

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

AUG 20 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)

CS Docket No. 97-141

REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated
domestic telephone operating, wireless and
video companies

John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

August 20, 1997

Their Attorneys

No. of Copies rec'd
List ABCDE

TABLE OF CONTENTS

	<u>PAGE</u>
SUMMARY	ii
I. INTRODUCTION	1
II. PROGRAM ACCESS RULES CONTINUE TO BE NECESSARY TO ENSURE NEW COMPETITORS HAVE ACCESS TO PROGRAMMING REQUIRED IN ORDER TO COMPETE.....	2
III. EXISTING CABLE HOME WIRING RULES DO NOT PROMOTE COMPETITION FOR CABLE SERVICES TO MULTIPLE DWELLING UNITS ("MDU") RESIDENTS.....	5
IV. COMPETITION	9
V. CONCLUSION	11

SUMMARY

GTE files these reply comments in response to comments made with respect to paragraphs 7, 14, and 16 of the Commission's Notice of Inquiry ("NOI") addressing its annual assessment of the status of competition in the market for the delivery of video programming. The NOI is designed to assist the Commission in developing and preparing the fourth annual report on competition in such markets.

GTE believes the Commission's program access rules continue to be necessary to ensure new competitors have access to key programming required in order to effectively compete with entrenched cable operators. Now, is not the time for the Commission to eliminate or lessen its program access rules. The Commission should act swiftly on Ameritech's Petition for Rulemaking requesting revisions to the program access rules. It should extend its program access rules to all programmers and broadcast television stations (regardless of whether they are vertically integrated or whether they are satellite-delivered) and should prohibit cable programming vendors and local television broadcast stations from requiring video distributors to carry any other programming channel as a condition of granting retransmission consent.

GTE believes the existing cable home wiring rules do not promote Multiple Dwelling Unit ("MDU") competition and urges the Commission adopt a "fresh look" policy as a means of ensuring such competition in the market for video distribution services and reject any proposals that would restrict access to a new, competitively neutral demarcation point.

GTE's and Ameritech's experience indicates that the benefits of competition are currently available to few cable consumers. Only those consumers fortunate enough to live in an area where there is meaningful competition to the entrenched , incumbent cable operator.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Annual Assessment of the Status of) CS Docket No. 97-141
Competition in the Market for the)
Delivery of Video Programming)

REPLY COMMENTS OF GTE

GTE Service Corporation, on behalf of its affiliated domestic telephone operating, wireless and video companies ("GTE"), respectfully submits these Reply Comments in response to the Commission's Notice of Inquiry ("NOI") in CS Docket No. 97-141, FCC 97-194, released June 6, 1997. In its Reply Comments, GTE responds to comments made with respect to paragraphs 7, 14, and 16 of the NOI.

I. INTRODUCTION

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

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

The NOI invites parties to identify and comment on existing statutory provisions which they perceive as restraining competition or inhibiting development of robust competition in the markets for the delivery of video programming. Commenters have also been asked to provide any information or analysis they deem relevant for the development and publication of the fourth annual report.

II. PROGRAM ACCESS RULES CONTINUE TO BE NECESSARY TO ENSURE NEW COMPETITORS HAVE ACCESS TO PROGRAMMING REQUIRED IN ORDER TO COMPETE .

Summary: GTE believes expansion of the program access rules is necessary to ensure that new competitors have access to key programming that is needed to compete successfully in the video market.

The NOI (at 14) requests information that would assist the Commission in assessing whether the program access rules² should be expanded or contracted in their coverage. In prior proceedings, GTE has consistently maintained that access to competitive and equivalent programming is essential to any new video programming provider's ability to successfully compete with entrenched incumbent cable operators. If access can be denied to key programming, GTE believes that effective LEC competition is impossible. GTE's experience indicates that competition in the multichannel video programming distributor ("MVPD") marketplace is only beginning to emerge, but only in limited, selected areas. Today, the vast majority of cable subscribers continue to have only the option of service from an incumbent cable

² 47 U.S.C. § 628.

monopolist. GTE shares the concerns voiced by several commenters concerning continued equal access to programming.

