

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

RECEIVED

SEP 29 1997

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)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-61
CCB/CPD 97-54

**COMMENTS OF GTE SERVICE CORPORATION
IN SUPPORT OF PRIMECO PERSONAL COMMUNICATIONS, LP
MOTION FOR STAY OF ENFORCEMENT**

GTE Service Corporation and its affiliated telecommunications companies¹ (collectively "GTE") submit these comments in support of the Motion for Stay of Enforcement filed by PrimeCo Personal Communications, LP ("PrimeCo") in the above captioned docket ("PrimeCo Motion").² In its motion, filed on September 23, 1997, PrimeCo asks the Commission to stay the enforcement of Section 64.1801 of its rules to the extent that the *Reconsideration Order*³ extends the application of Section 64.1801 to Commercial Mobile Radio Service ("CMRS")

¹ These affiliated companies include the Micronesian Telecommunications Corporation, GTE Hawaiian Telephone Company Incorporated, GTE Wireless Incorporated, GTE Airfone, and GTE Communications Corp.

² See *Expedited Pleading Cycle Established for PrimeCo's Motion for Stay of Enforcement of Rate Integration Requirements As Applied to CMRS Providers*, CCB/CPD 97-54, DA 97-2086 (rel. Sept. 25, 1997) (Public Notice).

³ *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, *First Memorandum Opinion and Order on Reconsideration*, FCC 97-269 (rel. July 30, 1997) ("*Reconsideration Order*").

024

carriers and to carriers which they control or own. At a minimum, PrimeCo asks the Commission to stay the application of the requirement that CMRS providers integrate rates across affiliates. As detailed below, GTE supports PrimeCo's stay request and strongly urges the Commission to suspend enforcement of Section 64.1801.⁴ Because Section 254(g) does not distinguish between "providers," any stay granted relief must be applied to all providers of interstate interexchange services.

I. THE COMMISSION'S INTERPRETATION OF SECTION 254(g) IS FLAWED.

In its *Reconsideration Order*, the Commission affirmed its previous determination "that section 254(g) requires the implementation of rate integration across affiliates."⁵ PrimeCo ably details the difficulties facing many CMRS providers as they struggle to determine how to comply with this requirement. As PrimeCo explains, complex ownership arrangements pervade the CMRS industry, and rate integration across affiliates raises obvious antitrust implications.⁶ Absurd consequences would result if carriers that are often competitors in other markets rate integrate with each other.

⁴ PrimeCo's stay request highlights the flaws in the Commission's interpretation of the term "provider" as requiring rate integration across affiliates. This interpretation is currently under review by the D.C. Circuit. See *GTE Service Corporation and the Micronesian Telecommunications Corporation v. FCC*, Case No. 97-1538 (D.C. Cir. filed Sept. 4, 1997).

⁵ *Reconsideration Order*, ¶ 16.

⁶ See PrimeCo Motion at 7-9.

In its earlier Petition for Reconsideration of the *Report and Order*,⁷ GTE Service Corporation warned about the deficiencies with the Commission's reading of the term "provider" in Section 254(g) as requiring rate integration across affiliates.⁸ GTE Service Corporation demonstrated that this interpretation contradicts the statute's plain language, ignores legitimate business distinctions between affiliates, and conflicts with long-standing Commission precedent and policies. Indeed, simple adherence to Congress's explicit limitation of rate integration to a "provider of interstate interexchange telecommunications services"⁹ that actually serves end user subscribers would eliminate any uncertainty, as well as the anti-competitive consequences that form the substance of PrimeCo's stay request.

II. THE COMMISSION'S REQUIREMENT THAT CARRIERS INTEGRATE ACROSS AFFILIATES HAS SERIOUS ANTI-COMPETITIVE CONSEQUENCES FOR ALL PROVIDERS OF INTERSTATE INTEREXCHANGE SERVICES.

The Commission's ruling that Section 254(g) requires rate integration across affiliates will have severe anti-competitive effects for all providers of interstate interexchange services. PrimeCo offers a compelling showing for a stay of Section 64.1801 to the extent that it applies to CMRS carriers.

⁷ *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, 11 FCC Rcd 9564 (1996) ("*Report and Order*").

⁸ GTE will not repeat the arguments made in previous pleadings, but rather incorporates them by reference. See GTE's Petition for Reconsideration and Clarification, CC Docket No. 96-61, Part II (filed Sept. 16, 1996); see also Motion for Partial Stay or Request for Extension, CC Docket No. 96-61, Part II (filed June 17, 1997).

⁹ 47 U.S.C. § 254(g) (emphasis added).

GTE Service Corporation has previously demonstrated that anti-competitive effects will flow from the Commission's new rate integration rules.¹⁰ For example, GTE Service Corporation contended that requiring GTE to integrate rates across all its affiliates would result in significantly low rates that could disadvantage other long-distance competitors in the Commonwealth of the Northern Mariana Islands ("CNMI"). The Commission's rules essentially require GTE's affiliate in the CNMI, the Micronesian Telecommunications Corporation ("MTC"), to either operate at a loss or raise rates for its domestic interstate interexchange business to levels that are not competitively feasible. Thus, the Commission's interpretation has clear anti-competitive effects under either of the options available to GTE.

