

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video programming)

CS Docket No. 96-133

REPLY COMMENTS OF GTE

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affiliated domestic telephone operating and
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REPLY COMMENTS OF GTE

GTE Service Corporation, on behalf of its affiliated domestic telephone operating and video companies ("GTE"), respectfully submits these reply comments in response to the Commission's Notice of Inquiry ("NOI") in CS Docket No. 96-133, FCC 96-265, released June 13, 1996. In these Reply Comments, GTE responds to comments made with respect to paragraphs 8, 15, and 24 of the NOI.

I. INTRODUCTION

Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report annually to Congress on the status of competition in the market for the delivery of video programming.¹ The NOI is intended to assist the Commission in gathering the necessary information, data, and public comment to prepare the third annual report on competition. The Commission seeks comment on conclusions

¹ Communications Act of 1934, as amended ("Communications Act"), Section 628(g), 47 U.S.C. § 548(g).

reached in the *1995 Competition Report*, data regarding changes over the past year, and projections for the future development of competition in this market.

The Commission believes the Telecommunications Act of 1996 ("1996 Act")² will dramatically affect overall competition in the market for delivery of video programming. Section II of the NOI requests information concerning the relevant provisions of the 1996 Act and their likely impacts on existing and potential distributors of video programming. In Section III, the Commission requests information on competition in markets for the delivery of video programming.

II. THE TELECOMMUNICATIONS ACT OF 1996

The 1996 Act contains a provision that eliminates under a number of circumstances the uniform rate structure requirement for services provided to multiple dwelling units ("MDUs")³. The NOI (at 8) seeks comment on the effect of this provision on competition from multichannel video programming distributors ("MVPDs") that compete with cable operators for service to MDUs.

While GTE does not offer specific comment on the uniform rate structure aspects of this section of the NOI, we are compelled to offer comment on the state of competition for service to MDUs, specifically in the area of cable home wiring. The

² Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996).

³ 1996 Act, Sec. 301(b)2.

Commission has a pending proceeding⁴ in which it is taking steps to revise its cable home wiring rules to incent nascent competition in the local video distribution market. An aspect of the proceeding addresses how the Commission's cable home wiring rules should be applied to MDUs with loop-through cable inside wire configurations. GTE believes the current rules hobble the evolution of effective competition. In its comments, filed March 18, 1996, GTE maintained that Commission rules should be designed to promote competition among telecommunications providers and asserted that the most sensible approach would be to "deregulate" all cable inside wiring and extend pretermination rights to all cable subscribers 90 days after a release of a final decision in a companion proceeding.⁵ The policy would result in a building owner having control over all existing loop-through inside wiring. Thus, competition would be truly promoted among telecommunications providers.

GTE also strongly urged the Commission to prohibit all future loop-through installations. Loop-through wiring only aggravates efforts to pry open the video distribution market to competition as it precludes any opportunity for more than one service provider to serve an MDU location. Retaining the existing policy of allowing loop-through wiring installations while exempting them from cable inside wiring rules has the effect of encouraging new and expanded use of loop-through wiring, as

⁴ See *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable Home Wiring*, Further Notice of Proposed Rulemaking, CS Docket No. 92-260, FCC 95-503, released January 26, 1996.

⁵ See *In the Matter of Telecommunications Services Inside Wiring, Customer Premises Equipment*, Notice of Proposed Rulemaking, CS Docket No. 95-184, FCC 95-504, released January 26, 1996.

incumbent cable operators seek every avenue to protect their monopolies from competition. Continued installation of loop-through wiring allows incumbent cable operators to avoid all, or most, of the Commission's inside wiring requirements in MDUs. Competition cannot develop among video programming distributors for MDU markets nor the promotion of subscriber choice, if the Commission does not prohibit installation of loop-through wiring in all future cable wiring configurations.