United States Telephone Association ("USTA") (at 8) states the Commission must continue to promote equal access to programming for all MVPD providers of video programming and vigorously enforce its program access rules. It urges the Commission to more effectively enforce its program access rules by acting swiftly on Ameritech's Petition for Rulemaking that proposes several changes to the rules. GTE supports the Ameritech Petition and believes that the proposed rule changes will result in more timely and effective enforcement of the Commission's rules.

Ameritech (at 14-15) observes that a growing number of significant cable programmers that are tying up quality programming in exclusive contracts are not affiliated with cable operators or have recently sold their cable operations and therefore, fall outside the Commission's program access rules. This is so despite the obvious adverse impact such exclusive agreements have on competition in video markets. The adverse impact on competing cable providers of not being able to acquire a substantial amount of programming owned by non-vertically integrated cable programmers is significant and the rules should be extended to cover non-vertically integrated cable programmers. There is no tenable policy justification for permitting evasion of the essential procompetitive protection of the program access rules simply because a vertically integrated cable company changes its means of delivering programming. Ameritech, therefore, correctly proposes that the Commission close this potentially significant loophole by extending Section 628 to cable programming delivered by whatever means.

Several commenters express concern over the variety of deals among large multiple system operators ("MSOs") and programming vendors that have occurred or have been announced.³ They believe the effect of those deals has been to concentrate control of key programming among a few powerful players in the cable industry. This increased horizontal concentration of the cable industry means that these non-vertically integrated cable programming services now have unprecedented incentive to maintain exclusive distribution arrangements with the large MSOs. GTE agrees that competition to entrenched cable operators will be crippled if retransmission consent for broadcast properties is denied new competitors that do not carry additional programming services on terms and conditions dictated by concentrated cable entities.

The Wireless Cable Association (at 3) states that the structural conditions of markets for the delivery of video programming are conducive to the exercise of market power by cable operators. They maintain (at 7) that activity in the past year has also eliminated any need for the Commission to speculate about whether vertically integrated cable programmers will attempt to evade the program access rules by migrating their programming services from satellite to fiber delivery. GTE agrees with WCA that the economic and technical restructuring of the cable industry will inevitably require the Commission to reevaluate whether its program access rules are adequate to deter anticompetitive behavior by cable programmers.

In sum, GTE shares the concern of commenters regarding the concentration of control of key programming that is occurring within the cable industry. Now is definitely

³ Bell Atlantic and NYNEX at 3; Ameritech at 37 and 39; BellSouth at 12.

not the time to eliminate or lessen the Commission's program access rules. GTE supports commenters that believe the Commission can best assure that consumers do not lose the benefits of competition through action proposed in comments by: (1) acting swiftly on Ameritech's Petition for Rulemaking and (2) responding to BellSouth's request (at 16). Specifically, BellSouth urges the Commission to commence a rulemaking proceeding to either amend its rules or, where necessary, make recommendations to Congress which at a minimum extends the program access rules to all programmers and broadcast television stations, regardless of whether they are vertically integrated or whether they are satellite-delivered, and prohibits cable programming vendors and local television broadcast stations from requiring video distributors to carry any other programming channel as a condition of granting retransmission consent.

III. EXISTING CABLE HOME WIRING RULES DO NOT PROMOTE COMPETITION FOR CABLE SERVICES TO MULTIPLE DWELLING UNITS ("MDU") RESIDENTS

Summary: The existing cable home wiring rules do not promote MDU competition. GTE urges the Commission to adopt a "fresh look" policy as a means to ensure MDU competition in the market for video distribution services and to reject proposals that would restrict access to a new, competitively neutral demarcation point.

The NOI (at 7) solicits information on factors that influence MDU competition. GTE believes a critical factor inhibiting MDU competition continues to be the Commission's long overdue decision concerning revision of its cable home wiring rules.

Application of the Commission's cable home wiring rules to MDUs with loop-through cable inside wire configurations continues to be an unresolved issue that

negatively impacts MDU competition. In prior proceedings, GTE has consistently maintained that the Commission's rules should be designed to promote competition among telecommunications providers and has proposed that the most sensible approach would be to "deregulate" all cable inside wiring and extend pretermination rights to all cable subscribers. GTE has urged the Commission to prohibit all future loop-through installations, since such wiring only aggravates efforts to pry open the video distribution market to competition as it precludes any opportunity for more than one service provider to serve an MDU location. GTE believes competition simply cannot develop among video programming distributors for MDU markets nor the promotion of subscriber choice, as long as revision of the cable home wiring rules remains unresolved.

