

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation on the)	
Commission's Own Motion Whether)	DOCKET NO. UT-970767
the IntraLATA Toll Services of)	
)	
GTE NORTHWEST INCORPORATED)	FIRST SUPPLEMENTAL ORDER
)	GRANTING COMPETITIVE SERVICE
Should Be Classified as a Competitive)	CLASSIFICATION WITH CONDITIONS
Telecommunications Service)	
.)	

SUMMARY

PROCEEDINGS: On May 16, 1997, the Commission on its own motion entered an Order Instituting Investigation to determine whether the intraLATA toll services of GTE Northwest Incorporated (GTE) are subject to effective competition and should be classified as competitive telecommunications services pursuant to RCW 80.36.330 and RCW 480-120-022. Specifically, the services subject to this investigation are listed in GTE's Tariff WN U-12.

On June 3, 1997, a Notice of Formal Investigation and Fact-Finding and Notice of Opportunity to Intervene and File Comments was served on all telecommunications companies registered in the State of Washington. Attached to the Notice was a document titled Joint Position of Commission Staff and GTE Northwest, Inc. Recommending Competitive Classification of IntraLATA Toll Services (Joint Position). The Notice invited interested persons to file a written petition to intervene and written comments not later than July 3, 1997; objections to use of the formal investigation and fact-finding process were to be filed with petitions to intervene. The joint parties were instructed to file written reply comments not later than July 18, 1997.

PARTIES: The Commission received the written petition to intervene and comments of TRACER on June 20, 1997; the written petition to intervene of United Telephone Company of the Northwest on June 23, 1997; the written petition to intervene and comments of Public Counsel and AT&T Communications of the Pacific Northwest, Inc., on July 3, 1997. Commission Staff and GTE filed written reply comments on July 16, and July 21, 1997, respectively.

SUMMARY: The Commission grants competitive classification to the intraLATA services of GTE Northwest Incorporated listed in Tariff WN U-12, as conditioned in this Order.

MEMORANDUM

I. COMMENTS OF PARTIES

A. Joint Position of Commission Staff and GTE

Commission Staff and GTE (Joint Parties) mutually agree that the telecommunications services which are the subject of the instant classification proceeding are subject to effective competition within the meaning of RCW 80.36.330, and therefore should be classified as competitive telecommunications services. In support of that recommendation, the Joint Position of these two parties includes an analysis of the factors contained in RCW 80.36.330 which must be considered by the Commission in making its determination.

1. Alternative Providers of IntraLATA Service

The Joint Parties provide as Attachment 1 to their Joint Position statement an extensive list of alternative toll providers currently offering "1+" intraLATA service in competition with GTE, which they contend illustrates such service is "available broadly from alternative providers in the relevant market." Attachment 2 to their statement is a list of all telecommunications providers registered in Washington State, which they suggest provides some indication of the magnitude of potential providers of service.

2. Ability of Alternative Providers to Make Functionally Equivalent or Substitute Services Available at Competitive Rates, Terms and Conditions

All telecommunications companies providing intraLATA toll services must file tariffs or price lists with the Commission setting forth their rates, terms, and conditions for providing this service. All companies generally offer toll services priced on a per minute basis and calling plans offering volume discounts. Also offered are operator services, directory assistance services, calling card services, and toll-free "800/888" services. The Joint Parties conclude therefore that alternative providers are offering intraLATA toll services at competitive rates, terms, and conditions, and further point to aggressive marketing and promotional efforts to pre-subscribe customers to their "1+" service.

3. Indicators of Market Power: GTE's Market Share

Based upon number of customers, GTE derives a market share no larger than 78%: as of April 1997, GTE serves 780,000 lines and 170,000 customers have pre-subscribed to intraLATA service providers other than GTE. The Joint Parties conclude that GTE has lost approximately one-fifth of the intraLATA toll market,

while noting "several reasons" why this market share figure is overstated. Nonetheless, both Commission Staff and GTE believe the market share is not indicative of market power. Rather, the number of other firms in the market, ease of entry into the market, and whether any customers are captive to GTE's intraLATA toll services are better indicators.