III. CHANGES IN MARKETS FOR THE DELIVERY OF VIDEO PROGRAMMING SINCE LAST YEAR'S REPORT

A. Remaining Inhibitors to Competition.

Commenters responding to the Commission's request for information on the likely effects of the new Open Video System ("OVS") option for Local Exchange Carrier ("LEC") entry into video programming, transmission, and distribution (NOI at 15) basically take the position that it is too early to tell what effect this option will have on the delivery of video programming. They do, however, identify two areas of concern that will impact LEC use of the option: program access and facility cost allocation rules.

Bell Atlantic notes that LECs that choose the OVS option are (in theory) subject to reduced regulatory burdens, but in return must cede editorial control over up to two-thirds capacity on the system. Bell Atlantic believes that it is too early to judge what the effect of the new option will be and suggests that LECs will not be able to determine which entry option makes sense until final rules are in place.⁶ SBC Communications,

⁶ Bell Atlantic at 2, 3, and 4.

Inc. ("SBC") states that Congress has fashioned the new platform to offer providers an alternative means to deliver programming besides the incumbent cable operator and notes that Congress intended the new platform to be a Title VI system. SBC also notes that the OVS option will not likely be viable until technology and market demand support an all digital environment due to the Commission's determination that analog and digital portions of an OVS must be considered separately for the purposes of allocating system capacity among video program providers. SBC concludes that it could prove difficult for an OVS to assemble an attractive programming package in an analog-only environment.⁷ GTE believes these observations are valid and should be included in the *1996 Competition Report*.

After these comments were filed, the Commission issued final rules on OVS.⁸ GTE believes that these final rules detrimentally affect the viability of OVS. Specifically, based on the failure of the Commission to correct its initial rules regarding Public, Educational and Governmental Access channels ("PEG") negotiations with local franchising authorities, and the Commission's adoption of anticompetitive modifications proposed by incumbent cable monopolists, GTE believes that OVS -- as now structured -- is simply not a viable commercial option.

The issue of cost allocation across all video services concerns several commenters. SBC states that rules under consideration in CC Docket No. 96-112 will

⁷ SBC at 4 and 5.

⁸ See *In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, CS Docket No. 96-46, FCC 96-334, released August 8, 1996.

create a competitive advantage for entrenched cable companies if any ordered allocator is not applied equally to incumbent cable providers upgrading their networks to enter the telephony market.⁹ BellSouth believes the prospect of entry into video is dimmed by proposals for punitive cost allocation rules like those being considered in the 96-112 proceeding. BellSouth correctly concludes that such a rule would significantly impair the business case for entry via joint use facilities, a penalty which apparently will not be imposed on cable operators developing business cases for entry into the telephone business.¹⁰ GTE has expressed similar observations and concerns in its comments in that proceeding. Specifically, GTE believes that the proposed 50/50 allocation factor is arbitrary in nature and appears to unfairly burden LECs that desire to use facilities in any joint use manner.

Program access is another issue of concern. SBC states that due to the current program access rules being limited in scope, exclusivity agreements such as the arrangement NBC is reportedly offering with respect to MSNBC may soon become the norm, and new entrants could be locked out of access to important programming.¹¹ BellSouth believes that access to programming continues to loom as a significant hindrance to successful competitive entry and cites the same MSNBC agreements as an indicator of the anticompetitive potential for such behavior.¹² Ameritech maintains

⁹ SBC at 5.

¹⁰ BellSouth at 4.

¹¹ SBC at 6.

