

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

In the Matter of)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61
Part II

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REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated
domestic telephone and interexchange
companies

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May 24, 1996

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SUMMARY

GTE agrees with the numerous parties who overwhelmingly support *permissive* detariffing for nondominant interexchange carriers. The record in this proceeding confirms, however, that *mandatory* detariffing would not serve the public interest. Mandatory detariffing will impose significant costs and administrative burdens on the carriers, will not promote competition, and will undermine existing market policies and customer relationships. GTE urges the Commission to reject its tentative conclusion for mandatory detariffing, and instead, to adopt a permissive detariffing policy.

All carriers, regardless of classification, should be permitted to offer interstate, interexchange service without the requirement to file tariffs. The interexchange market is sufficiently competitive that tariffing should not be required. Further, GTE firmly supports the classification of Independent LECs as nondominant in the provision of interstate, interexchange services -- with or without a separate affiliate -- because the LECs, as new entrants, have no market share, no existing interexchange customers, few if any in-place facilities (supply elasticity) and uncertain demand elasticity. The LECs clearly do not have the ability to exert market power (*i.e.*, ability to control prices or to restrict entry). If the Commission finds that dominant carrier regulation is, nonetheless, justified for the LECs, at most, streamlined tariffing should be applied to LECs' interstate, interexchange offerings.

Finally, GTE agrees with those parties supporting the packaging of CPE with interstate, interexchange services. The packaging of CPE with transmission services by all interstate, interexchange carriers allows carriers to offer a full range of services to the public. The user benefits by being able to take advantage of packaged offerings or to put together their own arrangements. GTE agrees that packaging would be pro-competitive, while any potential anti-competitive actions can be thwarted by adopting certain safeguards.

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REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone and interexchange companies, submits its Reply to comments regarding the issues of mandatory tariff forbearance and Customer Premises Equipment ("CPE") packaging addressed in the *Notice of Proposed Rulemaking* ("*Notice*" or "*NPRM*") in the above-captioned proceeding, FCC 96-123, released March 25, 1996.

I. PERMISSIVE DETARIFFING MEETS THE COMMISSION'S GOALS OF REDUCING ADMINISTRATIVE BURDENS WHILE PROMOTING THE PUBLIC INTEREST.

Most commenters agree that the Commission should forbear from applying tariff requirements to nondominant interexchange carriers. Overwhelmingly, however, the comments oppose the Commission's proposed conclusion in the *NPRM* for mandatory detariffing. Notwithstanding the justification presented in the *NPRM*, the record in this proceeding confirms that mandatory detariffing would not serve the public interest.

First, the Commission concludes (at ¶32) that it is required by Section 10 of the 1996 Act to forbear from requiring nondominant carriers to file tariffs. While the Commission has the authority, pursuant to Section 10, to forbear from requiring nondominant interexchange carriers to file tariffs, this authority does not mean that the Commission can *prohibit* the filing of tariffs. As noted in the *NPRM*, there is a long history to tariff forbearance, including a previous attempt to apply mandatory tariff forbearance which was vacated by the court. The court found that the Commission lacked the statutory authority to prohibit carriers from filing tariffs.¹ The FCC clearly now has authority to remove the affirmative regulatory requirement to file tariffs -- to forbear from tariff regulation. However, nothing in the 1996 Act gives the Commission authority to prohibit voluntary tariff submissions. Even if the Commission finds that forbearance is required for nondominant carriers, Section 203 remains in the Act. While not obligated to file tariffs under Section 203, the right to voluntarily file under Section 203 still exists.²

Second, the justification for mandatory detariffing in the *NPRM* (at ¶34), *i.e.*, pro-competitive, deregulatory, less cost, improved customer relationships, is not supported by the record in this proceeding.

¹ *MCI Telecom. Corp. v. F.C.C.*, 765 F.2d 1186 (D.C. Cir. 1985). As noted in the *NPRM*, the court subsequently found, moreover, that the FCC did not (prior to the 1996 Act) have the authority to forbear from tariffing. *AT&T v. F.C.C.*, 978 F.2d 727 (D.C. Cir. 1992), *cert. den.*, 113 S. Ct. 3020 (1993).

² Notwithstanding the Commission's lack of authority to prohibit tariff filing, many commenters argue that mandatory detariffing is premature in light of the significant changes to come from deregulation in the 1996 Act. See, *e.g.*, *Eastern Telephone Systems* at 6.

