

to all customers.⁵ GTOC also claims that the Commission's *DS-3 ICB Order* recognized that competitive conditions may justify some departure from a single general offering of DS-3 facilities.⁶ GTOC claims that under the criteria established in the *Private Line Guidelines Order*, GTOC can show that "competitive necessity" justifies the RFP tariff proposed in the instant transmittal.⁷ According to GTOC, governmental authorities often issue RFPs seeking competitive rates through the bidding process for the telecommunications services they want. GTOC notes that the Communications Act allows carriers to maintain different rates for the government than its general ratepayers and, therefore, contends that a RFP tariff available only to the government is not unreasonably discriminatory. GTOC states that in Hawaii, it has lost most government bids to its competitor, Oceanic Communications, Inc. (Oceanic), because its published rates are easily undercut by Oceanic. GTOC claims that denial to GTOC of a mechanism such as the RFP tariff, with which it can effectively compete, will undermine the government procurement process. Finally, GTOC contends that the public interest will be served by permitting more carriers to compete more effectively in the government procurement process because increased competition would foster lower prices and improved service quality.⁸

II. SUMMARY OF PLEADINGS

4. Petitions to reject or, in the alternative, to suspend and investigate Transmittal No. 988 were filed on September 11, 1995 by Teleport Communications Group, Inc. (Teleport), Association for Local Telecommunications Services (ALTS), and MCI Telecommunications Corporation (MCI). In summary, the petitioners argue that GTOC's offering: (1) is unlawfully vague and ambiguous in violation of Sections 61.2 and 61.54(j) of the Commission's Rules;⁹ (2) is unreasonably discriminatory in violation of section 202(a) of the Communications Act, which requires that local exchange carriers establish generally available rates for their standard

⁵ GTOC D&J at 3 (citing the Private Line Rate Structure and Volume Discount Practices, Report and Order, 97 FCC 2d 923 (1984) (*Private Line Guidelines Order*)).

⁶ GTOC D&J at 3 (citing Local Exchange Carriers' Individual Case Basis DS-3 Service Offerings, Memorandum Opinion and Order, 4 FCC Rcd 8634 (1989) (*DS-3 ICB Order*)).

⁷ GTOC D&J at 5.

⁸ *Id.* at 5-7.

⁹ MCI petition at 4. MCI states that the RFP tariff language fails to make clear the circumstances under which GTOC would make a contract-type tariff available. MCI also claims that the language gives GTOC unlimited authority to make customer-specific deals with the government and that this lack of specificity would grant GTOC the power to unlawfully discriminate among its government customers. *Id.* at 4.

services;¹⁰ (3) violates the *DS-3 ICB Order* which limits ICB pricing to use as a transitional mechanism for new services;¹¹ (4) violates Commission-imposed restrictions against contract-type tariff pricing flexibility;¹² and (5) does not satisfy the "competitive necessity" guidelines set forth in the *Private Line Guidelines Order*.¹³

5. In its reply, filed on September 21, 1995, GTOC states that (1) there is no unlawful discrimination since the tariff is available to all similarly situated customers;¹⁴ (2) the *DS3 ICB Order* does not preclude GTOC from filing its RFP tariff, but rather recognizes that LECs may make a competitive necessity showing that could justify different DS3 rate structures;¹⁵ (3) existing pricing flexibility does not preclude and is not inconsistent with granting additional pricing flexibility given the necessary competitive showing;¹⁶ and (4) the government procurement process assures that there is a competitive market and easily fulfills the required competitive necessity showing.¹⁷ GTOC does not respond to petitioners arguments that the tariff language is unlawfully vague and ambiguous under Sections 61.2 and 61.54(j) of the Commission's rules.

6. Southwestern Bell Telephone Company (SWB) also filed a reply stating that for reasons similar to those stated in SWB's filings concerning its Transmittal Nos. 2433 and 2449, GTOC should be permitted to make the tariff revisions filed in Transmittal No. 988.¹⁸

¹⁰ Teleport petition at 1-2; ALTS petition at 4-5.

¹¹ Teleport petition at 4; ALTS petition at 1-2.

¹² MCI petition at 2-3.

¹³ Teleport petition at 4-5; ALTS petition at 2; MCI petition at 5-5.

¹⁴ GTOC Reply at 8-9.

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 7. GTOC cites to Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992) ("additional pricing flexibility may be justified as competition develops").

¹⁷ GTOC Reply at 4-5. GTOC focuses on the use of the government procurement process as support for its claim that competition exists.

¹⁸ Southwestern Bell Reply at 1-2. SWB filed a RFP tariff with Transmittal Nos. 2433 and 2449, which the Commission, after investigation, found to be unlawful. See Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal Nos. 2433 and 2449, Order, DA 95-1445 (rel. June 26, 1995); Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Order Designating Issues for Investigation, DA 95-1867, CC Docket No. 95-140 (rel. August 25, 1995); Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Order Terminating Investigation, FCC 95-476, CC Docket No. 95-140 (rel. November 29, 1995) (*SWB RFP Order*).