¹² BellSouth at 4.

the Commission must recognize that denial of access to programming impedes a new entrant's ability to provide customers with a robust competitive alternative. Ameritech points out that incumbent operators can prevent new operators from having access to popular programming if they have entered into exclusive distribution contracts before June 1, 1990. Ameritech observes that though programming developed for LECs must be made available to all competitors, the same rules can be used by competitors to deny LEC access to certain programming. Ameritech also notes that programmers not subject to the Commission's program access rules (FOX and NBC offerings of exclusive carriage for their new 24-hour news channels to incumbent cable operators are cited as examples) are able to offer new services only to entrenched incumbent cable operators, denying new cable competitors access to these same services.¹³ Wireless Cable Association International ("WCA") comments that the greatest flaw in the 1992 Cable Act's efforts to promote fair access to programming was Congress' decision to limit the scope of Section 19 to only those programmers in which a cable operator has an attributable interest. WCA firmly believes that any program access requirements should apply equally to integrated and nonintegrated program suppliers and urges the Commission to recommend that Congress amend Section 628 of the Communications Act so that program access rules apply equally to all program suppliers. WCA also requests the Commission extend the program access provisions of the 1992 Cable Act so that they are applicable to not only satellite-distributed programming services, but all

¹³ Ameritech at 5, 7, 8, and 9.

programming services regardless of the means of distribution.¹⁴ GTE has long maintained that access to competitive and equivalent programming is essential to any new video programming provider's ability to successfully compete with entrenched cable operators. If incumbent cable providers are able to impede or deny competitors access to key programming, effective LEC video competition will be impossible.

B. GTE's Cable Overbuilds.

The NOI (at 15) seeks comment on the status of overbuilding, including the status of new overbuilding. The *1995 Competition Report* noted that overbuilding activity was being pursued by several LECs in the form of construction of cable systems within their local telephone service areas. The Commission projected that this type of activity was expected to continue and increase in 1996.

During 1996, GTE has received some of the necessary local franchise approvals in order to offer cable service over hybrid fiber-optic and coaxial networks in California and Florida. GTE's proposed Florida network obtained initial franchise approval, for its first community, in June, 1996 and will be capable of offering home entertainment and interactive video services to approximately 133,000 homes in the Tampa Bay area by year end. GTE's California network obtained initial franchise approvals in February and July, 1996 and will be capable of offering cable TV and enhanced video services to approximately 122,000 homes in Ventura County by year-end 1998.

¹⁴ WCA at 20 and 22.

Initially, the GTE systems will offer superior cable TV picture resolution, with stereo broadcasts and CD-sound quality over 78 channels. Later, the systems will become digital with a capacity of as many as 150 additional channels, with the capability of providing such interactive services as home shopping and banking, games, and digital music channels. Consumers will receive unique programming and other creative services available through GTE's alliance with americast™. That alliance includes the Walt Disney Co., Ameritech, BellSouth, Southern New England Telephone, and SBC.

C. Actual and Potential Competition and Competitive Responses.

The NOI (at 24) seeks information on the current effects of actual or potential competition in those markets where consumers have a choice between MVPDs. It also requests information on incumbent cable operators' responses to entry and competition and on the changes that cable operators are making in anticipation of the entry of competitive alternatives in local markets.

GTE has recently begun offering consumers a video choice in Clearwater, Florida. The incumbent operator's (Time Warner's) response has been to move to a price-based competitive approach in only those areas of its market in which GTE has a competitive presence. Time Warner appears to be trying a variety of repackaging approaches, coupled with discounting. Time Warner promotes these changes to its prior service offering on both a targeted (door-to-door sales and direct mail) and mass advertising (television) basis.

Obviously, Clearwater consumers fortunate enough to reside in an area where GTE competes with Time Warner -- which now comprises less than 12,000 households -- have realized tangible price and service offering benefits. Other consumers, however, remain under the incumbent monopolist's yoke.

IV. CONCLUSION

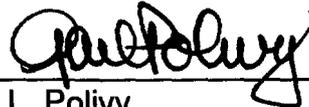
The annual report addressed in this NOI represents an important instrument for Congress to use in determining the status of competition in this evolving market. The information contained in this and prior reports is essential for Congress to have an accurate picture of the state of video programming provision. GTE appreciates the opportunity afforded by the Commission to comment in this proceeding and hopes its observations as a new video programmer provider will be of use to the Commission.

Respectfully submitted,

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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 August 19, 1996 to all parties on the attached list.

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