Large carriers,³ small carriers⁴ and customers⁵ alike dispute the conclusion that mandatory detariffing is pro-competitive, arguing to the contrary that permissive tariffing enhances competition. For example, CompTel (at 21) states:

[T]he cost of mandatory detariffing -- in terms of the labor hours required of marketing and legal personnel to convert all existing customers to individually negotiated contracts; the costs of negotiating and reviewing contracts on a going-forward basis; the increased exposure to liability and the commensurate litigation fees; and the loss of an important means of informing the public of new and changed rates and services -- constitutes a barrier to competitive entry that is antithetical to the 1996 Act.

As AT&T (at 13) states: "Even if the Commission had the authority to order mandatory detariffing, a regime of permissive detariffing is less regulatory, will impose fewer costs, and will better serve the public interest."

Many carriers argue that mandatory detariffing would cause additional costs and administrative burdens.⁶ Sprint (at 14-17) provides ample detail of the additional costs, e.g, individual customer contract negotiation, individual notification of changes in rates and charges or terms and conditions, and the inability of carriers to implement rapidly fraud control. MCI (at 10) agrees that carriers' transactional costs will increase if they are not permitted to file tariffs. These costs will be passed on to consumers in the form of higher rates.

³ See, e.g., MCI; Sprint; LDDS Worldcom

⁴ See, e.g., Casual Calling Coalition; MFS.

⁵ See, e.g., Citizens for a Sound Economy Foundation; TRAC.

⁶ See, e.g., LCI at 2-3 ("Denying IXCs the ability to file tariffs would needlessly impose enormous costs upon carriers and customers, and would greatly complicate the provision of long distance services.")

Although the *NPRM* suggests (at ¶30) that tariffing adds to the carrier's costs and restricts new offerings, many carriers commenting disagree. In fact, on balance, the administrative costs and burdens of voluntary tariff filing appear to be far outweighed by the benefits of the ability to provide service by tariff to end user consumers. Carriers report that the marketing and legal expenses involved in converting individual customers to contracts would be enormous. Significantly, none of the carriers filing comments object to the administrative expense of filing voluntary tariffs. Several commenters note that the Commission has already minimized the tariff filing burden by modifying the tariff requirements for nondominant carriers. The burdensome requirements have already been eliminated. Others suggest that further savings could be achieved through electronic tariff filing through the Internet and privatizing the process of receiving, logging and distributing tariffs.⁷

Commenters dispute the Commission's suggestion that mandatory detariffing would improve a carrier's relationship with its customers. In fact, the comments suggest that maximum flexibility which allows operating under tariff, contract arrangements or a combination provides the most advantageous environment.⁸ For example, LDDS WorldCom (at 5) argues that a mandatory detariffing policy would create enormous problems for carriers regarding "casual calling." The Casual Calling Coalition (at 11) agrees: "it would be both impractical and impossible to require casual users to sign a contract before using non-presubscribed services." Casual (10XXX)

⁷ LCI at 4.

⁸ See, e.g., LCI at 3.

and collect calling are frequently used services. Without the legal assurance of payment afforded by tariffs, carriers would have to decide whether or not to continue providing these services or to delay the call by requiring that the party to be billed provide a valid credit or calling card to ensure payment.⁹

Finally, the Commission's concern that tariffing encourages price collusion is overstated. Overwhelmingly, the comments provide evidence that tariffs are pro-competitive. Tariffing promotes competition by making available information about prices, terms and conditions to both customers and competitors.

GTE agrees with those parties supporting permissive detariffing. Mandatory detariffing will impose significant costs and administrative burdens on the carriers, will not promote competition, and will undermine existing market policies and customer relationships. Therefore, GTE urges the Commission to reject its tentative conclusion for mandatory detariffing, and instead, to adopt a permissive detariffing policy.

II. THE COMMISSION SHOULD ADOPT PERMISSIVE DETARRIFFING FOR ALL INTERSTATE, INTEREXCHANGE PROVIDERS.

It is imperative that the Commission realize that *all* interstate, interexchange providers will be operating in the same competitive marketplace and not disadvantage some to the advantage of others. Asymmetric regulation is not a new theme, but one played over and over by parties seeking to maintain or enhance their positions in the marketplace. The Commission should reject such proposals and instead recognize that

⁹ See Sprint at 13.

even-handed deregulatory actions will best assure a competitive telecommunications environment.

