

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of Section 19 of the	)	CS Docket No. 94-48
Cable Television Consumer Protection	)	
and Competition Act of 1992	)	
	)	
Annual Assessment of the Status of	)	
Competition in the Market for the	)	
Delivery of Video Programming	)	

**COMMENTS OF GTE**

GTE Service Corporation, on behalf of its affiliated domestic telephone companies (GTE), respectfully submits these Comments in response to the Commission's Notice of Inquiry in CS Docket No. 94-48, FCC 94-119, released May 19, 1994 (NOI). In these Comments, GTE responds to paragraphs 10, 16, 45-46, 52-53 and 64 of the NOI.

**I. INTRODUCTION**

In this proceeding, the Commission undertakes the task of gathering information necessary to assess the status of competition in the market for the delivery of video programming in order to prepare annual reports to Congress as required by the 1992 Cable Act.<sup>1</sup> The stated goals of the NOI are to gather information sufficient to prepare a preliminary analysis of the current state of competition provided by alternative

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<sup>1</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1460 (1992); Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 548(g).

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distribution technologies, to collect information on the extent to which the conduct and practices of multichannel programming vendors and distributors have changed and to identify the information required to enable the Commission to collect and prepare a more comprehensive analysis for future reports. (NOI, at ¶ 8.)

Under the 1992 Cable Act, local cable television rates are subject to regulation by local franchising authorities as well as the Commission if competition for such video services is not present. Once effective competition<sup>2</sup> develops in a cable operator's serving area and consumers are provided adequate multichannel video programming alternatives, the operator's rates are no longer regulated. Thus, the ability to analyze the status of developing competition in the delivery of video services is necessary to the evaluation of the effectiveness and continued need for Commission regulation of cable operators.

In addition, the Commission's 1990 Report<sup>3</sup> submitted to Congress revealed evidence of anti-competitive conduct as a result of the increasingly vertical integration of the cable industry. As a result, the 1992 Cable Act and Commission's implementation rules established regulations designed to protect consumers from past anti-competitive behavior. Thus, the collection of information regarding past practices of multichannel video programming vendors and distributors and trends in horizontal and vertical integration in the industry is necessary to determine whether the new cable regulatory scheme has protected consumer interests.

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<sup>2</sup> See 47 U.S.C. § 543(l)(1).

<sup>3</sup> *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, MM Dkt. 89-600, 5 FCC Rcd 4962 (1990) (1990 Report).

GTE supports the Commission's prudent efforts to compile a meaningful analysis of competition in the cable television market in order to make a preliminary assessment of the status of competition. The results of this effort will likely prove to be valuable in crafting future changes in regulatory policy as both the voice and video marketplaces become increasingly competitive. GTE believes, however, that the future collection of data from cable operators, programmers and local exchange carriers (LECs) should be limited and any annual reporting requirements be kept to a minimum. In particular, LECs should be required to report only the total number of homes passed by their video dialtone (VDT) systems. Specific programming data should be provided by programmers themselves or, alternatively, provided under confidential cover only if available to and submitted by the LECs.<sup>4</sup> Once video distribution markets are found to be competitive, extensive analysis of LEC operations will no longer be needed. Thus, at that time, reporting requirements should be discontinued or substantially reduced. Moreover, if competition is to flourish and local consumers are to directly benefit from competitive markets, it is crucial that the Commission adopt symmetrical regulatory policies for the cable and telephone industries and amend those regulations that impede the delivery of competitive communications services to local consumers.<sup>5</sup>

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<sup>4</sup> See 5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905; 47 C.F.R. § 0.457(d).

<sup>5</sup> Of particular concern is the unwieldy Section 214 application process which the Commission has injudiciously adopted for the review of VDT proposals. This process has created an unconscionable bottleneck in the delivery of competitive video services to consumers. The Commission should take all necessary action to reform the process at once.

## II. METHODS TO DETERMINE LEVEL THE OF COMPETITION

The NOI seeks to determine the general methodologies and relevant markets to consider in order to track the development of effective competition in the delivery of video services. (NOI, at ¶ 10.) The NOI asks for comment on whether the Commission should examine competition specifically as it relates to the local cable franchise or review the extent of multichannel programming distribution penetration on a broader geographic scope. (NOI, at ¶ 16.)

As an initial step, GTE agrees that the Commission should begin its efforts by updating the data in contained Appendix G of the 1990 Cable Report to form the basis for ongoing competitive analysis of programming markets and the extent of vertical and horizontal integration. GTE believes the data contained in the 1990 Report can be summarized and compared to more current information in order to draw a preliminary assessment of the impact of the anti-discrimination provisions of the Commission's cable rate regulations. The Appendix G data also provides useful information on the development and scope of programming suppliers and services and the degree of vertical integration in the cable industry.

