

RECEIVED

MAY 17 1999

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

DOCKET FILE COPY ORIGINAL

Request for)	
)	
Declaratory Ruling Regarding)	CC Docket No. 99-143
the Use of Section 252(i) to Opt Into)	
Non-Cost-Based Rates)	
)	
To: The Commission		

OPPOSITION OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its opposition to the petition for declaratory ruling regarding the use of Section 252(i) of the Communications Act, as amended (the "Act"), to "opt-in" to provisions of negotiated interconnection agreements filed by GTE Service Corporation ("GTE") in the above-referenced proceeding.^{1/} As shown below, GTE's request is contrary to the Commission's policies and rules and should be denied summarily.

Cox opposes the GTE Petition for several reasons. First, GTE misreads the plain language of Section 51.809 of the Commission's rules as support for broad limits on when incumbent local exchange carriers ("ILECs") must accept competitive local exchange carrier ("CLEC") requests to opt into negotiated interconnection provisions. Second, GTE misunderstands the nature of the Commission's symmetry rule, and erroneously contends that CLECs should be prohibited from adopting ILEC-based transport and termination rates for

^{1/} Request for Declaratory Ruling Regarding the Use of Section 252(i) to Opt Into Non-Cost-Based Rates, *Petition*, CC Docket No. 99-143, DA 99-862 (filed April 13, 1999) ("GTE Petition").

No. of Copies rec'd 077
List ABCDE

interconnection at the tandem level if they do not use a combination of tandem and end office switches, as ILECs do. Finally, GTE seeks to penalize CLECs for efficient use of their own networks — a practice completely at odds with the Commission’s policy to encourage competition in the local exchange marketplace. Indeed, the GTE Petition is so flawed it is not worthy of extensive Commission consideration.

I. GTE Ignores the Plain Language of Section 51.809

GTE asserts that Section 51.809 permits ILECs to reject at will CLEC requests to opt into negotiated interconnection agreements based either on the differences in the CLEC’s or the ILEC’s costs for non-covered services or elements. This contention plainly ignores the language of Section 252(i) of the Act and Section 51.809 of the Commission’s rules.

Section 252(i) of the Act requires ILECs to “make available any interconnection, service, or network element provided under an agreement . . . to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.”^{2/} The Commission has concluded that the “text of [S]ection 252(i) supports requesting carriers’ ability to choose among individual provisions contained in publicly filed interconnection agreements.”^{3/} According to the Commission, “[u]nbundled access to agreement

^{2/} 47 U.S.C. § 252(i).

^{3/} See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499, 16137 (1996) (“*Local Competition Order*”).

provisions will enable smaller carriers who lack bargaining power to obtain favorable terms and conditions — including rates — negotiated by large IXCs, and speed the emergence of robust competition.”^{4/}

With this policy in mind, the Commission adopted Section 51.809 of the rules. Under Section 51.809, an ILEC may refuse an opt-in request from a CLEC only under very limited circumstances: (1) the ILEC’s costs of providing a particular interconnection, service or element to the requesting carrier are greater than the costs of providing it to the carrier that originally negotiated the agreement; or (2) the provision of a particular interconnection, service or element is not technically feasible.^{5/} Section 51.809 does *not*, as GTE suggests, permit an ILEC to refuse a CLEC request to opt into negotiated interconnection provisions in any other circumstances. It certainly does not allow GTE to refuse an opt-in request because GTE’s costs for services or elements *other than* those provided to the requesting carrier are different than they were at the time of the agreement.^{6/} Indeed, such a result would undermine the Commission’s policy providing CLECs with incentives to enter and compete in the local exchange market.

^{4/} *Id.* at 16138-39. The Commission’s policies echo those expressed by the Senate Commerce Committee on its provision Section 251(g), which is substantively the same as Section 252(i): “The Committee intends this requirement to help prevent discrimination among carriers and to make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated.” S. Rpt. No. 104-23, at 22 (1995).

^{5/} 47 C.F.R. § 51.809(b)(1)-(2).

^{6/} In particular, Section 51.809 plainly does not permit an ILEC to refuse an opt-in request on the basis of *lower* costs.

Moreover, even if GTE is correct in asserting that CLECs can provide transport and termination for calls to Internet service providers at costs considerably lower than the reciprocal compensation rate reflected in current interconnection agreements, this would not affect an ILEC's obligations. Nothing in the language of Section 51.809 or the legislative history of Section 252(i)^{7/} allows consideration of the CLEC's costs when determining when an ILEC is presented with an opt-in request. Similarly, under Section 51.809, GTE's costs or revenues associated with originating traffic directed to Internet service providers are completely irrelevant. The Commission's rules, as required by the plain terms of Section 252(d), focus on the costs of providing reciprocal transport and termination to another carrier and do not consider the ILEC's costs of providing service to its end user customers. Thus, GTE's claims are flatly inconsistent with the plain language of both Section 252(i) of the Act and Section 51.809 of the Commission's rules.

II. GTE Misunderstands the Nature of the Symmetry Rule

Under the Commission's symmetric compensation rule, ILEC costs for transport and termination of traffic serve as a proxy for CLEC costs of transport and termination for the purpose of reciprocal compensation. Recognizing the basic principle that carriers should be compensated equally for providing the same service, the Commission has concluded that imposing symmetrical rates based on the ILEC's additional forward-looking costs would *not* substantially reduce carriers' incentives to minimize those costs.^{8/} Moreover, the Commission

^{7/} See *supra* note 4 for legislative discussion of Section 252(i).

