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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Low Tech Designs, Inc.	)	CC Docket No. 97-165
	)	
Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc's Petition for Arbitration with GTE South Before the Public Service Commission of South Carolina	)	

OPPOSITION OF GTE SERVICE CORPORATION AND GTE SOUTH, INC.

GTE Service Corporation and GTE South, Inc., by their attorney, respectfully oppose the Petition for Commission Assumption of Jurisdiction filed by Low Tech Designs, Inc.("Petitioner" or "LTD") on July 10, 1997. Petitioner requests that the FCC assume jurisdiction of the arbitration between LTD and GTE South, pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 ("the Act"), because of the failure of the Public Service Commission of South Carolina ("PSCSC") to take action to arbitrate the decision between LTD and GTE South.

The PSCSC denied LTD's petition for arbitration because LTD had not obtained the required state certification to operate as a competing local exchange carrier ("LEC").[1] Although the PSCSC did not take the action LTD

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[1] Order Denying Petition, Petition of Low Tech Designs, Inc., Order No. 97-153, PSCSC Dkt. No. 97-052-C, Mar. 4, 1997. ("PSCSC Order")

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wanted, it did not fail to carry out its responsibility. By insisting that LTD first obtain the required state certification, the PSCSC was merely applying the South Carolina state law.[2] Nothing in the South Carolina law or in the PSCSC's application of the state law is contrary to the provisions of the 1996 Act. Accordingly, the Petition must be denied.

The PSCSC Has Not Failed to Act to Carry Out its Responsibility Under Section 252.

The facts set forth in the Petition belie Petitioner's assertion that the PSCSC has failed to act in accordance with the requirements of Section 252. Petitioner admits (at ¶7) that the PSCSC issued an Order on March 4, 1997. The FCC's Rules confirm that "a state commission fails to act if the state commission fails to respond, within a reasonable time, to . . . a request for arbitration, as provided for in section 252(b) of the Act . . . ."[3] While LTD takes issue with the decision of the PSCSC, there is no doubt that the PSCSC has responded to the arbitration request. Thus, since the PSCSC has not failed to carry out its responsibility, the FCC has no jurisdiction to act under subsection 252(e)(5).[4]

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2 S.C. Code Ann. §58-9-10(13), §58-9-280(B) *et seq.* (Supp. 1996).

3 47 C.F.R. §51.801(b).

4 LTD's suggestion (at ¶12) that the FCC's assumption of arbitration and consolidation of LTD's arbitration requests of several carriers in several states would be pro-competitive is irrelevant. The 1996 Act clearly leaves the arbitration responsibility to the individual state commissions.

Furthermore, the FCC has no jurisdiction under subsection 252(e)(6)[5] to review the PSCSC's decision with regard to LTD's petition for arbitration. As the Court of Appeals recently affirmed, "the federal district court review contained in subsection 252(e)(6) is the exclusive means of obtaining review of state commission determinations under the Act . . . ."[6] Thus, if LTD disagrees with the PSCSC decision, the 1996 Act requires that LTD seek review of that decision not with the FCC but in a federal district court.

The PSCSC Decision is not a Barrier to Competition.

Petitioner argues (at ¶9) that the South Carolina statute which requires new entrants to obtain state certification is a barrier to entry in violation of Section 253(a) of the 1996 Act.[7] In effect, LTD is asserting that while it is entitled to interconnection for the purpose of providing local competition, it should not have to comply with state certification requirements for local exchange competitors.

LTD's argument that the South Carolina statute is a barrier to entry is completely unfounded. In fact, Section 253(b) specifically recognizes the states' authority to protect its state and local interests through competitively neutral and

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5 47 U.S.C. §252(e)(6).

6 *Iowa Utilities Board v. FCC,* No. 96-3321, slip op. at 123 (8th Cir. Jul. 18, 1997).

7 Although arguing that state certification is a barrier to entry, LTD does not specifically request that the FCC preempt the South Carolina statute.

nondiscriminatory mechanisms. The state statute was enacted after the 1996 Act to assure that local competitors obtain the required certification. The PSCSC stated that it "takes seriously its charge to uphold the law in South Carolina and protect the public's safety, welfare, and rights, as well as the service quality provided by telecommunications companies. We do not view our Legislature's actions as 'legal tools' to be used as barriers, but instead as shields which we must uphold for the protection of consumers."[8] State certification requirements are long-standing tools used by state commissions to regulate local telecommunications carriers. There is absolutely nothing to suggest that the 1996 Act meant to usurp this traditional state regulatory mechanism.

LTD argues further (at ¶10) that the PSCSC has not applied the statute on a competitively neutral basis. Although LTD suggests that the PSCSC Order did not address this, the PSCSC Order explicitly found that the requirements of the state statute "exist for any company that enters the local exchange market in this changing telecommunications industry."[9] There is nothing to suggest that the same certification requirements are not be applied to other competitive LECs on a competitively neutral basis. Thus, the South Carolina statute is not a barrier to competition.

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[8] PSCSC Order at 3-4.

[9] *Id.* at 3.

Conclusion

The PSCSC has not failed to carry out its responsibility by denying LTD's petition for arbitration, nor is the South Carolina statute requiring state certification a barrier to entry. Instead the PSCSC acted to assure that local LECs are certified in accordance with South Carolina law. Because the PSCSC has not failed to carry out its responsibilities, the FCC no jurisdiction to act under Section 252.

Respectfully submitted,

GTE Service Corporation and GTE South, Inc.

By _____

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July 28, 1997

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Opposition of GTE Service Corporation and GTE South, Inc.," have been mailed by first class United States mail, postage prepaid, on July 28, 1997 to the parties listed below:

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