

Assessing contributions based on both interstate and intrastate revenues would also be easier to administer. As the less-regulated telecommunications industry evolves, dividing revenues between interstate and intrastate service will become increasingly arbitrary. As Commissioner Chong observed, "I believe that it will become increasingly difficult to distinguish between interstate revenues and intrastate revenues in the future, because this distinction is a backwards looking one based on a monopoly era."¹⁰⁵ For example, as telecommunications providers offer packages of service that include both inter- and intrastate services, separation of inter- and intrastate revenues will be more difficult. These problems will be compounded by the difficulties associated with measuring traffic when multiple carriers are involved with completing the call.¹⁰⁶ A universal service funding mechanism that requires a carrier to separate intra- and interstate revenues will be particularly burdensome for carriers that are not currently required to comply with any jurisdictional separation requirements. Use of only interstate revenues will also provide opportunities for carriers to game the system by

¹⁰⁵ *Chong Statement* at 13.

¹⁰⁶ Also failure to include both revenue pools may undermine competitive neutrality by disproportionately burdening some categories of carriers. An example of this anti-competitive consequence is wireless companies under an interstate-only approach would pay a disproportionately large share of the universal service obligation.

designating revenues as intrastate in order to reduce their federal universal service obligation.¹⁰⁷

3. If federal universal service support is used to offset both state and interstate rates, then both state and interstate revenues should be used as a base.

The jurisdictional nature of the federal universal service plan is not determined by the nature of the service being supported, as the *Recommended Decision* suggests. Basic local service has traditionally been regulated by the states. The purpose of the new, explicit fund is to replace the existing, implicit support generated by other service rates today. New support provided to ILECs should be used to fund offsetting reductions in rates that are too high today, *i.e.*, those priced to generate subsidies in support of universal service. Currently, implicit support comes from a combination of interstate access rates and state rates for services such as access, toll, and vertical services. It is reasonable, therefore, that support from the federal fund should be used to fund offsetting reductions in both state and interstate rates. If this is done, then it is also reasonable that the base for generating the necessary funds should be both state and interstate revenues.

At the very minimum, the federal fund should be large enough to fund offsetting reductions sufficient to eliminate the contribution toward universal service currently

¹⁰⁷ Some parties have suggested that these calculations are already performed in order to determine TRS obligations. *Recommended Decision* at ¶ 815. This argument is not persuasive. TRS interstate calculations are not audited and involve minuscule amounts of money when contrasted with universal service obligations. The calculations that would be required for universal service would have to be much more precise and would have a much greater financial impact on the carriers, thus encouraging "creative" attribution.

generated by interstate access charges.¹⁰⁸ Assuming the Commission establishes a federal fund that is sufficient to accomplish this and also to fund significant offsetting reductions in state rates, then GTE recommends that the federal fund should be based on both state and interstate revenues.¹⁰⁹ An integrated approach of this kind is the most effective way for the Commission to meet its obligations under the 1996 Act.

However, so long as the federal support mechanism established by the Commission is not large enough to fund offsetting reductions in both state and federal rates, but is sufficient only to eliminate some portion of the support generated by interstate access today, then the federal fund should be based only on interstate revenues. If the federal fund were to raise money from both state and interstate sources, and use the funds thus gathered to offset only interstate access, it would simply shift some of the funding burden to the states.

The *Recommended Decision* does not address the important question of how funding is to be used to reduce rates that are contributing implicit support today. The Commission should deal with this issue when it establishes the federal universal service support mechanisms, and should choose the appropriate funding base accordingly.

¹⁰⁸ This should include elimination of the interstate CCL, and any funding needed to cap deaveraged SLCs at whatever level the Commission finds acceptable. It should also eliminate contributions currently generated by other interstate access rates, such as transport and local switching.

¹⁰⁹ This approach represents a reasonable policy balance. IXCs, who contribute all of the interstate revenue today, would share this burden with other carriers who have state revenues. At the same time, however, IXC contributions to the Federal fund would also help to address the need to remove implicit support from state rates.

F. The Commission Should Deaverage The Subscriber Line Charge To Permit Economically Efficient Pricing, Rather Than Adopting A Reduced Cap.

The *Recommended Decision* (at ¶ 773) proposes that the decrease in common line costs due to the elimination of certain cost elements¹¹⁰ should be used to reduce both the Subscriber Line Charge cap for primary residential and single-line-business and the CCL charge.

