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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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February 21, 1996

Hand-Delivered

William F. Caton, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Written Ex Parte Communications in IB Docket No. 95-59

Dear Mr. Secretary:

Pursuant to Section 1.1206 of the Commission's Rules, this is to notify you that a copy of the enclosed ex parte presentation submitted on behalf of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. was hand-delivered today to Jackie Chorney, Legal Advisor to Chairman Reed Hundt.

Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,

Lawrence R. Sidman

Lawrence R. Sidman

Enclosures

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Before the
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Washington, D.C. 20554
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Preemption of Local Zoning) IB Docket No. 95-59
) DA 91-577
Regulation of Satellite) 45-DSS-MISC-93
Earth Stations)

EX PARTE PRESENTATION OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

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February 20, 1996

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 21 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Preemption of Local Zoning) IB Docket No. 95-59
Regulation of Satellite) DA 91-577
Earth Stations) 45-DSS-MISC-93

**EX PARTE PRESENTATION OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.**

Pursuant to Section 1.1206 of the Commission's Rules, Philips Electronics North America Corporation ("Philips") and Thomson Consumer Electronics, Inc. ("Thomson") by their attorneys make this ex parte presentation in the above-captioned Notice of Proposed Rulemaking ("NPRM") to revise the rules regarding preemption of local zoning regulation of satellite earth stations.

I. Philips' and Thomson's Participation in IB Docket No. 95-59

Philips and Thomson have participated in this proceeding by filing reply comments in which these two consumer electronics equipment manufacturing companies urged the Commission to adopt a per se preemption of local regulation on small receive-only antennas, specifically the small antennas used by consumers to receive direct broadcast satellite (DBS) services.^{1/} Philips and Thomson contended in their reply comments that a per se preemption should cover any regulation of such receivers that

^{1/} See Reply Comments of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc., IB Docket No. 95-59 (filed Aug. 15, 1995).

would require a consumer to obtain a permit or other authorization, impose any cost or fees on a user, or require a user to attend a hearing or meeting. The companies also requested that the Commission extend the preemption to include antennas designed for off-the-air reception of television broadcast signals and address the problems created by private restrictions on the use of small, receive-only antennas by residential consumers, such as restrictive homeowners' association rules or deed covenants.

II. Section 207 of the "Telecommunications Act of 1996" --
Restrictions on Over-the-Air Reception Devices

On February 8, 1996, President Clinton signed into law "The Telecommunications Act of 1996" (the "Telecommunications Act").^{2/} Section 207 of the Telecommunications Act directs the Commission, within 180 days after the date of enactment, to "promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services."^{3/}

As the legislative history of this provision indicates, Section 207 was adopted almost verbatim from a predecessor in the House-passed version of the legislation with the sole addition of

^{2/} Pub. L. No. 104-104, 110 Stat. 56 (1996).

^{3/} Telecommunications Act of 1996, Pub. L. No. 104-104, § 207.

multichannel multipoint distribution service to its coverage.^{4/} The House report accompanying the predecessor section provides the clearest indication of Congressional intent in enacting this provision. In pertinent part, the House Report provides:

Section 308 directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services. The Committee intends this section to preempt enforcement of State or local statutes and regulations, or State or local legal requirements, or restrictive covenants or encumbrances that prevent the use of antennae designed for off-the-air reception of television broadcast signals or of satellite receivers designed for receipt of DBS services. Existing regulations, including but not limited to, zoning laws, ordinances, restrictive covenants or homeowners' association rules, shall be unenforceable to the extent contrary to this section.^{5/} [Emphasis added.]

III. The New Law's Impact on This Proceeding

Section 207 of the Telecommunications Act has a direct impact on the pending docket, specifically with regard to DBS antennas. The current Notice of Proposed Rulemaking (NPRM) appears to be noncompliant in several respects with the mandates of Section 207 of the Telecommunications Act. First, the current NPRM proposes merely to create a presumption that a local zoning regulation applicable to DBS antennas is unreasonable, and therefore preempted, unless a local government rebuts that presumption at the Commission or obtains a blanket waiver from the Commission. Under the proposed, rule a consumer could be required to exhaust the local zoning or permitting process before

^{4/} S. Conf. Rep. 458, 104th Cong., 2d Sess. 51 (1996).

