GTE

EX PARTE OR LATE FILED

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October 13, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

EX PARTE: GN DOCKET 94-33
FURTHER FORBEARANCE FROM TITLE II REGULATION FOR CERTAIN TYPES OF CMRS PROVIDERS

Dear Mr. Caton:

Today, a letter was sent to Mr. Joseph Weber of the Commission's Mobile Services Division concerning the application of TOCSIA requirements to GTE's affiliated cellular and air-ground service providers. (GTE Petition for Reconsideration or Waiver of TOCSIA Requirements: FCC File No. MSD 92-14) Issues addressed in this letter are relevant to point previously raised by GTE in its Comments and Reply Comments filed in the above-referenced docket.

Please include this Ex Parte notice, and the attached letter, in the record of this proceeding in accordance with the Commission's rules concerning ex parte communications.

Questions concerning this matter should be addressed to the undersigned.

Sincerely,

Carol L. Bjelland

Attachment

C: G. Harrison
S. McNeil
D. Speight
D. Abeyta

No. of Copies rec'd 0+1
List ABCDE

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. Joseph Weber
Mobile Services Division
Federal Communications Commission
1919 M Street, N.W. - Room 644
Washington, D.C. 20554

Re: EX PARTE:
GTE Petition For Reconsideration Or Waiver of TOCSIA Requirements
FCC File No. MSD 92-14

Dear Mr. Weber:

In follow-up to our August 25th meeting, GTE Service Corporation ("GTE") would like to provide additional information to further illustrate the positions articulated in the above-referenced pending petition for reconsideration and request for waiver of certain requirements related to the Telephone Operator Consumer Services Improvement Act ("TOCSIA").

BACKGROUND

The Bureau's 1993 TOCSIA Order held that GTE Airfone is both an aggregator and an operator service provider ("OSP"), and that GTE Railfone and GTE Mobilnet (to the extent it provides credit card cellular telephone service) are aggregators.[1] It also held that "the cellular carriers that connect the calls from

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1 8 FCC Rcd 6171, 6174 (1993) (¶¶ 16, 18). GTE Mobilnet no longer owns and operates a mobile public phone service, and consequently does not serve as an aggregator.

Railfone and Mobilnet to the switched network are the OSPs for the services provided."[2] In September 1993, GTE filed a Petition asking the Commission, either through reconsideration of the Bureau's TOCSIA Order or through waiver, to exempt its mobile service affiliates from TOCSIA requirements. In several subsequent filings in Docket Nos. 93-252 and 94-33, GTE has reiterated its plea for exemption, arguing that waiver is justified under the standards set forth in Section 332 of the Communications Act. In each of these dockets, the record overwhelmingly has supported forbearing from applying TOCSIA requirements to CMRS providers.

GTE continues to believe that applying TOCSIA to CMRS providers is not necessary to assure just and reasonable rates or to protect consumers, and that forbearance would serve the public interest because of the extreme difficulty, or in some cases the impossibility, of compliance. Accordingly, GTE remains convinced that full forbearance is justified under the statutory standard. Nonetheless, GTE is providing supplemental information to highlight the TOCSIA requirements that pose the greatest burden for its CMRS operations. If the Commission declines to exempt CMRS providers from complying with TOCSIA altogether, GTE urges it at a minimum to waive compliance with the requirements discussed below.

WAIVER OF MANY TOCSIA REQUIREMENTS IS PLAINLY JUSTIFIED

TOCSIA imposes several requirements on aggregators and OSPs. Aggregators must:

- Post on or near the telephone the name, address, and toll-free telephone number of the OSP; a written disclosure that rates are available on request and consumers have a right to obtain

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2 Id. at 6175 (¶ 21).

access to the OSP of their choice; and the name and address of the Enforcement Division.[3]

- Ensure that its telephones allow consumers to use 800 and 950 access numbers to access their preferred OSP.[4]

- Ensure that its telephones allow consumers to use equal access (10XXX) codes to access their preferred OSP.[5]

- Ensure that no charge to the consumer for using an 800, 950, or other access code is greater than the amount the aggregator charges for calls placed using the presubscribed OSP.[6]

Operator service providers must:

- File and update information tariffs specifying rates, terms, conditions, commissions, and surcharges, and reasonable estimates of the amount of traffic priced at each rate.[7]

- Brand each call before the consumer incurs any charge and permit the consumer to terminate the call at no charge before it is connected.[8]

- Disclose immediately to the consumer, upon request and at no charge, a quotation of its rates, the methods by which charges will be collected, and methods by which complaints will be resolved.[9]

- Ensure by tariff or contract that each aggregators does not block 800 and 950 access to other OSPs, and withhold payment of compensation to any aggregator that is engaging in blocking.[10]

- Establish an 800 or 950 access number.[11]

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3 47 C.F.R. § 64.703(b) (1993).

