DOCKET FILE COPY ORIGINAL

RECEIVED
JAN 31 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-238
	)	
Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers	)	

REPLY COMMENTS OF GTE

GTE Service Corporation, on behalf of its affiliated domestic wireline and wireless operating companies, submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released in this docket.[1]

DISCUSSION

A significant number of commenting parties generally support the Commission's proposed changes to its Rules governing formal complaints. In fact, on a number of proposals, there is virtually unanimous support.[2] In these reply comments, GTE

---

1 FCC 96-460 (released November 27, 1996).

2 For example, no commenting party opposed the concept of Commission ordered sanctions against parties failing to comply with its Rules. *See, e.g.*, Cincinnati Bell Telephone (CBT) at 17; MFS at 23, NYNEX at 17; Pacific Telesis (Pac Tel) at 34; and Southwestern Bell Telephone Company (SWBT) at 14. Similarly, all parties addressing the Commission's proposal to broaden the protection afforded proprietary information supported it. *See, e.g.*, BellSouth at 20; MCI at 23; MFS at 21; NYNEX at 15-16; Pac Tel at 29-30; and SWBT at 13-14.

No. of Copies rec'd 2+6
List ABCDE

addresses those issues which it believes are critical to maintaining minimum due process safeguards.

1. The Time For Filing Answers to Complaints Should Not Be Reduced From 30 to 20 Days.

As GTE explained in its comments, because of the added burdens the Commission proposes to place on carriers responding to formal complaints, it would not be fair or efficient to simultaneously shorten the time (from 30 days to 20 days) carriers have to meet those new burdens.[3] As Pac Tel notes, the Commission previously rejected a proposal to reduce the complaint response time for carriers from 30 to 20 days.[4] As the Commission correctly noted then: "it is important that defendants are not unduly hampered in responding to the charges against them."[5] This statement was true in 1993 and is even more compelling in the context of the new obligations created by the Telecommunications Act of 1996 ("1996 Act") as well as those proposed in this rulemaking.[6] For this reason, GTE wholeheartedly agrees with BellSouth that the

---

[3] GTE Comments at 4-6 & 9.

[4] Pac Tel at 16.

[5] *Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 92-26, 8 FCC Rcd 2614, ¶ 12 (1993).

[6] It is noteworthy that the Commission's rejection of the proposal in 1993 came at a time when significant new burdens of the type proposed here were not even being contemplated.

proposal to reduce the answering time to 20 days will unduly prejudice the rights of answering carriers.[7]

2. Self-Executing Discovery Should Not Be Eliminated.

GTE opposes the elimination of self-executing discovery. As noted in its comments, even with the Commission's proposal to require the exchange of documents and information early on in the proceeding, discovery will be needed to flesh out all pertinent facts – not just the facts one side wants the Commission (or the opposing party) to have.[8] Moreover, the proposal to make discovery available only upon a showing of good cause will do little more than ensure that motions to conduct discovery become a routine part of complaint proceedings.[9] Other commenters echo GTE's concerns.[10]

As one means of streamlining the discovery process, GTE suggested that the Commission reduce the number of self-executing interrogatories from 30 to 15.[11] GTE also is in favor of Commission staff involvement early in the discovery process to avoid abusive conduct. Staff involvement could take the form of resolving disputes over

---

[7] BellSouth at 14.

[8] GTE Comments at 10.

[9] CBT (at 11) and SWBT (at 6) agree that elimination of self-executing discovery will likely result in an increased number of discovery motions and concomitant delay.

[10] *See* MCI at 17-18; Sprint at 7; and U S West at 11.

[11] GTE Comments at 10; *see also* Pac Tel at 18 (suggesting a reduction to 20 interrogatories).

propounded discovery (possibly at the status conference) and evaluating requests for extraordinary discovery such as witness depositions.[12]

3. Briefs Should Not Be Eliminated In Cases In Which No Discovery Is Undertaken.

In its comments, GTE explained that it would not be appropriate to eliminate briefs in cases where no discovery is conducted.[13] Almost every party commenting on this issue agrees.[14] In addition, GTE agrees with U S West that the Commission should not continue its practice of requiring simultaneous initial and reply briefs because this practice "puts defendants in the position of replying to a position not yet fully articulated."[15] The burden should always be on a complainant to clearly articulate the basis upon which it claims it is entitled to relief before a defendant carrier is required to respond.[16]

---

[12] GTE opposes the suggestion of MFS (at 10) that all interrogatories be prohibited. In order to establish discreet factual issues, it is almost always more efficient to propound narrowly tailored interrogatories than to take the deposition of a witness who may or may not have knowledge of all of the information sought.

[13] GTE Comments at 16.

[14] *See* AT&T at 18; BellSouth at 20; CBT at 16; Competitive Telecommunications Association at 11; ICG Telecom Group at 24; MCI at 24; MFS at 22; Pac Tel at 31; Sprint at 9; SWBT at 13; and U S West at 12.

[15] U S West at 13.

[16] *See also* MCI at 24 (noting that "[w]hether or not discovery is conducted may have little bearing on the need for briefing of the legal issues").

4. Miscellaneous Proposals.

A number of commenters join GTE in supporting the Commission's proposal to allow parties to bifurcate complaint proceedings into liability and damages phases.[17] GTE agrees with the point made by Pac Tel and CBT, however, that the bifurcation of a proceeding cannot relieve the Commission of its obligation to determine whether a complainant has proved that an injury has occurred.[18]

GTE also agrees with those parties opposing the proposal to require the posting of funds by a defendant to cover the potential damages award after a finding of liability.[19] In the absence of any showing that that such a procedure is needed (*i.e.,* that a significant number of defendants consistently default on payment of damages awards) there simply is no reason to require the routine application of such a provision. This being the case, the administrative burden created by the proposal would far outweigh its potential utility in the few number of cases in which the safeguard is actually needed. In such cases, parties will always be free to seek the orders necessary to protect their interests.

Finally, GTE believes that the Commission should carefully consider the suggestions that it either create a separate set of rules for cases governed by the new provisions of the 1996 Act ("fast track" cases) or modify only certain rules and make

---

[17] *See, e.g.,* MCI at 21; MFS at 13; NYNEX at 13; and SWBT at 10.

[18] CBT at 13 and Pac Tel at 25-26.

[19] *See* CBT at 14; Pac Tel at 26; and SWBT at 10.

those modified rules applicable only to "fast track" cases.[20] It appears that the Commission may be taking on more than it has to by transforming all complaints into "fast track" proceedings. It may be more appropriate to phase in "fast track" rules applicable only to those cases immediately requiring them, gain some experience with them and then, if successful, apply the rules later to all complaint proceedings.

Respectfully submitted,

GTE Service Corporation, on behalf of its affiliated domestic wireline and wireless operating companies

David J. Gudino, HQE03J20
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(214) 718-5128

By Andre J. Lachance
Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5276

January 31, 1997

Their Attorneys

---

[20] *See, e.g.*, CBT at 4 and AT&T at 2.

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on January 31, 1997 to all parties of record.

Judy R. Quinlan

Judy R. Quinlan