^{5/} H. R. Rep. No. 204 (Part 1), 104th Cong., 1st Sess. 59 (1995).

being allowed to petition the Commission to obtain a declaratory ruling about whether the local regulation is in fact preempted.

By contrast, Section 207 of the Telecommunications Act is unequivocal in directing the Commission to issue rules preempting in their entirety State and local zoning regulations on DBS antennas. The strong language of the statutory provision and the legislative history indicate that Congress intended that the Commission issue rules creating a per se preemption of State and local regulation of DBS antennas so that a viewer's ability to erect and use a DBS antenna would not be **impaired** at all by such regulation or private land use restrictions. Congress' deliberate use of the word "impair" in the statute shows that even the slightest burden on a consumer caused by a State or local DBS antenna restriction is too great and should be preempted by the Commission's rules. Section 207 does not appear to provide the Commission with the discretion to issue rules with anything less than a per se preemption with regard to DBS antennas.

Second, the new law also makes clear that this per se preemption should be extended to private land use restrictions, such as homeowners' association rules and deed covenants, as well as State and local governmental laws and regulations. The current NPRM refrains from addressing such private land use restrictions except to note that the Commission has received numerous complaints that "private restrictions are unduly

interfering with access to interstate satellite communications" and that the issue may need to be addressed in the future.^{6/}

Third, the statute requires the Commission to extend the preemption to over-the-air television broadcast and MMDS antennas, neither of which are currently covered by the NPRM.^{7/}

IV. Options for Implementing the New Law

In the wake of the new law, the Commission has a number of options with regard to the pending docket that would aid in the expeditious implementation of Section 207 of the Telecommunications Act. Philips and Thomson believe that the current docket can be used to resolve the issue of state and local governmental regulation of DBS antennas in conformance with the mandates of the Telecommunications Act by providing in the Commission's new rules for a per se preemption of all State and local regulation of DBS antennas. A per se preemption for DBS antennas is supported by the record in this proceeding and would also meet the requirements of the new law. This could and should be achieved without in any way delaying the issuance of the new rules, which may be considered by the Commission at its February 29, 1996 meeting.

^{6/} Preemption of Local Zoning Regulation of Satellite Earth Stations, Notice of Proposed Rulemaking, 10 FCC Rcd. 6982, 6986 n. 14 (1995).

^{7/} However, the Commission received both comments and reply comments in support of extending the proposed rules to both rooftop television and MMDS antennas. See e.g., Comments of the National Association Broadcasters, Comments of the Association for Maximum Service Television, Inc., Comments of Bell Atlantic, Reply Comments of MCI.

If, however, in an effort to provide some immediate relief from local zoning regulations, the Commission issues new rules based on the approach contained in the NPRM which provides for less than a per se preemption for DBS antennas, Philips and Thomson believe that such new rules, in pertinent part, should only operate as an interim measure until the Commission completes the rulemaking required by Section 207. In this eventuality, we respectfully submit that the Commission should acknowledge in its order in this docket that further action will be necessary for faithful implementation of the mandate of Section 207. Philips and Thomson would then urge the Commission to issue expeditiously a further notice and final rules to implement Section 207 that would include a per se preemption of State and local regulation of DBS antennas as well as extending such rules to broadcast and MMDS antennas and addressing private land use restrictions. These new rules must be in place by August of 1996 to meet the 180-day timetable mandated by the statute.

