

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

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FEDERAL COMMUNICATIONS COMMISSIC.  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Section 402(b)(1)(A) ) CC Docket No. 96-187  
of the Telecommunications Act of 1996 )

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REPLY COMMENTS OF GTE

GTE Service Corporation on behalf of its affiliated  
domestic telephone operating companies

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## SUMMARY

The Telecommunications Act of 1996 envisioned a radical change in telecommunications law and regulation. Section 402(b) of the 1996 Act, applying this radical change to local exchange carrier ("LEC") tariff filing requirements and the lawfulness of LEC tariffs, is an essential part of this regulatory reform. GTE urges the Commission to use the opportunity in this proceeding to streamline LEC tariffs to implement this congressional direction. To do otherwise would not only violate this explicit statutory direction, but the congressional intent to enact real regulatory relief for the LECs.

The narrow interpretations advocated by interexchange carriers and competitors and potential competitors of the LECs effectively nullify much of the relief the 1996 Act directed to streamlining local exchange carriers' tariffs, and ignore the clear congressional intent to streamline tariff regulation. GTE urges the Commission to resist these attempts, and instead, to change the tariff rules in accordance with the plain meaning of the new Section 204(a)(3).

A plain reading of the statute creates a presumption of lawfulness for LEC tariffs when filed, which can be overcome if the Commission takes action to suspend the tariff and to initiate a hearing. If the Commission does not take this action, however, the tariff goes into effect as a lawful tariff. GTE agrees with those parties who argue that once in effect, the tariff becomes lawful, by operation of statute, and cannot later be deemed unlawful as to past charges. Moreover, GTE believes that streamlined procedures should apply to all LEC tariffs, not just rate increases and decreases, for both existing and new services. In order to promote innovation, the Commission should not differentiate between new and existing services or unduly restrict new services.

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GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby replies to Comments submitted to the Commission's *Notice of Proposed Rulemaking ("NPRM")* in the above-captioned proceeding.<sup>1</sup>

INTRODUCTION

The *NPRM* proposes rules to implement Section 402(b)(1)(A) of the Telecommunications Act of 1996<sup>2</sup> which provides for "Regulatory Relief" and "Streamlined Procedures for Changes in Charges, Classifications, Regulations, or Practices." Despite the relatively straightforward instructions contained in this subsection, the parties, not suprisingly, urge the Commission to adopt vastly different interpretations.

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<sup>1</sup> *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CC Docket No. 96-187, FCC 96-367 (released September 6, 1996).

<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 *codified at* 47 U.S.C. §§ 151 *et seq.* ("the 1996 Act").

The Interexchange Carriers ("IXCs")<sup>3</sup> and Competitive Local Exchange Carriers ("CLECs")<sup>4</sup> advocate a narrow reading while the Local Exchange Carriers ("LECs")<sup>5</sup> generally support a broader reading. GTE continues to believe that, by maintaining a plain reading of the statute, the Commission can faithfully implement the congressional deregulatory policy clearly established in of Section 402(b) of the 1996 Act.

**I. THE 1996 ACT ENVISIONED A PRO-COMPETITIVE, DEREGULATORY NATIONAL POLICY AND SPECIFICALLY ENACTED REGULATORY RELIEF FOR LOCAL EXCHANGE CARRIERS.**

The overall context of the 1996 Act is "to provide for a *pro-competitive, de-regulatory* national policy framework designed to *accelerate ... deployment of advanced telecommunications and information technologies and services ....*"<sup>6</sup> The specific context of Section 402 is *regulatory reform* with the emphasis in Section 402(b) on regulatory *relief*.

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<sup>3</sup> See, e.g., AT&T, MCI, and Frontier (at 2) (specifically calling for the Commission to "construe this provision ... as narrowly as possible.")

<sup>4</sup> See, e.g., MFS Communications Company, Inc. ("MFS") (at 2) (urging the Commission to adopt a "strict reading") and KMC Telecom, Inc. ("KMC") (at 3) (requesting the Commission "narrowly construe" this section. In arguing for a very narrow interpretation, the CLECs appear to believe that this section of the 1996 Act does not encompass them. As will be discussed *infra*, Congress did not differentiate in Section 402 between classes or types of LECs as it did in Section 251.