As noted *supra*, adoption of the recommended SLC cap reduction would violate both the 1996 Act's mandate that universal service support be explicit and the Joint Board's own competitive neutrality principle. This would occur because continuation of the CCL rate structure would perpetuate the flow of support from high volume users to low volume customers and result in incumbent LECs that are forced to use the CCL rate structure losing their high volume customers to unregulated competitors that are free to use flat charges to recover loop costs.

Moreover, reduction of the SLC will perpetuate the use of an economically inefficient rate structure -- the recovery of non-usage based costs on a usage-sensitive basis. Commissioner Chong recognized this very point, that reducing the

SLC is bad economic policy that contradicts the Commission's long standing goal to promote economic efficiency and cost causation. The SLC is a non-traffic sensitive charge that recovers non-traffic sensitive costs in the most economically efficient manner from end users. Any policy that, in essence, shifts or perpetuates the recovery of these costs from interstate providers can, at best, be described as an inefficient "shell game" on consumers.¹¹¹

¹¹⁰ Specifically pay telephone costs and Long Term Support funding. See n.61 *supra* and *Recommended Decision* at ¶ 768.

¹¹¹ *Chong Statement* at 12 (footnote omitted).

The Joint Board (at ¶ 775) agrees, stating that "the usage-sensitive CCL charge constitutes an inefficient mechanism for recovering NTS loop costs" because the cost of the loop does not vary with usage. Indeed, the Joint Board also observed (*Id.*) that to:

provide proper economic signals, it would be preferable for prices related to the loop, such as the CCL charge, to be set in a manner that is consistent with the manner in which the loop's cost is incurred. Because the cost of a loop generally does not vary with the minutes of use transmitted over the loop, the current CCL charge that mandates recovery of loop costs through per-minute-of-use charges represents an inefficient cost-recovery mechanism.

Chairman Hundt has also recommended that "[s]ubscriber line charges should reflect economically rational pricing for consumers and single line business" and that "we shouldn't be overly worried about nickel and dime differences on the local telephone bill at the expense of having a rational pricing for emerging competition."¹¹²

On these points GTE wholeheartedly concurs. Reducing the SLC cap would be a horrible step in the wrong direction that would not be competitively neutral because it would handicap only the incumbent LEC's ability to compete. As Chairman Hundt has correctly noted previously, new entrants are free to price their services in the most economically efficient manner, and if regulation forces incumbent LECs to use an inefficient pricing scheme, they will be unable to compete for high volume customers.¹¹³

¹¹² *Hundt Fifty-Nine Million Speech* at 3.

¹¹³ *Id.* The *Recommended Decision* (at ¶ 770) also acknowledges this point: "In this regard, we note that competitive carriers do not have common line rate structures."

For this reason, at a minimum, all common line cost reductions should be directed at lowering only the CCL.¹¹⁴

There is a far better approach than simply reducing the CCL a minor amount. The FCC should adopt a common line recovery structure that would: (i) use only flat-rated recovery mechanisms for common line costs; (ii) geographically deaverage the SLC based upon the same small geographic areas used to determine high cost support needs; and (iii) recover common line costs that exceed a new \$6.00 residential SLC cap from the new universal service high cost fund.

GTE recognizes that any proposal to increase the SLC cap that has been in place since 1988 without any inflationary adjustment is likely to meet opposition from many parties. However, frozen prices and inefficient rate structures adopted in a monopoly era have no place in the new marketplace created by the 1996 Act, and the Commission is bound to act in a manner that benefits competition rather than competitors. This means that the most economically efficient pricing structure possible must be set in place, *i.e.*, a cost-causative rate structure wherein end users pay the

¹¹⁴ This is especially true for the elimination of LTS costs from common line cost recovery. The LTS support was designed specifically to hold the CCL level to a nationwide average that would have existed if large ILECs had not exited the common line pool. See *Recommended Decision* at ¶ 190, n.613. Thus, it would be particularly inappropriate to use the removal of costs previously incurred to support only the CCL to reduce the SLC cap.

cost they cause the service provider to incur.¹¹⁵ To the extent that end users cannot be expected to pay the full costs they cause, the difference should be dealt with through explicit support, as intended by Congress.

The structure GTE has proposed would reflect in rates the very significant geographic differences in loop costs across geographic areas. Evidence from the proxy models the Joint Board is considering suggests that there are order-of-magnitude differences in loop cost even within a given wire center. To the extent that the Commission wishes to mitigate these differences, this should be accomplished through universal service funding for areas where a cost-based SLC would be too high, not through a requirement that SLCs be geographically averaged. GTE's proposal would cap SLC rates and would fund the difference between the cost-based SLC and that cap through universal service funding.