4. Indicators of Market Power: Ease of Entry into the Market

Beginning in September 1996 and concluding in February 1997, GTE implemented intraLATA equal access in its Washington exchanges, with a single exception to be converted in September 1997. With implementation of "1+" presubscription for intraLATA toll services, customers now have equal access to the service provider of their choice, and can switch to the provider of their choice by notifying GTE and paying a small fee for the change.

5. Indicators of Market Power: Captive Customer Base

With the availability of equal access presubscription, customers can switch intraLATA toll services providers as noted above; GTE therefore has no captive customers.

6. Indicators of Market Power: Affiliation of Service Providers

An affiliate of GTE, GTE Card Services, Inc. d/b/a GTE Long Distance, provides intraLATA toll services in the markets served by GTE.

7. Prices Charged for IntraLATA Toll Services Will Cover Cost

The rates for GTE intraLATA toll services and various calling plans, and subsequent filings to change those rates, were analyzed and approved by the Commission. Those rates were supported by GTE cost studies demonstrating they were above the cost of providing the services. GTE's intraLATA toll rates are subject to an imputation test designed to prevent it from pricing its toll services in relation to its wholesale exchange access services so as to create a "price squeeze" on its toll competitors for whom exchange access is a "bottleneck service." This imputation test ensures GTE's intraLATA toll rates will cover tariffed access charge rates plus the long-run incremental cost of providing the toll services.

B. Comments of Public Counsel

1. Effective Competition

Public Counsel is concerned the Commission adequately assess other factors bearing upon market power, especially one measure not addressed in the Joint Position: market concentration. He cites the Commission's report to the Governor's Telecommunications Task Force where it is noted that the Commission tracks telecommunications industry concentration according to the Herfindahl-Hirschman industry concentration index: "despite the large number of companies registered in this state, key telecommunications markets remain highly concentrated and are [a] long way from becoming competitive." The index examines the entire intrastate toll market versus intraLATA toll markets, but Public Counsel believes "there is substantial similarity between the two markets and it seems unlikely the Herfindahl-Hirschman analysis for intraLATA toll would differ significantly." This degree of market concentration alone appears to be inconsistent with the existence of "effective competition."

Another relevant factor in a market share analysis is GTE's status as the *de facto* monopoly provider of local exchange service throughout its service territory, which confers a significant competitive advantage on the company's long distance operation. GTE has extensive knowledge of its customers' calling patterns and needs, and the ability to offer "one-stop shopping." Public Counsel believes "GTE is not unaware of its advantageous position" and cites industry trade press for the proposition that GTE exploits this position by its stubborn resistance to competition in its local exchanges. Public Counsel makes two recommendations should the Commission otherwise be persuaded that effective competition nonetheless exists: (1) prohibit GTE from jointly marketing its toll and local services at the present time; and (2) schedule now a review of GTE's competitive status no later than two years from the date of competitive classification in this proceeding.

GTE's status as monopoly provider of local exchange service as evidenced by its market share, market concentration, and control of its local customer base argue for protections akin to the Section 271 scheme in the Telecommunications Act of 1996 (Act) which apply to the regional Bell operating companies. That GTE is not subject to this provision of the Act does not alter the fact that it has a competitive advantage in marketing to its local exchange captive customer base.

Further, because the Commission does not have adequate administrative rules governing the competitive conduct of companies, competitive classification of GTE would mean few competitive practices protections will constrain GTE's behavior.

A restriction on joint marketing is therefore essential; it could be to a date certain and reviewed coincidental with a review of GTE's competitive status. Public Counsel also proposes conditioning a grant of competitive classification on the requirement of a showing by GTE not later than two years after such classification that its intraLATA toll services continue to be subject to effective competition pursuant to WAC 480-120-022(7).

2. Relationship between Prices and Cost

Public Counsel notes that RCW 80.36.330(3) requires the Commission to ensure that prices charged for services classified competitive must cover their cost and to determine the proper cost standards to apply, and, further that subsection (5) places the burden on GTE to provide all data necessary for the implementation this section. If the Commission grants GTE competitive classification in this proceeding, GTE should be required to initially price list services at the level approved in Docket No. UT-970598, the GTE toll rate restructure proceeding. Further, to comply with the statute's requirement that cost be determined upon proper cost standard, a Commission order granting competitive classification should incorporate an imputation test to be applied in reviewing changes in prices for intraLATA toll services, and direct GTE to provide all data necessary for the Commission to determine that any price change meets such imputation test.

