

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
c/o Antitrust Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 724-6693

Plaintiff,

v.

GTE CORPORATION,

Defendant.

Civil Action No. 83-1298

Filed: 5/4/83

ANTITRUST
EQUITABLE RELIEF SOUGHT

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Sherman Act, as amended (15 U.S.C. § 4), to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 2 of the Sherman Act (15 U.S.C. § 2), and under Section 15 of the Clayton Act (15 U.S.C. § 25), to prevent and restrain the violation by the defendant, as hereinafter alleged, of Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

2. Defendant GTE Corporation transacts business and is found within the District of Columbia.

II

THE DEFENDANT

3. GTE Corporation (hereinafter referred to as "GTE") is made the defendant herein. GTE is a corporation organized and existing under the laws of the State of New York, with its principal place of business in Stamford, Connecticut. GTE, through various subsidiaries, is engaged in providing telecommunications services and in the manufacture of telecommunications equipment.

III

DEFINITIONS

4. As used herein:

(a) "AT&T" means American Telephone and Telegraph Company and all its wholly owned subsidiaries other than any Bell Operating Company.

(b) "Bell Operating Companies" (hereinafter referred to as "BOCs") means the following corporations:

Bell Telephone Company of Nevada
Illinois Bell Telephone Company
Indiana Bell Telephone Company, Inc.
Michigan Bell Telephone Company
New England Telephone and Telegraph Company
New Jersey Bell Telephone Company
New York Telephone Company
Northwestern Bell Telephone Company
Pacific Northwest Bell Telephone Company
South Central Bell Telephone Company
Southern Bell Telephone and Telegraph Company
Southwestern Bell Telephone Company

The Bell Telephone Company of Pennsylvania
The Chesapeake and Potomac Telephone Company
The Chesapeake and Potomac Telephone Company
of Maryland
The Chesapeake and Potomac Telephone Company
of Virginia
The Chesapeake and Potomac Telephone Company
of West Virginia
The Diamond State Telephone Company
The Mountain States Telephone and Telegraph
Company
The Ohio Bell Telephone Company
The Pacific Telephone and Telegraph Company
Wisconsin Telephone Company

(c) "Carrier" means any person deemed a carrier under the Communications Act of 1934 or amendments thereto, or, with respect to intrastate telecommunications, under the laws of any state.

(d) "Exchange access" means the provision of telecommunications services or facilities for the purpose of originating or terminating interexchange telecommunications.

(e) "Exchange area" or "exchange" means the franchised serving area of a local operating company, within which such local operating company provides exchange telecommunications services as authorized by applicable state or federal regulations.

(f) "Exchange telecommunications" means telecommunications between points located within an exchange area.

(g) "GTE operating companies" (hereinafter referred to as "GTOCs") means the following corporations:

General Telephone Company of Alaska
General Telephone Company of California
General Telephone Company of Florida

General Telephone Company of Illinois
General Telephone Company of Indiana, Inc.
General Telephone Company of Kentucky
General Telephone Company of Michigan
General Telephone Company of the Midwest
General Telephone Company of the Northwest, Inc.
General Telephone Company of Ohio
General Telephone Company of Pennsylvania
General Telephone Company of the Southeast
General Telephone Company of the Southwest
General Telephone Company of Wisconsin
Hawaiian Telephone Company

(h) "Independent operating company" or "independent" means any carrier, other than a BOC, providing exchange telecommunications and exchange access.

(i) "Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or other symbols.

(j) "Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information which may be conveyed via telecommunications, except that such use does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

(k) "Interexchange carrier" means any carrier providing interexchange telecommunications services.

(l) "Interexchange telecommunications" means telecommunications between a point or points located in one exchange area and either a point or points located in one or

more other exchange areas or a point or points outside any exchange area.

(m) "Local operating company" or "operating company" means a company which provides exchange telecommunications services as authorized by applicable federal and state regulations.

(n) "SP" means Southern Pacific Company and all its subsidiaries, including Southern Pacific Communications Company (hereinafter referred to as "SPCC") and Southern Pacific Satellite Company (hereinafter referred to as "SPSC").

(o) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received, by means of electromagnetic transmission, with or without benefit of any closed transmission medium, including all instrumentalities, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) essential to such transmission.

(p) "Telecommunications service" means the offering for hire of transmission facilities or of telecommunications by means of such facilities.

(q) "Transmission facilities" means equipment (including without limitation cable, microwave, satellite, and

fiber optics) that transmit information by electromagnetic means or which directly support such transmission.

IV

TRADE AND COMMERCE

5. Telephone communication is the most common form of telecommunications service. Telephone communications permit voice and data telecommunications between customers of one or more local operating companies, and include exchange telecommunications and long distance or "message telecommunications" services for interexchange telecommunications.

6. Exchange telecommunications services are provided by connecting all customers in the same exchange area through one or more central or end offices. Typically, wire pairs connect each customer to the central or end office switching facilities of the local operating company providing services in that exchange.