Not only would the suggested rate structure mitigate the cross-subsidy impact of SLC rates that are averaged over large geographical areas, it would provide an economically efficient rate structure that recovers costs in the same manner in which they are incurred, and that is consistent with the pro-competitive directive of the 1996 Act.

¹¹⁵ If the FCC ultimately decides not to increase the residential SLC cap, a second-best solution would be to recover the difference between the actual common line cost and the SLC cap from the universal service fund. A poor third choice would be to bill, on a bulk, flat-rated basis, to the presubscribed interexchange carrier serving the end user customer. See *Recommended Decision* at ¶ 776. This latter method would not be competitively neutral because it would impose those costs only on one class of carrier, and would continue implicit subsidies because the costs would be recovered primarily from only higher volume users.

In its SLC recommendation, as in other aspects of its proposal, the Joint Board appears to avoid confronting the essential problems of local service pricing, and the resulting need for universal service support. As part of a historic policy that has sought to intervene to hold down the price of local service, a portion of the cost of that service has been allocated to the interstate jurisdiction. The local loop is a component of the basic service, is caused by the customer's decision to subscribe to that service, and is unaffected by the customer's choice as to whether or not to use the loop to place a long distance call. Had the intervention in local rates never occurred, the need to recover a large contribution toward loop costs through access rates would never have arisen. Therefore, the carrier common line charge is one of the implicit support mechanisms which contributes to maintaining the intervention in local rates, and which the 1996 Act requires the Commission to replace with explicit funding.

Because the Joint Board fails to confront this issue, it incorrectly assumes that the problem is merely one of pricing to recover interstate loop costs from IXCs. The *Recommended Decision* thus effectively postpones the resolution of common line pricing issues to the Commission's access charge proceeding. It would be understandable if the Joint Board were to determine that a given level of the local rate (including the SLC) is not affordable, and that universal service funding is needed to maintain a rate level that is acceptable from a public policy standpoint. However, by denying that interstate common line recovery is even related to local rates, the Joint Board turns away from any consideration of common line recovery as a universal service issue.

As a result of this denial, the Commission is being asked to conjure up a mechanism that will continue to recover part of the cost of local service from IXCs, and to do this in an "economically efficient" manner. GTE acknowledges that a flat-rate recovery from IXCs will be preferable to the current usage-based CCL. However, as the *Recommended Decision* recognizes, IXCs do not actually purchase lines from ILECs (except on an unbundled element basis); consequently some surrogate, such as the Presubscribed Interexchange Carrier must be used. This is likely to have unintended distorting effects. Further, the reliance on IXCs to recover loop costs does not change the fact that loop costs vary dramatically by geography, nor does it obviate the need to deaverage the charges for these loop costs on a geographic basis.

The *Recommended Decision* contemplates (at ¶ 776) that IXCs would recover the flat-rated common line charges they would pay to ILECs by passing them through to end-users on a flat-rated basis. Suppose that, in a given area, the cost-based SLC charge would be \$10. The *Recommended Decision* says, in effect, that this \$10, if labeled as a SLC and charged to the end user by the ILEC, would threaten universal service. But the same \$10, with another label, and charged to the same end user by an IXC, would not threaten universal service, and would in fact "promote efficiency."¹¹⁶ Thus, the *Recommended Decision* appears to be more concerned with appearances than with the actual effects of its policy recommendations.

¹¹⁶ Note that, because the recommendation does not acknowledge common line recovery as a universal service issue, it would not contemplate any support to mitigate the effects on end users in high cost areas who might pay substantial charges to end users on this flat-rated basis.

IV. THE FCC SHOULD NOT ADOPT THE *RECOMMENDED DECISION'S* RECOMMENDATION LIMITING UNIVERSAL SERVICE SUPPORT ONLY TO THE PRIMARY LINE AT A BUSINESS OR RESIDENCE.

The *Recommended Decision* proposes (at ¶¶ 89-91) that universal service support provided to residential customers and to single-connection businesses in rural, insular, and other high cost areas should be "limited to those services carried on a single connection to a subscriber's principal premises."

A. The *Recommended Decision's* Proposal Fails To Address The Public Policy Reasons Supporting Universal Service Assistance For All Lines In A High Cost Area.