<sup>5</sup> See, e.g., Alltel Telephone Services Corporation ("Alltel") (at 2) ("the Commission must move beyond its current narrow focus of streamlining only the tariff notice periods and, instead, adopt regulations eliminating current cost support requirements for LEC tariff filings.")

<sup>6</sup> See Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996). (Emphasis added.)

The narrow interpretations advocated by IXC's and CLEC's effectively nullify much of the relief the 1996 Act directed to streamlining local exchange carriers' tariffs. Limiting LEC streamlined treatment to only rate increases or decreases, as suggested in the *NPRM* and soundly endorsed by non-incumbent LEC's, is no real relief to LEC's, especially since price cap LEC's already can file in-band tariffs with a 14-day effective date. Optional Incentive Regulation ("OIR") LEC's also have the added ability of implementing new services on 14-days' notice. Such narrow interpretations ignore the clear congressional intent to streamline tariff regulation. The Commission must change its rules in accordance with the plain meaning of the new Section 204(a)(3). To do otherwise would not only violate this explicit statutory direction, but the congressional intent to enact real regulatory relief for the LEC's. GTE agrees with NYNEX (at 4) that "[t]he tariff streamlining provision is an essential part of the regulatory reform framework, and it should not be given short shrift by the Commission."

**II. LEC TARIFFS ARE NOW "DEEMED LAWFUL" BY SPECIFIC STATUTORY DIRECTION. [*NPRM* ¶¶ 8-15]**

The commenters are fairly unanimous that by adopting Section 402(b)(1)(A), Congress intended to streamline the tariff process for LEC's.<sup>7</sup> Parties differ, however, on how these tariffs that are now "deemed lawful" should be treated. Most LEC's commenting

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<sup>7</sup> Ad Hoc Telecommunications Users Committee ("Ad Hoc") (at 2), to the contrary, suggests that, despite the fact that Section 402 is titled "Regulatory Reform," Congress did not intend to change the treatment of LEC tariff filings. This suggestion, supported by nothing more than wishful thinking, is contradicted by the statute.

advocate that tariffs filed must be determined to be lawful by operation of the statute.<sup>8</sup>

Under this interpretation, if service is provided pursuant to a tariff which is "deemed lawful," the carrier cannot later be liable for damages if that tariff is subsequently found to be unlawful. IXCs argue generally that these tariffs are only entitled to a presumption of lawfulness which can later be overturned, subjecting the carrier to damages.<sup>9</sup>

Neither of these positions truly accommodate the plain language of Section 402(b)(1)(A). As stated in its initial Comments, GTE believes that a plain reading of the statute blends the two concepts.<sup>10</sup> While the statute states that "any such charge, classification, regulation or practice shall be deemed lawful," it goes on to add "and shall be effective . . . unless the Commission takes action under paragraph (1) [Section 204(a)(1)] before the end of that 7-day or 15-day period, as is appropriate."<sup>11</sup> GTE believes that this language creates a presumption of lawfulness for tariffs when filed,<sup>12</sup> which can be overcome under the terms of the statute, if the Commission takes action under Paragraph 1

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<sup>8</sup> See, e.g., *NYNEX* at 9.

<sup>9</sup> See, e.g., *AT&T* at 7; *Association for Local Telecommunications Services ("ALTS")* at 3.

<sup>10</sup> *Southwestern Bell Telephone Company ("SWBT")* (at 5) takes a similar position. ("The presumption of existing LEC price cap regulation is supplemented by the statute. The LEC price cap filings would be 'deemed lawful' on the effective date, necessarily supplementing the 'presumption' with a 'determination' of lawfulness. The rules should be changed to reflect the change in the statute.")

<sup>11</sup> 47 U.S.C. § 204(b)(3).

