

In the Matter of)
)
National Exchange Carrier Association, Inc.)
)
Access Tariff Revisions, Tariff F.C.C.)
No. 5, Transmittal No. 986)

General Communication, Inc. (“GCI”) requests that, pursuant to Section 201(b) and 204(a)(1) of the Communications Act¹ and Section 1.773 of the Commission’s rules,² the Commission suspend and investigate Transmittal No. 986 (the “Transmittal”), filed by the National Exchange Carrier Association, Inc. (“NECA”) on June 3, 2003, because the Transmittal’s proposed methodology for determining customer percentage interstate usage (“PIU”) factors is unjust and unreasonable. Although GCI does not dispute that PIUs have been difficult for all carriers, NECA’s approach is no solution. It will cause predictable and unreasonable jurisdictional misclassification, it is impermissibly vague as to procedures for LECs that lack the ability to analyze traffic based on automatic number identification (“ANI”), and it contains one-sided audit and dispute resolution provisions that should be made bilateral. GCI is not opposed to efforts to better and more accurately classify traffic by jurisdiction, but the Transmittal, as written, is likely to make things worse rather than better.

² 47 C.F.R. § 1.773.

I. TRANSMITTAL NO. 986 MANDATES PROCEDURES THAT WILL AUTOMATICALLY AND UNJUSTLY MIS-CLASSIFY TRAFFIC.

NECA Transmittal No. 986 is an example of a facially appealing solution that nevertheless fails to confront and address the complexities of a real-world modern network of networks. NECA proposes to *require* NECA carriers and their customers to use ANI to determine the jurisdiction of all calls for which ANI is available, and to use PIU estimates only for the traffic with no ANI.³ Unfortunately, ANI is not always a reliable indicator of telephone traffic's jurisdictional nature, which means that Transmittal No. 986 would deliberately and predictably mis-classify substantial amounts of interstate *and* intrastate traffic.

Transmittal No. 986 assumes that all calls are made from the geographic location associated with a particular ANI. This is a wireline-centric assumption that bears no relationship to the reality of a world in which commercial mobile radio service ("CMRS") numbers roam nationwide on digital one-rate plans. By dictating that the jurisdictional classification of traffic will be determined by ANI, Transmittal No. 986 would classify all traffic from Alaska CMRS subscribers roaming outside Alaska to called party numbers within Alaska as intrastate, notwithstanding the fact that these are interstate calls. Similarly, Transmittal No. 986 would classify the calls from a California-based CMRS subscriber to an Anchorage called party number as interstate, even if the California-based CMRS subscriber were calling from a car at the Anchorage airport. The Transmittal makes no allowance for such travel, and fails to provide any basis on which to conclude that such automatic misclassifications are at all reasonable.

Second, as currently drafted, proposed Section 2.3.11(C)(1)(a) could lead to a jurisdictional misclassification of Feature Group A and B traffic. That section states that the projected interstate percentage for Feature Group A or Feature Group B traffic is to be

³ See Transmittal, Description & Justification at 2.

“developed as though every call that enters a customer network at a point within the same state as that in which the called station . . . is situated is an intrastate communication.”⁴ However, regional interexchange carriers such as GCI can have interstate traffic enter their networks in the same state as the called station, if, for example, GCI’s point of traffic exchange with a lower-48 long distance carrier is in Alaska. NECA should be required to clarify this definition to state that the interstate percentage will be developed “as though every call that enters a customer network by means of a Feature Group A or Feature Group B arrangement at a point within the same state as that in which the called station . . . is situated is an intrastate communication.” This clarification should prevent a NECA carrier from manipulating this definition to generate unreasonable and unwarranted PIUs for Feature Group A or B traffic.

II. TRANSMITTAL NO. 986 IS IMPERMISSIBLY VAGUE AS TO THE PROCEDURES THAT APPLY WHEN LECS CANNOT BILL SOME ACCESS TRAFFIC BY ANI AND SOME BY PIU, AND IS UNWORKABLE.

Because NECA’s proposal is a significant departure from the existing PIU methodology—which applies a PIU to all traffic, not just traffic for which there is insufficient call detail to attempt to analyze the jurisdictional nature of the traffic based on ANI—GCI does not believe that every NECA member’s carrier access billing system (“CABS”) is equipped to apply PIU only to the traffic for which ANI is unknown, as the Transmittal’s language would require. The Transmittal does not provide any default procedures that would apply in such a case; therefore, it is impermissibly vague. To remedy this situation, a PIU to be applied to all traffic should be permitted where the LEC is incapable of billing in the manner proposed under Transmittal No. 986.