Several commenters believe existing rules do not promote MDU competition. Ameritech (at 28) states that exclusive contracts for MDUs and anticompetitive inside wiring rules serve as severe impediments to the introduction of genuine competition for cable services to MDU residents. BellSouth (at 19) observes that MVPDs encounter obstacles in serving residents of MDUs. BellSouth requests the Commission expedite its final decision in its cable inside wiring docket and provide all MVPDs with some certainty as to what the "rules of the road" in the MDU arena will be going forward. The Independent Cable and Telecommunications Association ("ICTA") (at 6) maintain that the use of perpetual contracts by franchised cable operators forecloses MDUs to new entrants and inhibits the growth of competition. The North Carolina Cable Telecommunications Association (at 1-2) asserts that all video providers must have

access to MDU premises in order to utilize wiring or install new wiring and equipment.

They believe that without such access, competition will continue to be stymied.

ICTA (at 8) recommends that the Commission prohibit franchised cable operators from locking MDU owners into perpetual service agreements linked to the term of the operator's franchise and all renewals thereof. They believe all future service agreements should include a limited duration provision. They propose that rather than impose a mandatory access regime, the Commission should apply a "fresh look" policy to those perpetual contracts that are now in effect and then allow parties to contract as they see fit in response to consumer demands and the needs of the marketplace.

During the past year, GTE has had multiple *ex parte* contacts with Commission staff addressing revision of the cable home wiring rules.⁴ GTE has advocated that the Commission reform its rules concerning the cable demarcation point and that it permit exclusive, but not perpetual, contracts in conjunction with a "fresh look" policy.

GTE has supported the Commission's ability to modify the cable demarcation point and has urged the Commission to reject any attempts to constrain a new entrant's use of existing cable facilities from the demarcation point. GTE has asserted that effective competition in the video marketplace will flourish only if the cable demarcation point is located at a competitively neutral location -- such as the point at which facilities become dedicated to an individual subscriber -- and incumbent providers cannot

⁴ See GTE letters to Mr. William F. Caton, Acting Secretary Federal Communications Commission concerning Telecommunications Services Inside Wiring CS Docket No. 95-184 EX PARTES dated November 5, 1996, November 12, 1996, November 27, 1996, February 20, 1997, March 18, 1997, and May 15, 1997.

otherwise limit access to wiring. GTE believes any revisions to the rules that impose additional burdens on new entrants simply represent attempts by cable monopolists to retain control of wiring in order to thwart competition.

GTE believes that the Commission should prohibit perpetual contracts, but should not prohibit exclusive contracts between video providers and MDU owners. Parties arguing against exclusive contracts ignore the economic and competitive benefits of such arrangements and seek Commission intervention in an area expressly deregulated by the 1992 Cable Act. GTE maintains an exclusive arrangement between a competitive video service provider and a MDU owner produces significant economic benefits. For example, a MDU owner may seek an exclusive arrangement in return for particular pricing discounts or service options, or an owner may only be able to practically allow a single provider to offer service because of physical limitations in the MDU building. On the other hand, a competitive provider may wish to enter into an exclusive agreement in order to ensure that it can recover the substantial costs in providing new facilities and securing programming sources under the potentially low rates that it must offer to win the business. GTE's financial data demonstrate that a minimum of eight years is required to recover its investment in MDU contexts. Unlike the perpetual contracts signed by cable incumbents in a monopoly environment, exclusive contracts entered into by new entrants in today's increasingly competitive market will allow them to compete.

GTE believes the Commission may establish a "fresh look" policy pursuant to its broad authority to ensure that cable rates are reasonable and to protect the interests of cable subscribers under Title VI of the Communications Act. A "fresh look" policy will

allow market forces to bring increased competition and downward pressure on cable rates, thereby promoting the competitive availability of video and other services at reasonable rates to MDU customers. A "fresh look" policy is also justified on several policy grounds. First, the video distribution market was not effectively competitive when MDU owners signed contracts with incumbent cable operators. Rather, the perpetual term of most existing contracts reflects the fact that cable incumbents were monopoly providers who did not face an imminent threat of competition. As a business matter, such long-term contracts are not likely to continue to be a rational economic choice in a competitive market that offers alternative service options. Second, a "fresh look" policy is in the public interest because it will allow consumers to benefit from increased competition as new entrants are given a meaningful opportunity to compete for subscribers. Such competition will exert pressure on existing cable rates and encourage new services that have been limited by an incumbent's control over the cable wiring in MDU buildings.