GTE believes it would also be useful for the Commission to obtain data on cable systems that now face "effective competition", as defined by the Commission's criteria for competitive markets set forth in the *Cable Rate Order*.<sup>6</sup> This data, solicited directly from cable operators that have submitted showings of effective competition, would be similar to that information provided in Appendix H of the 1990 Report. This data would

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<sup>6</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Dkt. 92-266, Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) (*Rate Order*).

be helpful in analyzing, over time, the extent of competition to entrenched cable interests and the extent of distribution and/or penetration of video programming distributors within specific franchise areas.

For purposes of measuring the distribution and/or penetration of competitive service providers in local distribution markets, a broader geographical analysis should be undertaken on a metropolitan statistical area (MSA) or state basis. Potential competitors of traditional cable operators, such as LECs and wireless cable operators, do not necessarily operate within the franchise boundaries of incumbent cable operators and consequently do not maintain subscriber data by local cable franchise area. The reporting of subscribership or programming data by potential cable competitors on a franchise area basis would be complex and problematic. For example, with approval of its VDT proposals, GTE will be directly competing with thirteen cable system operators within the four market clusters of GTE's video dialtone offerings.<sup>7</sup> In many cases, GTE's VDT market clusters overlap only a portion of the incumbent cable operator's local franchise territory. Subscriber data in GTE's video dialtone system databases will categorize subscribers by central office serving area, NXX and zip code. Consequently, the reporting of subscriber data by franchise would require GTE to obtain local franchise boundary maps for each cable operator, and code each subscriber record in GTE's systems with the associated MSO franchise area. This additional effort would require expensive adjustments to GTE's billing and record keeping systems and would require additional work procedures and resources to

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<sup>7</sup> See *In re Contel of Virginia, Inc., doing business as GTE Virginia*, W-P-C 6955; *In re GTE California Incorporated*, W-P-C 6957; *In re GTE Florida Incorporated*, W-P-C 6956; *In re GTE Hawaiian Telephone Company, Inc.*, W-P-C 6958.

maintain and update the information – all with no direct benefit to GTE's customers. In addition, GTE is not even certain that reliable sources of MSO geographic boundaries are readily available in all serving areas. Similar requirements would be placed on other MSO competitors, such as wireless cable operators.

GTE believes that for future reporting purposes, the Commission should collect and analyze data on an MSA or state basis. This would allow all video distribution providers to aggregate data from their unique service areas to a common level. Using this data, the Commission could derive the relative penetration percentages of local franchised operators as well as competitive suppliers within the broader geographic area. Accumulation of data in this manner would also assist the Commission in constructing a visual picture, such as a color-coded map,<sup>8</sup> of the extent of competition in markets throughout the country.

In sum, potential competition in the creation and delivery of programming and advanced video services is growing at a rapid rate. Future analysis of market data should reveal an increasingly number of competitive market areas. However, once these markets become truly competitive, there will be little value to continue such extensive competitive analysis. Therefore, GTE believes that future reporting requirements for those markets that have reached a fully competitive stage should be eliminated or minimized.

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<sup>8</sup> See NOI, at ¶ 17.

### III. VIDEO DIALTONE REQUIREMENTS

The NOI requests comment on how the Commission should approach and address video dialtone in the context of its report on competition. (NOI, at ¶ 45.) Specifically, the NOI asks whether competitive analysis information for LECs conducting VDT market and technical trials should be collected, to what extent is such data proprietary or confidential, what programming and non-video information might be requested and what are the appropriate means of comparing relative prices of VDT network video offerings versus those of traditional cable operators. (*Id.*)

The deployment of LEC VDT networks is currently in its infancy stage. GTE agrees with the Commission's observation that because VDT is a nascent service, it is premature to seek specific subscription data. (NOI, at ¶ 46.) In fact, many LEC VDT offerings will be initiated on a "trial" basis in order to test market responsiveness to multiple video programming distributors and advanced technology. As such, market data concerning initial programming subscribership on LEC systems is competitively sensitive.