3. Termination of Service for Non-payment of Toll Charges

If competitive classification is granted, Public Counsel asks the Commission to address an important consumer protection issue -- termination of local service for non-payment of toll: "WAC 480-120-181 provides that '[n]onpayment of inter-exchange carrier charges shall not be grounds for disconnection of local service.'" Arguing that well established regulatory policy prohibits termination of monopoly service for failure to pay unregulated charges and that GTE will obtain an advantage in the marketplace not shared by its competitors, Public Counsel asks the Commission to prevent GTE from terminating local service for non-payment of competitive toll services.

4. Notice of Changes in Price Lists

Citing the requirement of RCW 80.36.330(2) that the Commission prescribe the form of notice to be used by a competitive company in notifying customers of price list changes, Public Counsel recommends the Commission specify in its order a form of notice which would include the following:

- * A clear statement of the service or services affected in non-technical language, referencing any commonly used marketing names for services;

- * The old and the new price for the service;
- * A statement that the customer may complain to the Commission and including the Commission's consumer affairs telephone number;
- * A statement of the effective date of the price change;
- * A contact person at GTE who can provide information about the price change;
- * A statement that this service is classified as a competitive service and that price changes can be made on ten days notice.

Finally, Public Counsel urges the Commission to carefully review and consider this proposal not only for compliance with the competitive classification statute but for the precedential nature for other potential classification proceedings. If the Commission believes the requirements of the statute are met, it nonetheless should condition classification by restricting joint marketing, prescribing a date certain review of the competitive status of the services, and other recommendations of Public Counsel.

C. Comments of AT&T

AT&T is concerned that the Joint Parties examine the statutory requirements of RCW 80.36.330 without adequately considering the impact of GTE's provision of switched access services -- a bottleneck monopoly input to intraLATA toll services -- on the ability of alternative providers to make service available at competitive rates, terms, and conditions. RCW 80.36.330(1). As both a local exchange company and an intraLATA toll service provider, "GTE can use its monopoly provision of switched access to maintain an artificial, and potentially insurmountable, competitive advantage over other providers of intraLATA toll services."

The Commission should not classify GTE's intraLATA toll services as competitive until adequate safeguards are put in place to prevent GTE from engaging in anti-competitive behavior. Specifically, AT&T asks the Commission to condition GTE's competitive classification "on implementation of inter-carrier business office practices and service quality rules, and on GTE's reduction of switched access charges to total service long-run incremental cost (TSLRIC), in conjunction with universal service reform if necessary."

Because switched access charges are approximately one-half inter-exchange carriers' costs to provide toll service and because GTE's switched access services are priced far above TSLRIC, GTE can squeeze its competitors out of the market by setting prices for its intraLATA toll services at or near its switched access rates. Although competitors currently may compete with GTE on competitive rates, terms, and conditions, AT&T fears the pricing flexibility inherent in competitive classification will enable GTE to reduce its intraLATA toll services rates to eliminate competitors while still making a substantial profit. While the Joint Position's requirement of a properly conducted imputation test is "indispensable" to constraining price squeeze behavior by GTE, it may have limited utility.

An imputation test is only as reliable as the underlying cost data, and even if such data were reliable, failing to price monopoly inputs at TSLRIC allows GTE to meet the test even while engaging in anti-competitive behavior. Since GTE's switched access rates are so far above the TSLRIC cost of the services, it could price its intraLATA toll services to recover its access charges and other incremental costs and still pass an imputation test and yet generate revenue in excess of actual costs. Neither AT&T, nor any competitor, could compete effectively with GTE under such circumstances. And GTE will have no incentive to increase efficiency, improve service quality, or lower toll rates in Washington. Imputation alone is not sufficient: GTE must be ordered to price switched access to all providers of intraLATA toll services at TSLRIC. This does nothing however to prevent GTE from using discriminatory business office practices or from providing poor quality switched access service to disadvantage its competitors.

AT&T urges the Commission to condition competitive classification of GTE's intraLATA toll services on the implementation of appropriate inter-carrier business office practices and service quality standards, and on the reduction of intra-state switched access service rates to TSLRIC, in conjunction with universal service reform if necessary. In the alternative, the Commission should immediately open new proceedings to establish business office and service quality rules and to institute intra-state switched access and universal service reform.

