, if any, facilities in place, and powerful competitors. To handicap Independent LECs with asymmetric regulations may benefit some competitors, but would not further competition or the public interest.

---

<sup>11</sup> The Commission established its forbearance policy for all interstate, interexchange carriers except AT&T, which it continued to strictly scrutinize until recently.

## 2. Separation Requirements are not Needed to Protect Competition.

The tired and trite argument about "bottleneck" facilities for in-region service has lost all meaning with the 1996 Act. The Commission has previously defined bottleneck control as having sufficient command over an essential facility or commodity so that the entrance of competitors could be impeded.<sup>12</sup> The 1996 Act not only eliminated legal barriers to entry, but through Section 251 has ensured that local competition will develop quickly and be sustainable.<sup>13</sup> AT&T, for example, has "already sought permission to offer local service in 50 states."<sup>14</sup> It should be quite evident, considering that Independent LECs have no market power in the interstate, interexchange market, that the "bottleneck" facilities concerns no longer justify treating Independent LECs as dominant simply because they are the incumbent LEC. Even if bottleneck facilities may have been of concern in the past, any concerns are now alleviated by the requirements of the 1996 Act and the changed telecommunications environment.

Cost-shifting or cross-subsidization is not a concern. GTE is under price cap regulation at the federal level and at the state level in many of its major operating

---

<sup>12</sup> *Competitive Carrier*, First Report and Order, 85 FCC 2d 1 (1980).

<sup>13</sup> In the case of GTE, the 1996 Act has made it particularly vulnerable to RBOC encroachment into its operating areas. In fact, Pacific Bell has already moved into GTE's operating area in California.

<sup>14</sup> *Communications Daily*, April 10, 1996, at 1. Further, AT&T just announced an agreement with Time Warner Communications to provide Tampa Bay area businesses (one of GTE's major operating areas) local service under the AT&T name. See Trigaux, Robert, *The St. Petersburg Times*, April 12, 1996 (<http://www.sptimes.com/>).

areas.<sup>15</sup> The Commission, itself, has recognized that price caps, even with sharing, "substantially curtails the economic incentive to engage in cross-subsidization."<sup>16</sup> Moreover, without sharing, price cap regulation effectively eliminates any incentive for cost shifting.<sup>17</sup> GTE has selected the no sharing option for 32 of its tariff entities at the interstate level.<sup>18</sup> The Commission's experience with AT&T and the cable industry should remove any doubt regarding the ability of a price cap carrier to cost shift. Further, the price cap plan, through the Part 69 rules, requires LECs to separately account for interexchange costs and allocate them to a separate price cap basket. Thus, cross subsidy concerns are completely alleviated.

Further, the Commission has in place accounting safeguards for all Tier 1 LECs that require them to allocate costs based on a uniform accounting system and cost allocation principles. The LECs accounting books are reviewed annually by independent auditors whose results are then reviewed by the Commission's auditors. Price cap LECs also are required to provide ARMIS reports that the Commission can

---

<sup>15</sup> GTE operates under price cap regulation in Alabama, California, Florida, Iowa, Michigan, Texas, Wisconsin and under other forms of incentive regulation in Virginia and Nebraska.

<sup>16</sup> *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 87-313, 4 FCC Rcd 2873, 2924 (1989).

<sup>17</sup> *See Price Cap Performance Review for Local Exchange Carriers*, First Report and Order, CC Docket No. 94-1, 10 FCC Rcd 8961, 9045 (1995).

<sup>18</sup> GTE is optimistic that the Commission will realize the detrimental effect of sharing and eliminate this mechanism altogether in the price cap plan for local exchange carriers much as it did for AT&T and the cable industry.

use to track accounts over time or to compare LECs. The Commission has all the necessary tools to detect inappropriately priced transfers without the separate affiliate requirement.

**3. Separation Requirements Impose Substantial Costs on Independent LECs not Incurred by Competitors.**

The separate affiliate requirement is not only administratively burdensome, but creates unnecessary inefficiencies. This was described in detail by Southern New England Telecommunications Corporation ("SNET") in its Petition for Nondominance.<sup>19</sup> Structural separation results in direct costs of duplicating personnel and facilities and eliminates the benefits of scale and productivity of joint operation. The separate affiliate requirement also "discourages or delays, by imposing physical, technical and organizational constraints, the introduction of innovative services that might be created by combining elements from the separate affiliates."<sup>20</sup>

GTE strongly urges the Commission to carefully examine the unique circumstances faced by Independent LECs. There are Independent LECs that serve only a small geographical market area while other Independent LECs, such as GTE, may be geographically dispersed and serve predominately rural and suburban markets. These characteristics make it extremely unlikely, if not impossible, for Independent LECs to exert any market power in the interstate, interexchange market. Finally, GTE

---

<sup>19</sup> See Petition of Southern New England Telecommunications Corporation for Declaratory Ruling, dated January 17, 1996, CCB Pol. 96-03.