In a VDT environment, the LEC is the transport provider for its programmer-customers. LECs possess, and can readily report to the Commission, the number of households passed by their VDT facilities. However, GTE considers the number of subscribers per programmer who lease VDT channels to be customer proprietary information. In contrast to traditional cable operators who control both programming and transport, programming decisions on LEC VDT systems are made by the

programmers themselves, not the LEC.<sup>9</sup> In order to develop and maintain a professional service provider/customer relationship with programmers on GTE's planned systems, programming market data cannot be revealed to other programmers or cable operators, *i.e.*, their competitors. Customers of LEC video dialtone systems, as well as other LEC access and transport services, rely on LECs to maintain confidential treatment of customer service usage. As a matter of policy, GTE does not provide minute of use or circuit information of an interexchange carrier to a competing carrier on its access service networks. Similarly, it would be inappropriate for GTE to place on the public record information relative to competing programmers' services. Indeed if the video programming ban<sup>10</sup> is overturned or repealed, as the Commission has recommended,<sup>11</sup> this reporting requirement would place LECs in a position of

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<sup>9</sup> *Telephone Company - Cable Television Cross-Ownership Rules*, CC Dkt. 87-266, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, FCC 92-327, 7 FCC Rcd 5781, 5797-98 (1992) (*Video Dialtone Order*), *pets. for recon. pending, appeal pending sub nom. Mankato Citizens Telephone Co. v. Federal Communications Commission*, No. 92-1404 *et al.* (D.C. Cir.).

<sup>10</sup> 47 U.S.C. § 533(b); 47 C.F.R. § 63.54(c).

<sup>11</sup> *Video Dialtone Order*, 7 FCC Rcd at 5841-5851.

collecting and reporting data on programmers with which they themselves compete.<sup>12</sup>

Thus, GTE believes that once LEC video dialtone networks are deployed, data requested from LECs should be limited to the number of households passed at an MSA level.

Any information on subscriber programming selection should be collected from programmers themselves. Full service programmers could indicate the total number of subscribers for their basic service offering. However, over counting of subscribers would occur if the Commission analyzes demand data for programming services other than based upon the basic service offering of a full service programmer or if data is collected from more than one full service programmer on the same VDT network. For example, GTE anticipates that individual subscribers will purchase programming from one or more full service programmers and any number of niche programmers on its VDT networks. Compounding the problem even further, subscribers could purchase the incumbent cable operator's basic service tier, while still utilizing the LEC's video

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<sup>12</sup> To the extent that the Commission requires data on programming selection directly from the LECs, such information should be limited only to the number of subscribers to the basic service offering of one of the full service programmers on the LEC's VDT network, whether affiliated with the LEC or not. (By "full service programmer", GTE means a programmer offering at least 50 channels to subscribers and which offers a basic service package comparable, albeit not necessarily identical, to the incumbent cable operator's basic tier.) Such information should be submitted only on a confidential basis. GTE also favors disclosure of data without associated disclosure of the names of the competitors whenever possible. This procedure would be consistent with the confidential treatment afforded GTE in the submission of market and technology test data to the Commission on its video services offerings in Cerritos, California. *See In re General Telephone Company of California*, 4 FCC Rcd 5693 (1989), *remanded sub nom. National Cable Television Association v. Federal Communications Commission*, 914 F.2d 285 (D.C. Cir. 1990), *further proceedings*, 8 FCC Rcd 8178 (1993), FCC 93-533 (1993), *appeal pending sub nom. GTE California Incorporated v. Federal Communications Commission*, No. 93-70924 (9th Cir.).

dialtone platform to purchase a la carte or niche programming, or even a full service programmer's offerings. In such circumstances, subscribers would be reported as customers of all competitive services. This would skew any resulting analysis.

Data collection for non-video or other programming services with a video component (*e.g.*, data, text, informational)<sup>13</sup> is even more difficult. While some interactive programmers will require end users to subscribe to their services, others may offer their programming services on an "on demand" or impulse basis. One subscriber may use a service many times a month, another may use it rarely or not at all. In either case, the program service is always available for use. These services are generally provided today by multiple suppliers in a competitive environment. GTE believes that there is no need to gather data on information services in order to assess the status of overall video service competition. Any analysis of programming services should focus on the basic offerings of full service programmers.

The NOI also asks how charges to subscribers for VDT and video programming services can be compared to prices charged to subscribers of cable. (NOI, at ¶ 45(e).) Comparing prices charged to customers of VDT (*i.e.*, programmer/packagers) versus prices charged by cable companies to subscriber end-users amounts to an "apples to oranges" comparison. The only meaningful comparison is between prices which programmer/packagers charge to their subscribers and the prices charged to subscribers by cable operators.<sup>14</sup> Again, this information should appropriately come from the programmers and cable operators. However, rate comparisons within a

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<sup>13</sup> See NOI, at ¶ 45(c).

