

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
1998 Biennial Regulatory Review --)	CC Docket No. 98-195
Repeal of Part 62 of the)	
Commission=s Rules)	
_____)	

Comments of GST Telecom Inc. on the
Notice of Proposed Rulemaking

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GST Telecom Inc. (AGST≅), through its counsel and pursuant to sections 1.415 and 1.419 of the Federal Communications Commission=s (AFCC≅) rules and the Notice of Proposed Rulemaking (ANPRM≅) in the above-captioned matter hereby submits these initial comments. GST supports the elimination of Part 62 reporting requirements because it is a costly administrative burden that serves no useful purpose.

GST provides local, long-distance, data transmission, and Internet services as a total solution to business and government customers= telecommunications needs.¹ As an ICP, GST has never been an incumbent local exchange carrier so it is considered non-dominant by the

¹ GST considers the term Acompetitive local exchange carrier≅ or Acompetitive access provider≅ to be an inaccurate reflection of its business. Rather, GST prefers to consider itself an integrated communications provider (AICP≅).

FCC.² Furthermore, the United States Small Business Administration deems GST a small business³ for purposes of compliance with the Regulatory Flexibility Act.⁴ Although GST is classified as a small business, GST must comply with a plethora of FCC-mandated recordkeeping and reporting requirements including those in 47 C.F.R. § 62.26 which requires companies to report changes in directors among wholly-owned corporate subsidiaries. Under these rules, GST must file changes to directors among its thirteen wholly-owned subsidiaries that have status to provide competitive local exchange service. In addition, GST holds nine section 214 authorizations and must inform the FCC whenever directors of those 214 authorizations change.

² See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15,499, 16,144-45 (1996).

³ 13 C.F.R. § 121.201. GST also is considered a small business for purposes of federal government contracting. *Id.*

⁴ 5 U.S.C. §§ 601-12 (ARFA).

These requirements were initially designed to thwart potential anti-competitive behavior of large dominant carriers.⁵ In addition, the rules provided potential protection against a single carrier taking actions among its corporate subsidiaries that might adversely affect competition.⁶

⁵ NPRM at & 3.

⁶ *Id.*

GST established a number of subsidiary operating companies. This operating company structure is common among new competitive entrants,⁷ especially those seeking to provide exchange or exchange access service.⁸ GST and other non-dominant carriers, by definition, do not have the internal corporate capacity to take anti-competitive actions despite their corporate structures. Therefore, concern that interlocking directorates among wholly-owned operating subsidiaries of non-dominant carriers would thwart competition is not valid.

⁷ Given the pattern of corporate acquisition of many new entrants, including GST, it is not surprising that they have a number of wholly-owned operating subsidiaries.

⁸ Federal Communications Commission, *Local Competition*, Table 5.1 (1998). For example, American Communications Services, Inc. has twenty separate operating subsidiaries; Hyperion Telecommunications, Inc. (which has a majority of its stock held by a major cable operator) has nine operating subsidiaries; and Nextlink has seven operating subsidiaries.

Furthermore, the underlying legal rationale for the reporting of interlocking directorates of wholly-owned subsidiaries has been irrelevant since the Supreme Court's decision in *Copperweld Corp. v. Independence Tube Corp.*⁹ Prior to the Court's decision, courts and antitrust scholars believed that an intra-enterprise conspiracy could occur thereby violating § 1 of the Sherman Act. Therefore, knowledge of shared directors between wholly-owned subsidiaries and the parent would assist federal regulators in policing anti-competitive conspiracies between a parent and subsidiary. In *Copperweld*, the Court determined that an entity could not conspire with itself and rejected the intra-enterprise conspiracy theory.¹⁰ Since wholly-owned subsidiaries of a parent cannot conspire among themselves, the existence of interlocking directorates between parent corporations and wholly-owned subsidiaries raises no valid antitrust concern.

GST and similarly-situated carriers have neither the market power to create problems with interlocking directorates nor the legal capacity, under *Copperweld*, to create a

⁹ 467 U.S. 752 (1984).

¹⁰ *Id.* at 771.

conspiracy among its subsidiaries that would raise competitive concerns under the antitrust laws.¹¹

Therefore, the elimination of these reports would not adversely affect the public interest, would not adversely affect rates paid by consumers, and would not lead to unjust, unreasonable or discriminatory rates for services. Under § 160 of the Telecommunications Act, the FCC then should forbear from imposing this reporting requirement on non-dominant carriers.

¹¹ To the extent that there may be potential anti-competitive concerns with any interlocking directorates, they would arise from interlocking directorates among competitors, not wholly-owned subsidiaries, and the Clayton Act provides sufficient protection against that evil.

Given that these reports provide no benefit to the public or assistance to the FCC in prohibiting anti-competitive conduct, the reports simply constitute an administrative and costly reporting burden imposed on non-dominant carriers, such as GST. The FCC has a statutory mandate under both the Telecommunications Act of 1996¹² and the RFA¹³ to reduce regulatory burdens on small businesses. Therefore, elimination of these reports also would satisfy the FCC's statutory obligation to eliminate burdensome regulations on small businesses.

Respectfully submitted,

[electronic submission]

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¹² 47 U.S.C. § 257 (requiring elimination of barriers to entry among small telecommunications carriers); *id.* at § 161 (review and delete unnecessary regulations); *id.* at § 160 (forbear from applying regulations if not needed to protect the public interest).

¹³ 5 U.S.C. § 603-05 (federal agencies must assess impact of their rules on small businesses and examine less burdensome alternatives).