Today, GTE stands ready to provide service to any customer who requests it without interrogation to determine whether an individual "deserves" service. This is a reasonable way for all telecommunications carriers to treat their customers, and universal service policy should not place carriers in the position of demanding that customers somehow prove or certify that they are "deserving." The proposal in the *Recommended Decision* represents policy making by "sound bite." In order to avoid the appearance of supporting second lines for the affluent, the *Recommended Decision* attempts to draw an unworkable distinction that cannot actually be maintained. In so doing, it creates a very significant administrative burden, and puts LECs in the position of judging their customers.

Most importantly, because no screening or certification system will ever be perfect, it is inevitable that the ILEC's best efforts will on occasion fail, and service will be provided to some customers who should not have support, and also that affordable

service will be denied to others who should have it.¹¹⁷ For example, where two families of modest means share a rented house, they may reasonably constitute two "households," and universal service policy should ensure that each of them can order a line at an affordable rate. But because the screening method will be imperfect, it is very likely that supported service may be denied in such a case. In fact, it is reasonable to expect that those who are better at understanding the rules and filling out complex forms will be able to use the system to their advantage, but it will victimize those who are less able or willing to do these things -- precisely the customers for whom universal service policy should have the greatest concern. By focusing only on sound bites relating to wealthy families, the *Recommended Decision* may in fact do harm to families in East Los Angeles.

The recommendation (at ¶ 89) that only a primary line be supported will also have the practical effect of impeding access to and use of information services in direct conflict with the 1996 Act.¹¹⁸ This will occur because many families today add a second line to allow family members to use on-line information services without the

¹¹⁷ Statisticians refer to "type 1" and "type 2" error. Sometimes a system will accept when it should reject, and sometimes it will reject when it should accept. Only if the screening system has perfect power to distinguish the cases -- an impossibility -- will these errors be avoided. Given the administrative difficulties described here, it is in fact likely that the errors will be quite large.

¹¹⁸ § 254(b)(2) (access to information services should be provided in all regions of the Nation).

inconvenience of tying up the normal telephone line.¹¹⁹ A policy that supports only one line per household, coupled with the necessity for service providers to obtain compensatory prices for unsupported lines, will result in many families not obtaining a second line. The burden of this discriminatory policy would fall unevenly upon members of society. One goal of universal service is to ensure access to information services for persons in both rural areas and in cities. It is likely that additional lines in cities will be affordable without universal service support, but this is not likely to be the case in rural areas.

B. The *Recommended Decision* Ignores The Many Practical Problems Associated With Defining A "Household" And Determining Which Service Request Is "Eligible" For Support.

The *Recommended Decision* (at ¶ 89) specifically rejects GTE's concerns that the local service provider would be unable to determine whether a requested service is a household's second connection or whether the residence is shared by two or more households. This rejection is largely premised upon an overly simplistic and unrealistic contention that the service provider can simply "use subscriber billing information to determine the number of households at a given address." (*Id.*)

Billing information will not provide the information needed to comply with the *Recommended Decision's* suggested requirement because it will only indicate whether a bill is already being sent to the same address for which a new connection is

¹¹⁹ Adding a second line also facilitates solving software problems that prevent use of on-line services by allowing discussions with a manufacturer's help line while viewing the problem on the screen, and trying each suggested fix using the second line while the trouble consultant remains on the first line. This capability is greatly reduces the level of frustration associated with solving computer software problems.

requested. Billing information cannot be used to answer any of the dozens of other questions that must be answered if there is to be any realistic chance of uniform compliance with, and administration of, the proposed rule.

For example, if a newly divorced woman returns to live in her parents' home and requests service under her married name, how does the service provider categorize this line? Is it a non-qualifying second line, even though it is arguably for a second "household" in the same dwelling? Does it matter whether the woman uses her maiden name, or her married name? Is the service provider to interrogate each person requesting service to determine the exact relationships between all individuals under one roof, and/or the primary or secondary nature of the requested service? And, how does one service provider discover whether another firm is already providing a primary, supported line, whether in the same location or to another home in a different state? Must the service provider compare the answers from its interrogation to a matrix created based upon its own interpretations of "eligibility," or against a matrix provided by the universal service fund administrator? Must a person provide "proof" of being an individual household? Or, are individuals to self-certify based on the "honor system"? For audit purposes, must the service provider retain records, and in what form? These are but a few of the scores of individual issues and sets of circumstances that must be analyzed, with answers pre-determined by the Commission and/or by the fund administrator.

