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Before the
FEDERAL COMMUNICATIONS COMMISSION FEB 14 1994
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 11 and 13)
of the Cable Television Consumer)
Protection and Competition Act of 1992)

MM Docket No. 92-264

OPPOSITION OF GTE

GTE Service Corporation ("GTE"), on behalf of the GTE Domestic Telephone Operating Companies and GTE Laboratories Incorporated, hereby opposes the Petition for Reconsideration of the Center for Media Education and the Consumer Federation of America ("CME/CFA") filed December 15, 1993 with reference to the Second Report and Order in the above-captioned proceeding.¹

In its Comments (at 7-8) of August 23, 1993 in this proceeding, GTE suggested, among other points, that channel occupancy limits need not be applied to cable operators leasing space on video dialtone or other types of open-access common carrier systems:

If the cable operator programmer is subject to viable and vigorous intra-system competition from other program suppliers [leasing from the same carrier], the extent to which the operator employs affiliated programming is of little or no concern.

¹ Acknowledgment of receipt of the CME/CFA petition, together with a petition from Bell Atlantic, was published in the Federal Register of January 27, 1994, 59 Fed.Reg. 3859. Because the FCC was closed Friday, February 11th, owing to a severe ice storm, the deadline for oppositions shifted to Monday, February 14, 1994.

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GTE made clear that its suggestion was meant to apply only to open-access carrier systems where neither the carrier nor any single lessee is able to control the video programming delivered to end users, and not to future switched systems where, despite the abundance of capacity, a cable operator or other private carrier might still exercise the total power of editorial selection of content.

Neglecting entirely the difference between open-access, subscriber-controlled telephone common carrier systems and operator-controlled cable systems, CME/CFA ask that:

To prevent MSOs from acquiring excess market power through telephone companies mergers, the Commission should clarify that the horizontal limits apply to both telephone subscribers and cable subscribers. (Petition, 13)

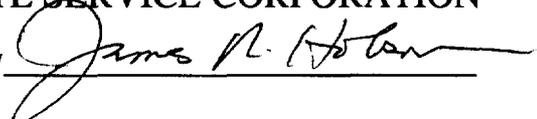
The first problem with the CME/CFA request is one of statutory authority. For the Commission to base a combined telephone/cable subscriber horizontal limit on Section 613(f)(1)(A) would be dubious in the extreme. The subsection reads "cable subscribers" and says nothing at all about "telephone subscribers" -- even if they are strong "potential" cable subscribers (Petition, 12) -- so long as their homes are not passed by the cable system in question.

The second problem is the one alluded to by GTE in its earlier Comments. A telephone subscriber is not the programming captive of the telephone carrier, whether the subscriber is receiving today voice and data service or, tomorrow, video services via "video dialtone." In voice and data, the subscriber is his own programmer. And, under video dialtone, the telephone carrier will be only the technical intermediary between a subscriber who makes his own program choices from the multitude of unrelated programmers who are entitled to non-discriminatory access to the video dialtone carrier's "platform."

In short, the mixing of telephone and cable subscribers as requested by CME/CFA would be highly questionable in law and utterly unnecessary to the policy objective of effective video competition. The CME/CFA petition should be denied.

Respectfully submitted,

GTE SERVICE CORPORATION

By 

Ward W. Wueste, Jr., E03J43
John F. Raposa
GTE Telephone Operations
P.O. Box 152092
Irving, Texas 75015-2092
(214) 718-6969

James R. Hobson
Donelan, Cleary, Wood & Maser
1275 K Street N.W., Suite 850
Washington, D.C. 20005-4078
(202) 371-9500

ITS ATTORNEYS

February 14, 1994

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Opposition of GTE" have been mailed by first class United States mail, postage prepaid, on the 14th day of February, 1994 to the following parties:

Michael E. Glover, Esq.
Bell Atlantic Telephone Companies
1710 H Street, NW
Washington, DC 20006

Angela J. Campbell, Esq.
Institute for Public Representation
Citizens Communications Center Project
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001



Ann D. Berkowitz