Conclusion

Section 207 of the Telecommunications Act directs the Commission to preempt State and local regulatory barriers and private land use restrictions that prohibit consumers from being able to erect and use antennas to receive DBS services, local broadcast stations and MMDS services. The Commission should carry out this Congressional directive now by issuing strong and unequivocal per se preemption rules for DBS antennas in this proceeding. Alternatively, to avoid any delay in granting

partial relief from unreasonable and discriminatory zoning restrictions, the Commission should issue interim rules for DBS antennas, effective immediately, based on the approach suggested by the NPRM, and then issue a further Notice of Proposed Rulemaking to implement Section 207, making clear that any rules regarding preemption of zoning ordinances regarding DBS receivers would be reviewed to ensure compliance with Section 207.

Respectfully submitted,

Philips Electronics N.A.
Thomson Consumer Electronics

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Date: February 20, 1996

TELECOMMUNICATIONS ACT OF 1996

JANUARY 31, 1996. Ordered to be printed

Mr. BLILEY, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 652), to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

SECTION 1. SHORT TITLE; REFERENCES.

(a) *SHORT TITLE.*—This Act may be cited as the “Telecommunications Act of 1996”.

(b) *REFERENCES.*—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.).

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; references.

Sec. 2. Table of contents.

Sec. 3. Definitions.

(2) **CONFORMING AMENDMENT.**—Section 309(d) (47 U.S.C. 309(d)) is amended by inserting after “with subsection (a)” each place it appears the following: “(or subsection (k) in the case of renewal of any broadcast station license)”.

(b) **SUMMARY OF COMPLAINTS ON VIOLENT PROGRAMMING.**—Section 308 (47 U.S.C. 308) is amended by adding at the end the following new subsection:

“(d) **SUMMARY OF COMPLAINTS.**—Each applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant’s programming, if any, and that are characterized by the commentator as constituting violent programming.”

(c) **EFFECTIVE DATE.**—The amendments made by this section apply to applications filed after May 1, 1995.

SEC. 205. DIRECT BROADCAST SATELLITE SERVICE.

(a) **DBS SIGNAL SECURITY.**—Section 705(e)(4) (47 U.S.C. 605(e)(4)) is amended by inserting “or direct-to-home satellite services,” after “programming.”

(b) **FCC JURISDICTION OVER DIRECT-TO-HOME SATELLITE SERVICES.**—Section 303 (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

“(v) Have exclusive jurisdiction to regulate the provision of direct-to-home satellite services. As used in this subsection, the term ‘direct-to-home satellite services’ means the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.”

SEC. 206. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Part II of title III is amended by inserting after section 364 (47 U.S.C. 362) the following new section:

“SEC. 365. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

“Notwithstanding any provision of this Act or any other provision of law or regulation, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators. This section shall take effect for each vessel upon a determination by the United States Coast Guard that such vessel has the equipment required to implement the Global Maritime Distress and Safety System installed and operating in good working condition.”

SEC. 207. RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.

Within 180 days after the date of enactment of this Act, the Commission shall, pursuant to section 303 of the Communications Act of 1934, promulgate regulations to prohibit restrictions that impair a viewer’s ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services.

SECTION 206—AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS

Senate bill

Section 306 of the Senate bill provides that notwithstanding any other provision of the Communications Act, any ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention is not required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

House amendment

This House provision is identical.

Conference agreement

The conference agreement adopts the Senate provision with a modification placing the provision as an amendment to section 364 of the Communications Act. This provision permits a ship that fully complies with the Global Maritime Distress and Safety System (GMDSS) provisions of the Safety of Life at Sea Convention to be exempted from requirements to carry a radio telegraph station operated by one or more radio operators. Due to the conferees' concern about the proper implementation of the GMDSS, the provision specifies that this exemption shall only take effect upon the United States Coast Guard's determination that the system is fully installed, maintained, and is operating properly on each vessel.

SECTION 207—RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES

Senate bill

No provision.

House amendment

Section 308 of the House amendment directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services.

Conference agreement

The conference agreement adopts the House provision with modifications to extend the prohibition to devices that permit reception of multichannel multipoint distribution services.

TITLE III—CABLE SERVICES

SECTION 301—CABLE ACT REFORM

Senate bill

Section 203(a) of the Senate bill amends the definition of "cable system" in section 602 of the Communications Act.