<sup>20</sup> *Id.* at 7.

urges the Commission to consider the pro-competitive benefits of encouraging Independent LEC entry in the interexchange market, both out-of-region and in-region.

**III. THE COMMISSION SHOULD ADOPT ITS RATE AVERAGING AND RATE INTEGRATION PROPOSALS WITH CERTAIN MODIFICATIONS.**

Section 254(g) of the Communications Act, as amended, provides that by August 8, 1996, the Commission:

shall 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 telecommunication services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.

Section VI of the *NPRM* proposes rules to implement these "rate averaging" and "rate integration" requirements.<sup>21</sup>

GTE supports the basic proposals in the *NPRM*, which are consistent with both the 1996 amendments and long-standing Commission policy objectives. Each GTE company will develop its rates for interexchange services in a consistent method that complies with the rate averaging and rate integration requirements of the Act and

---

<sup>21</sup> The legislative history of the 1996 Act provides further support for this plain language of the statute. As the conferees specifically noted, "[n]ew section 254(g) [was meant] . . . to incorporate the policies of geographic rate averaging." The Conference Committee approvingly cited the Commission's decision in *Integration of Rates and Services Order*, 61 FCC 2d 380 (1976) as setting forth the policies Section 254(g) is intended to achieve. Joint Explanatory Statement at 132.

whatever rules the Commission ultimately adopts. In particular, the interexchange rates charged by GTE companies will not distinguish between urban and rural customers, and to the extent that rates differ by distance, each company will offer interstate service according to a geographically integrated schedule.<sup>22</sup>

While GTE supports the *NPRM's* proposal to implement the statutory requirement, the current proposals can be improved in several respects. First, the Commission should clarify that it will not require rate integration of intrastate services, because Section 254(g) of the Act limits its rate integration jurisdiction to interstate services. Second, carriers should have the option of demonstrating their compliance with the rate averaging and integration requirements by filing either a tariff or a certification containing a basic price list. Third, the Commission should allow a reasonable period of time for providers of services in U.S. insular territories to transition to full domestic rate integration within their study areas.

**A. The Commission's Preemptive Authority is Less in the Case of Rate Integration Than in the Case of Rate Averaging, and Therefore may not Require Integration of Intrastate Rates Across State Lines.**

**1. The Commission Should Limit any Preemption of State Intrastate Rate Averaging Regulations to Those that are Inconsistent with Federal Rules.**

The 1996 Act mandates the promulgation of rules requiring geographic rate averaging and integration. Accordingly, the Commission must adopt appropriate

---

<sup>22</sup> As discussed *infra*, this proceeding renders moot the pending petitions seeking rate integration of the Commonwealth of the Northern Mariana Islands.

implementing regulations. These Comments will address the Commission's invitation to comment on the preemptive scope of the regulations to be adopted in this proceeding.

The *NPRM* interprets Section 254(g) to "preempt state laws or regulations requiring intrastate geographic rate averaging only to the extent such laws or regulations are inconsistent"<sup>23</sup> with the newly adopted rules. While Section 254(g) grants the agency legal authority to require rate *averaging* of intrastate interexchange rates, the statute does not empower the agency to preempt state regulation of intrastate, interexchange services consistent with the new federal rules. This conclusion is confirmed by the Conference Report, which expresses the Congressional intent that states should continue to be responsible for enforcing geographic averaging of intrastate, interexchange services as long as state rules are consistent with the newly promulgated federal rules.<sup>24</sup> While GTE does not perceive a need for any federal preemption of state jurisdiction in this area, the Commission should carefully limit any preemption to state regulations that are inconsistent with federal rate averaging policies, and leave the details of the implementation of these averaging requirements to the states.

**2. The Commission may not Require Rate Integration of Intrastate, Interexchange Rates Across States.**

Notwithstanding the Commission's statutory authority to mandate rate integration of *interstate*, interexchange rates, the Commission has no authority to require rate

---

<sup>23</sup> *NPRM* at ¶68.