<sup>12</sup> *Pacific Telesis Group ("PTG")* (at 5) argues that the tariff is deemed lawful at the time of filing.

to suspend the tariff and to initiate a hearing on the lawfulness.<sup>13</sup> If the Commission does not take this action, however, and the tariff goes into effect. GTE agrees with those parties<sup>14</sup> who argue that the tariff becomes lawful, by operation of statute, and cannot later be deemed unlawful as to past charges.

The IXCs argue that "deemed lawful" really means only presumed lawful. They fail to explain, however, why Congress would use the word "deemed" if it meant "presumed."<sup>15</sup> The Commission cannot simply assume that Congress used the wrong word for what it intended. PTG (at 4) cites numerous other places in the statute where Congress used the word "deemed." These other references confirm Congress' understanding of the ordinary definition. The rules of statutory interpretation require the Commission to give otherwise undefined terms in the statute their ordinary meaning. Further, since price cap LECs are already entitled to a presumption of lawfulness for in-band tariff filings, the statutory change, under the IXCs' reading, would have added little or no reform to the vast majority of LEC

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<sup>13</sup> See also *U S WEST , Inc. ("U S WEST")* (at 7) ("The 1996 Act deems a tariff filing to be lawful upon filing, not simply upon effectiveness. Thus, the 1996 Act shifts the burden of proof as to lawfulness for a filed, but not effective tariff.")

<sup>14</sup> See, e.g., *BellSouth Corporation ("BellSouth")* at 6-7; *SWBT* at 5.

<sup>15</sup> *Capital Cities/ABC, Inc. et al. ("the Networks")* (at 4-5) concede that interpreting "deemed lawful" as "presumed lawful" is "arguably ... inconsistent with its historical meaning." Instead, the Networks resort to an argument of "[w]hat Congress surely must have intended. . . ."

tariff filings.<sup>16</sup> Both these reasons support the position that "deemed lawful" establishes a lawful tariff not just a presumption of lawfulness.

There is well established case law that a carrier which charges a lawful rate cannot later be liable for damages.<sup>17</sup> None of the commenters explain how a rate found lawful by the Commission, in its legislative capacity, is any more lawful than a rate deemed lawful by operation of the statute directly. AT&T (at 4) argues that this interpretation of the subsection "works a radical change in the law that has long governed tariffs." It is clear that the 1996 Act envisioned a radical change in telecommunications law and regulation and, more specifically, that Section 402 enacted a radical change in LEC tariff filing requirements *and* the lawfulness of LEC tariffs.

While it is understandable that customers would like to retain the ability to file complaints and receive damages for past charges, Congress clearly changed this remedy because of the new regulatory environment. America's Carriers Telecommunications Association ("ACTA") (at 7) argues that Congress "meant to create no such slanted playing field." In fact, the changes in the lawfulness of the LEC tariffs is an integral part of the balance the statute established to allow competition in the local exchange market.

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<sup>16</sup> In arguing against applying this section to CLECs, Time Warner Communications Holding, Inc. ("TW Comm") (at 3) argues that "[n]othing in the 1996 Act or in its legislative history reflects Congressional intent to increase ... regulation of non-dominant carrier tariffs" and that applying this section would have the "peculiar result of increasing the notice period." Applying the 15-day notice period to price cap LEC tariffs also has the "peculiar result of increasing the notice period" for in-band increases; yet this section does indeed have that impact.

<sup>17</sup> *Arizona Grocery Co. v. Atchison, T. & S.F.*, 284 U.S. 370 (1932).

BellSouth (at 5) correctly states that "[the statute] displaces regulation as the means of oversight, at least for the relevant charges, practices and classifications, with the operation of the marketplace." The Commission cannot and should not alter this one essential element in that balance that gives the LECs an opportunity to compete effectively with the new competitors.

**III. ALL LEC TARIFFS SHOULD RECEIVE STREAMLINED TREATMENT NOT JUST RATE INCREASES OR DECREASES TO EXISTING SERVICES. [NPRM ¶¶ 16-19]**

Notwithstanding the expressed intent of Congress to streamline LEC tariff filings, some of the commenting parties urge the Commission to restrict the words in Section 204(a)(3). Competitors and potential competitors of the LECs almost unanimously oppose the inclusion of new services for streamlined treatment. Then, to varying degrees, the parties suggest steps the Commission should take in allowing the LECs some tariff regulatory relief.