4 Id. § 64.704(a).

5 Id. § 64.704(c).

6 Id. § 64.705(b).

7 47 U.S.C. § 226(h)(1).

8 47 C.F.R. § 64.703(a)(1), (2).

9 Id. § 64.703(a)(3).

10 Id. § 64.704(b).

11 Id. § 64.704(d).

- Not bill for unanswered calls in areas where equal access is available, and not knowingly bill for unanswered calls where equal access is not available.[12]

- Not engage in call splashing, except under certain conditions, and not bill for a call that does not reflect the location of the origination of the call.[13]

- Ensure by contract or tariff that each aggregator is in compliance with the requirement that it not charge more for 800 or 950 access calls than for calls using the presubscribed OSP.[14]

As GTE discusses below, the majority of these requirements are unnecessary and contrary to the public interest as applied to underlying cellular carriers, Airfone, Railfone, and Mobilnet.

A Blanket Waiver of the OSP Requirements As Applied to Underlying Cellular Carriers Is Warranted

Under the TOCSIA Order, underlying cellular carriers whose services are used by mobile public phone providers are considered OSPs. GTE previously has explained that under this analysis, every cellular carrier in the country is potentially an OSP. Moreover, since cellular carriers may not unreasonably restrict resale of their services, they may not even be aware that they are acting as OSPs with respect to particular calls. Consequently, all cellular carriers — and in the future, all ESMRs and broadband PCS providers — must comply with OSP requirements, absent full forbearance, or in the alternative, a waiver. As previously discussed in GTE's Petition and further detailed below, a blanket waiver of such requirements is warranted under the Section 332 standard.

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12 Id. § 64.705(a)(1), (2).

13 Id. § 64.705(a)(3), (4).

14 Id. § 64.705(b).

1. Tariffing

In the landline context, tariffing of OSP rates makes sense because the OSP determines the charges to the end user. Tariffs therefore inform the user what rates will apply to particular calls, and public disclosure may have some precatory effect in constraining rate levels.

In contrast, informational tariffs from underlying cellular carriers serve no purpose. Unlike the landline context, cellular carriers acting as OSPs do not determine the rates charged to users of mobile public phones. Rather, those rates are set by the entity offering the mobile public phone service. Accordingly, tariffs filed by underlying cellular carriers do not serve the purposes of TOCSIA and are not necessary to ensure just, reasonable, and non-discriminatory pricing or to protect consumers.

Nor can such tariffing be considered to serve the public interest. Not only does tariffing impede competition, as the Commission found in the Regulatory Parity Second Report and Order,[15] but the specific tariffing requirements of Section 226(h) — including the obligation to provide reasonable estimates of the amount of traffic carried at each rate — are burdensome and irrelevant. Consequently, waiver of the TOCSIA tariffing requirements as applied to underlying cellular carriers is justified.[16]

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15 Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411 (1994)(¶ 177). The Commission also specifically found that forbearance from requiring tariff filings from cellular carriers is in the public interest, "[i]n light of the social costs of tariffing, the current state of competition, and the impending arrival of additional competition ...." Id.

16 The same analysis compels forbearance from the requirement that an underlying cellular carrier disclose on request its rates, method of collecting charges, and method of resolving complaints. The cellular carrier's rates are irrelevant, it does not collect any charges from the end user, and any complaints about mobile public phone rates can be addressed only by the aggregator.

2. Branding

In the landline OSP context, branding protects consumers by informing them which carrier is handling their call and enabling them to switch to a preferred OSP before incurring any charges. In contrast, in the mobile public phone context, disclosure of the identify of the underlying cellular carrier provides the consumer with no useful knowledge. As noted with respect to tariffing, the rates, terms and conditions of the mobile public phone service are determined by the aggregator, not the underlying cellular carrier.

Besides serving no purpose, the branding obligation would impose massive costs on underlying cellular carriers. These costs fall into several categories:

First, cellular carriers would have to install upgraded switch software to provide branding announcements. As explained in GTE's Petition, the software upgrades and associated installation costs for the cellular industry as a whole probably exceed $20 million,[17] and costs for the entire universe of broadband CMRS providers would be many times this amount.

Second, each branding announcement would occupy RF capacity. Although it is difficult to quantify the costs imposed by this use of spectrum, it is sufficient to note that the rapid increase in the number of cellular subscribers is causing some cellular systems to approach the limits of their capacity. Although the implementation of digital technology will increase capacity, the diversion of resources to comply with TOCSIA requirements may impede the ability of some cellular providers to expeditiously deploy digital equipment.