<sup>14</sup> Even this analysis is likely to be skewed when the programmer in question offers only "niche" or a la carte services.

market area in which LEC VDT systems are operating and where effective competition is deemed to exist would be meaningless since such rates would presumably be set at "market-based" competitive levels.<sup>15</sup>

The NOI requests comment on whether the adoption of the Commission's VDT policy has affected the development of new programming sources and how long is it likely to take for VDT to serve as a competitive alternative to cable. (NOI, at ¶ 46.) It is apparent that there is evidence of the development of new programming sources. However, it is not clear that this activity is a result of Commission action. As LEC video dialtone services are developed, competition among LECs and cable operators should result in increased programming options available to subscribers.

GTE does not expect that LEC video services will become a competitive alternative to cable for a number of years. The primary impediments to competition include an unwieldy Section 214 application process, the anticipated contentiousness of VDT tariff approval and the time required to wire the market, *i.e.*, place the VDT network to as many or more homes as the incumbent cable operator serves. In the first four markets in which GTE plans to offer VDT, GTE anticipates that it will have the ability to serve over 500,000 subscribers by the end of 1995.

The NOI also asks how long it will take for VDT to become an alternative to cable in a larger sense. (NOI, at ¶ 46.) For the nation's largest markets, this will depend on the LEC's respective market entry rates. Most LECs seeking to offer VDT

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<sup>15</sup> Although cable operators facing "effective competition" will be unencumbered by rate regulation, LECs will still be required to file tariffs with the Commission for VDT services. In order for subscribers to benefit from fully competitive market rates, LECs must be given substantial pricing flexibility to determine rates for VDT offerings.

have announced deployment schedules in phases to be achieved over a five to ten year period. GTE plans to expand its VDT services to a total of sixty-six markets throughout the nation, effectively providing competitive video services to over seven million homes within the next ten years. However, given that the industry is only in the initial planning and construction phases of VDT development, and that the vast majority of Section 214 applications have yet to be acted on by the Commission, it is simply premature to attempt to estimate when VDT will provide a ubiquitous alternative to cable.

The NOI asks whether it would be if feasible for VDT to serve as a competitive alternative to cable if traditional telephone technology (twisted pair copper wiring) is utilized to deploy broadband services. (NOI, at ¶ 46.) Provision of broadband services over twisted pair copper using Asymmetrical Digital Subscriber Line (ADSL) technology is currently being tested by some LECs. (GTE is not testing ADSL, but may seek to do so at some future date.) Customer satisfaction information, and the migration path for ADSL (*e.g.*, to accommodate HDTV) are not yet known. Since cable operators are rapidly deploying hybrid fiber coax systems, valid comparisons on the competitiveness of ADSL with cable systems cannot be inferred.

#### **IV. TECHNOLOGICAL ADVANCES**

The NOI seeks comment on the impact that significant technological advances in the multichannel video programming arena will have on the marketplace and at what point will technologies with compression capabilities become a competitive factor. (NOI, at ¶ 52.) Technology is available today to provide enhanced video services packaging for consumers. Technology will, no doubt, proceed to improve application functionality at competitive prices. However, the regulatory goals of the Commission

must continue to focus on stimulating competition. If market entry is unencumbered by artificial rules, GTE envisions rapidly expanding VDT platforms and enhanced cable networks. However, technological availability will work effectively only when the applications from the technology are transformed into services that have value for the consumer, and when market forces, rather than regulation, is allowed to guide competitors' actions.

Compression technology is expected to permit traditional wireless carriers to derive a sufficient number of channels for a competitive offering. It will also enable cable operators to increase channel capacity dramatically. Similarly, compression will enable VDT platforms to meet channel capacity demand from multiple programmer/packagegers. In this environment, compression will enable file servers to store movies and other programming for instant availability by subscribers. Continued improvements in compression and larger, lower cost storage devices will also enhance on-demand capability.

Compression technology will play a large role in making far more programming available to the public. Based on discussions with various vendors, GTE anticipates that digital compression will be readily available during 1995, and broadband switching sometime during 1996. GTE believes that compression capabilities will have a competitive impact beginning in 1995. However, the degree to which consumers will accept and utilize this increased programming availability is not yet known. GTE expects that cable operators, as well as LECs, will initiate tests of enhanced programming to determine public acceptance prior to full scale roll-out of these types of services

The Commission also inquires as to the competitive effects of advances in encryption technology, advanced televisions (ATV) and interactive services. (NOI, at ¶

52.) GTE does not expect encryption to provide a direct competitive advantage to one company or system over another. However, encryption can clearly discourage persons from illegally hooking on to the transmitted signal. As such, GTE does not favor the proposed rule that requires must-carry and PEG channels not be encrypted.<sup>16</sup>

Advanced televisions (ATV) and interactive services have the potential to enhance busy lifestyles, provide learning opportunities and recreation without having to travel outside of the home. The extent to which these services will be accepted and purchased in sufficient quantities to justify investments is the subject of planned GTE market trials.