First, all carriers, regardless of classification, should be permitted to offer interstate, interexchange service without having to file tariffs. GTE agrees with the Ad Hoc Coalition of Corporate Telecommunications Managers (at 2) that the interexchange market is sufficiently competitive that dominant regulation is not required. Further, GTE firmly supports the classification of Independent LECs as nondominant in the provision of interstate, interexchange services -- with or without a separate affiliate. The LECs do not have the ability to exert market power (*i.e.*, ability to control prices or to restrict entry). They are the new entrants with *no* market share and no existing interexchange customers, few if any in-place facilities (supply elasticity), purchase transmission capacity from the incumbents, and have uncertain demand elasticity.

If the Commission finds that it must maintain dominant carrier regulation for the LECs, it should at least apply streamlined regulation to LECs' interstate, interexchange tariff filings. There is no reason why any LEC, even if classified as a dominant carrier for interstate, interexchange services, should continue to be compelled to file tariffs subject to "dominant" carrier regulation when its competitors will be allowed either to not file tariffs or to file them under the rules governing streamlined regulation.

GTE takes exception to those parties that want to fragment the distinction between carriers even more. Specifically, the Telecommunications Resellers Association's ("TRA") attempts to segment nondominant carriers into categories is totally self-serving and ignores the realities of a competitive marketplace. TRA (at 18-19), seeking to preserve its market share and flexibility, proposes to handicap any

carrier that generates "five percent or more of the aggregate domestic toll revenues, as well as ... carriers that are affiliated with an incumbent LEC."¹⁰ This proposal would increase regulation even as the Commission has determined that the interexchange market is competitive. As stated above, retaining a dominant carrier classification for certain carriers in a market that it has already determined to be competitive would hamper competition; but to further bifurcate the competitors based on size or affiliation would surely distort the market further. Promoting competition should not require maintaining rules forever that "protect" inefficient competitors from the marketplace.¹¹

GTE urges the Commission to classify *all* interstate, interexchange carriers as nondominant and to apply the *same rules* to every competitor regardless of size or affiliation. To do otherwise would be to disrupt the functioning of a competitive marketplace.

III. THE PUBLIC INTEREST WARRANTS ALLOWING CARRIERS TO PACKAGE CPE WITH INTERSTATE, INTEREXCHANGE TRANSMISSION SERVICES.

The majority of commenters addressing the issue support the Commission's tentative conclusion that packaging of CPE with interstate, interexchange services would be in the public interest. The recurring themes are that consumers prefer purchasing services in packages, that packaging would be pro-competitive, and that

¹⁰ See also Dr. Robert Self dba Market Dynamics (at 20) who argues for the retention of tariff filing requirements based on size.

¹¹ The word inefficient is key. GTE does not support the theory that size alone dictates the efficiency of a competitor.

any potential anti-competitive actions can be thwarted by certain safeguards.¹² GTE agrees with those parties supporting the packaging of CPE with interstate, interexchange services.

Parties suggest two safeguards to prevent anti-competitive action:¹³ the use of public interfaces and adequate notice of any change in the interface; and the offering of transmission services on a stand-alone basis. By requiring that the interface be disclosed, the Commission can assure that technical information will be available to all interested persons, thereby addressing the concerns of parties such as the Consumer Electronics Retailers Coalition (at 13) that they would be unable to obtain necessary information. Moreover, by requiring that transmission services also be offered on a stand-alone basis, the Commission can assure that users who prefer to develop their own package of services have the necessary information available to do so. With these safeguards, users benefit by being able to take advantage of packaged offerings or to put together their own arrangements.

¹² See, e.g., General Communications, Inc. At 5; Louisiana PSC at 8-10; NYNEX at 7; Office of the Ohio Consumer's Counsel at 8-9.

¹³ See U S WEST (at 7); Ad Hoc Telecommunications Users Committee, California Bankers Clearing House Association, New York Clearing House Association, ABB Business Services, Inc., and Prudential Insurance Company of America (at 12-13).

Therefore, GTE urges the Commission to allow the packaging of CPE with interstate, interexchange transmission services by all interstate, interexchange carriers, thereby permitting carriers to offer a full range of services to the public..

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone and interexchange
companies

A handwritten signature in black ink, appearing to read "Gail Polivy", written over a horizontal line.

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May 24, 1996

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on May 24, 1996 to of record.



Ann D. Berkowitz