Third, for the foreseeable future, cellular carriers would have to brand all roamer calls, because there is currently no means of differentiating "regular" roamers from roamers using mobile public phones. Admittedly, the IS-41

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17 GTE Petition at 17.

standard could conceivably be revised to carry information identifying mobile public phone roamers. However, this standard still is not widely employed. A revision would likely take three to four years to develop, at considerable cost. In the interim, all roamers would be bombarded by constant branding announcements as they travel from system to system, and cellular carriers would be forced to expend resources on software upgrades that yield no customer benefits.

Plainly, branding is not necessary to assure just and reasonable rates or to protect consumers, and waiver of the branding obligation would affirmatively advance the public interest. Under these circumstances, the statutory standard for waiver is clearly satisfied.

3. Enforcement of Aggregator Obligations

In the landline context, there is a direct contractual relationship between the OSP and the aggregator. In exchange for being presubscribed to an aggregator's phones, the OSP pays the aggregator a commission. Accordingly, there is a mechanism to enforce compliance with the various aggregator requirements.

In the mobile public phone context, there is no such relationship. Rather, a mobile public phone provider will simply resell services provided by an underlying cellular carrier, which may have no inkling that its offerings are being used by an aggregator.[18] In such a situation, there is no mechanism for the underlying cellular carrier, if considered an OSP, to enforce compliance by the aggregator.[19]

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18 GTE provides wholesale cellular airtime to many resellers, any or all of which could provide aggregator services without the knowledge of GTE as the underlying carrier.

19 Because underlying cellular carriers do not pay mobile public phone providers a commission, there is nothing to withhold as an incentive to compliance.

The impossibility of discharging the enforcement obligations means that waiver of these obligations would not harm consumers or be contrary to the public interest. Accordingly, waiver of 47 C.F.R. §§ 64.704(b) and 64.705(a)(5) for underlying cellular carriers is justified under the standards set forth in Section 332 of the Act.

4. Billing, Splashing, and Access Numbers

As noted above, OSPs are prohibited from billing for unanswered calls in most situations and from engaging in call "splashing" — that is, transferring a call to another OSP in such a manner that the second OSP cannot bill for the call based on the point of origination. In addition, OSPs are required to establish an 800 or 950 access number. These requirements simply make no sense in the mobile public phone context.

Billing and splashing. In the landline context, the user is billed by the OSP — and accordingly, the OSP appropriately is required not to bill for unanswered calls or to engage in splashing. In contrast, in the mobile public phone context, the user is billed by the aggregator (usually through a credit card), not the OSP. The mobile public phone provider controls which calls are billed, and how the originating point of the call is described on the bill.

In addition, OSP-originated splashing is an impossibility in the mobile public phone context because the underlying cellular carrier usually is incapable of transferring a call to an alternative OSP. Because of the pre-arranged billing agreement with either the A or the B carrier, each mobile public phone, like cellular phones generally, can operate on only one of the two systems in each market. Indeed, even if a phone were capable of operating on both systems in its "home" market under separate subscriber arrangements with each carrier, it could roam only on foreign systems with which the home cellular operator had a

roaming agreement — and roaming agreements are entered into only by systems operating on the same frequency block.

Access numbers. Once again, distinctions between the landline and mobile contexts render pointless the requirement to establish an 800 or 950 access number. In the landline context, all OSPs operating in an area can potentially serve an end user. Under these circumstances, establishment of an 800 or 950 number makes sense in order to facilitate access to the user's preferred OSP.

As explained above, however, a different situation applies in the mobile context. Because each phone operates on only one system, establishing an 800 or 950 access number serves no purpose. While cellular carriers do not block the dialing of such numbers, the user can not physically be connected to the other licensee in the market.[20]

* * *

In sum, significant distinctions between the landline and mobile contexts render OSP requirements either impossible to implement, extremely burdensome, or pointless. These requirements are not necessary to assure just and reasonable rates or protect consumers (and in most cases are irrelevant or antithetical to these goals when applied to underlying cellular carriers) and are contrary to the public interest. Accordingly, a blanket waiver of OSP requirements is justified under Section 332 of the Act for underlying cellular

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20 GTE wishes to emphasize that users are free to access the IXC of their choice for long distance calls by dialing an 800 or 950 number. There is no technical obstacle to connecting a user to any IXC operating in the area, and cellular carriers do not block such access. GTE respectfully suggests that under TOCSIA, it is unfettered access to an IXC (not to the other cellular licensee or another CMRS provider) that is required, since TOCSIA applies only to interstate calls.

carriers in the mobile public phone context if the Commission declines to exempt CMRS providers from TOCSIA compliance altogether.

Waiver or Modification of Certain Aggregator Requirements Is Justified for Railfone.

GTE conducts its Railfone[21] mobile public phone operations in a manner that is intended to maximize consumer satisfaction:

- It plainly discloses its rates, an 800 customer service number, and the name and address of the FCC's Enforcement Division on or near the telephone instrument.
- It does not block 800 access to interexchange carriers.
- It fully refunds all charges to customers who are dissatisfied with the service.