**A. The only detail omitted in the text of Section 204(a)(3) is a specific effective date for tariffs other than rate increases or decreases – not whether or not other changes qualify for streamlined treatment. [NPRM ¶ 17]**

Several IXCs and CLECs insist that only rate increases and decreases should be allowed streamlined treatment and that notice for classifications, regulations, or practices must be longer. They offer a variety of reasons: that the terms and conditions are too complex to justify streamlined treatment;<sup>18</sup> that the scope of streamlined treatment must be

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<sup>18</sup> MCI at 14.

limited until the incumbent LECs have lost "at least one-third of the U.S. local customers,"<sup>19</sup> and that only rate increases and decreases which are specifically stated in the second sentence qualify for shortened notice.<sup>20</sup> The incumbent LECs advocate a broader reading. Even though a specific time period is not contained in Section 203(a)(3) for changes to classifications, regulations, or practices, the words clearly express a congressional intent to streamline LEC tariff filings – not just LEC rate increases or decreases.

GTE agrees with those parties that support Commission discretion on the notice period for other than rate increases and decreases, as long as it is no greater than 15-days. To give effect to the expressed congressional intent, classifications, regulations, or practices should be afforded streamlined treatment and filed on shorter notice. GTE agrees with Sprint (at 5) that "[b]ecause almost any change in the terms and conditions under which an existing service is rendered will impact the overall rate or cost to the purchaser, it is appropriate to apply the 7-day or 15-day notice provisions to all tariff filings that impact existing services, not just those that increase or decrease rates." GTE recommends at most 15-days' notice for classifications, regulations, or practices. Any longer period would not truly streamline tariffs as envisioned by Section 402.

**B. New services must be afforded streamlined treatment. [NPRM ¶ 18]**

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<sup>19</sup> MFS at 4.

<sup>20</sup> Frontier at 3-4; ALTS at 5. Ad Hoc (at 5) recommends leaving terms and conditions under current rules, while AT&T (at 10) cedes that it might be appropriate to establish a 30-day notice period.

Competitors and potential competitors of the LECs almost unanimously oppose the inclusion of new services for streamlined treatment.<sup>21</sup> As GTE explained in its Comments, however, the statute does not allow the Commission to distinguish between existing and new services.<sup>22</sup>

Section 204(a)(1) applies to "new or revised charge, classification, regulation, or practice" – precisely the same terminology used in Section 204(a)(3), and Section 204(a)(1) has long been held to apply to new services.<sup>23</sup> Congress can be presumed to know existing Commission interpretations of terms and to adopt that same meaning when utilizing the same terminology in subsequent legislation.<sup>24</sup> Therefore, the Commission must find that Section 204(a)(3) applies to all LEC filings, not just to revisions to existing tariffs.

In order to promote the rapid introduction of innovative new services, the Commission must interpret this section to include new services. Recently, this Commission explained the importance of shorter notice periods for new services when it stated that these shorter periods are designed to "encourage the prompt introduction of new tariff

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<sup>21</sup> See, e.g., Telecommunications Resellers Association ("TRA") at 7; Competitive Telecommunications Association ("CompTel") at 3-4; MCI at 15-16.

<sup>22</sup> BellSouth (at 8) agrees that while Section 204(a)(3) does not include the term "existing services," it includes the same terms found in all other Title II provisions – charges, classifications, regulations and practices – which encompass all tariff filings whether related to existing or new services.

<sup>23</sup> Section 204(a) often has been applied to investigate new services. See, e.g., *800 Data Base Access Tariffs*, 8 FCC Rcd 3242 (1993).

<sup>24</sup> See, e.g., *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

offerings ... ." <sup>25</sup> Given that the intent of the 1996 Act is to speed new services delivery to the public <sup>26</sup> and the Commission has itself recognized that the current system hinders the introduction of these services, <sup>27</sup> the Commission must include new services in its interpretation of Section 204(a)(3).