III. DISCUSSION

7. Upon our review of this matter, we find that the tariff language proposed in Transmittal No. 988 is unclear and ambiguous in violation of Section 61.2 of the Commission's rules.¹⁹ Section 61.2 requires that tariff publications contain "clear and explicit explanatory statements regarding the rates and regulations" contained in a tariff.²⁰ In addition, we find that the tariff language violates Section 61.54(j) of the Commission's rules, which requires that "[t]he general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely."²¹ GTOC sets forth in its RFP tariff neither the types of access services it would make available nor the corresponding rates and charges. It is impossible to discern from the tariff language how GTOC would exercise its discretion in selecting the services to be provided under a RFP arrangement, or the circumstances under which it would provide or deny that service to a particular customer. Moreover, it is also impossible to discern from the tariff language how GTOC would exercise its discretion in setting the rates and charges for services to be provided to a particular customer, or the circumstances under which it would provide or deny another customer the same rates and charges. Finally, it is unclear from the face of the tariff what standards GTOC proposes to use to determine what constitutes a *bona fide* RFP or how it will exercise its discretion to make such a determination. Section 61.1 of the Commission's rules states that failure to comply with any provisions of Part 61 may be grounds for rejection of the non-complying provisions.²² Because it fails to state clearly the mechanism for providing service, the services that would be provided, and the rates and charges for such services, Transmittal No. 988 violates of Part 61 of the Commission's rules and we must reject it.

8. We note here that the RFP tariff filed with Transmittal No. 988 is similar to the tariff revisions recently filed by SWB under Transmittal No. 2297.²³ That transmittal, like the transmittal at

¹⁹ 47 C.F.R. § 61.2.

²⁰ 47 C.F.R. § 61.2.

²¹ 47 C.R.R. 61.54(j).

²² 47 C.F.R. § 61.1.

²³ See Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 73, Transmittal No. 2297, Order, 9 FCC Rcd 2683 (1994), *application for review pending* (SWB Tr. 2297 Order) (request by SWB to allow it to offer, in response to a *bona fide* request from a customer, a bid for a tariffed service or for a special service arrangement at prices that may differ from those in effect in the tariff); see also, Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 73, Transmittal No. 2312, Order, 9 FCC Rcd 1616 (1994), *application for review pending* (request by SWB to allow it to offer promotional arrangements that would provide discounts on recurring charges, or discounts or waivers of nonrecurring charges, resulting in charges below the stated rates); and Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 73, Transmittal No. 2316, Order, 9 FCC

issue here, purported to allow SWB to offer, in response to a *bona fide* request from a customer, a bid for a tariffed service at prices that differed from its general tariff prices. In addition, the tariff language filed with Transmittal 2297 did not specify the services to be offered, or the corresponding rates and charges. Because we found the tariff language proposed in Transmittal 2297 to be unclear and ambiguous in violation of Sections 61.2 and 61.54(j) of the Commission's rules, we rejected the transmittal. This is in contrast to our action with respect to the recent RFP tariff filed by SWB under Transmittal Nos. 2433 and 2449, which we suspended and investigated. Those transmittals, while not containing a complete list of services, rates and charges to which the tariff was limited, did include a partial list of services to be offered, and their corresponding rates and charges.²⁴

9. We also note that because we are rejecting GTOC's Transmittal No. 988 for failure to meet our basic tariffing requirements, we do not reach any other arguments presented by GTOC.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 61.1 of the Commission's rules, 47 C.F.R. Part 61, the tariff revisions filed by the GTE Telephone Operating Companies with Transmittal No. 988 ARE REJECTED.

11. IT IS FURTHER ORDERED that GTE Telephone Operating Companies SHALL FILE tariff revisions removing the unlawful material and reinstating lawful material no later than 5 business days from the release of this Order to become effective on not less than one day's notice.

12. IT IS FURTHER ORDERED that the petitions to reject or, in the alternative, suspend and investigate GTE Telephone Operating Companies Transmittal No. 988, filed by Teleport Communications Group, Inc., Association for Local Telecommunications Services, and MCI Telecommunications Corporation, ARE GRANTED to the extent indicated herein.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney, Chief, Common Carrier Bureau

Rcd 1883 (1994) (request by SWB to allow it to institute rate ranges, expressed in terms of maximum and minimum rates, for its MegaLink Data special access services). In each of these Orders, the Bureau rejected the transmittals on the ground that they were unclear and ambiguous in violation of Sections 61.2 and 61.54(j) of the Commission's rules.

²⁴ As noted *supra*, the Commission, after investigation, found SWB's RFP tariff to be unlawful. The Commission concluded that SWB's RFP tariff violated various Commission rules, including Sections 61.2 and 61.54(j), and was unreasonably discriminatory in violation of Section 202(a) of the Communications Act. *SWB RFP Order*, FCC 95-476.