Section 203(b) of section 204 of the bill limits the rate regulations currently imposed by the 1992 Cable Act.

Paragraph (1) amends the rate regulation provisions of section 623 of the Communications Act for the expanded tier. First, it eliminates the ability of a single subscriber to initiate a rate com-

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COMMUNICATIONS ACT OF 1995

JULY 24, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1555]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 1555) to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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SEC. 305. BROADCAST LICENSE RENEWAL PROCEDURES.

(a) **AMENDMENT.**—Section 309 of the Act (47 U.S.C. 309) is amended by adding at the end thereof the following new subsection:

“(k) BROADCAST STATION RENEWAL PROCEDURES.—

“(1) STANDARDS FOR RENEWAL.—If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, with respect to that station, during the preceding term of its license—

“(A) the station has served the public interest, convenience, and necessity;

“(B) there have been no serious violations by the licensee of this Act or the rules and regulations of the Commission; and

“(C) there have been no other violations by the licensee of this Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse.

“(2) CONSEQUENCE OF FAILURE TO MEET STANDARD.—If any licensee of a broadcast station fails to meet the requirements of this subsection, the Commission may deny the application for renewal in accordance with paragraph (3), or grant such application on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.

“(3) STANDARDS FOR DENIAL.—If the Commission determines, after notice and opportunity for a hearing as provided in subsection (e), that a licensee has failed to meet the requirements specified in paragraph (1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall—

“(A) issue an order denying the renewal application filed by such licensee under section 308; and

“(B) only thereafter accept and consider such applications for a construction permit as may be filed under section 308 specifying the channel or broadcasting facilities of the former licensee.

“(4) COMPETITOR CONSIDERATION PROHIBITED.—In making the determinations specified in paragraph (1) or (2), the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant.”

(b) **CONFORMING AMENDMENT.**—Section 309(d) of the Act (47 U.S.C. 309(d)) is amended by inserting after “with subsection (a)” each place such term appears the following: “(or subsection (k) in the case of renewal of any broadcast station license)”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to any application for renewal filed on or after May 31, 1995.

SEC. 306. EXCLUSIVE FEDERAL JURISDICTION OVER DIRECT BROADCAST SATELLITE SERVICE.

Section 303 of the Act (47 U.S.C. 303) is amended by adding at the end thereof the following new subsection:

“(v) Have exclusive jurisdiction over the regulation of the direct broadcast satellite service.”

SEC. 307. AUTOMATED SHIP DISTRESS AND SAFETY SYSTEMS.

Notwithstanding any provision of the Act, a ship documented under the laws of the United States operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety of Life at Sea Convention shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

SEC. 308. RESTRICTIONS ON OVER-THE-AIR RECEPTION DEVICES.

Within 180 days after the enactment of this Act, the Commission shall, pursuant to section 303, promulgate regulations to prohibit restrictions that inhibit a viewer's ability to receive video programming services through signal receiving devices designed for off-the-air reception of television broadcast signals or direct broadcast satellite services.

SEC. 309. DBS SIGNAL SECURITY.

Section 705(e)(4) of the Act (47 U.S.C. 605(e)) is amended by inserting after “satellite cable programming” the following: “or programming of a licensee in the direct broadcast satellite service”.

Section 305. Broadcast license renewal procedures

Section 305 amends section 309 of the Communications Act by adding a new subsection (k) mandating a change in the manner in which broadcast license renewal applications are processed. Subsection (k) allows for Commission consideration of the renewal application of the incumbent broadcast licensee without the contemporaneous consideration of competing applications. Under this subsection, the Commission would grant a renewal application if it finds that the station, during its term, had served the public interest, convenience, and necessity; there had been no serious violations by the licensee of the Act or Commission rules; and there had been no other violations of the Act or Commission rules which, taken together, indicate a pattern of abuse. If the Commission finds that the licensee has failed to meet these requirements, it could deny the renewal application or grant a conditional approval, including renewal for a lesser term. Only after denying a renewal application could the Commission accept and consider competing applications for the license.

