

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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DEC 16 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
TELEPHONE COMPANY- )  
CABLE TELEVISION )  
CROSS-OWNERSHIP RULES, )  
)  
and )  
)  
Amendments of parts 32, 36, )  
61, 64, and 69 of the )  
Commission's Rules to )  
Establish and Implement )  
Regulatory Procedures for )  
Video Dialtone Service. )

CC Docket No. 87-266

8221  
RM-8821

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COMMENTS OF GTE

GTE Service Corporation and its affiliated  
domestic telephone operating companies

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December 16, 1994

Their Attorneys

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## SUMMARY

GTE commends the Commission on the decisions taken in its recent *Reconsideration Order* that reaffirm its commitment to the development of video dialtone services. The Commission's determination not to defer consideration of LEC Section 214 applications and to adhere to its established regulatory framework for video dialtone will ensure that real competition in the delivery of wireline video services becomes a reality.

In the *Third Notice*, the Commission identified four areas within its overall video dialtone policies for which additional public comment is sought. In considering these issues, it is imperative that the Commission adhere to its commitment to maintain a flexible regulatory approach to video dialtone. If video dialtone is to truly develop in accordance with market needs, LECs must be given the flexibility to design their video business plans in a manner that accommodates evolving technology and advanced service applications. 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, are allowed to influence competitor's actions.

Therefore, GTE urges the Commission not to create specific rules governing LEC channel allocation and sharing practices. Instead, LECs should be allowed to submit proposals that demonstrate compliance with Commission expectations that video platforms provide nondiscriminatory access to all programmers and that reasonably accommodates the availability and deployment of advanced digital technology in the network. LECs should also be allowed to voluntarily provide access

on their video dialtone platforms to local communities as a component of their channel sharing arrangements. Further, in an effort to encourage increased diversity in the availability of video services in smaller communities, the Commission should allow LECs to purchase existing cable facilities, or jointly construct facilities with local cable operators, in those markets where two wireline cable systems may not be viable. Finally, the Commission should refrain from requiring that pole attachment and conduit information be submitted in LEC Section 214 applications for video dialtone. Additional regulatory reporting requirements will needlessly build in additional delays in the Section 214 review process for VDT.

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**COMMENTS OF GTE**

GTE Service Corporation, on behalf of its affiliated domestic telephone operating companies (GTE), hereby offers its Comments regarding the Commission's Memorandum Opinion and Order on Reconsideration (Reconsideration Order) and Third Further Notice of Proposed Rulemaking released November 7, 1994 (Third Notice) in the above captioned proceeding.

**I. INTRODUCTION**

The Commission recently took an important step in further promoting competition in the local wireline video distribution market by affirming its commitment to the development of Local Exchange Carrier (LEC) provision of video dialtone (VDT) services. The *Reconsideration Order* rejected imprudent demands that approval of any Section 214 Applications for VDT be delayed until an unnecessary and burdensome comprehensive review of cost allocation rules and other purported safeguards is conducted. *Reconsideration Order*, at ¶ 145. With the *Reconsideration Order* the

Commission has now affirmed on three separate occasions that LEC adherence to established Commission Rules and policies adequately protect ratepayers from cross-subsidization and discriminatory conduct in the provision of VDT services.<sup>1</sup> In response to concerns regarding available capacity on proposed VDT platforms, the Commission has properly determined not to defer consideration of any 214 applications pending the development of rules governing channel sharing arrangements but instead to address these proposals on a case-by-case basis. The Commission has also cited GTE's Section 214 Applications as proposing a reasonable approach to accommodate programmer capacity needs. *Reconsideration Order*, at ¶¶ 270 and 275.

In the *Third Notice*, the Commission identified four areas within its overall VDT regulatory framework for which additional public comment is appropriate: (1) capacity issues, (2) modifications to the prohibition on LEC acquisitions of cable facilities, (3) preferential access proposals, and (4) pole attachment and conduit rights. GTE submits its comments in response to these issues.