<sup>24</sup> Joint Explanatory Statement at 129.

integration of intrastate rates *among* states. For example, the 1996 Act does not give this Commission authority to order telecommunications providers to integrate intrastate rates in Texas with intrastate rates in Oklahoma. Accordingly, the Commission should clarify that its rate integration rule will have no effect on *intrastate* interexchange rates.

The plain text of Section 254(g) grants the Commission less authority over rate integration than over rate averaging. Unlike the rate averaging clause, which does not distinguish between interstate and intrastate rates, the rate integration provision expressly is limited to "interstate interexchange telecommunications services."<sup>25</sup> There is no grant of authority to the FCC to mandate integration of intrastate interexchange rates.

This statutory distinction makes sense from a policy standpoint. Intrastate interexchange rates often reflect a variety of state social and economic policies, which affect rates differently among the states. These policies can affect both intrastate interexchange access rates and the interexchange rates themselves. Given the utter absence of any indication that Congress intended to assert federal preemptive authority over state policies embodied in intrastate access and interexchange rates -- which would be a necessary corollary to any rate integration of intrastate rates across states

---

<sup>25</sup> 47 U.S.C. § 254(g). Nor does the legislative history suggest that Congress had any intention of disrupting the many and various state policies -- ranging from universal service to cross-subsidy of local residential service -- embodied in current intrastate rates.

as well as a dramatic change from preexisting law -- the Commission should leave these matters entirely to the states.

Congress clearly intended regulation of intrastate, interexchange services to be the responsibility of the states when federal policies and rules do not present inconsistencies.<sup>26</sup> Since intrastate integration requirements are unrelated to interstate rate integration requirements imposed by the 1996 Act, intrastate rates should not be subject to nationwide integration.

**B. Carriers Should Have the Option of Demonstrating Their Compliance with the Rate Averaging and Integration Requirements by Filing Either a Tariff or a Basic Price List.**

As an enforcement mechanism, the *NPRM*<sup>27</sup> proposes to require providers to file a certification that their rates comply with the appropriate averaging and integration rules. GTE submits that a certification filing is unnecessary in the case of providers that file tariffs. However, for providers that do not file tariffs, an unsupported certification provides inadequate compliance assurance and should be supplemented with a basic price list.

The proposed certification requirement obviously envisions the eventual adoption of a mandatory detariffing policy, a matter deferred to the second comment cycle in this proceeding. However, the Commission also asks whether "other requirements" should

---

<sup>26</sup> Joint Explanatory Statement at 129. "States shall continue to be responsible for enforcing this situation with respect to intrastate interexchange services, so long as the state rules are not inconsistent with Commission rules and policies on rate averaging."

<sup>27</sup> *NPRM* at ¶71.

be adopted to ensure that carriers are in compliance.<sup>28</sup> As GTE believes that detariffing should be permissive,<sup>29</sup> it suggests that a provider should have the option of demonstrating its compliance either by filing a tariff or by filing a certification accompanied by a basic price list. Where a provider elects to file a tariff setting forth rates, it should not have to make a second filing to certify its compliance. The tariff would provide adequate proof.

As for providers that do not file tariffs, the *NPRM* proposes a certification procedure. Providers would be required to certify their compliance with the rate averaging and integration provisions. Without more, however, an unsubstantiated certification would provide little assurance that a provider has in fact averaged and integrated its rates appropriately. A provider willing to ignore a plain Commission rule is unlikely to be bothered by an unsubstantiated certification requirement. In this instance, the Commission's goals of avoiding excessive filings while enforcing the new Act can best be balanced by requiring a carrier to attach its then-effective basic price list to its certification.

Such a price list would merely be a "snapshot" of the carrier's rates at the time of certification, would not be subject to Commission review other than for the facial determination of compliance, and providers would have no obligation to update it when

---

<sup>28</sup> *Id.* ¶70.

<sup>29</sup> GTE will explain in its Comments on the tariff forbearance proposals in the *NPRM*, the Commission should not forbid nondominant IXCs from filing tariffs.

rates are changed. However, submission of a price list would provide some evidence that a carrier had taken the trouble to make any necessary modifications to its rates and was, in fact, in compliance at the time of certification. Such a procedure would give the Commission somewhat more assurance than an unsupported certification while not unduly burdening its resources.