The *Recommended Decision* brushes aside these many real-life, practical considerations and places the service provider squarely in an untenable position -- caught between customers and a fund administrator. The service provider must either

develop intrusive, and undoubtedly offensive to many customers, interrogation scripts for customer contact employees, and retain such "proofs" as the fund administrator requires or be subject to massive disallowances during the inevitable audit. The Commission must reject such an unworkable scheme that is guaranteed to cause massive customer confusion and anger.

C. The *Recommended Decision* Fails To Address How A Service Provider Is To Determine Whether A Service Request Is For A Secondary, Or Vacation Connection.

The *Recommended Decision* proposes (at ¶ 89) that support should not be provided for other residential connections beyond the primary residential connection. The *Recommended Decision* does not address in any fashion at all GTE's concerns about how service providers are to determine whether a service request is for a primary or secondary (vacation) residence, particularly when it is likely that such service would be provided by a different firm, perhaps in another state.¹²⁰

Many of the issues described *supra* are just as relevant for secondary connections as for additional lines within a dwelling unit. The service provider has no means, other than to ask the customer, whether a request involves a primary or secondary service. Absent some form of "proof" provided by the customer to either the

¹²⁰ See *Recommended Decision* at ¶ 86.

fund administrator or to the service provider, the carrier must assume that each request involves primary service.¹²¹

D. The *Recommended Decision* Fails To Address The Need For Bifurcated Local Service Prices In High Cost Areas -- One Price That Reflects Universal Service Support, And A Second Higher, Unsupported, Fully Compensatory Price.

If the price of one local service at a dwelling unit is to be supported and another at the same address is not, and if a line at one house is to be supported because it is a "primary" line whereas the house next door has a "secondary" and unsupported line, then the heavily regulated incumbent LEC must be allowed by the relevant regulatory agency to charge a different, higher price for the non-supported, non-universal service, discretionary and/or secondary residence line. The *Recommended Decision* (at ¶ 90) clearly expects this will be the case in the context of vacation homes, for it states that "owners of these residences can afford to pay rates that accurately reflect the carrier's costs to provide services carried on connections to second residences."

However, the *Recommended Decision* does not accompany that recognition with a recommendation that restrictions on the type of line to be supported be linked to a companion requirement that carriers be allowed to charge compensatory prices for the unsupported service. The Commission must encourage state regulators to allow

¹²¹ If, as discussed *infra*, prices for secondary lines or vacation homes are allowed to reflect the absence of universal service support, customers will tend to order service in a manner that complies with the criteria to obtain support. For example, a customer with a home in a low-cost urban area that has low regular service rates and a vacation home in a high-cost area where an unsupported price would be very high might well declare the vacation home as the primary. Or, an individual might declare both to be a primary residence.

different prices to avoid creating new hidden subsidies for lines that do not qualify for universal service support.

V. THE COMMISSION'S RULES MUST REASONABLY ALLOW UNIVERSAL SERVICE HIGH COST SUPPORT FOR PARTY-LINE SERVICE.

The *Recommended Decision* proposes (at ¶ 47) that only single-party service be supported. The *Recommended Decision* also sanctioned (*id.*) allowing state commissions to permit a transition period for "carriers to make upgrades to provide single-party service, but only to the extent carriers can meet a heavy burden that such a transition period is necessary and in the public interest."

GTE endorses these recommendations and notes that party-line service is rapidly disappearing in its service areas.¹²² However, GTE suggests the Commission's final rule should include three clarifications:

First, the *Recommended Decision* (at ¶ 47) states that "carriers may offer consumers the choice of multi-party service in addition to single-party service and remain eligible for universal service support." The Commission should clarify that carriers will be eligible for universal service support not only for single-line customers, but also for each party-line customer that has single-line service available but instead chooses party-line service.¹²³

¹²² Out of GTE's approximately 17 million customer lines, fewer than 100,000 customers currently subscribe to party-line service. This number has declined at a double-digit rate for a number of years.

¹²³ In several states where GTE provides service, GTE has completed activities in compliance with state commission single-line upgrade programs but is not allowed to force party-line customers to move to single-line service.

