

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Micronesian Telecommunications Corporation)	
Revision to Tariff FCC No. 1)	Transmittal No. 133
)	
)	
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)	

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2004

Released: April 5, 2004

By the Commission:

I. INTRODUCTION

1. In this order, we deny an application for review filed by IT&E Overseas, Inc. (IT&E).¹ IT&E requests that the Commission review the decision by the Competitive Pricing Division (Division) of the Common Carrier Bureau (Bureau)² allowing revisions to Micronesian Telecommunications Corporation's (MTC's) Tariff F.C.C. No.1 filed under Transmittal No. 133 to take effect on August 1, 1997.³ IT&E argues that MTC failed to provide relevant support materials for its tariffed rates as required under section 61.49 of the Commission's rules.⁴ IT&E further argues that MTC violated sections 201(a), 201(b), and 254(k) of the Communications Act of 1934, as amended (the Act),⁵ as well as the Commission's cost allocation rules.⁶ As explained

¹ See *Application for Review*, filed by IT&E Overseas, Inc., CCB/CPD 97-45 (Sep. 2, 1997) (*IT&E AFR*). See also *Pleading Cycle Established – IT&E Overseas, Inc. Files Application for Review of Micronesian Telecommunications Corporation*, Public Notice, 12 FCC Rcd 13,427, DA 97-1926 (rel. Jul. 31, 1997).

² Pursuant to a Commission reorganization in March 2002, the Common Carrier Bureau was re-named the Wireline Competition Bureau and the Competitive Pricing Division was re-named the Pricing Policy Division.

³ MTC Tariff F.C.C. No. 1, Transmittal No. 133, filed July 17, 1997, effective August 1, 1997. Through this filing, MTC proposed integrated message toll service rates for service from the Commonwealth of the Northern Marianas Islands to domestic points in response to a Commission order requiring rate integration. See *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, Report and Order, 11 FCC Rcd 9564 (1996) (*Rate Integration Order*).

⁴ See *IT&E AFR* at 2-4.

⁵ See 47 U.S.C. §§ 201(b), 201(a), and 254(k).

below, we reject both arguments.

II. BACKGROUND

2. Section 254(g) of the Act says that “a provider of 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.”⁷ Congressional conferees made clear that Congress intended section 254(g) to incorporate the Commission’s existing rate integration policy.⁸ Since 1972 that policy required any carrier providing domestic interstate interexchange service between the 48 contiguous states and various offshore points to integrate its rates for offshore points with its rates for similar services on the mainland.⁹

3. In the *Rate Integration Order*, the Commission adopted a rate integration rule mirroring the language of section 254(g), making the existing rate integration policy applicable to all interstate interexchange services as defined in the Act and to all providers of those services.¹⁰ Because the Act defines “state” to include all U.S. territories and possessions, the Commission concluded that providers of interexchange services to offshore points must do so on an integrated basis with services provided to other states.¹¹

4. The Commission also concluded that a “provider” of interstate interexchange services under section 254(g) includes parent companies that, through affiliates, provide service in multiple states, and that such providers must integrate rates across their affiliates.¹² The Commission specifically ordered GTE, the parent company of MTC, to integrate rates across its affiliates, including MTC.¹³ The Commission adopted section 64.1801 to implement this directive.¹⁴ The Commission set August 1, 1997, as the deadline for compliance with the new rule, and directed carriers to submit preliminary and final rate integration plans by February 1, 1997, and June 1, 1997, respectively.¹⁵

5. GTE filed a petition for reconsideration of the *Rate Integration Order*, challenging the Commission’s authority to require rate integration across affiliates.¹⁶ GTE

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⁶ See 47 C.F.R. §§ 64.901-904.

⁷ 47 U.S.C. § 254(g).

⁸ S. Rep. No. 230, 104th Congress, 2d Sess. 1, 132 (1996) (Joint Explanatory Statement).

⁹ *Rate Integration Order*, 11 FCC Rcd at 9586, para. 47.