IV. COMPETITION

Summary: Consumers fortunate enough to reside in an area where GTE (and other telephone companies) compete have realized tangible price and service offering benefits. Other consumers, however, remain under the incumbent monopolist's yoke.

The NOI (at 16) sought information on the effects of actual competition in local markets where cable operators face meaningful competition from MVPD entrants. Specifically, the NOI sought information on incumbent MVPDs responses to anticipated and actual entry by competing MVPDs.

Ameritech (at 9) reports that its presence has spurred incumbent cable operators to upgrade their networks; lower prices; pledge to "meet or beat" any offer from a wired cable provider for similar services; launch "winback" campaigns; add channels; offer free cable channels; roll out upgraded converter boxes with an Interactive Programming Guide; offer discounts; and add quality channels to their expanded basic tiers.

Ameritech (at 10) also cites instances where the incumbent cable operator has raised rates in areas where Ameritech does not compete while holding rates constant in areas where Ameritech does compete. Ameritech (at 13) concludes that it appears that, at least for now, the ability of a consumer to enjoy more value and better quality in cable service is directly dependent upon whether or not the consumer is fortuitous enough to live in an area where there is meaningful competition to the incumbent cable operator.

GTE's Americast cable experience in St. Petersburg, Florida has been similar to that reported by Ameritech. A June 12, 1997 article in the *St. Petersburg Times* summarizes the experiences of both consumers and GTE as a new competitive cable entrant. It describes two cousins, living within 50 blocks of each other, and their monthly Time Warner bills. One cousin, living in the area not served by GTE, pays \$32 a month for cable service. The other cousin, living in an area where GTE is completing its competing cable TV system, pays \$25 a month for the same level of service. The story describes how the customer not living in the GTE served area asked Time Warner for a similar deal and was turned down flat. He says, "I thought for sure they (Time Warner) would offer me the deal when I explained the situation, but they didn't seem to care. I'm ... being overcharged because there's no competition where I live. It just doesn't seem fair." A St. Petersburg city administrator, interviewed for the article, says

that in an effort to stave off competition, cable companies offer special pricing deals only in areas where customers have the option to change to another service. He says that there could be a situation where one customer has lower cable rates than their neighbor across the street.

The article recounts that among the incentives Time Warner offers are: two months free service if subscribers stay with the company for 10 months; a free movie channel with purchase of a movie channel package such as HBO and Cinemax; free upgrade to "smart" cable boxes (computerized with extra features) for two additional TVs in the household; and rates guaranteed for a year. To the cousin living in the competitive area, Time Warner has given a \$6 monthly discount as part of a retention plan to keep St. Petersburg subscribers. Time Warner promotes these service changes and incentives on both a targeted (door-to-door sales and direct mail) and mass advertising (television) basis.

V. CONCLUSION

GTE believes that now is not the time for the Commission to eliminate or lessen its program access rules. The Commission can best assure that consumers do not lose the benefits of competition by acting swiftly on Ameritech's Petition for Rulemaking, extending its program access rules to all programmers and broadcast television stations (regardless of whether they are vertically integrated or whether they are satellite-delivered), and prohibiting cable programming vendors and local television broadcast stations from requiring video distributors to carry any other programming channel as a condition of granting retransmission consent. GTE believes the existing cable home

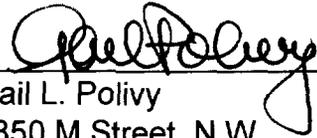
wiring rules do not promote MDU competition and urges the Commission to adopt a "fresh look" policy as a means to ensure such competition in the market for video distribution services and to reject proposals that would restrict access to a new, competitively neutral demarcation point. GTE's and Ameritech's experience indicates that the benefits of competition are only available to a few cable consumers, those fortunate enough to live in an area where there is meaningful competition to the entrenched incumbent cable operator.

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone operating, wireless and
video companies

John F. Raposa, HQE03J27
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092
(972) 718-6969

By


Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, DC 20036
(202) 463-5214

August 20, 1997

Their Attorneys

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on August 20, 1997 to all parties of record.


Ann D. Berkowitz