GTE voluntarily engages in these practices because it makes good business sense to do so. GTE's interest is in maximizing usage of its system and convincing railroads that they should carry GTE's mobile public phone service. Accordingly, as GTE previously has contended, there is no need to apply mandatory TOCSIA obligations to its Railfone public phone operations.

If the Commission nonetheless concludes that some TOCSIA aggregator requirements remain necessary, GTE seeks waiver or modification of those requirements as discussed below.

Posting requirements. As indicated, GTE already discloses information about its own rates, an 800 customer service number, and the name and address of the FCC's Enforcement Division. This information is either posted on a placard near the telephone instrument or distributed separately throughout the passenger car. (A copy of this notice is attached.) Read literally in light of the Bureau's TOCSIA Order, however, TOCSIA's posting requirements would require GTE to

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21 As explained in footnote 1, GTE Mobilnet no longer acts as an aggregator.

disclose the identity and phone number of the underlying cellular carrier and the manner in which customers could reach a different underlying cellular carrier.

Such disclosure would be difficult because the identity of the underlying cellular carrier will change as the user moves between service areas. It would also be essentially irrelevant and contrary to the public interest for two reasons. First, the aggregator rather than the underlying cellular carrier determines the rates and bills the end user. Second, providing access to a different underlying cellular carrier — as opposed to providing access to a different IXC — is difficult or impossible.

In any event, consumers know the rates charged by GTE Railfone, know how to reach Railfone, and can access any IXC serving the area by use of 800 number dialing arrangements. Consequently, enforcement of the TOCSIA posting rules is not necessary to protect consumers, assure just and reasonable rates, or serve the public interest. GTE therefore asks the Commission to hold that its current practices satisfy TOCSIA's posting requirements.

Unblocking of access. TOCSIA was intended to allow users to access the long distance carrier of their choice, and Railfone's mobile public phone operations comply fully with this requirement by allowing such access via 800 number dialing arrangements. These operations cannot, however, feasibly allow users to access the underlying cellular carrier of their choice.

In general, cellular phones operate only on one frequency block pursuant to a subscriber agreement with one of the two licensees. Consequently, even if all cellular carriers had 800 or 950 access numbers and the mobile public phone provider did not block dialing of those numbers, the mobile public phone could not utilize the system operating on the other frequency block. Even if the phone were subscribed to both licensees, the mobile public phone provider would have to resell both licensees in the market in order to provide service to the customer,

although it is economically untenable to do so because the volume of traffic for the second system would be too small to permit resale at advantageous rates. The situation becomes even more problematic when the user is roaming, since providing access to both licensees in every market would require that the underlying cellular carrier in the home market have a roaming agreement with both licensees in every market in the country.

In short, to comply with the unblocking regulations as interpreted by the Bureau's Order, GTE Railfone would have to (1) utilize phones capable of functioning on both frequency blocks, (2) resell both licensees in "home" markets, and (3) ensure that the underlying cellular carrier in the home market had roaming agreements with both licensees in every foreign market. Even if economically and technically feasible, compliance with these requirements would gain nothing from the end user's perspective, because the charge to the end user is determined by the mobile public phone provider, not the underlying cellular carrier. Accordingly, the Commission should either waive the TOCSIA unblocking requirement as applied to underlying cellular carriers or state that compliance with the unblocking requirement is satisfied by allowing access to the IXC of the customer's choice by use of universally available 800 number dialing arrangements. Such a clarification would advance the purposes of TOCSIA and be fully consistent with Section 332 of the Act.

Charge for 800/950 access. TOCSIA requires aggregators not to charge more for 800, 950, or other access arrangements than they charge for calls placed using the presubscribed OSP. GTE Railfone imposes no surcharge for 800 numbers used to access IXCs. Rather, the subscriber will pay the same per-minute air time charge that applies when any number is dialed. Accordingly, GTE believes that it is in compliance with this requirement.

Waiver of OSP Requirements as Applied to GTE Airfone is Warranted

Because of the uniqueness of its service, strict compliance with several TOCSIA requirements, such as audio call branding,[22] 950[23] and 10XXX[24] access, and the connection of emergency calls[25], is either technically infeasible or impractical in the air-to-ground ("ATG") environment. However, the manner in which GTE Airfone provides air-ground service to end user customers is consistent with the spirit of TOCSIA's customer protections. GTE believes, that at the very least, it is appropriate for the Commission to grant waivers of the TOCSIA requirements in these circumstances.

1. **GTE Airfone Substantially Complies with TOCSIA's Consumer Information Requirement**

The objective of TOCSIA's audio call branding requirement is to clearly identify the service provider to the transient end user customer. It has been GTE's experience that its end-user customers favor immediate access to dialtone when placing calls using its air-ground services. Audio call branding imposes an unwanted delay before receiving a dialtone. More importantly, however, GTE Airfone already substantially complies, in several ways, with the spirit of TOCSIA's audio call

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[22] 47 U.S.C. § 226(b)(1)(A), (b)(2); 47 C.F.R. § 64.703(a), (c).

