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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
GTE Telephone Operating Companies	)	CC Docket No. 92-141
Tariff F.C.C. No. 1	)	Transmittal No. 711

WRITTEN EX PARTE PRESENTATION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES: THE RECORD IN CC DOCKET NO. 92-141 COMPELS REJECTION OF GTE TRANSMITTAL NO. 711

The Association for Local Telecommunications Services ("ALTS"), by its undersigned counsel and pursuant to § 1.1206(a)(1) of the Commission's Rules, hereby respectfully submits an original and two copies of its written ex parte filing in the above-captioned proceeding.

On December 8, 1992, counsel for the Association for Local Telecommunications Services ("ALTS") conducted a series of oral ex parte presentations with various members of the Commission staff concerning the pending investigation of GTE's proposed below-band rates for switched transport services.[1/] In those presentations, ALTS explained that the record of the Commission's investigation in CC Docket No. 92-141 contains incontrovertible evidence that GTE has failed to demonstrate that its proposed rates recover average variable cost ("AVC"), and compels rejection of the GTE filing.

[1/] See Association for Local Telecommunications Services, "Notice of Oral Ex Parte Presentation; CC Docket No. 92-141," filed Dec. 8, 1992.

This written ex parte filing reiterates those arguments, and provides specific cites to the record in CC Docket No. 92-141 that demonstrate GTE's failure to pass the Commission's AVC test.

1. THE RATE REDUCTIONS OR UP TO 80% PROPOSED IN TRANSMITTAL NO. 711 WOULD ESTABLISH BY FAR THE LOWEST SWITCHED TRANSPORT RATES OF ANY LEC, AND ARE DESIGNED TO UNDERPRICE COMPETITION

In the ALTS Petition to Reject or Suspend GTE Transmittal No. 711, ALTS demonstrated that GTE's proposed rates for Premium Switched Transport Termination were set at levels 73% to 89% below the rates currently charged by the five Bell Operating Companies ("BOCs") that tariffed similar rate elements.[2/]

To provide a more complete comparison between GTE's proposed rates and the rates currently in effect for all seven BOCs, ALTS below computes the entire per-minute switched transport charge for a one-mile and a five-mile circuit, using the rates proposed by GTE and the rates currently in effect for the BOCs. These computed charges include both transport termination and transport facility rate elements.[3/]

[2/] ALTS Petition to Reject or Suspend Transmittal No. 711, filed Apr. 29, 1992, at page 7.

[3/] GTE's tariff does not clearly state whether one or two transport termination charges are charged per switched circuit. In computing these rates, ALTS used the assumption most favorable to GTE -- that GTE imposes two transport termination charges per circuit, and that the other BOCs only charge a single transport termination charge per circuit. Using this assumption, the GTE rates are set at levels 36% - 76% below the BOCs' rates. If this (continued...)

	1 MILE	% DIFFERENCE GTE V. BOC	5 MILE	% DIFFERENCE GTE V.BOC
GTE Cal.	.0038564		.004082	
Amer.	.009895	-60%	.010535	-73%
B. At.	.0089	-56%	.0089	-54%
B. So.	.00644	-40%	.00644	-36%
NYNEX	.016496	-76%	.016912	-75%
Pacif.	.007184	-46%	.007496	-45%
SWB	.0064	-39%	.007785	-47%
USW	.012247	-68%	.01235	-67%

As the above chart makes clear, GTE's proposed switched transport rates would establish charges that are set at levels 36% - 76% below the rates charged by the BOCs. These dramatic reductions indicate that the GTE rates are set at below-cost levels and are intended to underprice GTE's competition.

2. GTE ADMITS THAT IT HAS EXCLUDED SALES AND MARKETING COSTS FROM ITS RATE COMPUTATIONS

In its Opposition to Direct Case, ALTS argued that GTE failed to include the costs associated with sales and marketing in computing its switched transport costs.[4] In its Reply, GTE admits that it excluded such data, but argued that these

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[3] (...continued)
assumption is incorrect, and GTE charges only one transport termination charge per circuit, the disparity between the GTE and BOC rates would be even greater.

[4] ALTS Opposition to Direct Case, filed Aug. 17, 1992, at 10-11.

represent "fixed" costs, which need not be included in its rate computation.[5]

In a subsequent ex parte filing,[6] ALTS listed the following court precedent and prior Commission decisions that have treated sales and marketing as variable costs:

> Illinois Bell Telephone Co. v. FCC, 883 F.2d 104, 110 (D.C. Cir., 1989) (discussing the incremental cost of CPE and Centrex marketing in a sales package that includes regulated and unregulated services); Morgan v. Ponder, 892 F.2d 1355, 1362 & n.17 (8th Cir., 1989) (citing 3 P. Areeda & D. Turner, Antitrust Law ¶ 719); Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, 1323 (1987) (citing comments of Ameritech identifying marketing costs as incremental); Procedures for Implementing and Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry), 95 F.C.C.2d 1276, 1305 (1983) (citing comments of AT&T identifying marketing costs as incremental).

As variable costs, sales and marketing costs must be included in GTE's AVC showing. Because GTE admits that these costs are excluded, the Commission must find that GTE has failed to meet the AVC test. Failure to so find would contravene established court precedent and would be inconsistent with prior Commission decisions, and so would constitute reversible error.