## II. CAPACITY ISSUES

In the *Reconsideration Order*, the Commission affirmed a hallmark of its video dialtone policy -- that LECs provide a common carrier platform containing sufficient capacity to serve multiple customer-programmers and expand platform capacity as demand increases so as to avoid becoming a bottleneck. The Commission rejected

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<sup>1</sup> See *Telephone Company - Cable Television Cross-Ownership Rules, Sections 6.54 63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5823 (1992) (*Video Dialtone Order*); *New Jersey Bell Telephone Company, W-P-C-6840*, FCC 94-180, released July 18, 1994 (*Dover Order*), at ¶ 31; *Reconsideration Order*, at ¶145 .

proposals that would allow a single "anchor programmer" to obtain "all or substantially all" of the VDT network's analog channels. *Third Notice*, at ¶ 35.

Adherence to this mandate requires LECs to place a significant reliance on the use of digital technology in the provision of their VDT services. However, as the Commission has observed in the *Third Notice*, there is some uncertainty concerning the widespread availability and commercial feasibility of deploying digital compression and transmission technology in the immediate future. Therefore, the *Third Notice* (at ¶270) seeks comment on the merits of the approach originally proposed by GTE which would make extensive use of digital capacity vis-à-vis alternative arrangements which would make more efficient use of analog capacity, such as channel sharing.

**A. Regulatory flexibility is key in designing channel allocation policies if VDT is to develop in accordance with market needs.**

It is crucial that the Commission proceed with caution in this area. If video dialtone is to truly develop in accordance with market needs, LECs must be given the flexibility to design operational plans that accommodate evolving capacity needs as new technologies become increasingly economical and their deployment more efficient. Most importantly, the Commission should place reliance on the dictates of the marketplace to insure appropriate utilization of advanced digital technology and services as they become commercially available. GTE's initial plans, as outlined in its pending Section 214 applications<sup>2</sup>, were to make extensive use of real time compressed digitization in its video dialtone networks. However, it now appears that

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<sup>2</sup> See Applications of Contel of Virginia, Inc, doing business as GTE Virginia, W-P-C-6955; GTE Florida Incorporated, W-P-C-6956; GTE California Incorporated, W-P-C-6957; and GTE Hawaiian Telephone Company Incorporated, W-P-C-6958; May 24, 1994.

widespread use of set top boxes with digital capabilities in the *initial* phases of GTE's video dialtone deployment is not economically feasible. Although GTE remains committed to the ultimate deployment of a network with substantial digital capacity in accordance with market dictates, GTE and the Commission must now address how scarce analog capacity is to be provided to programmer-customers.

Contemporaneously with the submission of these Comments GTE is amending its Section 214 applications to propose a channel sharing arrangement which will allow for more efficient use of analog capacity.<sup>3</sup>

Initially, it is clear that the establishment of specific regulatory requirements regarding channel allocation and sharing procedures may very well block discovery of the some of the best solutions to this issue and slow the development of competition to incumbent video service providers. Therefore, the Commission should refrain from mandating LEC employment of specific digital technologies in the development of video dialtone. Given the significant differences between LEC VDT proposals and markets, *i.e.*, technology used, population densities, local market demands, etc., LECs must be allowed to tailor channel sharing arrangements and introduce newer technologies in a manner that meets the needs of their programmer-customers and the marketplace in general.

Technology is available today to provide enhanced video services packaging for consumers. Technology will continue to improve application functionality at competitive

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<sup>3</sup> GTE's channel sharing arrangement is also addressed in response to the Commission's December 9, 1994 correspondence which requests further clarification of GTE's plans. GTE's response to that correspondence is also submitted to the Commission contemporaneously with these Comments.

prices. Therefore, the regulatory goals of the Commission should continue to focus on stimulating competition. If market entry is unencumbered by artificial rules, GTE envisions rapidly expanding VDT platforms and, as they seek to compete with new market entrants, enhanced cable company networks. 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, are allowed to influence competitors' actions. Therefore, Commission policies should allow for flexibility in the design of channel sharing arrangements, including the determination of the entity that manages shared channels and the selection of appropriate technology to meet the needs of specific markets. GTE urges the Commission not to create specific rules governing LEC channel allocation practices, but instead allow LECs to submit proposals in compliance with the Commission's stated capacity policies.