[23] 47 U.S.C. § 226(b)(1)(D), (c)(1)(B); 47 C.F.R. § 64.704(a), (b), (c).

[24] 47 U.S.C. § 226(f); 47 C.F.R. § 64.704(b), (c).

[25] 47 U.S.C. § 226(d)(4)(A); 47 C.F.R. § 64.706.

branding requirement. For these reasons, and as discussed in greater detail below, waiver of TOCSIA's audio call branding requirement for GTE Airfone is appropriate.

GTE Airfone identifies itself to airline passengers generally, and end-user customers specifically, in numerous ways. GTE Airfone informs each end user of its identity on all equipment available for customer use. Certain GTE Airfone telephones have the words "Airfone In-Flight Telephone Service" printed directly on the handset. All other GTE Airfone telephones have LCD screens that communicate information to the end user: "Airfone In-Flight Telephone Service" clearly appears on the handset LCD screen until the handset is in use. With these very clear and visible means of identification, airline passengers and end-user customers are clearly notified that GTE Airfone is the air-ground communications service provider and not simply the manufacturer of the handset equipment.

GTE Airfone is clearly identified as the air-ground service provider in literature printed in airline in-flight magazines and on seat pocket cards distributed throughout aircraft equipped to provide GTE Airfone service. GTE Airfone provides airlines with descriptive literature for inclusion in the respective airline's in-flight magazine. This information explains the nature of the services, provides operating instructions, rate and other important customer service information. A photocopy of one such magazine notice is attached.

GTE Airfone also provides each commercial airline equipped with its service a sufficient number of seat pocket cards to be made available to all passengers. The seat pocket cards conspicuously display the GTE Airfone logo in large, bold type, and describe GTE Airfone as providing "In-flight Telephone Service". The

instructions for use of the telephone handset are clearly labeled "Airfone System Operating Instructions," and passengers are further notified of the major credit cards and local telephone calling cards that may be used.

In addition, information printed on the seat pocket card states " that passengers may "Dial '0' while in flight for GTE Airfone Customer Service. This is a FREE call." Passengers are also notified that "GTE Airfone Incorporated operates under a license issued by the Federal Communications Commission ("FCC")," and that complaints may be directed to the FCC's Enforcement Division. GTE Airfone's address and 800 customer service number are prominently displayed.

As is clear from the above discussion, GTE Airfone believes that its multiple forms of customer notification, from equipment labeling to clearly printed notices, more than adequately satisfy the spirit and intent of TOCSIA's consumer information requirements, making audio call branding superfluous.

There are also technical limitations to the provision of audio call branding in the air-ground environment. If GTE Airfone were required to provide audio call branding from its ground stations, the branding function would usurp channels currently utilized to carry customer air-ground traffic. A fixed, limited number of channels, shared by all air-ground service providers, are available to transmit voice and data communications between the aircraft and landline systems. Utilization of these channels for audio call branding would effectively reduce already limited spectral capacity for handling customer calls. This situation will be exacerbated as calling volumes increase, necessitating increased radio channel capacity dedicated for audio call branding. In order to provide quality air-ground service and to give end-

users the ability to complete calls without disruption, GTE Airfone should not be required to provide audio call branding.

2. GTE Airfone Substantially Complies with TOCSIA's Requirement to Provide Access to OSPs

GTE Airfone presently provides end user customers with unrestricted access to their IXC(s) or OSP(s) of choice through the use of 800 number dialing arrangements. GTE Airfone does not block or otherwise inhibit the use of 800 number dialing access. End-users of GTE Airfone's service have available to them unblocked access to OSPs.

It is technically infeasible for GTE Airfone to provide end users with direct 950 access to their IXC or OSP of choice. ATG service is an interstate service - ATG calls are generally made to and from ground-based points hundreds of miles away from the aircraft. "950" numbers are seven-digit "local" numbers. ATG calls are not local calls because aircraft are not associated with any specific area code at any time. GTE's Airfone system cannot recognize "local" telephone numbers that are seven digits in length, and consequently cannot process 950 dialing arrangements.

Given the technical limitations inherent in providing 950 dialing arrangements through its air-ground systems, GTE Airfone requests a waiver of the TOCSIA 950 access requirement of Section 64.704(a), (b), and (c). Such a limited waiver is appropriate under these circumstances where the objectives of TOCSIA, namely customer notification and choice, are satisfied by other means.