D. Reply Comments of Commission Staff

1. Reply to Public Counsel

a. Market concentration/market share

Commission Staff contests Public Counsel's assertion that "effective competition" does not exist for GTE in the intraLATA toll services' market by contending that GTE had 100% of the market less than one year ago, and, in addition,

by noting that GTE's market share has dropped from 78% in April 1997 to 63% in May 1997, due largely to the increased marketing of both inter- and intra-state long distance and intraLATA toll services by inter-exchange carriers. Staff continues to believe the appropriate focus of the Commission here primarily is the fundamental structure of the relevant market and only secondarily is market share or market concentration. Staff's analysis demonstrates to its satisfaction that the intraLATA toll services' market is subject to effective competition despite GTE's market power.

b. Market power analysis

While Staff "agrees" with Public Counsel's factual statements and policy concerns regarding GTE's market power, they submit those perspectives justify competitive classification for GTE: "Were intraLATA toll services not competitive, the concern about GTE-NW extending its local service market power into the intraLATA toll market would not arise."

c. Joint marketing

Any prohibition on joint marketing of local exchange service with intraLATA toll services should extend to "any competitive service, including unregulated services such as Internet access, voice mail, inside wiring maintenance, and interLATA toll." Staff sees this issue as restricting "how GTE-NW markets or provides its local service," and opines that to the extent any such restrictions on local service marketing are appropriate, a rule making that applies to all competitive services, not just intraLATA toll, and to all local service companies, not just GTE, is the appropriate vehicle.

d. Review of competitive status

The provisions of RCW 80.36.330(7) authorizing the Commission to reclassify any competitive telecommunications service is sufficient to protect the public interest, and should be sufficient to address Public Counsel's request to condition any grant of competitive classification by limiting it to a two year period.

e. Price-cost relationship

Staff cites its Staff Memorandum to the June 25, 1997 open meeting in Docket No. UT-970598 for a statement of the appropriate imputation test to be used in determining whether GTE's prices for its intraLATA toll services reflect the proper costs and cost levels. The Joint Parties would expect GTE's prices for toll services to continue to meet the test articulated in the Memorandum. The "essence" of the cost standard in Staff's view is a requirement that "average rates under each toll plan are sufficiently high to cover the access charges that GTE-NW would incur and the incremental cost of toll service."

f. Termination of service for non-payment

Staff concurs with Public Counsel, and would interpret WAC 480-120-081(2)(d) to prohibit disconnection of local exchange service for non-payment of "charges imposed by carriers for inter-exchange service." A condition of competitive classification here should include this prohibition.

g. Notice of changes in price lists

A form of notice should be specified in the order as recommended by Public Counsel, and should take the form of notice now required of all other inter-exchange carriers granted competitive classification.

2. Reply to AT&T

Staff concurs in AT&T's recommendations that the Commission (1) develop rules on inter-carrier business office practices and service quality standards and (2) reduce GTE's switched access charge rates to TSLRIC. Competitive classification of GTE's intraLATA toll services however should not await such resolution. Staff posits that an important result of competitive classification should GTE exhibit inappropriate practices and behavior in the intraLATA toll services' market is that it will be subject to the state's Consumer Protection Act, Chapter 19.86 RCW. In the interim before accomplishing AT&T's recommendations, Staff believes its proposed imputation test is "sufficient to protect AT&T and other competitors from predation by GTE-NW."

E. Reply Comments of GTE

GTE "generally agrees" with Commission Staff's reply comments, and "specifically believes" its intraLATA toll services are subject to effective competition "because of the current structure of GTE's market, among other things." The "tangential concerns" of Public Counsel and AT&T would best be addressed in other proceedings. Finally, GTE asks that the same "administrative requirements" for notice of price list changes be the same as applied to other toll providers whose services are classified competitive, including AT&T.

II. COMMISSION DISCUSSION AND DECISION

RCW 80.36.330 authorizes the Commission to "classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service" if it finds that the service is "subject to effective competition." The statute defines "effective competition" to mean that "customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base."