Second, no additional state commission action should be necessary to authorize universal service support for party-line customers in cases where a state regulatory agency has previously established a transition to single-line capability that extends beyond the recommended January 1, 1998, implementation date of the new high cost fund.¹²⁴

Third, the Commission should clarify that the obligation for carriers to make a public interest showing to qualify for high-cost support only applies when the carrier itself seeks deferral of a state commission's single-line upgrade program. State commissions in a number of GTE's service areas have not yet addressed a single-party upgrade program, and service providers are not allowed to "force upgrade" party-line customers to single-line service when they install the capability for full single-line service. In this case, carriers should not bear the burden of initiating a proceeding to obtain support or be prevented from obtaining support for customers that choose party-line service.

These clarifications will serve the public interest by avoiding unnecessary regulatory activity and by allowing carriers to obtain support when circumstances that are beyond their control prevent adherence to the Commission's rules.

¹²⁴ Three of the states where GTE provides service have already created mandatory schedules for achieving single-line capability that have completion dates beyond the recommended January 1, 1998, implementation date of the new universal service high cost fund. Approximately 17,000 party line customers exist in those areas today, and under the existing schedules, would have single-line service available by the end of 1999.

VI. THE RECOMMENDED DECISION'S PROPOSALS CONCERNING DISCONNECTION PROHIBITION AND DEPOSITS FOR LOW INCOME INDIVIDUALS MUST BE REJECTED OR SUBSTANTIALLY MODIFIED.

The *Recommended Decision* proposes (at ¶ 417) expanding the Lifeline program to all states and suggests (at ¶¶ 425, 428) that means-testing be required for both Lifeline and Link Up services. While GTE endorses these recommendations, other recommendations that seek to increase subscribership levels among low-income individuals must be either dramatically revised or rejected.

A. Prohibiting Carriers From Receiving Universal Service Support For Providing Lifeline Service From Disconnecting Such Service For Non-Payment Of Toll Charges Is Fatally Flawed.

The *Recommended Decision* proposes that Lifeline service include voluntary toll limitation and that such service be supported from the universal service fund.¹²⁵ GTE has no objection to providing toll limitation services as a supported component of Lifeline service. However, the accompanying recommendation that "the Commission prohibit carriers receiving universal service support for providing Lifeline service from disconnecting such service for non-payment of toll charges" is fatally flawed in a number of respects.¹²⁶

First, the *Recommended Decision's* proposal cannot be adopted because it would create a hidden subsidy in violation of the 1996 Act's mandate that universal service support be explicit and sufficient.¹²⁷ Unless the FCC's rules that prohibit

¹²⁵ *Recommended Decision* at ¶¶ 384-385.

¹²⁶ *Id.* at ¶ 387.

¹²⁷ § 254(e).

disconnection also included a mandate for the universal service fund to offset any uncollectible amounts incurred as a result of the disconnection prohibition, such a rule will directly contravene the 1996 Act. This will be the case because such a rule will force carriers to cross-subsidize low-income subscribers that circumvent toll blocking and abuse the disconnection prohibition privilege from revenues obtained from the vast majority of customers that honor their obligations.

Second, such a recommendation is an unjustifiable and unwarranted governmental intrusion into the affairs of private businesses. GTE has demonstrated that it strives to provide service to all consumers, and that it actively seeks to keep customers in service.¹²⁸ Government regulations covering such minute details of a firm's interaction with its customers is totally inconsistent with the Congressional intent of establishing a "pro-competitive, deregulatory" marketplace for telecommunications. In a competitive environment, if one carrier has service policies that customers find unreasonable, other carriers will profit from those practices by capturing dissatisfied customers. Thus, a disconnection prohibition that prevents a firm from using prudent business practices designed to protect against huge uncompensated losses not only contravenes the deregulatory market model envisioned by the 1996 Act, it presupposes that a competitive market will not be attained and that detailed regulatory intervention is necessary.

¹²⁸ See Amendment of the Commission's Rules and Policies to Increase Subscriberhip and Usage of the Public Switched Network, CC Docket No. 95-115 ("D.95-115"), GTE's Comments ("GTE's D.95-115 Comments"), September 27, 1995, at 30-32.

Third, the record is clear that toll blocking methods are costly to deploy and ineffective if an individual is determined to circumvent them.¹²⁹ A prohibition on disconnecting customers would not serve the public interest because it would not be effective in increasing subscribership, yet would generate an enormous increase in costs for all service providers that would far outweigh any claimed benefit.¹³⁰

Fourth, the *Recommended Decision's* recommendation cannot be adopted in its current form because it fails to link a customer's choice of toll blocking with the proposed prohibition on disconnection. Merely having a voluntary option available cannot be used to justify a disconnection prohibition.