In order to provide 10XXX access, Airfone would have to substantially modify its system by creating, testing, and implementing new software system-wide. Such

modifications would be costly and of limited benefit in that 10XXX codes are not recognized by foreign ground systems that would be involved in the completion of air-ground calls. Use of 10XXX dialing access would conflict with standardized international dialing plans, leading to customer confusion. Implementation of 10XXX could also precipitate increased credit and calling card fraud if passengers accessing OSPs via 10XXX are required to manually enter their credit card numbers versus automatic system identification using a "swipe" process. Airline passengers sit in near proximity to each other on an aircraft, making it relatively easy for credit or calling card numbers to be surreptitiously obtained as the caller manually keys the relevant numbers.

10XXX codes are not recognized by foreign ground stations located in Canada and Mexico. Foreign ground stations are not licensed by the Commission, and are not owned by GTE Airfone. Even on domestic flights, many aircraft fly near or over U.S. borders and thus utilize foreign ground stations for call completion. GTE Airfone-equipped aircraft also fly to a variety of international destinations. In each of these situations, users attempting to complete calls by dialing 10XXX are thwarted because foreign ground stations do not recognize 10XXX codes.

The task of implementing 10XXX would be formidable. First, the radio transceivers that provide the aircraft with a communication link to the ground would need new software to be able to pass 10XXX codes. Second, new software would have to be generated to permit the aircraft cabin telecommunications unit ("CTU"), which connects all of the handsets to the radio transceivers, to accept 10XXX dialing.

GTE estimates that the cost of developing, testing, and deploying such software to accommodate 10XXX dialing domestically and internationally would be in excess of $ 1 million.

GTE Airfone provides end-user customers with unrestricted access to OSPs via 800 number dialing arrangements. However, because of the uniqueness of air-ground service generally, and its system specifically, significant technical barriers exist making provision of direct 950 and 10XXX access infeasible. GTE Airfone substantially complies with TOCSIA's requirement that consumers have ready access to OSPs. Waiver of TOCSIA's prohibition against call blocking as it relates to 950 and 10XXX access is appropriate.

3. Waiver of the Emergency Call Access Requirement is Appropriate

The requirement that OSPs connect all emergency calls is meaningless and even detrimental in the ATG environment, and therefore not in the public interest. Airline passengers, on ATG-equipped aircraft, are generally traveling at high speed and altitude. It is clear, then that ground-based emergency services are inaccessible. Moreover, In the event of an emergency on board an aircraft in flight, the airline's professionally trained crew is available to assist passengers, often by use of official airline radio communications. The completion of end user 911 calls under these circumstances would be inappropriate and futile.

The Commission itself has stated that "the overwhelming majority of emergency calls are local in nature and the handling of such calls is of primary concern to local communities." OSP NPRM at 4635. Police, paramedics, and fire

fighters must be available to respond to individuals in their immediate localities. Most 911 systems are designed to identify the location from which an emergency call is placed, allowing crews to reach the scene of the emergency even if the caller is unable to speak or is disconnected from the dispatcher before an address can be verbally provided. If an emergency call is placed from an Airfone-equipped aircraft, the location information provided to the emergency response team would be the location of the ground station or ground switch through which the call was delivered - not the location of the aircraft.

Confusion has already resulted from the connection of an aircraft-originated 911 call. Emergency personnel in Charleston, West Virginia received a 911 call from a GTE Airfone-equipped aircraft and were directed by their emergency system to the apparent origin of the call– an Airfone ground station. The emergency personnel found no emergency, only an equipment facility. The call was probably the result of misdialing, but this unfortunate event demonstrates that even inadvertent dialing of 911 can create unnecessary confusion for emergency service providers on the ground. For this reason, GTE Airfone currently blocks 911 emergency calls.

Although the connection of all emergency calls may be vital in other contexts, it would do more harm than good in the ATG environment by needlessly diverting emergency response teams to inappropriate locations. Waiver of Section 64.706 of the Commission's rules is thus warranted.

4. Waiver of Tariff Filing Requirement

Currently GTE Airfone files informational tariffs with the Commission pursuant to Section 226(h)(1) of the Act. However, as will be discussed below, waiver of the informational tariff filing requirement is warranted.

Section 226 of the Act provides for waiver of the informational tariff requirement, four years after enactment, if a carrier can demonstrate, and if the Commission agrees, that the waiver "will not adversely affect the continued achievement of [TOCSIA's] regulatory objectives." 47 U.S.C. § 226 (h)(1)(B)(ii); see 47 U.S.C. § 226(d)(1)(A), (B). GTE Airfone's practice of clearly identifying itself as the service provider and detailing its rates furnishes the public with the very information necessary to make the informed choice that TOCSIA seeks to ensure.