Once recognizing that new services should be afforded streamlined treatment like existing services, the Commission must consider the appropriate notice period. The statute only specifies a period for decreases (7-days) or increases (15-days). Because rates for new services did not previously exist, arguably all new services are increases requiring 15-days' notice. A 15-day notice period should provide adequate review time for concerned parties, while still allowing these services to reach the public in a timely manner.

**C. Tariffs filed on longer notice periods than 7 or 15-days are still eligible for streamlined treatment. [NPRM ¶ 19]**

GTE disagrees with parties that claim LECs forfeit their right to streamlined treatment if they file tariffs on other than 7 or 15-days' notice. <sup>28</sup> As GTE stated in its Comments, the Commission strains the statute to suggest that only tariffs filed on 7 or 15-days are deemed lawful. Section 204(a)(3) states that "any such new or revised charge ... shall be deemed

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<sup>25</sup> *Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 858, 877 (1995) ("Second Further Notice").*

<sup>26</sup> The 1996 Act seeks to "to accelerate ... deployment of advanced telecommunications and information technologies and services." See Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. Preamble (1996). (Emphasis added.)

<sup>27</sup> "We are concerned that the current system may hinder the introduction of services, a result that is harmful to customers and competition." *Second Further Notice at 877.*

<sup>28</sup> See, e.g., ACTA at 8.

lawful ... ." If Congress had intended that only 7 and 15-day filings were subject to the deemed lawful language, it would have been more specific. Moreover, the statute does not state that tariffs are deemed lawful "only" if filed on 7 or 15-days' notice as it would if the Commission's proposed interpretations were correct.

GTE agrees with those LECs that suggest that the statute provides the maximum notice period, not an absolute notice period. The Commission's rules should provide that decreases must be filed "on at least" 7-days' and increases "on at least" 15-days' notice similar to the current language in Section 61.58 which reads, for example, "on at least 14 days' notice."<sup>29</sup> There may very well be good reason for a LEC to file a tariff with a longer notice period, such as allowing customers a longer review period based on holidays, weekends, or the impact of the filing. LECs should not be disadvantaged for allowing a longer review period for both the Commission and customers when expedient. This is contrary to common sense and would force the LECs only to file on 7 or 15-days' notice.

**D. Retention of the 120-day deferral authority [Section 203(b)(2)] would undermine the purpose of Section 204(a)(3). [NPRM ¶ 6]**

The Commission correctly recognized in the *NPRM* (at ¶ 6) that Section 204(a)(3) prevents the Commission from deferring LECs' tariffs past the 7 or 15-day period. In its Comments, GTE agreed with the Commission that Congress intended to "foreclose Commission exercise of its general authority under Section 203(b)(2) to defer ... tariffs that

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<sup>29</sup> See SWBT at 8; NYNEX at 15.

LECs may file on 7 or 15-days' notice."<sup>30</sup> Several parties argue that the failure of Congress to repeal or amend either § 203(b)(1) or § 203(b)(2) allows the Commission to defer tariffs for 120-days.<sup>31</sup>

By arguing that Congress intended general language in another section to permit deferral of up to 120-days, parties seek to nullify any streamlining allowed in Section 204(a)(3). It makes no sense that Congress would have ordered an expedited decision on whether to suspend but would allow a 120-day deferral before it even considered whether to suspend and investigate a tariff.

GTE agrees with MCI (at 2) "that the 'shall be effective ... unless the Commission takes action under paragraph (1)' language forecloses exercise of 203(b)(2) deferral authority."<sup>32</sup> As noted by Sprint (at 2), a 120-day deferral period "would eviscerate the shortened notice provisions ... and thwart the plain intent of Congress to speed up the effective date of certain LEC tariffs."

**IV. SECTION 204(a)(3) DOES NOT PRECLUDE THE COMMISSION FROM EXERCISING ITS FORBEARANCE AUTHORITY FOR PERMISSIVE DETARIFFING. [NPRM ¶ 19]**

Comments of many parties<sup>33</sup> support the Commission's tentative conclusion that Section 204(a)(3) does not preclude it from exercising its forbearance authority under

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<sup>30</sup> NPRM at ¶ 6.

