

Not released 7/1/80

STATEMENT ON PETITIONS FOR RECONSIDERATION OF FINAL DECISION AND ORDER, DOCKET NO. 21402, 70 FCC 2d 593 (1978), an Inquiry into whether Inward and Outward Wide Area Telecommunications Services (WATS) and Message Telecommunications Service (MTS) are "like communication service" within the means of Section 202(2) of the Communications Act.

After careful review of our action in Docket 21402, I have come to the conclusion that the Commission--myself included--erred in determining that MTS and WATS are "like service(s)" under Section 202(a). Our decision was based upon "customer perception" of the two services and derived from a record which clearly indicated that the large users of WATS did not perceive them as like services. In short, those customers who would be most likely to perceive the services as unlike as evidenced by their own discrimination in favor of one or the other were virtually unanimous in stating a perceived difference. MTS customers who use only MTS of course, did not respond with their perceptions one way or another.

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In the draft item proposing to deny reconsideration, the staff notes: "WATS and MTS employ the same public switched network and offer the same telephone calling capability from the standpoint of the customer. Although petitioners continue to view these distinctions as dispositive of our Inquiry, it is plainly evident that customer selection of WATS or MTS is entirely a matter of price." (see para. 5, page 3, draft decision)

That argument is valid only to the extent that it is amenable to general applicability. In testing it, it might be useful--by way of illustration--to apply it to what I recently discovered on page 8 of C&P Telephone's Northern Virginia director If--according to the phone book--I decide to subscribe to "Flat Rate Service" I can make an unlimited number of local calls for one flat rate, \$11.42. If, on the other hand, I don't require unlimited service but plan to make fifty calls or less per month, I can receive the same service for \$8.40. Or, if I make few

outgoing calls, I can further reduce my cost of service to \$6.24 plus 8.5¢ per call.

Now, using the staff's rationale and substituting the terms "Flat Rate Service," "Message Rate Service," and "Economy Service" for the terms "MTS" and "WATS", it appears clear that C & P is being discriminatory in providing these three services at different prices. Flat Rate Service, Message Rate Service and Economy Service "...employ the same public switched network and offer the same telephone calling capability from the standpoint of the customer...it is plainly evident that customer selection of Flat Rate Service, Message Rate Service or Economy Service is entirely a matter of price."

Of course, it clearly is not simply "...a matter of price." It is a matter of selecting a service which meets one's needs at the lowest price. Thus, in the case of WATS versus MTS, a user who perceives a need to make a large number of outgoing calls to certain areas of the country would be likely to choose WATS. On the other hand, a user who makes occasional calls to widely separated points would be more inclined to use MTS.

The staff concedes that MTS and WATS "...are not identical in technical, service features, and tariff aspects...." (Para. 3, page 3, cover memo) It is essentially because the customer perceives a likeness--according to the staff--that the Commission must find that they are "like service(s)" under Section 202(a). The staff appears to discount the fact that the customers who use WATS most perceive a difference.

In speaking of customer perceptions, the Staff concludes that "...these services clearly are viewed as replacements for each other, with the determining factor being the cost savings available at high usage levels rather than any significant operational characteristics." Using that same logic, we could presumably conclude that WATS and Private Lines are also "like" services since a user could decide to purchase private line connections with all customers and suppliers albeit at a higher cost. Insofar as the customer's perception is concerned, viewed generically, the "functional equivalent" of WATS service is being able to pick up the phone on one end and ring a phone on the other and being billed a flat rate for the service. That describes private line service.

Thus, I believe that the "customer perception" test--at least in the context of this docket--is fatally flawed. In looking to the customer to define a service, it is necessary to look to the sophistication of the customer. My guess is that most users of telephone service view that service as being represented by the terminal device alone, in other words, the telephone. There is little concern or interest in what happens in the network to bring about a completed call. As a matter of fact, the carriers expend a good deal of effort to provide service that provides no evidence to the customer of the complex switching, amplification, alternate routing, etc., that is commonplace. Small wonder, then, that the staff has discovered that only the most sophisticated users actually perceive a real difference between MTS and WATS. The wonder comes in staff's use of unsophisticated customer perceptions as a basis for making policy in this highly complex matter.