In the following responses to the *Third Notice*, GTE outlines both its short term and long term plans to make use of digital technology and reasonable standards which can be adopted to allow LEC flexibility in designing channel allocation and sharing mechanisms that reflect the realities of the video distribution marketplace.

**B. The "GTE Approach" Will Ensure Nondiscriminatory Access to VDT Platforms By All Programmers**

In its Section 214 Applications, GTE outlined plans to deploy a state-of-the-art 750 MHz systems wherein 500 MHz (the equivalent of 80 channels) would be used for analog channels and 200 MHz would be used for compressed digital channels. Assuming a compression ratio of six digital channels for each 6 MHz of bandwidth would be utilized, the 200 MHz of compressed digital bandwidth would support 192

channels. As set forth in its applications, GTE plans were to equip its VDT networks with 168 compressed digital channels if demand for such capacity materialized, which meant that 24 additional compressed digital channels could be added before GTE would be required to convert any other analog bandwidth to compressed digital bandwidth. Under this configuration, local subscribers would be required to either purchase or lease a set top box with digital capabilities to gain access to all programming carried on the GTE network.

The GTE approach also addressed the need for capacity expansion. If demand developed for more than 272 channels (80 analog plus 192 digital), analog bandwidth could be converted to digital bandwidth in order to increase channel capacity. In such circumstances, GTE could either modulate this (digital) signal input onto a 6 MHz analog channel, or encode and multiplex this signal input onto a digital bit stream to derive additional channels. Thus, GTE's approach, which would make extensive use of digital capacity, would ensure that capacity be made available on a nondiscriminatory basis to all programmers regardless of the amount of capacity being utilized on the system at any given point in time.

**C. Digital technology and compression will play a large role in making far more programming available to the public.**

Digitization is leading the technological revolution within the telecommunications industry. Digital compression technology is expected to enable VDT platforms to meet channel capacity demand from multiple programmer/packagees (including a la carte programmers) and will enable file servers to store programming for instant availability by customers. Digitization greatly increases compatibility and eliminates much of the noise or interference that occurs when information is copied, manipulated, or

transmitted over distances. Digital transmission via hybrid fiber/coax facilities has four major advantages over today's analog coaxial networks: (1) it has more bandwidth capacity, (2) it requires less amplification, (3) it is more reliable, and (4) it costs less to operate. Digital transmission also does not deteriorate the image quality of the picture and can deliver CD quality sound.

Digital compression uses a series of engineering and mathematical principles to transmit more information economically. The main strategy behind compression relies on transmitting only the data that conveys new information. As telecommunications and set top box manufacturers incorporate MPEG standards<sup>4</sup> into their products, 6 MHz analog channels will give way to multiple digital streams of information. The number of digitally compressed streams that can fit in a 6 MHz analog channel will vary based on the type of modulation scheme used. Based on a 64 bit quadrature amplitude modulation (64 QAM) scheme, a 750 MHz system can support more than 200 digital channels.

Over time, content will be digitized to form new packages of products and services, which should be less costly and easier to use. New services such as interactive television and video-on-demand will create new revenue opportunities for programmers. The added benefit for programmers is that digital compression will allow them to fit up to 10 channels per satellite transponder. This increases the number of available distribution channels for programmers at lower costs.

GTE's VDT network will benefit from using digital compression by:

- Decreasing the amount of storage needed for image data.

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<sup>4</sup> The Motion Picture Experts Group standards for digital compression.

- Decreasing the time required to move image data from a video server onto the network.
- Decreasing the time required to exchange image data across the network.
- Increasing usable bandwidth.

Digital compression was introduced by the cable industry in 1994. Direct Broadcast System (DBS) providers are offering digitally compressed services to consumers today. Various equipment vendors have developed codec equipment for digital compression of satellite transmissions. Based on discussions with various vendors, GTE believes that limited quantities of digital set top boxes will be available to telecommunications and cable companies in the second half of 1995.