⁴ Transmittal, Original Page 2-18.2.

Transmittal No. 986 is also deficient because it places unworkable burdens on interexchange carriers (IXCs) to undertake to set PIUs only for those calls for which ANI is not passed to the terminating LEC, rather than for all traffic. This is not a minor departure from existing practice. Today, when GCI performs a study to determine its PIU, it analyzes the jurisdictional nature of traffic at all points that such traffic enters GCI's network—whether that traffic is entering at GCI's point of interconnection with lower-48 carriers (often in Seattle, Washington), or over access lines within Alaska. Analyzing traffic at the point it enters an IXC's network is the most reliable point for determining jurisdiction based on the destination NXX. This, for example, allows GCI to distinguish intra-Alaska calls from CMRS subscribers from interstate calls involving CMRS subscribers.

NECA's proposal would, however, require PIUs to be determined excluding traffic for which ANI was passed at termination. That is a much more difficult determination because the IXC must attempt to study the jurisdictional nature of traffic as it exits the IXC's network, when information is likely to be more limited. For example, when GCI is not passing ANI, it is most likely that the traffic is originating on a non-GCI network in the lower 48. Such traffic is overwhelmingly interstate in nature, but at the point of exit the traffic no longer carries any information with which to substantiate the origination point of the traffic, and the traffic's interstate source is not as apparent as it would be if such traffic was analyzed jurisdictionally at the point of entry (e.g. GCI's interconnection point with a lower-48 carrier). On the other hand, because GCI's network is relatively small and simple, GCI has and passes originating ANI for almost every *intrastate* call.

These difficulties are compounded by the fact that the IXC often will not know with any certainty the calls for which the LEC is not recording an ANI. In GCI's experience with Alaska

Communications Systems (“ACS”) alone, there have been instances where ACS did not record the ANIs that GCI was sending.⁵ Although NECA’s proposed tariff language would appear to *require* a LEC to use ANI when that information is provided (*i.e.*, to require such information to be recorded when provided by an IXC), GCI cannot adequately survey the jurisdictional nature only for traffic for which ANI is not recorded when it does not control the LEC’s ANI recording procedures.

The only feasible approach for the IXC remains to survey traffic as it enters the IXC’s network, irrespective of whether ANI is passed. PIUs determined according to this method must, however, apply to all traffic, or, in GCI’s case, traffic will be significantly overallocated to intrastate because of the overwhelming interstate nature of the traffic for which there is no ANI.

III. THE TRANSMITTAL’S AUDIT AND REVISION PROVISIONS ARE UNREASONABLY RIGID AND ONE-SIDED.

GCI agrees with NECA that audit rights have a place in the PIU mechanism, but those rights should be reciprocal among LECs and IXCs, and not bestowed unilaterally on the LECs, as NECA proposes. It is equally plausible that GCI would need to audit a NECA member’s PIU records as the opposite; if, for example, GCI is sending ANIs and the LEC is not recording them, then GCI has a right to learn of the error and to correct it. Moreover, when an audit reveals an error mid-quarter, the tariff should provide for the immediate filing of corrected PIU factors, without waiting for the following quarter to begin. Similarly, if an IXC adds or loses a carrier customer and knows that its PIUs will change significantly as a result, the IXC should be able to adjust its PIUs mid-quarter. NECA should be required to alter these lopsided tariff terms before they are allowed to take effect.

⁵ Other times, glitches in the configuration of local PBX groups meant that GCI thought it was sending ANIs when in fact GCI was not.

IV. CONCLUSION.

NECA Transmittal No. 986 introduces practices that are unjust and unreasonable. The Commission should not allow it to take effect, but should instead suspend it pending investigation.

Respectfully submitted,

General Communication, Inc.

Tina M. Pidgeon
GENERAL COMMUNICATION, INC.
1130 17th Street, N.W.
Suite 410
Washington, DC 20036

By: _____/s/
John T. Nakahata
Michael G. Grable
HARRIS, WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street, N.W.
Suite 1200
Washington, DC 20036
(202) 730-1345

June 9, 2003