The reality of these anti-competitive consequences is further highlighted by the recent allegations of IT&E Overseas, Inc. ("IT&E"), one of MTC's long-distance competitors. In filings before the Commission, IT&E has asserted that the Commission's new rate integration rules will place IT&E at a severe competitive disadvantage. Specifically, after MTC filed its tariff in accordance with the Commission's rules, IT&E accused MTC of "engag[ing] in predatory pricing below its actual costs" and of forbidden cross-subsidization.¹¹ Another competitor has accused MTC of proposing "rates [that] are predatory, unreasonable and designed to drive competition from the marketplace."¹²

¹⁰ See *supra* note 8.

¹¹ Petition of IT&E Overseas, Inc. to Reject, or Alternatively, To Suspend and Investigate, Transmittal No. 133, at 5-6 (filed July 24, 1997). IT&E has also sought judicial review of the Commission's rate integration orders in the Ninth Circuit. *IT&E Overseas, Inc. v. FCC*, Case No. 97-71004 (9th Cir. filed Sept. 17, 1997).

¹² Petition of PCI Communications, Inc. to Reject or, in the Alternative, to Suspend and Investigate, Transmittal No. 133, at 3 (filed July 24, 1997). As MTC noted in its reply to IT&E and PCI, "[t]he problem is not with MTC's tariff but with the Commission's requirement that

Thus, it is clear that the far-reaching and potentially adverse effects of the Commission's "across affiliates" requirement is not limited to the CMRS industry. Indeed, there are serious implications for all providers of interstate interexchange services. To prevent any anti-competitive effects, the Commission should stay enforcement of Section 64.1801 as it applies to CMRS and all other providers of interstate interexchange services.

III. ANY STAY RELIEF GRANTED MUST BE AFFORDED TO ALL PROVIDERS OF INTERSTATE INTEREXCHANGE SERVICES.

A stay of enforcement in the instant case would be consistent with prior Commission precedent, where the Commission has stayed the effectiveness of a rule in the wake of revelations of unanticipated and unintended consequences.¹³ This stay, of course, must extend to all interstate interexchange services because no discernible factual or statutory basis is apparent for distinguishing between a "provider" and an "affiliate" in the CMRS context and in other contexts. The statute requires 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 its subscribers in any other State."¹⁴ The statute does not distinguish between CMRS and other "provider[s]."

(...Continued)

MTC use a rate structure and rates in common with affiliates." Reply of Micronesian Telecommunications Corporation, Transmittal No. 133, at 2 (filed July 28, 1997).

¹³ PrimeCo Motion at 4.

¹⁴ 47 U.S.C. 254(g).

As such, the Commission should grant PrimeCo's stay request and, at the same time, suspend enforcement of Section 64.1801 for all entities affected by the Commission's interpretation of "provider" and by the requirement that carriers integrate rates across affiliates. Such affected entities would include GTE's affiliated carriers such as MTC. Failing to grant an across-the board suspension would create an artificial distinction between a "provider" and "affiliate" in the CMRS and interexchange contexts that has no discernible factual or statutory basis.

CONCLUSION

GTE urges the Commission to expeditiously grant PrimeCo's request to suspend enforcement of Section 64.1801 as it applies not only to CMRS providers but to all providers of interstate interexchange services pending judicial review. Grant of a stay pending judicial review is warranted given the difficulty and, in some cases, inability of certain providers to comply with the requirement that carriers integrate across affiliates. In addition, a stay would serve the public interest by avoiding the significant anti-competitive effects that currently flow from the Commission's mistaken interpretation of Section 254(g).

Respectfully submitted,

**GTE SERVICE CORPORATION, on
behalf of its affiliated telecommunications
companies, and GTE MOBILNET**

By: Ward W. Wueste
Ward W. Wueste
Gail L. Polivy
GTE SERVICE CORPORATION
1850 M Street, N.W., Suite 1200
Washington, DC 20036
(202) 463-5214

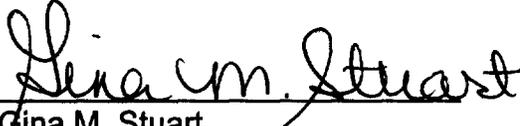
By: Daniel E. Troy
Daniel E. Troy
Angela N. Watkins
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

September 29, 1997

Their Attorneys

CERTIFICATE OF SERVICE

I, Gina M. Stuart, hereby certify that a copy of the foregoing "Comments of GTE Service Corporation in Support of PrimeCo Personal Communications, LP's Motion for Stay of Enforcement" was served upon the following via hand delivery on this 29th day of September, 1997:


Gina M. Stuart

William L. Roughton, Jr.
PrimeCo Personal Communications, LP
1133 20th Street, NW
Suite 850
Washington, D.C. 20036

Wanda Harris
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554
(2 copies)

James Schlichting, Chief
Competitive Pricing Division
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554

Jeanine Poltronieri
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5002
Washington, D.C. 20554

Rosalind K. Allen
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW
Room 5002
Washington, D.C. 20554

Patrick J. Donovan
Common Carrier Bureau
Federal Communications Commission
2033 M Street, NW
Room 500
Washington, D.C. 20554

William Bailey
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, D.C. 20554

ITS
1231 20th Street
Room 112
Washington, D.C. 20036