In determining whether a particular service is a competitive service, the Commission should consider, among other factors, the following:

- (1) the number and size of alternative providers of services;
- (2) the extent to which services are available from alternative providers in the relevant market;
- (3) the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (4) other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Once a service is classified as a competitive telecommunications service, the Commission may reclassify any such service if reclassification will protect the public interest.

A. Effective Competition

The Joint Parties provided a list of telecommunications companies registered to provide service in the state of Washington which they postulate as a meaningful indicator of the number and size of alternative service providers. The Joint Parties also provide a list of alternative toll providers currently providing "1+" intraLATA toll services in GTE's service territory. Many of these alternative service providers are of sufficient size to be capable of offering customers both intraLATA and interLATA toll service from a single source. The Commission is satisfied with the number and size of alternative providers and the availability of alternative service to that of GTE.

The Joint Parties note that all telecommunications companies providing intraLATA toll services file tariffs or price lists containing their rates, terms, and conditions of service, and generally offer service priced on a per minute basis and calling plans offering volume discounts. Also routinely offered are operator services, directory assistance services, calling card services, and toll free "800/888" services. Their conclusion therefore is that functionally equivalent or substitute services are readily available at competitive rates, terms, and conditions.

Public Counsel cites the Herfindahl-Hirschman industry concentration index for the proposition that in spite of large numbers of registered telecommunications companies in Washington key markets remain highly concentrated and are a long way from being competitive. Despite the index's focus on the entire intrastate toll market,

Public Counsel finds a substantial similarity with GTE's intraLATA toll market, which it contends is inconsistent with the existence of "effective competition." Public Counsel recommends the Commission condition competitive service classification by prohibiting GTE from joint marketing of local exchange and toll services, and by setting now a review of GTE's competitive classification within two years of the date of this Order.

AT&T claims the Joint Parties ignore the effect of GTE's provision of a bottleneck monopoly input -- switched access services -- on the ability of alternative providers to make services available on competitive rates, terms, and conditions. AT&T urges denial of competitive classification until adequate safeguards are in place to prevent GTE from engaging in anti-competitive behavior. Specifically, AT&T asks the Commission to condition classification upon GTE's implementation of inter-carrier business office practices and service quality standards, and upon reduction of intra-state switched access charges to TSLRIC.

The Commission acknowledges that thorny questions are posited by the instant application and recognizes as legitimate the concerns expressed by both Public Counsel and AT&T. The Commission is hesitant to restrict GTE's joint marketing of local exchange and toll services in the instant proceeding, noting that new entrants likely will engage in similar practices. Likewise, the Commission is reluctant to set a sunset review of the conditional grant of competitive classification we here order in the absence of any indication that such action is necessary.

The Commission realizes that service quality issues are critically important to companies who must rely upon competing companies for inputs to services offered to end users, and are of paramount concern to the consumers of all telecommunications services. However, as with joint marketing and inter-company business office practices, we do not believe it is appropriate to resolve the issue of service quality standards upon the limited scope of this proceeding thereby delaying competitive classification to GTE. The Commission anticipates rule making to address inter-company business office practices and company-to-company service quality before year's end.

GTE must know however that the Commission will scrutinize rigorously its timely and efficient provision of service to interconnecting companies competing with GTE in the intraLATA toll market. Any degradation of the quality of service provided to consumers taking intraLATA toll services from alternative providers will be interpreted as jeopardizing the public interest and thereby prompting the Commission to revisit GTE's competitive classification as provided in RCW 80.36.330(7). Commission Staff also notes in its reply comments that "should GTE-NW engage in inappropriate practices in the toll market, under RCW 80.36.360 its actions would be subject to the state Consumer Protection Act, Chapter 19.86 RCW."

Perhaps the "thorniest" of all issues presented by the parties is the issue of pricing of switched access services. AT&T asks the Commission to order GTE to price switched access service to all providers of intraLATA toll service at TSLRIC. Public Counsel asks the Commission to clearly articulate a "proper cost standard" and to incorporate an imputation test to apply in reviewing changes in prices. Here again is another issue which the Commission and the telecommunications industry must address jointly. The Commission must take up the matter of switched access service in a forum which resolves the costing and pricing of access service "globally," and includes consideration of the related matter of universal service funding. This is not the proceeding for such an investigation, nor does the Commission find it necessary to withhold competitive classification in this proceeding pending that resolution.