TOCSIA was enacted at the behest of OSP customers who complained of allegedly being deceived by OSPs, being charged for calls at rates that were considerably higher than those charged by major IXCs, and being blocked from reaching alternate OSPs. In sharp contrast to that murky environment, air-ground end users receive precise rate information from GTE Airfone, provided either on a seat pocket card or in an airline in-flight magazine. Airline passengers are clearly informed that GTE Airfone provides ATG service on Airfone-equipped aircraft, and are directed to the Commission's Enforcement Division if customer service inquiries are not adequately resolved. End users also have unrestricted access to OSPs through 800 dialing arrangements. The connection of emergency calls and TOCSIA's prohibition against call splashing are not meaningful in the ATG

context.[26] Thus, the original concerns that precipitated the enactment of TOCSIA are either fully addressed by Airfone or are entirely inapplicable to ATG service.

As the Commission itself has found, tariff filing requirements may not be consistent with the public interest. Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services (Second Report and Order, 9 F. C. C. Rcd 1411, 1479 (1994) [hereinafter CMRS Second Report and Order]. The Commission therein stated that "tariffing, with its attendant filing and reporting requirements, imposes administrative costs upon carriers. These costs could lead to increased rates for consumers and potential adverse effects on competition." Id.

The statutory framework establishing TOCSIA contemplated waiver of the tariff requirements when the regulatory objectives of TOCSIA had been achieved and waiver would not adversely affect the continued achievement of such objectives. GTE Airfone believes that these conditions have been met.

CONCLUSION

GTE's Petition, the record compiled in response thereto, and the records in Dockets 93-252 and 94-33 compellingly demonstrate that forbearance from applying TOCSIA to CMRS providers is justified under the standard set forth in

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[26] The inapplicability of call splashing to ATG service has been discussed in previous petitions filed with the Commission by GTE. See, e.g., Petition for Declaratory Ruling, filed in Petition for Declaratory Ruling that GTE Airfone, GTE Railfone, and GTE Mobilnet Are Not Subject to the Telephone Operator Consumer Services Improvements Act of 1990, File No. MSD-92-14, at 10-11 (May 1, 1992). To the extent necessary, Airfone therefore requests waiver of TOCSIA's prohibition on call splashing as set forth in Section 64.705(a)(3) and (4) of the Commission's rules.

Section 332 of the Communications Act. Consequently, GTE continues to urge the Commission to exercise its forbearance authority with respect to the application of all TOCSIA obligations to CMRS providers.

If the Commission nonetheless declines to forbear from applying TOCSIA to CMRS providers, GTE urges it at a minimum to waive or modify those obligations in the following respects:

First, the Commission should not apply OSP requirements to underlying cellular carriers. The underlying cellular carrier in the mobile public phone context plays a very different role than the OSP in the landline context, and accordingly is incapable of discharging many of the OSP obligations. Other requirements, including tariffing and branding, would impose considerable costs and would harm rather than benefit consumers.

Second, the Commission should either waive the posting and unblocking requirements as applied to Railfone or clarify that those requirements are satisfied by posting Railfone's rates and customer service number and unblocking 800, 950, and where applicable, 10XXX access to IXCs. GTE's current practices fully protect consumers and satisfy the spirit of TOCSIA.

Third, the manner in which GTE Airfone provides its air-ground service to end-user customers substantially complies with TOCSIA's OSP requirements. Technical limitations support a waiver of the call branding, 950, 10XXX and emergency call access requirements.

Sincerely,

Carol L. Bjelland

THE RAILFONE® SERVICE IS BEING TRIALED ON THIS TRAIN TO DETERMINE HOW USEFUL IT IS TO YOU, OUR PASSENGER, AND IF IT MEETS YOUR NEEDS AND DESIRES AS AN ADDITIONAL ON-BOARD AMENITY.

ABOUT THE RAILFONE® SERVICE...

RATES:

TYPE OF CALL	CALL SETUP CHARGE *	PER MINUTE CHARGE *
DOMESTIC U.S. - INCLUDES CALLS TO ALASKA, HAWAII, AND PUERTO RICO AND CALLS TO 800 NUMBERS	$0.99	$1.99
INTERNATIONAL CALLS	$1.99	$3.99

* PLUS APPLICABLE TAXES. DIRECTORY ASSISTANCE CALLS (AREA CODE+555-1212) ARE FREE.

CREDIT CARDS ACCEPTED:

AT&T CALLING CARD	CARTE BLANCHE	MASTERCARD
AMERICAN EXPRESS	DINERS CLUB	MCI CARD
BELL ATLANTIC® IQ®CARD	DISCOVER® CARD	VISA CARD

THE RAILFONE SERVICE ALSO ACCEPTS MOST REGIONAL BELL OPERATING AND INDEPENDENT TELEPHONE COMPANY CALLING CARDS. IT IS NOT NECESSARY TO DIAL A 1; JUST DIAL THE AREA CODE AND NUMBER. RAILFONES CANNOT RECEIVE CALLS FROM OTHER TELEPHONES.

STOP AT THE RED LIGHT.