7. Interexchange telecommunications services are provided by connecting central or end offices in different local exchange areas. The connection of these local exchange areas, through trunk lines, satellite facilities, and toll switching facilities, permits long distance telecommunications throughout the United States. Central or end office switching equipment in each exchange area provides each customer of the local operating company with access to the interexchange transmission facilities of one or more interconnected interexchange carriers.

8. The principal interexchange telecommunications network in the United States is a network consisting of a joint venture of the Long Lines Department of AT&T and the various local operating companies, including the BOCs, the GTOCs, and approximately 1500 other independents, commonly known in the telecommunications industry as "the partnership." Local operating companies typically contract with their customers for exchange and interexchange services, and by connecting the customers' telephone equipment with end office facilities, provide the customer with automatic access to the partnership network. Customers typically are charged installation fees and a monthly recurring charge by the local operating company for exchange and partnership services, and are charged separately for each long distance connection. Revenues from such "message telecommunications" services and other interexchange voice telecommunications services are allocated among the firms participating in the partnership through a procedure known variously as "settlements" and "division of revenues." This division of revenues provides a common rate of return to all members of the partnership on the aggregate, undepreciated investment of each partnership member in interexchange transmission and switching facilities, and is not based upon the volume of telecommunications traffic transmitted by, nor upon the value of telecommunications or exchange access services provided by, each partnership member. During calendar year 1981, GTE received approxi-

mately \$3.9 billion as a result of this allocation of interexchange revenues by partnership members, accounting for 57% of GTE's 1981 revenues from telephone operations.

9. GTE, through its ownership of the GTOCs, is the largest of the independent operating companies. The GTOCs provide telecommunications services in 31 states. As of December 31, 1982, GTE, through the GTOCs, provided exchange and partnership interexchange services to approximately 13 million telephones, which account for eight percent of the telephones in the United States. The GTOCs provide interexchange telecommunications services to their customers over transmission facilities (toll trunks, toll switches, coaxial cables, and other interexchange transmission facilities) which they own and which are interconnected with the partnership network.

10. GTE also provides interexchange telecommunications services through its wholly owned subsidiary GTE Satellite Corporation (hereinafter referred to as "GSAT"). In 1972, GTE withdrew its application to the Federal Communications Commission for authority to launch and operate satellites in competition with AT&T upon consummating an agreement with AT&T under which GSAT operates three of the seven existing earth stations used for providing partnership interexchange services in the United States. Revenues from these services are divided between GTE and AT&T pursuant to the partnership division of revenues agreements and understandings. GTE has not operated GSAT's satellite earth stations except in partnership with AT&T.

11. Since 1971, firms other than GTE and the other members of the partnership have been authorized by the Federal Communications Commission to provide interexchange telecommunications services. Commonly known as "Other Common Carriers" (OCCs), these firms operate their own interexchange transmission facilities which are interconnected with the facilities of local operating companies. In order to originate and terminate interexchange telecommunications services for their customers, OCCs must gain access to the switching and transmission facilities of the local operating companies providing exchange telecommunications in the areas in which their customers are located. Local operating companies have the power to control the price of, and exclude competition for, the provision of exchange access to interexchange carriers. Exchange access is obtained by OCCs through interconnections procured under tariff or pursuant to contract with each local operating company in each area served by the OCC. Under these interconnection arrangements, the OCC pays to the local operating company both an installation and monthly recurring charge for each interconnection leased. An OCC independently solicits and separately bills its customers for its services.

12. SPCC operates as an OCC, and is the second largest interexchange carrier providing voice and data interexchange telecommunications services, other than the partnership, in the United States. Since 1973, SPCC has provided services in com-

petition with services offered by the members of the partnership. Through its microwave and satellite facilities, SPCC currently serves over 260 metropolitan areas.

13. Since at least 1973, the members of the partnership have actively prevented the OCCs from fully and equally interconnecting their interexchange networks with partnership facilities. The partnership has resisted the demands of OCCs for non-discriminatory access to the essential local switching and transmission facilities controlled by partnership members, which has prevented and restrained OCCs from offering services in competition with interexchange telecommunications services offered by members of the partnership.

14. OCCs currently obtain interconnections from the BOCs pursuant to tariff. Commonly known as the "ENFIA" tariffs, these tariffs are the result of negotiations between the OCCs, AT&T, the BOCs, and GTE. Interconnections obtained by OCCs under the ENFIA tariffs are of a quality substantially inferior to the interconnections provided by local operating companies to the partnership, and do not include exchange access services provided by the operating companies to the partnership such as automatic calling number identification, answer supervision, single-digit access, access from rotary-dial telephones, testing and maintenance of facilities, and the provision of information necessary to bill customers. In order to provide interexchange services comparable to those offered by the members of the partnership, OCCs must utilize quality-enhancing equipment and must independently provide exchange access ser-

vices routinely provided to the members of the partnership.

