

of easement thereby denying the alternative provider the right to establish an exclusive relationship.<sup>12</sup>

GTE believes that the Commission must move forcefully to counter these anti-competitive actions by entrenched cable operators. Specifically, the Commission should bar incumbent operators from entering into or enforcing any exclusive arrangements. To do otherwise simply grants the incumbent a huge windfall -- the right of contractual exclusivity which it may deny to competitors -- simply because of the incumbent's current monopoly position. Therefore, existing cable operators should be barred from entering into exclusive relationships in excess of 12 months in those markets where alternative providers have announced an intention to enter and be required to conform all existing contracts to this 12 month limitation.

With respect to the demarcation point established for the service and/or facilities, GTE believes that all providers must be afforded reasonable access. Moving the

---

<sup>12</sup> See, e.g., *C/R TV, Inc. v. Shannondale, Inc.*, 27 F.3d 104 (4th Cir. 1994) (appeals court reverses a trial court summary judgment in favor of the MDU owner and the alternative provider, allowing the incumbent to proceed on various theories of access after the MDU owner established an exclusive relationship with the alternative provider); *Multi-Channel TV Cable Co. V. Charlotte Quality Cable Corp.*, 65 F.3d 1113 (4th Cir. 1995) (incumbent awarded hundreds of thousands of dollars in damages under tortious interference and Virginia law claims when SMATV operator entered in exclusive agreements with MDUs); *Southeast Florida Cable v. Islandia I Condominium Association*, Nos. 93-3316, 93-3243 (Fla. Ct. App., Feb. 15, 1995) (unpublished opinion) (incumbent sued MDU for terminating its access agreement and internal easement in favor of bulk contract with an alternative provider, which was also named as a defendant; the court upheld the incumbent's easements and ruled that the MDU had wrongfully denied access to the property); *Cencom Cable Television, Inc. V. Barranca Villa Investors, Ltd.*, No. BC 114682 (Cal. Super. Ct., Los Angeles Cnty., filed Oct. 18, 1994) (unpublished opinion) (incumbent granted preliminary injunction to continue to serve MDU on claim that it had a valid easement even after contract with MDU was terminated).

demarcation point applicable to cable services provided to MDUs will reduce the inconvenience placed on building owners while allowing competing video service providers the opportunity to adequately install and maintain their equipment.

#### **VIII. CUSTOMER PREMISES EQUIPMENT.**

The *Notice* requests comment on the costs and benefits of revising the rules regarding technologies and equipment used to receive and to interact with network-delivered video programming and telephony. The Commission asks whether customers should be allowed to use and connect their cable-related CPE, such as set-top boxes, to cable facilities; if it should extend its current CPE registration programs to cable services; whether it should regulate cable CPE under the policies adopted in *Computer II*; and generally whether it should deregulate rates for cable CPE.

While the Commission's efforts to expand the commercial availability of video-related CPE are laudable, the technical characteristics and design of today's cable systems (and other video delivery networks) simply do not permit cable equipment to be treated in a manner identical to existing telephone CPE. Nevertheless, the Telecommunications Act of 1996 requires the Commission, in consultation with appropriate industry standard-setting organizations, to adopt regulations to assure commercial availability of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming from manufacturers, retailers, or other vendors not affiliated with the video programming distributor.

GTE believes that the Commission should defer consideration of CPE issues in this proceeding until industry standard-setting organizations are able to prepare and

submit a report regarding the feasibility of mandating the commercial availability of video-related CPE.<sup>13</sup>

**IX. CONCLUSION.**

In this proceeding the Commission should deregulate rates for cable home wiring, establish consistent demarcation policies for telephone and cable services, and extend pretermination control over all cable inside wiring to the subscriber within ninety days from the release of a final order in this proceeding. Where practical, the Commission should employ the same framework established for the deregulation of telephone inside wiring as a model in crafting these policy changes. Finally, the Commission needs to take forceful action to counter cable industry attempts to thwart competition in the MDU market.

Respectfully submitted,

GTE Service Corporation, on behalf of its  
domestic telephone operating companies and  
GTE Media Ventures Incorporated

John F. Raposa, HQE03J27  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092  
(214) 718-6969

By Gail Polivy

Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 463-5214

March 18, 1996

Their Attorneys

---

<sup>13</sup> The Cable Services Bureau has indicated it will issue a Notice of Proposed Rulemaking in the second quarter of 1996 to address this portion of the legislation.