

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)
)
Inquiry into Policies and Programs to)
Assure Universal Telephone Service in)
a Competitive Market Environment)

RM-8388

JAN - 3 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GTE'S REPLY COMMENTS

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SUMMARY

1. The Commission should move forward immediately to open a proceeding which would examine all issues relating to universal service policies. This proceeding should be separate from, but concurrent with, a proceeding to reform the Commission's rules on access rate structure and pricing.

2. A new proceeding on universal service should be broad enough to examine all aspects of universal service policy, including the obligations of each carrier and the implicit and explicit support flows incorporated into today's rates.

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GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), submit the following reply comments with reference to comments dated December 16, 1993, regarding the Petition of MFS Communications Company, Inc. ("MFS") for a Notice of Inquiry and *En Banc* Hearing (the "*MFS Petition*") filed on November 1, 1993. The *MFS Petition* asks the Commission to issue a Notice of Inquiry ("NOI") and to convene an *en banc* hearing to "determine future policies assuring the continued availability of universal telephone service."

DISCUSSION

I. A BROAD CONSENSUS OF PARTIES SUPPORTS THE NEED FOR COMMISSION ACTION TO REEVALUATE NATIONAL UNIVERSAL SERVICE POLICY.

There is a strong consensus among commenters representing a broad cross-section of telecommunications suppliers and users that the Commission should move ahead with a comprehensive review of universal service issues.¹ The single party that

¹ See ALTS at 4; Electric Lightwave, Inc. ("ELI") at 2; MCI at 3-4; AT&T at 2; General Communication, Inc. ("GCI") at 1; National Cable Television Association, Inc. ("NCTA") at 1; International Communication Association ("ICA") at 2; Alliance for Public Technology, Inc. ("APT") at 1; Illinois Commerce Commission ("ICC") at 3; USTA at 1; BellSouth at 1-2; Organization for the Protection and Advancement of Small Telephone Companies ("OPATSCO") at 3; and Rochester at 1.

does not support an immediate proceeding, Consumer Federation of America ("CFA"), does so because it believes Commission resources would be more productively focused on other issues, such as cable regulation, video dialtone rules, and introduction of local competition. However, CFA's view is myopic. Unless universal service policies are examined concurrently with measures to increase local competition, genuine competition cannot occur. So long as the prices of only one class of providers, Local Exchange Carriers ("LECs" or "exchange carriers"), are artificially inflated – thereby distorting entry decisions and granting a pricing umbrella to new entrants – consumers will not receive the benefits of real competition.²

GTE supports parties that oppose an *en banc* hearing process.³ A sound basis for evaluating the many issues involved can best be developed at this stage through a written record. National Telephone Cooperative Association ("NTCA") urges use of an *en banc* hearing process only "after there has been adequate opportunity to develop a record and whatever level of consensus may be possible." GTE agrees with NTCA that an *en banc* hearing may be useful at a later stage, after the basic framework of the policy choices available to the Commission has been identified through written comments.

As to whether a proceeding on universal service should take the form of a Notice of Proposed Rulemaking ("NPRM"), as opposed to an NOI, GTE takes no position. Several parties urge bypassing the NOI phase and immediately beginning a rulemaking

² CFA refuses (at 1) to acknowledge that local service is supported today. In the same breath, CFA proposes (at 6) that universal service support be extended to include new and advanced services – even as it decries LEC investments in network upgrades to provide such advanced services (at 4). In fact, CFA is simply refusing to confront the issue of universal service.

³ See MCI at 2; US West at 3-4; Bell Atlantic at 9. To the extent that hearings have any value at this stage, that value should be realized in hearings organized by the National Technical Information Administration ("NTIA"); there is no need for the Commission to duplicate this process.

proceeding.⁴ These commenters point to the existing record that can be used to formulate proposed rules.⁵ The Commission has often foregone an NOI phase and has frequently used a multi-phased rulemaking approach to complete large proceedings.⁶ Thus, in the case of access reform, GTE maintains that the Commission can and should issue an NPRM without need for an NOI proceeding. However, in the case of universal service, the existing record does not provide as much in the way of detailed or well-developed proposals as those offered by USTA and by the *FCC Staff Analysis* on issues of access rate structure and pricing flexibility.

What is most important is that the Commission move quickly to open a proceeding on universal service, and that this proceeding should be sufficiently broad to include all aspects of universal service policy. This could be done by either an NOI or an NPRM.