3. GTE ADMITS THAT IT HAS EXCLUDED REPEATER COSTS FROM ITS RATE COMPUTATIONS

In its Opposition, ALTS showed that GTE excluded relevant repeater costs from the computation of its Transport

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[5] Reply of GTE, filed Aug. 24, 1992, at 10.

[6] ALTS Ex Parte Filing, filed Sept. 30, 1992, at 3.

Facility rates.[7] In reply, GTE argued that, on average, circuits with lengths of haul requiring repeaters only existed in the GTE Southwest service area, and so repeater costs were excluded from the computation of its rates in other areas.[8]

This argument simply fails to refute the ALTS opposition. First, GTE provided no data to support its allegation of average circuit lengths in its different service areas. More importantly, GTE fails to demonstrate that no repeaters were used in the Florida and California service areas. Indeed, it did not even state that repeaters were not used in those areas. The GTE response cannot be accepted as a credible showing that relevant repeater costs were not excluded from its rate computations. As such, the filing must be rejected.

4. GTE ADMITS THAT IT HAS NOT PROVIDED COST DATA FOR A NUMBER OF COST ELEMENTS

In its Opposition to Direct Case, ALTS identified a number of relevant costs that were excluded from the GTE's cost showing. In its reply, GTE responded that: "Many of the items ALTS claims were excluded from the GTE study were, in fact, included, but were not necessarily shown at this lowest detail."[9] In order to support this argument, GTE submitted exhibits that did not list actual costs, but "illustrative"

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[7] ALTS Opposition at 9.

[8] GTE Reply at 8-9.

[9] Id.

costs. GTE defended this action with this statement: "Due to the confidentiality of the filed data, the numbers in the exhibits do not tie directly to any numbers on the AVC study, but are provided for illustrative purposes only."[10]

In so stating, GTE clearly admits that its Direct Case does not provide the detailed cost data required by the Order initiating the investigation of its rates in CC Docket No. 92-141. This admission flatly contradicts the Commission's direct order, and compels rejection of the filing.

Moreover, GTE's assertion that it has withheld data because it is confidential was made earlier in the proceeding and was rejected by the Commission. GTE's Direct Case initially provided only grossly aggregated data. At the Commission's insistence, GTE made disaggregated data available to ALTS upon the execution of a nondisclosure agreement. GTE's claim for nondisclosure of allegedly confidential data in its Reply is merely an ex post facto attempt to explain away its failure to provide complete cost data in its Direct Case. For the Commission to accept GTE's proprietary exclusion argument now, after rejecting an identical argument made earlier in this proceeding, would constitute reversible error.

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[10] Id. at 6-7 (emphasis added).

5. GTE HAS EXCLUDED THE COSTS OF SPARE PARTS FROM ITS RATE COMPUTATIONS

The ALTS Opposition shows that GTE excluded significant costs associated with spare parts from its Direct Case.[11] GTE fails to rebut this ALTS showing, and merely argues that spare parts are included in its Direct Case through its computation of spare capacity.[12] As ALTS discusses at length in its September 30 written ex parte filing in this proceeding, spare capacity and spare parts are two wholly different concepts. The ALTS argument is supported by the Commission's own accounting rules, which require separate accounting treatment of expenditures for spare parts.[13] Because GTE's argument cannot reasonably be accepted to rebut the ALTS opposition, it is clear that GTE has excluded a significant cost element from its Direct Case, which compels rejection of the GTE filing.

6. GTE HAS NOT SHOWN THAT ITS ALLOCATION OF ALL TANDEM OFFICE COSTS TO ITS SWITCHED TRANSPORT TERMINATION RATE ELEMENT IS REASONABLE

The ALTS Opposition demonstrated that GTE improperly allocated all costs associated with its tandem offices to its Transport Termination rate element, when such costs are clearly

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[11] ALTS Opposition at 8.

[12] GTE Reply at 7.

[13] 47 C.F.R. § 32, subaccount 1220.1.

associated with its Transport Facility function.[14] As such, GTE's Transport Facility rates are grossly understated.

In reply, GTE merely asserts that the Commission's Part 69 rules do not specify how the costs should be allocated, so GTE is free to allocate them to whatever rate segment it chooses.[15] GTE's failure to allocate the costs associated with its tandem offices is indefensible, and establishes that its Transport Facility charges are set at below-cost levels.

7. BECAUSE GTE HAS STATED THAT ITS FLORIDA RATES ARE SET AT AVC, A FINDING THAT ANY COSTS HAVE BEEN EXCLUDED FROM ITS DIRECT CASE COMPEL REJECTION OF THE FILING

GTE admits that it has set its rates for Switched Transport in its Florida service area at AVC. As a result, a credible showing that the GTE Direct Case has excluded any relevant costs compels a finding that the Florida rates are set at below-AVC levels, and compels rejection of the GTE filing. As ALTS has demonstrated in its filings throughout this proceeding, GTE demonstrably has excluded relevant costs from its Direct Case. As a result, the Commission's Price Cap rules require that

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[14] ALTS Opposition at 10.

[15] GTE Reply at 9.

the filing be rejected. Failure to do so would constitute reversible error.

Respectfully submitted,

/s/John C. Shapleigh

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Dated: December 10, 1992

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December 1992, copies of the aforementioned WRITTEN EX PARTE PRESENTATION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES: THE RECORD IN CC DOCKET NO. 92-141 COMPELS REJECTION OF GTE TRANSMITTAL NO. 711 were sent via hand-delivery to the following:

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