<sup>31</sup> See, e.g., AT&T at 2; ACTA at 1.

<sup>32</sup> Unlike MCI (at 3), GTE believes that the 120-day deferral does not apply to any tariff covered by § 204(a)(3).

<sup>33</sup> See, e.g., AT&T at n.21; TW Comm at 3; TRA at 8.

Section 10(a) of the 1996 Act. GTE agrees with PTG (at 15) that "whatever forbearance the Commission applies concerning § 204(a)(3) should apply to all LECs equally."

Section 402(b)(1) of the 1996 Act applies to a "local exchange carrier." Congress was quite explicit in the statute when it meant to differentiate a class of local exchange carrier.<sup>34</sup> If Congress had intended to exempt a class of LECs, such as CLECs, from the requirements imposed by this section, it would have done so explicitly as it did in Sections 251, 252, 271 and 272. There is no justification for the Commission to treat CLECs any differently than incumbent LECs when applying any rules that result from Section 402 requirements.

If the Commission elects to exercise its authority under Section 10 to forbear from requiring a certain class of LEC, such as CLECs, to file on 7 or 15-days' notice as TW Comm requests,<sup>35</sup> GTE does not object as long as the criteria established in Section 10 are met and this forbearance authority is available to all classes of LECs, including incumbent LECs, that meet the criteria. GTE agrees with TW Comm (at 3) and also with AT&T (at n.21) that states: "Nothing in § 402(b)(1)(A) suggests that LEC tariffs subject to streamlining are outside the scope of the Commission's powers under § 10."

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<sup>34</sup> See, e.g., Sections 251(b), 251(c), 252, 271 and 272.

<sup>35</sup> "Neither does the language of Section 402(b)(1)(A)(iii) of the 1996 Act nor its legislative history indicate that Section 204(a)(3) is intended to limit the authority of the Commission under Section 10 of the Act to forbear from applying any regulation or provision of the Act to telecommunications carriers or services or classes of carriers or services ...." TW Comm at 3.

GTE, however, disagrees with the claims of CompTel (at 5) and ACTA (at 9) that the specific language of Section 204(a)(3) takes precedence over the general language of Section 10. The intent of Congress is clear in Section 402(b)(3) which states:

**FORBEARANCE AUTHORITY NOT LIMITED.** - Nothing in this subsection shall be construed to limit the authority of the Commission to waive, modify, or forbear from applying any of the requirements to which reference is made in paragraph (1) under any provision of this Act or other law.

The 1996 Act is explicit that the forbearance authority is not limited. GTE suggests that Section 204(a)(3) was viewed as a transition mechanism, starting the move toward deregulation for all LECs. When the incumbent LECs meet the criteria in Section 10, the Commission must forbear from regulation.

**V. A PRE-EFFECTIVE TARIFF REVIEW IS NECESSARY IN ORDER TO STREAMLINE THE PROCESS. [NPRM ¶ 25]**

**A. Section 402(b)(1)(A) effectively requires a pre-effective tariff review.**

Regardless of how a commenting party interprets "deemed lawful," almost every party agrees that a pre-effective tariff review is best. The time to review a LEC's tariff is when it is filed and before it becomes effective. GTE's position, as stated *supra*, is that tariffs are presumed lawful when filed and become lawful when effective. GTE believes the Commission should apply to these LEC tariffs the same standard currently applied to other tariffs presumed lawful. Thus, under the statute, the Commission and interested parties would have either 7 or 15-days (depending on the type of tariff) to examine the tariff. If at that end of that period, unless opposing parties have shown in accordance with Section 1.773 of the rules that: there is a high probability that the tariff would be found unlawful;

alleged harm to competition would outweigh benefit to the public from availability of the service; irreparable injury would result; or the suspension would be contrary to the public interest, then the tariff should be allowed to go into effect as lawful.