GTE expects that the required digital compression equipment will be commercially available during the build-out phases of GTE's networks. Unfortunately, it is apparent that volume production for these boxes will initially be low and prices relatively high. Thus, though technically available, the placement of digital equipment at each and every television set on a subscriber's premise is likely to be cost prohibitive until the 1998 timeframe.

**D. Based on current trends, reliance on digital equipment may not prove to be economically viable in the initial development phases of GTE's VDT deployment.**

Generally, deployment of digital transmission and compression equipment in VDT networks is economical and will provide substantial efficiencies in the provision of capacity to programmers. GTE plans to construct, operate, and maintain hybrid fiber/coaxial VDT networks capable of transporting both analog and digital channels. This allows individual customer-programmers to deliver either analog or digital signals over the VDT network to subscribers. This flexibility makes it possible for customer-

programmers to provide creative new services, such as interactive TV, in addition to standard video services. GTE believes that this mix of analog and digital channels provides the most flexible and economical method of meeting market demand by multiple customer-programmers on a non-discriminatory, first come, first served basis. Thus, digital compression and transmission equipment will be used in the initial deployment phase of video dialtone, regardless of whether every subscriber has a set top box with digital capabilities.

In contrast, the placement of a set top box with digital capabilities on every television set is not expected to be economically feasible in the early stages of GTE's service deployment plans. The cost of set top converters is related to the complexity of the decoder, user functionality, storage capacity, and production volume. Several companies are in the process of developing digital capable set top converters. However, based on information provided by these vendors, the initial costs of digital capable converters will be such that subscribers will be unlikely to pay the required up-front or monthly lease fee for each television set in order to change their video programming distribution provider. GTE expects that while some subscribers connected to its VDT networks will utilize a digital capable set top box on their primary television set, many will continue to rely on the receipt of analog signals in the near term.

GTE also expects that the cost of digital capable set top converters will decline as manufacturers gain efficiencies from volume orders and lower production costs. During this time, a gradual conversion of existing customer's analog connections to a digitized system via set top converters will take place, primarily as a result of increased demand for services requiring digital transmission technology, such as interactive video

offerings. Therefore, LECs must be allowed to provide video distribution services in a manner that accommodates the immediate requirements of video programmers such that they are able to effectively compete with entrenched cable system offerings. This effort will require reliance on the use and delivery of analog signals to local programming subscribers and, consequently, the need to develop plans to allocate and/or share fixed analog capacity.

Ultimately, GTE plans to add substantial switched digital capacity to its VDT networks as set top converters and ATM switches become economically available. As networks evolve, marketplace demand, coupled with declining equipment costs, will be the determining factors in insuring the continued development and expanded use of digital technology in the delivery of consumer video services. The Commission should not mandate that LECs employ all digital VDT systems before these systems are economically viable. For example, for those VDT networks with only a few initial programmers, the installation of a switched digital system would needlessly limit customer choice and increase overall operations costs to programmers if these expenses were incurred without any corresponding tangible benefits. A mandated technology requirement would place LECs at a significant competitive disadvantage and restrict their flexibility to offer multiple customer-programmers non-discriminatory access to deliver, and subscribers to receive, video programming and other video services.

In the near term, a hybrid analog/digital VDT system will increase the number of video services available to all subscribers, including low-income subscribers. The increased channel capacity and two-way signaling capability will introduce competition to the market which, in turn, will tend to reduce subscriber fees. The hybrid

analog/digital VDT system will allow GTE to offer reasonably priced access to all consumers. Thus, for example, GTE's approach to VDT should provide low-income subscribers with more choice in service options.

**E. Until widespread digital technology becomes commercially affordable, the public interest would be well-served by allowing LECs to adopt reasonable channel sharing arrangements.**

Shared channel arrangements provide the most effective means for VDT providers to meet initial capacity demands. GTE believes the Commission should encourage and support channel sharing mechanisms but should refrain from adopting specific rules and policies which would limit LEC's ability to design a capacity program to fit their individual market needs. LECs should be allowed to propose reasonable mechanisms in their 214 Applications and tariff submissions that comport with the Commission's prohibition against allocating "all or substantially all" analog channels to a single programmer. While LECs should submit general sharing plans in their 214 Applications, details such as the terms and conditions under which such arrangements will be managed may appropriately be left to the tariff review process.