¹⁰ *Id.* at 9588, para. 52. See also 47 C.F.R. § 64.1801(b).

¹¹ *Rate Integration Order*, 11 FCC Rcd at 9596, para. 66.

¹² *Id.* at 9598, para. 69.

¹³ *Id.*

¹⁴ See 47 C.F.R. § 64.1801; see also *Rate Integration Order*, 11 FCC Rcd at 9596, 9605, paras. 66, 89.

¹⁵ *Rate Integration Order*, 11 FCC Rcd at 9597, para. 68.

¹⁶ Petition for Reconsideration and Clarification, filed by GTE Service Corporation, CC Docket No. 96-61 (continued...)

submitted a final rate integration plan on June 2, 1997 “under protest,” stating that the plan was in accordance with the *Rate Integration Order*, but that GTE was still awaiting the outcome of *GTE’s Rate Integration Petition for Reconsideration*.¹⁷

6. On July 17, 1997, MTC filed Transmittal No. 133 proposing revisions to Tariff F.C.C. No. 1. In its transmittal, MTC reiterated that the rates were in accordance with the *Rate Integration Order*, but that they were being filed “under protest” pending the outcome *GTE’s Rate Integration Petition for Reconsideration*.¹⁸ IT&E filed a petition to reject the rates in MTC’s tariff, arguing, as it does now, that (1) MTC failed to file support materials as required under section 61.49 of the Commission’s rules, and (2) MTC’s rates failed to incorporate access charges MTC was required to impute to itself.¹⁹

7. On July 30, 1997, the Commission denied *GTE’s Rate Integration Petition for Reconsideration*, reiterating that section 254(g) requires rate integration across affiliated companies.²⁰ The Commission concluded that this interpretation best comports with the Commission’s prior rate integration policy, which had always required rate integration across affiliates, and Congress’ intent to codify that policy.²¹ GTE had argued that integration across affiliates is inappropriate because its affiliates operate separately from each other and from the parent company.²² The Commission rejected GTE’s argument, explaining that this would allow parent holding companies to establish separate affiliates to offer services to a state on a non-integrated basis with services offered in other states, effectively thwarting the achievement of rate integration.²³

8. On July 31, 1997, the Division denied the *IT&E Petition to Reject*, concluding that IT&E’s petition did not present compelling arguments that the transmittal was so unlawful as to require rejection, and that the issues raised did not present significant questions of lawfulness requiring a tariff investigation.²⁴ In response to that decision, IT&E filed the instant

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(Sep. 16, 1996) (*GTE’s Rate Integration Petition for Reconsideration*).

¹⁷ Letter from F. Gordon Maxson, Director-Regulatory Affairs, GTE Service Corporation, to William F. Caton, Acting Secretary, FCC, CC Docket No. 96-61 (filed June 2, 1997).

¹⁸ Letter from Del E. Jenkins, General Manager, MTC, to William F. Caton, Acting Secretary, FCC, Transmittal No. 133 (filed July 17, 1997) (Transmittal No. 133 Letter).

¹⁹ In the Matter of Micronesian Telecommunications Corporation, Revision to Tariff No. 4, Transmittal No. 133, Petition to Reject, or Alternatively, to Suspend and Investigate, filed by IT&E (Jul. 24, 1997) (*IT&E Petition to Reject*).

²⁰ *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, 12 FCC Rcd 11812, 11819-21, paras. 14-17 (1997) (*Separate Affiliates Order*).

²¹ *Id.* at 11819, para. 14.

²² *See Separate Affiliates Order*, 12 FCC Rcd at 11814-15, para. 5.

²³ *Separate Affiliates Order*, 12 FCC Rcd at 11819-20, para. 15.