The 1996 Act mandates tariff streamlining. The Commission should take this congressional direction to implement meaningful streamlining to the tariff review process. GTE suggests that the Commission must look critically at procedures which would slow down the LECs' implementation of services, rates, classifications, regulations and practices should be eliminated. This includes Part 69 waivers that often take years to review, 120-day deferrals, and automatic suspensions and investigations that take years or are never completed (*i.e.*, an order is never issued). These processes will be increasingly anti-competitive if allowed to continue.

GTE submits that the Commission should use post-effective tariff review as the exception rather than the rule. LECs and their customers need the certainty of pre-effective tariff reviews in order to effectively plan for the future and not have to worry that everything will change (*e.g.*, price cap indices that have been in effect for perhaps years) as the result of a post-effective tariff review. By establishing time certain notice periods and the "deemed lawful" language, Section 402(b)(1)(A) shows a congressional intention for pre-effective tariff reviews.

- B. The Commission's proposal to require additional detail with streamlined filings is contrary to the intent of Section 402(b)(1)(A). [NPRM ¶ 25]**
  - 1. Additional tariff support is redundant and contrary to the intent of Section 402(b)(1)(A). [NPRM ¶ 25]**

Many LECs in addition to GTE have demonstrated that the filing requirements associated with tariff filings need to be streamlined not further expanded, as suggested by the Commission (at ¶¶ 25, 31).<sup>36</sup> IXC and CLECs take a contrary position. AT&T (at 12) supports the requirement for more detail in order to facilitate its pre-effectiveness review. These suggestions highlight attempts to derail the regulatory reform envisioned by the statute.

Some parties such as MCI (at 21) not only want more detail, but they want it faster: "LECs should also be required to fax advance notice that a transmittal will be filed ... . The LEC should be required to send this notice at least 7 days before filing ... ." This theme is repeated by MFS (at 10) that goes even further than MCI and wants "a requirement that ILECs make publicly available a schedule of planned section 204(a)(3) 7/15 day filings at least thirty days prior to the filing ... ." These proposals for additional informal notice, however, would contradict the shorter notice requirements established by the statute. The Commission cannot circumvent this specific statutory direction by establishing another procedural requirement. Again, GTE urges the Commission to eliminate regulatory tariff burdens, not to impose additional filing requirements on the incumbent LECs.

As GTE stated in its Comments, the current filing requirements are sufficient to permit adequate review: transmittal letters with descriptions;<sup>37</sup> description and justification

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<sup>36</sup> See, e.g., NYNEX at 19-21 and 24-26; SWBT at 14.

<sup>37</sup> See 47 C.F.R. § 61.21.

letters; price cap compliance reports; and identification of insertions, deletions and changes to textual material and annotation of increases and decreases in specific rate elements.

Sprint (at 6-7) highlighted the breath of information already submitted by the LECs and the redundancy and burden of establishing additional requirements:

The Sprint LECs already file a Description and Justification (D&J) with their tariff submissions. These D&Js contain a description of the service involved, the changes to the existing tariff provisions, the demand assumptions used, and the proposed new or revised rates. The D&J adequately explains the reason for the tariff filing and demonstrates generally the lawfulness of such tariff filing. Any additional requirements would be redundant and would only add additional burdens on both LECs and Commission staff. Such redundancy and additional burdens are not in keeping with the Congressional intent behind Section 204 (a) (3) to establish a 'deregulatory national policy framework ....and ... to speed up implementation of LEC tariffs.' (Footnote omitted.)

GTE wholeheartedly agrees. Though the statute mandates tariff streamlining, the Commission has not proposed to relieve the LECs of the significant cost support burdens.

GTE strongly urges the Commission to resist these calls for additional support.

Further detail is not needed. The Commission and parties should be able to determine from the available data whether a tariff should be suspended. Moreover, in the short notice period required by the statute, it is unlikely that opposing parties could use all the additional material being requested. Regulatory reform requires the Commission to scrutinize critically any request to increase regulatory burdens.