GTE believes that the selection of channels to be shared by programmers will be directly impacted by the market demands of local subscribers. Programmers wishing to compete with incumbent cable systems must offer local subscribers much of the same programming that subscribers currently receive in a cable operator's basic tier of services. These include local broadcast stations and some programming services provided to governmental entities. It is in the public's interest to have a shared channel arrangement that accommodates these needs. Conditions under which such channels will be made available to any and all programmers will be set forth in a publicly available tariff, subject to Commission scrutiny and the compliant process. Therefore,

GTE does not believe that there is any compelling public interest need to require that shared channels be managed by either a group of programmers or an independent third party.

The Commission should determine adherence to its capacity requirements based on the consideration of three proposed criteria: (1) initial capacity, (2) expandability, and (3) market demand. This is essentially the criteria used by the Commission in approving VDT applications for SNET and NJ Bell.<sup>5</sup>

First, it is important that initial programmers be allowed to utilize enough capacity to assemble competitive programming packages vis-à-vis the incumbent cable operator. At the same time, capacity must be available to subsequent programmers. In the initial phases of VDT development, it is not expected that these subsequent programmers will demand an amount of channels that approximate the number provided by the competing cable system. Therefore, GTE does expect to sufficiently accommodate capacity demands for these "niche" programmers.

GTE is contemporaneously amending its Section 214 Applications to provide for a reasonable allocation of capacity on its initial VDT systems. GTE will utilize a combination of hybrid (*e.g.*, analog and digital) and all-analog set top boxes. All channels will be scrambled. Under this construct, programmers will share channels which consist of local commercial broadcast stations, local non-commercial broadcast stations and channels designated for use by local governmental entities. Therefore, GTE expects to make available from ten to twenty shared analog channels depending

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<sup>5</sup> See *Dover Order*, at 13; *In the Matter of Application of Southern New England Telephone Company*, No. W-P-C-688, Order and Authorization, FCC 94-297, released November 22, 1994, at ¶123.

on the specific characteristics of the market area. Because customer-programmers will decide which of these channels they wish to carry, GTE will not be placed in the position of selecting or determining the actual type of programming to be delivered to subscribers over these shared channels. Thus, GTE's proposal is not in violation of the cross-ownership rules.

Once shared channels are defined for a specific market area, GTE proposes that no customer-programmer will be allowed to purchase more than 60% of the remaining analog capacity to carry unique programming. Programmer-customers will be assigned capacity on a first-come, first-served basis. However, if after six months from the effective date of the tariff any analog capacity remain unused, existing programmers may utilize this capacity contingent upon releasing its use if new programmers subsequently request analog channels.

In addition, GTE will make available digital compression and transmission technology in this initial phase of its VDT rollout such that any programmer that wishes to avail itself of these capabilities will be able to do so. Subject to capacity demands, 200 MHz of capacity, equating to 192 digital channels, will be made available to all programmers. Continued reliance on digital technology will enable GTE to sufficiently expand capacity to meet future demand in excess of available analog capacity. GTE expects that initial programmers on its systems will not rely on analog channels alone and will request a number of digital channels in order to introduce services to subscribers that either own or are willing to lease a set top box with digital capabilities.

Finally, the Commission should recognize that capacity allocation is only a short term problem -- as technology evolves VDT networks and programmers will rely increasingly on digital solutions. Market competition will result in widespread use of

digital technology as demand for interactive, video-on-demand and other informational services increases. GTE's capacity and allocation plans insure that sufficient capacity will be available to accommodate expanding market demand. Although GTE anticipates maintaining some type of channel sharing arrangement on its VDT networks to the direct benefit of its programmer-customers and their end users, it expects that the approach to managing system capacity that it originally proposed in its Section 214 applications will be implemented in future VDT deployment plans.