**C. Extension of Rate Integration to U.S. Insular Territories will Moot the Currently Pending Proceedings.**

As the *NPRM* indicates, the 1996 Act extends domestic rate integration to U.S. insular territories and possessions.<sup>30</sup> The statute now extends domestic rate integration policies to the Commonwealth of the Northern Mariana Islands.<sup>31</sup> GTE agrees that the Act, therefore, has mooted several pending petitions that have sought to establish domestic rate integration policies for Guam and the CNMI.<sup>32</sup> As will be required by the Act and regulations, MTC will average and integrate its domestic rates for interexchange telecommunications service appropriately.

The Commission should be mindful of the fact, however, that rate integration alone will not necessarily lower the rates for interexchange services originating in U.S.

---

<sup>30</sup> *NPRM* at ¶77.

<sup>31</sup> *Id.* at ¶77. The Micronesian Telecommunications Corporation ("MTC"), a separate subsidiary of GTE Hawaiian Telephone Company Incorporated, provides local, access, and interexchange services in and from the CNMI. No GTE company serves Guam.

<sup>32</sup> *NPRM* at n.170. In particular, this should moot the Petition for Rulemaking filed in June 1995 by the Commonwealth of the Northern Mariana Islands seeking to extend domestic rate integration to that U.S. Territory. See Public Notice, AAD 95-86 (released June 16, 1995) and pleadings filed in that proceeding.

overseas territories. In the particular case of the CNMI, it is important to recognize that MTC faces unusually high costs due to unique circumstances arising from its location.

The prime reason for previous rate integration policies was the existence of "domestic" satellite facilities available to serve these points that, in the Commission's view, eliminated distance sensitivity. Thus, *DOMSAT II* required carriers that "provided domestic satellite service" to integrate rates and services.<sup>33</sup> The CNMI, however, is served by international, not domestic satellites.<sup>34</sup> MTC currently obtains its transmission capacity from the CNMI to the U.S. mainland at international rates from COMSAT. The rate for a common international space segment, a 1.544 Mbps half circuit, is \$35,880 (COMSAT Corporation F.C.C. No. 1 Tariff) a month versus \$9,920 (AT&T Communications F.C.C. No. 7 Tariff) for the same segment on a domestic satellite.<sup>35</sup> The original premise for rate integration in *DOMSAT II*, domestic satellite distance insensitivity, does not apply to the domestic insular points. It is clear from the difference in rates charged for the use of domestic versus international satellite facilities that once again distance sensitivity is an issue.

---

<sup>33</sup> *Id.* at ¶75.

<sup>34</sup> All the insular points not rate integrated (Guam, the CNMI and American Samoa) are served by international, not domestic, satellite facilities. Further, the CNMI is served *only* by international satellite facilities, unlike Guam which is served by international satellite facilities and undersea cable.

<sup>35</sup> Discounted rates may be available for longer term commitments. See Comments of GTE, Petition for Rulemaking to Implement Domestic Rate Integration Policies for the Commonwealth of the Northern Mariana Islands, DA 95-1361, filed August 15, 1995, at 11.

Furthermore, MTC provides service only in the CNMI, so its study area and customer base accordingly are quite small. Nothing in the 1996 Act requires any carrier or other provider of telecommunications services to offer service in areas where it does not currently offer service. The Conference Report states only that geographically rate averaged and rate integrated services shall be generally available "in the area served by a particular provider."<sup>36</sup>

The *NPRM* (at ¶77) solicits comment on "appropriate mechanisms to implement rate integration" for U.S. territories, such as the CNMI, not currently subject to domestic rate integration policies. It is more than just an "appropriate mechanism" issue. GTE submits that the Commission must carefully examine all the issues related to rate integration for the yet unserved insular areas. The Commission should scrutinize the difference in rates for the use of international versus domestic satellite facilities and the impact of rate integration on the carriers serving these insular points (most especially those originating traffic), and ensure that competition is being promoted rather than impeded as a result of any actions taken by the Commission. Small regional carriers with a very limited calling base and high costs, such as MTC, can be drastically impacted by rate integration if forced to compete against large carriers with lower costs and huge customer bases over which they can spread these costs.

While MTC has not yet identified all of the changes that domestic rate integration will entail, it will need to make a number of adjustments in its current service

---

<sup>36</sup> Joint Explanatory Statement at 132.