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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

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REPLY COMMENTS OF GTE

GTE Service Corporation on behalf of its affiliated domestic telephone operating companies, respectfully submits these Reply Comments in response to the Commission's Notice of Inquiry (NOI), FCC 94-119, released May 19, 1994.

I. THE REGULATORY BARRIERS TO EFFICIENT IMPLEMENTATION OF VIDEO DIALTONE MUST BE REMOVED IF COMPETITION IS TO FLOURISH

In their comments in this proceeding, prospective video dialtone providers have persuasively echoed a central theme -- that competition in the video programming marketplace will languish unless legal and regulatory constraints preventing or delaying video dialtone (VDT) applications are relaxed and that the Commission must adopt symmetrical regulatory policies for the converging cable and telephone industries. (*E.g.*, Bell Atlantic, at 2; NYNEX, at 3; U S West, at 3.) Although the Commission has now approved its first commercial video dialtone application after a nearly two year

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delay,[1] a backlog of applications remains, including four submitted by GTE. As these potential competitors in the video delivery market correctly observe, entrenched cable interests continued their efforts to retard the Section 214 application process by opposing VDT proposals, rearguing issues previously settled by the Commission in its *Video Dialtone Order*,[2] and insisting upon new regulatory proceedings to further complicate VDT approval.[3] Even the comments of multi-programming video distributors recognize the cable industry's "chronic motivation to restrain and exclude competitors." (Liberty Cable, at 4.) Moreover, most recently NCTA publicly announced its intention to "continue its war" on VDT submissions and escalate its challenges to video dialtone.[4] Despite the cable industry's vehemence, the Commission must not allow these entrenched operators to thwart its efforts to encourage the expedient delivery of desirable and alternative video programming choices to the American consumer.

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1 *In re New Jersey Bell Telephone Company*, FCC 94-180, released July 18, 1994.

2 *Telephone Company - Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781 (1992) (*Video Dialtone Order*), *pets. for recon. pending, appeal pending sub nom. Mankato Citizens Telephone Co. v. Federal Communications Commission*, No. 92-1404 (D.C. Cir.).

3 For example, NCTA argues in this proceeding, as well as in its oppositions to GTE and other VDT applications, that no VDT networks should be implemented until the Commission develops and approves a whole new set of video dialtone regulations. Many of these issues were previously ruled upon by the Commission in its *Video Dialtone Order*. The Commission must not allow NCTA and others to continue to delay the process by rehashing old and useless arguments.

4 *See* The Cable-Telco Report, July 18, 1994, at 1, recounting the statement of NCTA President Decker Anstrom before the New England Cable Television Association.

GTE strongly supports the four principal requirements for successful deployment of video dialtone recommended by Bell Atlantic for the Commission's Report to Congress: (1) lift the video programming ban,[5] (2) streamline the VDT application approval process, (3) resist efforts by local authorities to impose local barriers, and (4) adopt regulations that ensure parity between cable and VDT industries. (Bell Atlantic, at 7-8.) These actions would be consistent with the essential underpinnings of the Commission's regulatory flexibility framework for video dialtone, as enunciated in the *Video Dialtone Order*.[6] Comments submitted by programmers and programming distributors demonstrate the need for video dialtone technology and the promises it holds for increasing competition (Liberty Cable, at 26-27; HBO, at 14-15), but unless the roadblocks inherent in the 214 application process are removed, these parties will be hampered in their ability to market their services to a greater audience.

GTE agrees with the prospective VDT providers that much of the data needed to conduct a competitive analysis on the effect of video dialtone simply does not exist. (*E.g.*, Bell Atlantic, at 10; NYNEX, at 5.) Although many VDT applications do contain projections of the number of homes passed and other market information, it will be some time before VDT becomes a meaningful alternative to traditional cable systems and actual data will become available. Even then, as these commentators accurately observe, the relevant price, subscription and elasticity information on video services

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[5] 47 U.S.C. § 533(b); 47 C.F.R. § 63.54(c).