^{8/} *Local Competition Order*, 11 FCC Rcd at 16040.

found that using the ILEC's cost studies to establish the presumptive symmetrical rates would provide reasonable opportunities for local competition, including opportunities for small telecommunications companies entering the local exchange market.^{9/}

GTE contends that CLECs should not be able to adopt transport and termination rates for interconnection at the tandem level if they do not actually use a network of ILEC-type tandem and end office switches. This contention, however, totally misses the underlying purpose of the Commission's symmetry rule, *i.e.*, that carriers should be compensated equally for providing the same service in comparable geographic territories. Indeed, in 1996 the Commission explicitly addressed and rejected GTE's proposal to adopt non-symmetrical compensation. The Commission also must deny what amounts to a petition for reconsideration filed 30 months late.

In the initial round of the Local Competition proceeding, GTE argued that a symmetry rule would violate the requirement of Section 252(d)(2) that rates be based on a reasonable estimate of each party's additional costs of transport and termination.^{10/} The Commission flatly rejected GTE's argument, holding that "[w]here the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate."^{11/} Although the Commission has allowed state commissions to establish transport and termination rates that vary as to whether traffic is routed through a tandem switch

^{9/} *Id.* at 16041.

^{10/} *Id.* at 16032.

^{11/} *Id.* at 16042.

or directly to the end-office switch, the states must nonetheless consider whether new technologies (*e.g.*, fiber ring or wireless networks) perform functions similar to those performed by the ILEC's tandem switch and thus, whether calls terminating on the new entrant's network should be compensated at the *same* level.^{12/}

Because few, if any, CLECs use tandem switches, the obvious result of the Commission adopting GTE's proposal would be to drastically reduce the compensation due to CLECs without any corresponding reduction in the functionality CLECs such as Cox's telecommunications subsidiaries provide to ILECs in the reciprocal exchange of traffic. This reduction in compensation would reduce CLECs' incentives, and more importantly, their ability to compete with ILECs in their service areas. Such a noticeably self-serving proposal — one completely at odds with the Commission's pro-competitive policies — must be rejected.

III. CLECs Should Not Be Punished for Cost Efficiency

As technologies and networks become more advanced, new entrants into the telecommunications marketplace are becoming increasingly efficient in providing their services. The Commission should encourage such innovation and efficiency by CLECs and ILECs alike, since it minimizes the costs of providing service to end users, and provides consumers with more facilities-based service choices. GTE's campaign to drastically reduce the compensation available to CLECs — based solely on a CLEC's failure to adopt outmoded networking arrangements — would discourage CLECs from further investing in their networks and thus reduce important ILEC incentives that would otherwise exist to upgrade their existing networks

^{12/} *Id.*

and technologies. Such a modification of the rules of the game at this critical juncture would stifle competition in the local exchange and would be contrary to the goals of the Act.

Moreover, ILECs and CLECs have access to the same technologies, including direct routing for high volume customers. Should GTE wish to increase the efficiency of its own network, it is free to make the same investment in new technologies as CLECs, such as Cox, have already made. CLECs should not be punished because ILECs choose not to employ more efficient network technologies. In fact, the Commission has sought to encourage ILECs to improve their efficiency through price caps and other regulatory mechanisms. Indeed, the Commission should ask why GTE and other ILECs are not actively seeking to use these techniques, so as to lower their cost of transport and termination and, ultimately, their costs of serving customers. The ILECs and their customers would be far better served by such efforts than by blatant attempts to circumvent the Commission's interconnection framework and to prevent the development of significant facilities-based competition.

IV. Conclusion

GTE not only fails to raise any issues that the Commission did not fully consider and reject in the *Local Competition Order*, it misreads existing rules to achieve an anticompetitive result. GTE provides absolutely no basis for the relief it seeks. Therefore, Cox Communications, Inc., respectfully requests that the Commission deny the GTE Petition.

Respectfully submitted,

COX COMMUNICATIONS, INC.



Laura H. Phillips
J.G. Harrington
Laura S. Roecklein

Its Attorneys

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
(202) 776-2000

May 17, 1999

CERTIFICATE OF SERVICE

I, Shane Allen, certify that I caused a copy of the foregoing **Opposition of Cox Communications, Inc.** to be served on May 17, 1999, by first class mail or via hand delivery upon the following:

*The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554

*The Honorable Susan Ness
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554

*The Honorable Harold W. Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554

*The Honorable Michael K. Powell
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554

*The Honorable Gloria Tristani
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554

*Kathryn C. Brown
Chief of Staff
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 8B-201
Washington, D.C. 20554

*Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-C327
Washington, D.C. 20554

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Thomas Parker
GTE Service Corporation
600 Hinden Ridge, MS HQ-E03J43
P.O. Box 152092
Irving, Texas 75015-2092

Gregory J. Vogt
Suzanne Yelen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

*Robert C. Atkinson
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-356
Washington, DC 20554

*Lawrence E. Strickling
Federal Communications Commission
445 12th Street, S.W., Room 5C-450
Washington, D.C. 20554



Shane Allen

*Denotes Hand Delivery