GTE opposes those parties⁷ that recommend consideration of universal service policies within the context of a pending rulemaking proceeding on the Universal Service Fund ("USF").⁸ Absent a change of direction by the Commission, the *USF NPRM* will

⁴ See National Rural Telecom Association ("NRTA") at 4; US West at 3-5; AT&T at 4.

⁵ See National Association of Regulatory Utility Commissioners' ("NARUC") Request for a Notice of Inquiry Concerning Access Issues (the "*NARUC Petition*"), DA 93-847, filed June 25, 1993; United States Telephone Association ("USTA") Petition for Rulemaking regarding Reform of the Interstate Access Charge Rules (the "*USTA Petition*"), RM-8356, filed September 17, 1993; Federal Perspectives on Access Charge Reform, A Staff Analysis, April 30, 1993 (the "*FCC Staff Analysis*"); NTIA Information Infrastructure Task Force, "The National Information Infrastructure: Agenda for Action," Washington D.C., September 1993.

⁶ For example, in *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141.

⁷ See OPATSCO at 7; NECA at 4; GCI at 1.

⁸ See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Notice of Proposed Rulemaking, CC Docket No. 80-286, (the "*USF NPRM*") FCC 93-435 (released September 14, 1993).

address issues concerning only one explicit mechanism used to support universal service, the USF; it will not examine the entire spectrum of universal service policies and related issues.⁹ As GTE (at n.3) noted, USF is only one of many existing explicit support mechanisms. Further, fine tuning only USF rules will not address removal of the many implicit support flows that must be accomplished if genuine local competition is to occur.¹⁰

Finally, a docket focused only on USF will not examine policies to ensure that every customer is served in a competitive market with multiple providers. Indeed, effort expended on tinkering with the existing USF mechanism may well be misplaced, given the likelihood that a more comprehensive overhaul of universal service policy will soon be required.

There is also widespread agreement that examination of universal service issues should not delay access reform efforts.¹¹ It is also clear that favorable action on the *USTA Petition* would not prevent timely Commission consideration of universal service policies.¹² On the contrary, several commenters agree with GTE that adoption of the Public Policy element structure contained within the USTA proposal would accommodate any new universal service support elements that might be created as a

⁹ "We therefore intend to propose, in the near future, broader changes in the USF rules contained in Part 36 of our rules." *USF NPRM* at para. 2. This statement clearly limits the issues to be addressed to those surrounding the USF itself, and does not signal any intent to explore other explicit universal service mechanisms. Nor does this proceeding examine the implicit support provided by other LEC services - a much larger flow than the explicit USF mechanism.

¹⁰ See GTE at 7-8; Southwestern Bell Telephone Company ("SWBT") at 13; BellSouth at 3; Bell Atlantic at 6-8; Sprint at 2.

¹¹ See *MFS Petition* at 8; SWBT at 3; BellSouth at 2-3; Bell Atlantic at 1-2; NYNEX at 4-5; NCTA at 5; Sprint at 5.

¹² See SWBT at 3-4.

result of a separate Commission examination of universal service policies.¹³ Further, the flexibility provided by USTA's proposed rate structure and pricing rules would enhance the LECs' ability to maintain some level of contribution from interstate access services as these markets become more competitive.¹⁴

In summary: The Commission should move forward immediately to open a proceeding which would examine all issues relating to universal service policies. This proceeding should be separate from, but concurrent with, a proceeding to reform the Commission's rules on access rate structure and pricing.

II. A PROCEEDING ON UNIVERSAL SERVICE SHOULD EXAMINE ALL ASPECTS OF UNIVERSAL SERVICE POLICY.

There is broad agreement among commenters that any new mechanism to support universal service should minimize market distortions¹⁵, and that all telecommunications providers should contribute to universal service support.¹⁶ Beyond that, there is not a clear consensus on the specifics of any mechanism. GTE will not propose any plan here; nor will it comment on the specifics of proposals advanced by other parties. These specifics are best dealt with in a proceeding on universal service.

GTE is concerned about commenters discussed *infra* seeking to limit the scope of such a proceeding to their advantage. GTE urges the Commission to disregard these attempts to shape the proceeding so it will produce a predetermined result favoring one group over another. The questions examined in the proposed universal

¹³ See USTA at 6-7; Rochester at 5.

¹⁴ See BellSouth at 5.

¹⁵ See NTCA at 8; ICC at 10; SWBT at 9.