15. GTE has never offered exchange access to OCCs equivalent to that provided by the GTOCs to the partnership. GTF is the only independent operating company that participated in the ENFIA negotiations, and has offered exchange access to OCCs in the same manner as under the ENFIA tariffs filed by AT&T and the BOCs with the Federal Communications Commission. Although for several years GTE has had the technological capability in a number of GTOC exchange areas to provide exchange access to OCCs equivalent to that provided to the partnership, GTE has never offered exchange access to OCCs superior in any way to that available under the ENFIA tariffs.

16. The exchange telephone communications services provided by local operating companies are regulated by the states. As a result of this regulation, the GTOCs and other operating companies are constrained in the rate of return on investment they can earn from the provision of monopoly exchange telecommunications services. GTE and the GTOCs therefore have an incentive to seek a supra-competitive return on investment in assets used to provide services that either are not regulated or are not regulated, by the same regulatory body. By misallocating costs among various classes of regulated and unregulated services, and, where possible, assigning those costs properly attributable to unregulated services to the ratebase of the company providing the regulated service, two results are achieved. First, the captive regulated rate-

payer is forced to underwrite the cost of services not provided to him. Second, the unregulated service is offered at a price held artificially below its true cost.

17. Vertical integration by local operating companies therefore has two identifiable competitive effects. Since the firm with monopoly control over exchange access is simultaneously competing with non-integrated firms for interexchange telecommunications services, non-integrated firms are forced to depend on the local operating company acting against its own economic interest to provide equal exchange access to competitors. Second, since the operating company is providing unregulated interexchange services in addition to regulated exchange telephone services, vertical integration gives it the incentive and ability, through cross-subsidization, to eliminate or substantially impair competition from non-integrated competitors.

18. GTE has begun to offer information services, and will continue to offer information services in the future. The provision of such information services in connection with regulated exchange telecommunications services offered by the GTOCs, or over transmission facilities used by the GTOCs for such services, provides GTE with the incentive and ability, through cross-subsidization and use of monopoly control over exchange access, to eliminate or substantially impair competition from non-integrated competitors.

19. GTE, directly and through its subsidiaries, regularly transmits voice, data, and other telecommunications services

across state lines to customers located throughout the United States, and has been and is engaged in interstate commerce.

V

VIOLATIONS ALLEGED

20. Defendant GTE has entered into an agreement with SP which, if consummated, will result in the acquisition by GTE of various telecommunications enterprises of SP, including SPCC and SPSC. Consummation of the acquisition will occur absent order of this Court upon approval by the Federal Communications Commission of GTE's application for transfer of licenses pursuant to Sections 214 and 310 of the Communications Act of 1934, as amended (47 U.S.C. §§ 214, 310).

21. The effect of the aforesaid acquisition may be substantially to lessen competition in the aforesaid trade and commerce, in violation of Section 7 of the Clayton Act, in the following ways, among others:

(a) GTE will have the incentive and ability to use the GTOCs' monopoly control over exchange access to foreclose or impair competition for the provision of interexchange telecommunications services to customers in GTOC exchange areas;

(b) GTE will have the incentive and ability to evade regulatory constraints on the rate of return on investment earned by the GTOCs as franchised monopolists, resulting in the foreclosure or impairment of competition for the provision of interexchange telecommunications services to customers in GTOC exchange areas;

(c) Existing and potential competition for the provision of interexchange telecommunications services to customers in GTOC exchange areas may be substantially lessened;

(d) Competition generally in interexchange telecommunications in the aforesaid and other markets may be substantially lessened; and

(e) SPCC may be eliminated or restrained as a substantial competitive factor in the provision of interexchange telecommunications services as a result of agreements or understandings between GTE and AT&T.

22. Defendant GTE's provision of information services creates a substantial probability of monopolization of the aforesaid trade and commerce in the provision of information services, in violation of Section 2 of the Sherman Act.

VI

PRAYER

WHEREFORE, plaintiff prays:

1. That the proposed acquisition of the telecommunications enterprises of SP by defendant GTE be adjudged to be in violation of Section 7 of the Clayton Act;

2. That defendant GTE be preliminarily and permanently enjoined from consummating the aforesaid acquisition or any similar plan or agreement the effect of which would be to allow the acquisition, merger, consolidation, operation, or in any other way permit combination of the ownership or operation of the telecommunications enterprises of SP and GTE;

3. That defendant GTE be permanently enjoined from providing information services;

4. That the plaintiff have such other and further relief as the Court may deem just and proper; and

5. That the plaintiff recover the costs of this action.


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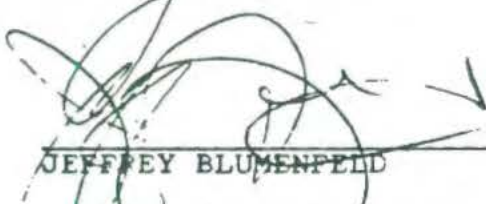

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