[6] "[R]egulatory flexibility is the key if video dialtone is to develop in accordance with market needs and technological innovations rather than according to Commission mandate." *Video Dialtone Order*, 7 FCC Rcd at 5805 (¶ 45).

markets should rightfully come from the programmers themselves, not the underlying transport providers. (*See* BellSouth, at 3.) However, if data regarding video dialtone transport networks would prove useful to the Commission's analysis, such information can easily be obtained during the Commission's planned review of VDT, scheduled for 1995. (*See* NYNEX, at 6.) GTE continues to maintain that if any such information requested by the Commission is competitively sensitive, it must be afforded confidential treatment. (GTE Comments, at 9, fn 12; BellSouth, at 2.)

II. THE COMMISSION MUST NOT RELAX THE EFFECTIVE COMPETITION STANDARD UNLESS IT ADOPTS SIMILAR REGULATORY TREATMENT FOR EXCHANGE CARRIER INDUSTRY

NCTA and TCI request that the Commission relax the effective competition standard used to determine the point at which competition exists in a given market and, consequently, the point at which local franchised cable operators become free from regulation. NCTA (at 28) claims that the effective competition test fails to reflect the current realities of the market place while TCI (at 5) claims that the test does not take into proper account the competitive effects of alternative providers that have achieved a "toehold" presence. On this basis, these cable representatives propose that the effective competition standard should be relaxed.

Under the 1992 Cable Act,[7] once alternative video distribution services are present in a cable operator's market, the cable operator is released from rate

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[7] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102-385, 106 Stat. 1464.

regulation, either by the local franchise authority or the Commission. 47 U.S.C. § 543(b)(1), (l)(1). This is exactly the type of regulatory flexibility that is desperately needed in LEC access markets today. GTE, as well as other LECs, has supported the adoption of the USTA Access Charge Reform proposal, which allows increasing pricing flexibility depending on the varying degrees of competition present in a given market. As LECs begin to offer competitive video services to subscribers and cable companies begin to transport voice and data services, LECs must be afforded the degree of pricing flexibility required to meet competition from cable operators.

The Commission should resist attempts to relax the competitive standard rules for cable until it adopts similar flexible treatment of LEC access services as that proposed by USTA. LECs have submitted extensive data and information to the Commission demonstrating an equal presence of "toehold" competition in LEC markets as those referenced by NCTA and TCI.[8] It is also evident from cable operators themselves that they believe that LECs may become a real competitive alternative to traditional cable television operations. (*See* TCI, at 11.) Therefore, adjustments to the regulatory framework for the cable industry to provide greater pricing flexibility in order to meet competition must correspond to the relaxation of the LEC price cap rules, such that both industries are provided incentives to compete on the basis of price and service in the market.

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[8] *Price Cap Performance Review for Local Exchange Carriers*, CC Docket 94-1, GTE Comments, Attachment B, May 9, 1994.

NCTA and other cable interests also seek to assure the Commission that its program access rules are working sufficiently (*e.g.*, NCTA, at 25) and that vertical integration in the industry has led to reduced prices and increased service availability (NCTA, at 25; TCI, at 12). The Commission has recognized the benefits that vertically integrated cable and programming providers can produce. However, there is a danger, as evidenced by the comments of the programmers and alternative distributors which demonstrate that serious anti-competitive behavior continues to exist in the cable industry. (*E.g.*, DIRECTV, at 3; National Rural Telecommunications Cooperative, at 2-3; Wireless Cable Association, at 13-15; Liberty Cable, at 8-18.) Based on the comments submitted by many parties, it is readily apparent that the Commission should maintain an ongoing review of cable industry information regarding vertical integration in this docket, in order to gauge whether changes that have occurred in the industry over time have the effect of increasing or preventing access to desirable and reasonably priced programs.

III. CONCLUSION

GTE is encouraged that the Commission has acted on the first commercial application of video dialtone services. However, the continued delaying tactics of entrenched cable interests and the cumbersome VDT application process must not be allowed to retard the expeditious approval of VDT proposals which remain pending. The Commission must adhere to its central goal with respect to VDT of promoting competition and diversity in the video distribution marketplace. Only increased regulatory flexibility, for both video dialtone and LEC access services, will produce real

benefits in the competitive marketplace. If this course is followed, these benefits should be evident in the analysis of competition in future Commission reports submitted to Congress.

Respectfully submitted,

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 29th day of July, 1994 to all parties on the attached list.

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