¹⁶ See AT&T at 4; GCI at 3; NTCA at 7-9; ICC at 9; U S West at 2; BellSouth at 8; Ameritech at 2; Citizens at 3; APT at 4.

service proceeding should be framed broadly, to ensure that all aspects of the matter are fully addressed.

MFS, for example, proposes to shape a new universal service mechanism around credits associated with the provision of service to individual end users. While such an approach may have merit, MFS essentially evades the difficult issue of the carrier's obligation to serve. Without facing the consequences, MFS blithely assigns any carrier of last resort obligation to the exchange carrier.¹⁷

If regulation permitted exchange carrier rates for local service to seek market-clearing levels, the need for any obligation to serve would be reduced. However, to the extent that such an obligation is maintained, any new support mechanism has to be designed to take this into account. The cost of service varies across customers, and yet these costs are interdependent. The cost of serving any given customer may depend on the other customers served on the same network, and on the customers that network must stand ready to accommodate.

If regulation provides for the LEC's competitors the freedom to build their networks to serve only those subsets of customers they choose to serve, while exchange carriers are obliged to stand ready to serve all customers, a support mechanism based on an average credit per end user (i) may not fairly compensate the exchange carrier, and (ii) may not provide the desired incentive to new firms to serve all customers. A proceeding on universal service should carefully consider support proposals, including those of MFS. But any proposal meriting consideration should address the exchange carrier's obligations to serve.

The International Communications Association ("ICA") (at 3-4) suggests that a proceeding should examine only explicit support mechanisms. This would have the Commission ignore the implicit support inherent in the rates of other LEC services,

¹⁷ *MFS Petition, Attachment 1, fifth unnumbered page.*

notably of interstate access services. Such an approach would be self-defeating since it would remove from consideration elements at the heart of the problem. As MFS acknowledges,¹⁸ one of the purposes of examining universal service issues at this juncture is to eliminate burdens of universal service support borne by some carriers but not by others, which artificially handicap those carriers in competitive access markets.¹⁹ Since the implicit support flows are currently much larger than the explicit ones, the competitive equity MFS professes to seek cannot be established by dealing solely with the explicit support programs.

Many parties attempt to address this implicit support flow by inventing pejorative terms for it, such as "subsidy"²⁰ or "great pools of excess earnings."²¹ In fact, it is nothing more than a pattern of contribution levels across services that is different from the one a competitive market would produce. As ICA points out (at 4), any firm with declining cost must set some prices above marginal cost, and will therefore earn a "contribution." The difference, in the case of local exchange carriers, is that they have not been free in the past to choose the price level, and hence the contribution, for each of their services.²² As NTCA notes (at 4):

[Another firm] such as a grocery or MFS is free to price its products to recover its costs consistent with its view of the market.... The access and separations rules, presently applied to LECs but not MFS, make these

¹⁸ *MFS Petition* at 13.

¹⁹ See Sprint at 4-5: "LECs are competing in access markets with prices that are inflated with considerable subsidies..."

²⁰ See Teleport's Attachment.

²¹ Coalition of Midwestern Competitive Access Providers at 4.

²² Many parties – without defining "cost" – suggest that the Commission should seek to establish interstate access rates at the level of cost. The objective should not be to eliminate contribution, but to replicate the amount of contribution a competitive access market would generate.

decisions for the LEC industry on the basis of governmental conclusions as to the market.²³

ICA is incorrect, then, when it says (at 4) that implicit support flows "are not the unique result of any government activity." These support flows are the direct result of previous policy decisions. To be consistent with access competition, any new policy toward universal service must be designed to allow LEC access rates to move to competitive market-clearing levels. Since implicit support flows account for most of the difference between current access prices and competitive market-clearing rates, this difference must be addressed in developing any new universal service policy.

In summary: A new proceeding on universal service should be broad enough to examine all aspects of universal service policy, including the obligations of each carrier and the implicit and explicit support flows incorporated into today's rates.

Respectfully submitted,

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²³ Teleport (at 4) contrives to represent this constraint on LEC decision-making as an asset "contributing to their guaranteed income stream." It is difficult to see how being required to price some services above market levels, and other services below, is an asset. Teleport ignores the fact that these "income streams" are not guaranteed, but must be generated by the LEC's own rates in markets which are increasingly subject to competition.

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on the 3rd day of January, 1994 to all parties of record.


Ann D. Berkowitz