### **III. MODIFICATIONS TO THE PROHIBITION ON ACQUISITION OF CABLE FACILITIES**

The Commission has recognized that the ban on LEC acquisitions of cable facilities may deny consumers the benefits of a common carrier video transmission facility in those markets that are not likely to sustain facilities-based competition. Thus, the *Third Notice* requests comments on the appropriate criteria by which LECs should be permitted to acquire cable facilities in markets in which two wire-based multi-channel video delivery systems are not viable. *Third Notice*, at ¶ 277.

GTE supports the Commission's efforts to remove the acquisition ban in those markets where it serves little useful purpose. As competition in the video distribution markets grows more intense over time, the Commission should take steps to eliminate the ban entirely.<sup>6</sup> There are real advantages of allowing LECs operating in smaller markets to purchase existing cable facilities or jointly construct facilities with cable

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<sup>6</sup> GTE believes that given the distinct advantages of a common carrier video platform over traditional closed cable systems, LECs should be permitted to purchase cable facilities regardless of the size of the market it serves. Provision of video services via a common carrier platform open to all customer-programmers provides the best opportunity to expand the diversity and availability of advanced video services to the public.

operators. Many LECs have significant fiber optic networks in place throughout rural and small communities. Where existing cable operators find it difficult to upgrade their existing networks or continue to maintain multiple head-ends in lower density areas, the purchase of local cable distribution facilities by LECs and the use of their existing fiber transport networks could result in significant cost savings to consumers. These savings, in turn, may enable programmers to expand the mix of service options available in smaller markets. In addition, allowing LECs to acquire existing facilities when is economically beneficial will provide additional incentives for LECs to offer a common carrier VDT platform in markets that would not otherwise support more than one wireline video provider.

For purposes of the instant Notice, the appropriate market criteria should be based on that which a LEC utilizes to determine if its own construction of a VDT facility in a given market area is warranted. When considering whether to construct VDT systems in a given market, several factors determine whether market potential justifies the risk associated with constructing a VDT network. Two primary factors affecting this decision are the size (population) of the market area and the household density. Construction of a VDT system requires a large investment to construct and significant fixed costs to operate. As a result, LECs will likely only build competitive systems in markets where the size and density justify the investment.

GTE believes that VDT systems will not prove to be competitively viable in markets with populations of 50,000 or less. Therefore, the Commission's Rules should be amended to allow LECs to purchase existing cable facilities in communities of populations less than 50,000 persons. The purchase or construction of cable facilities within these markets should be without usage restrictions so that these systems could

be used for either cable service or VDT. A less restrictive framework will provide LECs with the incentive and needed flexibility to provide upgraded and enhanced video services in smaller market areas where two competing video delivery systems is impractical.

#### **IV. PREFERENTIAL ACCESS PROPOSALS**

The *Third Notice* (at ¶¶ 281-283) requests comment on whether the Commission should, and legally can, mandate preferential treatment for certain classes of commercial, governmental, or not-for-profit video programmers. Alternatively, the Commission inquires whether LECs should be permitted to voluntarily provide preferential treatment and whether such a permissive policy is consistent with Commission Rules and applicable case law. *Third Notice*, at ¶284.

GTE strongly encourages the Commission to rely on the free market system to provide advanced video services to the citizens of the United States and not governmental fiat. To the extent that the Commission believes that free or reduced rate access is necessary to promote the public interest, it should allow LECs and programmers flexibility in determining how such access should be provided and it must determine how it should be funded.

VDT platforms will provide equal access to all programmers operating in an intensely competitive market. Where competition exists, all firms will introduce products and services in locations where a sufficient customer base exists to make the offering profitable. Within existing video distribution markets, monopoly wireline cable operators are required to deliver certain local broadcast and not-for-profit programming to local subscribers pursuant to the Commission's "must-carry" rules and local franchise requirements. Subscribers receive such channels as part of the basic tier of services

provided by their local cable operator. Thus, in order to compete with existing market conditions, new programmers using LEC VDT systems may have to design programming packages which local subscribers are accustomed to receive. These include local broadcast and certain programming services unique to the community.