B. The *Recommended Decision's* Proposal That Carriers Not Be Allowed To Obtain Service Deposits From Lifeline Customers That Elect To Receive Toll Blocking Must Be Rejected.

The *Recommended Decision* proposes (at ¶ 429) that service initiation deposits be prohibited if a customer "voluntarily elects to receive toll blocking." As discussed *supra*, because toll blocking service is not effective when an individual is determined to evade blocking and the recommendation contains no provision for carriers to be reimbursed for losses by the universal service fund, the Commission must also reject this recommendation.

¹²⁹ See *GTE's D.95-115 Comments* at 18-29, and *D.95-115*, *GTE's Reply Comments ("GTE's D.95-115 Reply Comments")*, November 20, 1995, at 17-19.

¹³⁰ See *GTE's D.95-115 Reply Comments* at 3-11, summarizing the comments of the many diverse parties opposing a disconnection prohibition, and providing record evidence of the high amount of losses actually experienced in states with an existing disconnection prohibition.

Service deposits are not established as a barrier to subscribership. To the contrary, GTE's deposit policies are designed only to reflect GTE's assessment of the risk of non-payment and the maximum amount that a customer can be expected to afford.¹³¹ Deposits are nothing more than prudent safeguards that a carrier will not bear an unreasonable amount of loss from a customer's failure to pay for services rendered.

The *Recommended Decision* proposes the Commission abrogate the judgment of the service provider by mandating that no deposits may be collected, or that deposits may not exceed some amount. The Commission must reject this recommendation. The record is clear that toll blocking is not an effective safeguard against losses from non-payment of toll charges,¹³² and the *Recommended Decision's* (at ¶ 429) reliance upon blocking as justification for a deposit prohibition is therefore mistaken. If nevertheless the Commission adopts a mandatory deposit limitation, then the FCC must accompany that mandate with provision for the new universal service fund to compensate carriers for the difference between the mandatory deposit amount and the normal deposit the carrier would have collected.¹³³

¹³¹ See *GTE's D.95-115 Comments* at 15-16.

¹³² See *GTE's D.95-115 Reply Comments* at 3-11.

¹³³ In any event, the Commission must not adopt this recommendation without at the very minimum establishing an administratively simple mechanism that allows carriers to obtain deposits from those consumers that continually evade toll blocking and abuse the system.

VII. ALTHOUGH GTE SUPPORTS MANY OF THE *RECOMMENDED DECISION'S* RECOMMENDATIONS AIMED AT PROVIDING UNIVERSAL SERVICE SUPPORT TO SCHOOLS AND LIBRARIES, SEVERAL MUST EITHER BE REVISED OR REJECTED AS INCONSISTENT WITH THE INTENT OF THE 1996 ACT.

A. The 1996 Act Does Not Permit Inside Wiring and Internet Service Provider Charges To be Discounted Because They Are Not "Telecommunications Services."

GTE supports the provision of telecommunications services to schools, libraries, and health care providers at a discount. Virtually all parties have agreed that offering discounted rates to public institutions, with the discounted amount subsequently repaid to the *Eltel* from the universal service fund, will help to achieve the Act's goal of "open[ing] new worlds of knowledge, learning and education to all Americans -- rich and poor, rural and urban."¹³⁴ However, in pursuing this laudable purpose, the Joint Board has overstepped its authority under the 1996 Act. The Joint Board's conclusion that unregulated, competitive products such as inside wiring and Internet access provider fees should receive subsidies simply cannot be squared with Section 254's directive to establish a support mechanism for universal "telecommunications services."¹³⁵

Section 254(h)(1)(B) requires that all telecommunications carriers shall "upon a bona fide request for any of its services that are within the definition of *universal service*" provide "such services" to schools and libraries at a discount. Universal service is defined as "an evolving level of *telecommunications services* that the

¹³⁴ Conference Report at 132.

¹³⁵ *Recommended Decision* at ¶ 473, ¶ 463.

Commission shall establish."¹³⁶ "Telecommunications services" is, in turn, defined by the 1996 Act as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used,"¹³⁷ and "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."¹³⁸ Neither Internet access nor inside wire are encompassed within these definitions. Yet, the *Recommended Decision* determined that an "enhanced service"¹³⁹ -- Internet

¹³⁶ § 254(c)(1).

¹³⁷ § 153(51).