²⁴ *Protested Tariff Transmittals Actions Taken*, Report No. CCB/CPD-37, Public Notice, 12 FCC Rcd 11,613, DA 97-1647 (July 31, 1997).

application for review. MTC filed an opposition, and IT&E filed a reply.²⁵

9. On March 9, 1998, IT&E filed a separate formal complaint alleging, as it does in the instant application for review, that MTC violated sections 201(b), 201(a) and 254(k) of the Act by imposing excessive interstate access charges, failing to impute access charges to itself, and cross-subsidizing its interexchange operations with revenue collected from its local services.²⁶ The Commission denied IT&E's claims in an order released on August 10, 1998.²⁷

III. DISCUSSION

10. Support Materials. We deny IT&E's claim that MTC violated section 61.49 of the Commission's rules by failing to provide relevant support materials.²⁸ MTC's rates are those contained in the June 2, 1997 rate integration plan, filed pursuant to the *Rate Integration Order*.²⁹ As reflected in Transmittal No. 133, MTC's Actual Price Index of 32.98 percent is below the Price Cap Index (PCI) of 93.98 percent. Where, as here, the price cap tariff filing proposes rates resulting in an API value equal to or less than the applicable PCI value, and where the rates are within applicable bands under rule section 61.47, the filing must be accompanied by support establishing compliance with the applicable bands, and sufficient to calculate the necessary adjustment to the affected APIs and Service Band Indexes (SBI) pursuant to rule sections 61.46 and 61.47.³⁰ In this case, MTC is not required to show the effect on the SBI because there are no service bands in the fourth price cap basket, the basket containing the local exchange carrier's interexchange service. As reflected in the transmittal letter, MTC did recalculate the API, which was reduced significantly from 93.98 percent to 32.98 percent as a result of rate integration.³¹ Accordingly, we find that MTC did comply with section 61.49 of the Commission's rules.

11. Lawfulness of MTC's Transmittal No. 133. We reject IT&E's claim that MTC fails to impute access charges to itself, engages in predatory pricing, unreasonably discriminates against its competitors, and engages in improper cross-subsidization, in violation of sections 201(b), 202(a), and 254(k) of the Act, and the Commission's cost allocation rules. These same arguments were raised by IT&E in a formal complaint proceeding, and were rejected by the Commission in the *IT&E-MTC Formal Complaint Order*.³² As it did in the formal complaint

²⁵ See Opposition of MTC, CCB/CPD 97-45 (Sept. 22, 1997); and Reply of IT&E Overseas, Inc., CCB/CPD 97-45 (Sept. 30, 1997).

²⁶ See *IT&E Overseas, Inc. v. Micronesian Telecommunications Corporation*, File No. E-98-31, Memorandum Opinion and Order, 13 FCC Rcd 16058, 16058, para. 1 (1998) (*IT&E-MTC Formal Complaint Order*) (citing IT&E Overseas, Inc. Complaint, filed March 9, 1998).

²⁷ See *Formal Complaint Order*, 13 FCC Rcd at 16073-74, paras. 25-26.

²⁸ See 47 C.F.R. § 61.49.

²⁹ See *Rate Integration Order*, 11 FCC Rcd at 9605, para. 92.

³⁰ See 47 C.F.R. § 61.49(b).

³¹ Transmittal No. 133 Letter at 2.

³² *IT&E-MTC Formal Complaint Order*, 13 FCC Rcd at 16064-65, 16067-73, paras. 10, 16-24.

proceeding, IT&E bases its claims on the assertion that MTC's rates are below cost.³³ At the conclusion of that proceeding, the Commission found that IT&E failed to make the required evidentiary showing on any of its claims. Because these issues have already been decided by the Commission in the course of a formal complaint proceeding, and IT&E offers no new evidence, we need not revisit these issues here.

IV. CONCLUSION AND ORDERING CLAUSES

12. For the reasons stated above, we affirm the Bureau's order denying IT&E's Petition to Reject Micronesian Telecommunications Corporation Transmittal No. 133, and deny the application for review filed by IT&E.

13. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.115 of the Commission's rules, that the Application for Review filed by IT&E Overseas, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³³ *IT&E AFR* at 4.