A red "No Service Area" light will appear when cellular telephone coverage is interrupted. This generally occurs when we're in stations, going through tunnels or beyond cellular telephone company service areas in remote parts of the country.
IF THE RED LIGHT IS ON, PLEASE WAIT UNTIL IT GOES OFF BEFORE STARTING YOUR CALL.
Actual cellular telephone coverage may also vary due to weather and terrain. If the green light is illuminated, you can place a call by lifting the handset from the cradle and swiping an accepted card as shown on the Railfone and dialing the desired telephone number.

OUR SERVICE GUARANTEE.

We stand behind the quality of our service. If at anytime you are dissatisfied with your Railfone call, are disconnected or have any questions, dial "0" from the Railfone for GTE Railfone Customer Service. A representative will be happy to help you and, if necessary, credit your call. For assistance or information after reaching your destination, dial 1-800-TEL-RAIL (1-800-835-7245), or you can write to GTE Railfone Customer Service, 2809 Butterfield Road, Oakbrook, IL 60522-9000.

The consumer can direct complaints to the Enforcement Division of the Common Carrier Bureau at the Federal Communications Commission at 2025 M Street, N.W., Room 6202, Washington, D.C. 20554.

Telephone Relay Service (TRS) may be accessed using the Railfone® Service. For Voice applications call 800-855-2881. For TDD applications call 800-855-2880.

TELEPHONE INFORMATION

Flight Information
1-800-824-6200
Air Cargo Services
1-800-825-3788
Baggage Service
1-800-221-6903
Customer Relations
1-708-952-6796

Duty Free Customer Service
1-800-541-7172
1-212-213-1166
Inflight Duty Free Shop
15 Lexington Avenue, 12th Floor
New York, NY 10016 USA
Foreign Language Assistance
1-800-426-5560
Hearing Impaired (TDD)
1-800-323-0170

Meetings Plus™
1-800-MEET-UAL
(633-8825)
Mileage Plus®
24 Hour Account Information
1-800-421-4655
Additional Assistance
1-605-399-2400
First Card Visa Applications
1-800-537-7783

Red Carpet Room
1-602-881-0500
Reservations and City Ticket Office Information
1-800-241-6522
(Over 200 Offices Worldwide)
Reservaciones en Español
1-800-426-5561

SPD-Small Package Dispatch
1-800-PACKAGE
(722-5243)
United Travel Card℠ Applications
1-800-767-7574
Vacation Planning Center
1-800-328-6877

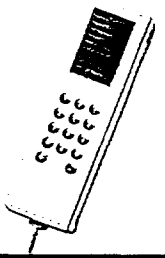
PHONE ON BOARD

PUBLIC PHONE ON-BOARD

THE AIRFONE℠ SERVICE FROM GTE.

The Airfone℠ Service accepts these credit cards, plus, most local telephone calling cards.

HOW TO PLACE A CALL

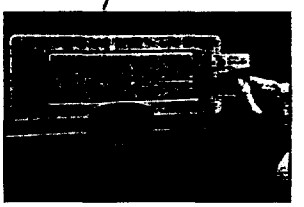


USING THE NEW ALL-DIGITAL AIRFONE℠ SYSTEM.

It's easy... follow the screen for instructions!

PRESS BUTTON TO RELEASE PHONE.

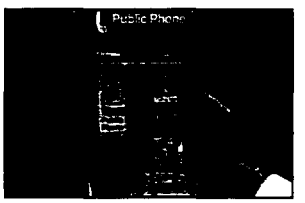
Available when flying over the U.S., Canada and Mexico.



USING THE ANALOG SEATFONE™ SYSTEM.

- *Insert card and remove phone*
- *Wait for green handset light, slide card through handset slot*
- *Listen for dial tone (If red light flashes, try again.)*
- *Dial 1 + Area Code + Number*
- *To place additional calls, press "New Call" button. To end call, press "Hang Up" button and replace handset.*

Available when flying over the U.S., Canada and Mexico.



USING THE CORDLESS WALL PHONE SYSTEM.

- *Insert card as shown*
- *Lower door handle and remove phone*
- *Press green button and listen for dial tone*
- *Dial 1 + Area Code + Number*
- *To place additional calls, repeat the last two steps. To end call, return and insert handset heel first. Remove card.*

Available when flying over the U.S., Canada and Mexico.

Free Calls

For free "*" numbers, you'll need to slide your card to activate the phone, but the call is free.

Dial *034
- High Street Emporium™ Catalog—(In-flight Shopping)
- High Street Emporium Concierge—If it exists, our Concierge can get it for you. Locating out-of-print books, finding tickets to sporting events, the theater, concerts, opera or ballet.

Dial *068
1-800-JASMINE—(Flowers, gift baskets & balloons)

Dial "0"
GTE Airfone Customer Service
Area Code/Country Code Information