¹³⁸ § 153(48).

¹³⁹ The *Recommended Decision* concludes that information service providers and enhanced service providers do not provide "telecommunications services" under the Act and therefore are not required to contribute to the fund. *Recommended Decision* at ¶ 790.

access -- and a non-telecommunications service -- inside wiring and its maintenance and installation -- should receive subsidies as "telecommunications services."¹⁴⁰

Specifically, the Joint Board found that the installation and maintenance of inside wiring are "services" which must be provided to implement the purpose of the Act.¹⁴¹

¹⁴⁰ Excluding inside wiring, CPE and enhanced services from universal service support is also consistent with the Commission's decision that these products and services were not common carrier services under Title II, and therefore not subject to Commission regulation. The definition of common carrier services subject to Title II is effectively the same as the 1996 Act's definition of "telecommunications services," making the *Recommended Decision's* position all the more untenable. See *Detariffing the Installation and Maintenance of Inside Wiring* (CC Docket No. 79-105), 51 Fed. Reg. 8498 (1986), reprinted in full at 59 RR 2d 1143, 1151-1155 (1986) ("Detariffing Order"); *Second Computer Inquiry Final Decision*, 77 FCC 2d 384, 428-430 (enhanced services), 438-447 (CPE) modified on recon., 84 FCC 2d 50 (1980), further modified on recon., 88 FCC 2d 512 (1981), *aff'd sub. nom.*, *Computer and Communications Indus. Ass'n. v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff'd on second further recon.*, FCC 84-190 (1984). It is also consistent with the distinction drawn by the Joint Board between telecommunications services and information services under the Act. The Joint Board equated information services with enhanced services as defined by the FCC (47 C.F.R. § 64.702) and determined that providers of information are not telecommunications carriers, and, hence, not liable for contributions to the universal service fund under the 1996 Act. *Recommended Decision* at ¶ 790. The notion that Internet service provider fees are not "telecommunications services" is further supported by the legislative history. In discussing an earlier version of the Bill, the Senate Report on the S. 652 indicated that "[i]nformation services providers do not 'provide' telecommunications services; they are users of telecommunications services. The definition of telecommunications service specifically excludes the offering of information services (as opposed to the transmission of such services for a fee) precisely to avoid imposing common carrier obligations on information service providers." Senate Report at 28 (1995).

The Joint Board, without any legal justification, simply chose to adopt a popular definition of the term "services" -- rather than the statutory definition -- to bring installation and maintenance within its scope.¹⁴² As discussed above, Congress specifically defined "telecommunications services" in such a way that excludes "installation" and "maintenance." In fact, Congress throughout the 1996 Act carefully distinguished "services" from "elements," from "equipment," and from other

¹⁴¹ *Recommended Decision* at ¶ 474; The Joint Board relies on the congressional decision to insert the term "school classrooms" in § 254(h)(2)(a), rather than simply "schools" as they did elsewhere in the 1996 Act, to support its analysis. *Recommended Decision* at ¶ 478. This reliance is unfounded. Congress was clear in referring to "schools" rather than "classrooms" whenever they address the carriers' obligations to provide services to those institutions at a discount. Section 254(c)(3), Section 254 (h)(1)(b). The reference to "classrooms" appears only in connection with the goal of providing "access" to advanced services, which is to be realized through the provision of discounted telecommunications services under the operative provisions of the 1996 Act.

¹⁴² The Joint Board's efforts to import loose references to "inside wiring services" in *NARUC v. FCC*, 880 F.2d 422, 430 (D.C. Cir. 1989) are equally unavailing. *Recommended Decision* at ¶ 474, n.1583 (setting forth numerous court references to "inside wiring services" as dispositive evidence that installation and maintenance of inside wiring are "services" under the 1996 Act). First, the issue before the D.C. Circuit did not turn on whether installation and maintenance of inside wiring were "services." To extract from dicta largely colloquial uses of the term "services" and then substitute these uses for the statutory definition is unfounded. (Remarkably, in support of its conclusion, the *Recommended Decision* notes that the D.C. Circuit "refers to CPE as equipment." It is hard to imagine how the D.C. Circuit's breaking down of acronyms is relevant to defining "services.") Second, even the decision itself defines inside wire as "the telephone wires within a customer's side of the point of intersection between the telephone company's communications facilities and the customer's facilities." *NARUC*, 880 F.2d at 425. Inside wire is therefore not a "service" even under the decision's own terms.