The Joint Parties contend the current rates for GTE's intraLATA toll services and various calling plans were supported by cost studies demonstrating rates were above costs of providing the services, and, after investigation, were approved by the Commission. Further, the Joint Parties argue that GTE's intraLATA toll rates are subject to an imputation test so designed as to prevent GTE from pricing toll service in relation to its wholesale exchange access service thereby creating a "price squeeze" on toll competitors purchasing the "bottleneck" switched access service.

The Commission Staff's reply comments, in which GTE says it "generally agrees" and we interpret to mean GTE "concur," state that "the cost standard, at its essence, is the requirement that "average rates under each toll plan are sufficiently high to cover the access charges that GTE-NW would incur and the incremental cost of toll service." And, further, that "the imputation requirements discussed earlier are sufficient to protect AT&T and other competitors from predation by GTE-NW."

The Commission incorporates as the appropriate cost standard for determining whether GTE's prices for intraLATA toll service cover its costs the imputation analysis provided by GTE in Docket No. UT-970598, revisions to its Tariff WN U-12, IntraLATA Toll Services. The June 25, 1997 Staff Memorandum on this filing notes at page 2:

Imputation

GTE-NW is required to demonstrate that its rates do not create a "price squeeze" for its toll competitors, who must buy access from GTE-NW. GTE-NW has provided its imputation analysis as a confidential cost support exhibit with the tariff filing. Staff believes the proposed toll rates do not result in a price squeeze, because the average rates under each toll plan are sufficiently high to cover the access charges that GTE-NW would incur and the incremental cost of toll service. The only exception to this is the Toll-Pac offering, which has been grandfathered as of January 10, 1997.

It is the "imputation analysis" there referenced which the Commission adopts for prices for intraLATA toll services in this proceeding. The initial price lists developed pursuant to competitive classification of these services should mirror the tariffed rates approved in Docket No. UT-970598 and effective June 26, 1997. Thereafter, any rate changes must continue to meet the imputation analysis here adopted. Commission Staff must review price list changes to ensure that GTE's prices cover costs consistent with that imputation test.

For purposes of the instant proceeding, the Commission will accept the Joint Parties representation that alternative providers of intraLATA toll service are able to provide the same or equivalent service at competitive rates, terms, and conditions. The Commission will condition competitive classification of GTE's intraLATA toll services on the requirement that rates continue to satisfy the imputation test discussed above until otherwise directed by the Commission.

B. Other Issues

1. Termination of Service for Non-payment of Toll Charges

Public Counsel asks that we interpret WAC 480-120-181 to prohibit termination of local exchange service for non-payment of toll charges. Commission Staff concurs and suggests making this a condition for competitive classification.

The Commission believes this is a long-standing policy in this state and will condition competitive classification of GTE's intraLATA toll services by prohibiting the termination of local exchange service for non-payment of charges for inter-exchange service.

2. Notice of Price List Changes

Public Counsel asks for a notice of price list changes unique to GTE, and offers six key areas to be specifically addressed by such notice. Commission Staff and GTE ask the Commission require no more of GTE by way of notice of price list changes than is required for any other competitive service or competitive company.

The Commission will prescribe the same notice requirement as has appeared in all orders granting competitive service or competitive company classifications.

3. Review of Competitive Service Classification

Public Counsel asks the Commission in the instant Order to set a date for review of the competitive classification of GTE's intraLATA toll services not later than two years from the date of this Order. Public Counsel reasons that lack of Commission rules governing competitive company practices, and GTE's competitive advantage in marketing to its captive customer base mandate such a review to ascertain whether GTE's intraLATA toll services continue to be subject to effective competition pursuant to WAC 480-120-022(7).

Commission Staff replies that authority in the Commission to undertake a review of competitive classifications pursuant to RCW 80.36.330(7) is sufficient protection of the public interest.

The Commission is concerned over the precedential nature of its approval of the Joint Position. We agree with both Public Counsel and AT&T that many critical and important issues remain unresolved, e.g., access charge costing and pricing, and that many rules providing a framework for inter-carrier relations, e.g., company- to-company service quality and business office practices, remain unaddressed.