**2. Tariff Review Plans should be filed with the annual filings and not before.**

Parties such as AT&T (at 17) that advocate the filing of Tariff Review Plans ("TRPs") 90-days in advance of the tariff effective date seek to undermine the intent of Section

204(a)(3).<sup>38</sup> Although not as aggressive as AT&T, MCI (at 27-28) urges the Commission to require the LECs to file the TRPs in advance so it can check the PCI calculations and, for mid-year filings, the exogenous cost changes.

GTE opposes filing the TRP in advance of the annual filing because: (1) the Common Line Basket PCI cannot be developed until the tariffs of the LEC and NECA are completed; (2) rate development would have to take place to calculate the APIs which is contrary to the streamlined intent of Section 203(a)(3); and (3) exogenous costs changes, which have been the most contentious issue, will have already been addressed in a rulemaking proceeding, rule waiver or declaratory ruling. The TRP, therefore, should remain on the same schedule as the tariff itself.

**C. The Commission cannot establish an automatic class of "unlawful" tariffs ineligible for streamlined treatment. [NPRM ¶ 25]**

AT&T (at 12) suggests that "the Commission may wish to designate by rule certain categories of tariffs that would be presumptively subject to deferral or suspension, such as those that are facially noncompliant with price cap rules or other regulations." (Footnote omitted.) GTE asserts, however, that there is no basis for the Commission to establish a category of filings which would be presumed unlawful. As discussed above, in addition to placing the burden on opponents to show that a tariff should not go into effect, Section 402(b)(1)(A) establishes a short time frame for determining whether a tariff should be

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<sup>38</sup> GTE is perfectly aware that AT&T does not miss the point, but is attempting to handicap its competitors for as long as possible while it is seeking to gain a foothold in the local arena.

suspended. Within that framework, the Commission can suspend tariffs which it finds not in compliance with the Act. GTE agrees with SWBT (at 14) that: "There is no reason to establish any presumption of unlawfulness for categories of tariffs as to permit suspension and designation of issues for investigation through abbreviated orders or public notices. This approach would be contrary to the plain language of the statute which holds that all filings are 'deemed lawful' ... ."

**VI. THE CONFIDENTIALITY OF COST DATA IS EVEN MORE IMPORTANT IN THE COMPETITIVE ENVIRONMENT ESTABLISHED BY THE 1996 ACT. [NPRM ¶ 29]**

The Commission (at ¶ 29) questions whether or not it should impose a standard protective order when a carrier, in good faith, claims confidentiality and what rules should be associated with this order. Obviously, the IXCs and CLECs want to see the incumbent LECs' cost data. According to TW Comm (at 9), "ILEC requests for confidential treatment of cost data accompanying tariff filings should be rarely, if ever, granted by the Commission." AT&T (at 19) argues that the Commission "does not have the authority to issue this type of *pro forma* protective order."

The Commission currently has a proceeding considering the treatment of confidential information.<sup>39</sup> GTE's position, as advocated in that proceeding, reflects its concerns for the substantial unfair competitive advantage that disclosure of incumbent LEC cost support

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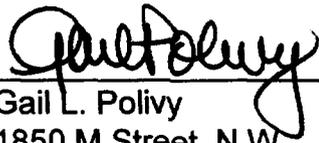
<sup>39</sup> See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Notice of Inquiry and Notice of Proposed Rulemaking, GC Docket No. 96-55, FCC 96-109 (released March 25, 1996).

data would provide.<sup>40</sup> GTE recommends that the Commission resolve the issue of a protective order based on the more complete information on the record in GC Docket No. 96-55, rather than from the information provided in this proceeding.

## VII. CONCLUSION

GTE urges the Commission to implement true regulatory reform by streamlining the tariff filing process for incumbent LECs as required by Section 402(A)(1) of the 1996 Act.

GTE Service Corporation on behalf of its  
affiliated domestic telephone operating  
companies



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October 24, 1996

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<sup>40</sup> See Comments of GTE dated June 14, 1996, and Reply Comments of GTE, dated July 15, 1996, GC Docket No. 96-55.

**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 October 24, 1996 to all parties on the attached list.

  
Ann D. Berkowitz