In the current environment of increasingly competitive markets for all telecommunications services, public policy must not regress to a monopoly-era regulatory framework and establish requirements for new market entrants to provide reduced-price services to selected customer groups. GTE maintains that the pressures to deliver the types of programming consumers truly want will drive programmers on VDT systems to deliver services that accommodate more localized needs of a community. Regulatory mandates to provide preferential access to specific customer sets have no place in the truly competitive market in which VDT providers will operate.

GTE does recommend that the Commission allow LECs to voluntarily provide access directly to local governmental entities. GTE is prepared to include, on a voluntary basis, channels provided to local governmental entities as a component of the defined set of shared channels. Local governmental entities would share in the selection and creation of actual programming carried on these channels. Such channels would be consolidated between the various communities in a VDT serving territory. These municipalities would be jointly responsible for allocating available time slots for city council meetings, school board meetings, educational programming, etc. GTE would have no involvement in the determination or selection of this programming, thereby complying with the Commission's cross-ownership rules. To the extent that LECs voluntarily implement such proposals, they should be allowed to recoup the

underlying costs from the assessment of a charge to all end users, all programmers, or a combination of both.

The Commission should not mandate preferential VDT treatment for certain classes of programmers. In order to require preferential access to specific entities irrespective of market demand, explicit funding mechanisms such as grants, local taxes, and other similar measures must first be established to enable LECs to recover underlying costs in a competitively neutral manner. In addition, the Commission would be forced to determine which programming entities should be afforded preferential treatment and whether various local, state, or federal governmental agencies would be willing to fund such programming and by what means. Alternatively, the Commission should rely on local subscriber demand to dictate whether programmers will deliver certain non-commercial or not-for-profit programming over VDT networks. GTE believes that its channel sharing proposal and its treatment of providing voluntary access to VDT subscribers by localized governmental entities will insure that not-for-profit video programmers most in need of preferential treatment will be afforded access on VDT systems.

## **V. POLE ATTACHMENT AND CONDUIT RIGHTS**

*The Third Notice* (at ¶285) seeks input as to whether rules regarding pole attachment rights and conduit space currently applicable to channel service applications be extended to Section 214 Applications for VDT.

GTE believes the Commission's proposal to amend Section 214 filing rules to require a statement by LECs that pole attachment and conduit space is available in VDT roll-out areas is misplaced. The currently effective rules regarding Section 214 requirements for video channel services were designed to protect existing wireline

cable television companies from actions by LECs that would prevent access to utility poles and conduit. In the VDT environment, GTE will be dealing directly with programmers, not cable operators planning to build new wireline systems to compete with existing operators. As customer-programmers, these entities *by definition* do not desire to construct their own facilities. Thus, offering pole attachment rights would be a meaningless gesture. However, requiring the reporting of pole attachment and conduit space availability will needlessly build in additional delays in the Section 214 review process for VDT.<sup>7</sup>

## **VI. CONCLUSION**

The Commission must adopt flexible regulatory policies if VDT is to develop in accordance with market needs and technological capabilities. LECs should be allowed to design channel sharing arrangements that accommodate the capacity needs of all programmers while providing reasonable programming access to VDT systems by local communities. The Commission should amend its rules to permit LEC acquisition or construction cable facilities in areas in which such activities would be beneficial to the

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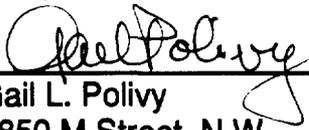
<sup>7</sup> Existing pole attachment rules are adequate to insure reasonable pole attachment conditions and rates are provided to traditional cable operators. To the extent that local franchised cable operators are allowed to compete with LECs in provision of local telephony services, the Commission's pole attachment complaint rules should be amended such that local cable companies would be made subject to the same pole attachment responsibilities and rules as are the LECs.

viewing public. Regulations pertaining to the support and filing of Section 214 Applications for VDT should be streamlined, not expanded.

Respectfully submitted,

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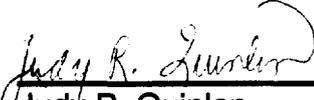
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December 16, 1994

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### **Certificate of Service**

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 16th day of December, 1994 to all parties of record.

  
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Judy R. Quinlan