The Committee believes this change in procedure will lead to a more efficient method of renewing broadcast licenses and should result in a significant cost saving to the Commission. The Committee notes that subsection (k) does not alter the standard of renewal employed by the Commission and does not jeopardize the ability of the public to participate actively in the renewal process through the use of petitions-to-deny and informal complaints. Further, this section in no way limits the ability of the Commission to act sua sponte in enforcing the Act or Commission rules.

Section 306. Exclusive Federal jurisdiction over direct broadcast satellite service

Section 306 amends section 303 of the Communications Act of 1934 to clarify that the Commission has exclusive jurisdiction over the regulation of direct broadcast satellite (DBS) service. DBS is a direct-to-home satellite broadcasting service which utilizes Ku-Band satellites. The Commission currently regulates and issues licenses for DBS service pursuant to its authority contained in Title III of the Communications Act. Section 306 reaffirms and clarifies that the Commission has exclusive authority over the regulation of DBS service. Federal jurisdiction over DBS service will ensure that there is a unified, national system of rules reflecting the national, interstate nature of DBS service.

Section 307. Automated ship distress and safety systems

This section states that notwithstanding the Communications Act of 1934, a ship shall not be required to be equipped with a radio telegraphy station operated by one or more radio officers or operators.

Section 308. Restrictions on over-the-air reception devices

Section 308 directs the Commission to promulgate rules prohibiting restrictions which inhibit a viewer's ability to receive video programming from over-the-air broadcast stations or direct broadcast satellite services. The Committee intends this section to preempt enforcement of State or local statutes and regulations, or State or

local legal requirements, or restrictive covenants or encumbrances that prevent the use of antennae designed for off-the-air reception of television broadcast signals or of satellite receivers designed for receipt of DBS services. Existing regulations, including but not limited to, zoning laws, ordinances, restrictive covenants or homeowners' association rules, shall be unenforceable to the extent contrary to this section.

The Committee notes that the "Direct Broadcast Satellite Service" is a specific service that is limited to higher power DBS satellites. This service does not include lower power C-band satellites, which require larger dishes in order for subscribers to receive their signals. Thus, this section does not prevent the enforcement of State or local statutes and regulations, or State or local legal requirements, or restrictive covenants or encumbrances that limit the use and placement of C-band satellite dishes.

Section 309. DBS signal security

Section 309 amends section 705(e)(4) of the Communications Act of 1934 to extend the current legal protection against signal piracy to direct-broadcast services. The Committee finds this section necessary to protect the DBS industry from unauthorized decryption of its signals by pirates or hackers.

TITLE IV—EFFECT ON OTHER LAWS

Section 401. Relationship to other laws

Section 401 of the bill contains savings provisions for other applicable laws.

Subsection (a) provides that, although Title I of the bill supersedes the MFJ's line-of-business restrictions, the other parts of the MFJ are not affected. For clarity, those other parts are explicitly enumerated.

Subsection (b) provides that nothing in this Act shall be construed to modify, impair, or supersede any of the Federal antitrust laws.

Subsection (c) provides that nothing in the Act shall be construed to modify, impair, or supersede any other Federal law other than law expressly referred to in this Act. This subsection also contains a savings clause for State and local law, except "to the extent such law would impair or prevent the operation of this Act."

Subsection (d) provides that the provisions of the GTE consent decree shall cease to be effective on the date of the enactment of this Act. GTE's consent decree resulted from its 1982 acquisition of Southern Pacific Communications Company (Sprint), which provided national long distance service, and Southern Pacific Satellite Company (Spacenet), a provider of satellite communications services. The Department of Justice, as part of its statutory Hart-Scott-Rodino Act review of the proposed acquisition, negotiated a consent decree with GTE. The consent decree was approved in December, 1984 and permitted GTE to proceed with its acquisition of Sprint, but regulated its provision of interexchange services. The agreement required structural separation between General Telephone Operating Companies (GTOCs) and the Sprint assets and prohibited the GTOCs from providing interexchange services. The decree

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