The NOI seeks comment on other emerging potential providers of video programming, such as electric and other utility companies, and the implications of Commission regulations on the widespread availability of video services. (NOI, at ¶¶ 53, 54.) As the Commission is aware, a number of power utility companies have placed a considerable amount of fiber optics especially to larger businesses for the ostensible purpose of power load shedding management. Some companies have also placed fiber to residences. While the clear potential exists for entry of these companies into the video (and voice) marketplaces, GTE is not aware of firm plans by these companies to utilize their fiber for video services. However, consistent with the goal of regulatory parity and in order for competition to develop fairly, it will be appropriate to ensure that power and other utility companies are subject to the same regulatory treatment as the cable operators and LECs when they enter they enter the video market.

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<sup>16</sup> *See Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992: Compatibility Between Cable Systems and Consumer Electronics Equipment*, ET Dkt. 93-7, First Report and Order, FCC 94-80, released May 4, 1994. While these rules do not apply to a VDT network, it is clear that they ought not to.

## **V. TRENDS IN HORIZONTAL CONCENTRATION AND VERTICAL INTEGRATION**

The NOI requests comment on how recent or proposed mergers or partnerships and alliances involving programming vendors, cable operators, or telephone companies will affect the cost, quality and variety of video programming and what regulatory and antitrust concerns, if any, are raised by such combinations. (NOI, at ¶ 64.)

As Chairman Hundt recently observed: "We are witnessing an evolution of convergence of networks and markets, whether it be telephone, broadcast, cable wireless or satellites, domestic and international." (Statement of Hon. Reed E. Hundt before the Subcommittee on Commerce, Justice, State and Judiciary, Committee on Appropriations, US Senate, April 28, 1994.) The rapid growth of technology has made it possible for information of all types to be carried on most of the transmission media deployed today. These advances have enabled a wide variety of firms to enter the interstate telecommunications market in recent years. These firms have sought partners in strategic alliances and mergers designed to make the most effective use of each firm's respective strengths. The result is a continuing convergence of the previously separate telephone, cable, wireless, computer and information services industries. To date, most attempted mergers and alliances have involved telephone companies aligning with cable operators. More recently, indications are that mergers among cable operators will accelerate to achieve larger clusters of potential subscribers and improved economies of scale. The signals suggest that cable industry preparation for competition may have finally begun.<sup>17</sup>

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<sup>17</sup> For further analysis of video alliances, see GTE's Comments, Attachment B, May 9, 1994, in *Price Cap Review for Local Exchange Carriers*, CC Dkt. 94-1.

As GTE has stressed, in order to foster competition in the converging voice and video marketplaces, provide for the efficient allocation of resources, avoid establishing barriers to entry and to lay the necessary regulatory framework to support the National Information Infrastructure, it is vital that the Commission's cable and LEC price cap proceedings<sup>18</sup> achieve symmetrical regulatory treatment of cable operators and LECs. Once alternative video distribution services are present in a cable operator's market, the operator is no longer subject to rate regulation, either from the local franchise authority or the Commission.<sup>19</sup> In like manner, LECs should be afforded the flexibility to meet competition as soon as competition emerges.

The price cap plan for LECs must be improved to remove barriers that limit efficiency gains such as sharing and depreciation prescription and allow for greater pricing flexibility.<sup>20</sup> Indeed, the dictates of a competitive marketplace require that the price cap rules which govern incumbents also be applied to potential competitors. Thus, it is imperative that the Commission's evolving regulation of cable operators, as well as LECs, achieve congruity. Only if the regulatory treatment of exchange carriers

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<sup>18</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Dkts. 92-266, 92-262, 93-215, CS Dkt. 94-28; *Price Cap Review for Local Exchange Carriers*, CC Dkt. 94-1.

<sup>19</sup> Section 623(a)(2) of the Act, 47 U.S.C. § 543(a)(2).

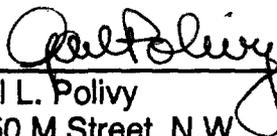
<sup>20</sup> See GTE's Comments, in *Price Cap Performance Review for Local Exchange Carriers*, CC Dkt. 94-1, filed May 9, 1994.

and cable operators achieves congruity will vigorous competition in the video, voice and data markets occur.

Respectfully submitted,

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