We note also the concerns of Public Counsel regarding GTE's market share and market concentration. While there is clear indication that some GTE customers may have choices among competing providers and that some are exercising that choice, the scope and extent of customer choice remains largely unclear at this time. For all of these reasons, and, equally importantly, to protect consumers moving between companies for provision of intraLATA service, we will require GTE to report on the competitive nature of the market for intraLATA toll services in its territory. This report need not be exhaustive, but, at a minimum should focus on the four factors found in RCW 80.36.330(1) to be used by the Commission in determining whether a service is competitive and remains competitive.

Based upon the entire record and file in this matter, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate rates, rules, regulations, practices, accounts, securities, and transfers of public service companies, including telecommunications companies.

2. GTE NORTHWEST INCORPORATED is registered as a telecommunications company providing service within the state of Washington as a public service company.

3. On May 16, 1997, the Commission on its own motion entered an Order Instituting Investigation to determine whether the intraLATA toll services of GTE are subject to effective competition and should be classified as a competitive telecommunications service pursuant to RCW 80.36.330 and RCW 480-120-022. The services subject to Commission investigation are contained in GTE's Tariff WN U-12.

4. On June 3, 1997, the Commission issued a Notice of Formal Investigation and Fact-Finding and Notice of Opportunity to Intervene and File Comments.

5. Telecommunications Ratepayers Association for Cost-based and Equitable Rates intervened on June 20, 1997; United Telephone Company of the Northwest intervened on June 23, 1997; Public Counsel and AT&T Communications of the Pacific Northwest, Inc., intervened and filed written comments on July 3, 1997. Commission Staff and GTE filed written reply comments on July 16, and July 21, 1997, respectively.

6. The relevant product market is intraLATA intrastate switched inter-exchange message toll service offered on an "equal access" basis where customers choose a primary inter-exchange carrier to which all "1+" intraLATA toll calls are directed, and the relevant geographic market is the state of Washington.

7. There are alternative providers of the telecommunications services to those GTE offers in the relevant market.

9. There are no regulatory barriers to entry into the relevant market, and entry is occurring.

10. The intraLATA intrastate switched inter-exchange message toll services offered by GTE are subject to effective competition.

11. GTE's prices for intraLATA intrastate switched inter-exchange message toll service are subject to the imputation test described fully in the text of this Order until otherwise ordered by the Commission.

12. GTE should report bi-annually on the status of competition in the relevant market for its intraLATA intrastate switched inter-exchange message toll service, addressing at a minimum the factors contained in RCW 80.36.330(1) until otherwise ordered by the Commission.

CONCLUSIONS OF LAW

1. GTE's intraLATA intrastate switched inter-exchange message toll service meets the requirements of RCW 80.36.330. The Commission should grant the joint petition of GTE and Commission Staff.

2. GTE should be permitted to intraLATA intrastate switched inter-exchange message toll service under price list.

3. Pursuant to WAC 480-120-181, GTE is prohibited from terminating local exchange service for non-payment of inter-exchange service.

ORDER

THE COMMISSION ORDERS:

1. The joint petition of GTE and Commission Staff for an order granting competitive telecommunications service classification is granted.

2. GTE's prices for intraLATA intrastate switched inter-exchange message toll service are subject to the imputation test described fully in the text of this Order until otherwise ordered by the Commission.

3. GTE is to file with the Commission every six months a report on the status of competition in the relevant market for its intraLATA intrastate switched inter-exchange message toll service, addressing at a minimum the factors contained in RCW 80.36.330(1), until otherwise ordered by the Commission.

4. GTE may not terminate local exchange service for non-payment of inter-exchange service.

5. GTE is authorized to offer services under price list, the format of which is subject to prior approval by the Commission, to be effective after ten days notice to the Commission and to customers. In the event of a price reduction or a change in terms or conditions which do not have rate impact, personal notice to customers is not required. Although the Commission does not have authority to waive this notice requirement, petitioner does have the option to publish notice of price reductions by a display advertisement in such newspaper or newspapers as are geographically situated so as to be circulated over the company's service area.

DATED at Olympia, Washington, and effective this 29th day of September 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



RICHARD HEMSTAD, Commissioner



WILLIAM R. GILLIS, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-09-820(1).