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

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In the Matter of:	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

REPLY COMMENTS OF GTE

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GTE Service Corporation and its affiliated domestic telephone operating and interexchange companies (collectively "GTE"),[1] respectfully submit their reply comments in response to the *Further Notice of Proposed Rulemaking* ("*FNPRM*") in the above-captioned proceedings.[2] As explained below, the proposed rule would undermine support for universal service in contravention of Section 254 of the Act, ignore the rationale behind the Eighth Circuit's decisions in *CompTel* and *Iowa Utilities Board*, violate Section 251(g) and the jurisdictional boundaries established in the Act, and contradict the Commission's own precedent concerning use of and access to unbundled switching elements. Accordingly, the proposed rule should not be adopted.

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[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

[2] FCC 97-295 (rel. Aug. 18, 1997).

I. Introduction and Summary

The comments filed in response to the *FNPRM* underscore GTE's concern that adoption of the Commission's proposed rule would eviscerate the present access charge system and universal service support mechanism. By promoting arbitrage of access service through the use of unbundled switched transport elements, interexchange carriers would have every ability and incentive to avoid paying their fair share of the implicit universal service subsidies that the Commission has declined to remove from access charges. Such a result would violate Section 254 of the Act, which requires that the Federal universal service support mechanism be "sufficient" and based on "equitable and nondiscriminatory" contributions.

In addition, GTE and other commenters showed that the Eighth Circuit's decisions in *CompTel* and *Iowa Utilities Board* and several provisions of the Act preclude adoption of the proposed rule. The Eighth Circuit has consistently maintained a clear distinction between exchange access services and unbundled network elements ("UNEs"), which the Commission may not ignore.[3] Because the proposed rule would effectively abolish this distinction and allow interexchange carriers ("IXCs") to bypass access services, the Commission would render meaningless the statutory directive of Section 251(g), Section 201's grant of jurisdiction over interstate access services to the FCC, and the jurisdictional boundary established by Congress in Section 2(b) of the Act. Further, this rule would be inconsistent with the Commission's prior conclusion that

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[3] GTE reiterates its continued opposition to classification of shared transport as an unbundled network element. However, it assumes, without conceding, for purposes of these Reply Comments that the Commission has properly identified shared transport as an unbundled network element.

a purchaser of an unbundled switching element obtains exclusive access to that element on a per-line basis, thereby preventing requesting carriers from using such elements to provide interexchange service to end users that do not receive the carrier's local exchange service. Accordingly, the Commission should decline to permit the proposed use of shared transport by IXCs to circumvent access services.

II. The Record Demonstrates That the Commission's Proposed Rule Would Undermine Universal Service Support.

As GTE explained in its comments, adoption of the FCC's proposed rule would violate Section 254's requirement that the Federal universal service support mechanism be "sufficient" and based upon "equitable and non-discriminatory contributions."[4] This rule would undermine universal service support by encouraging interexchange carriers to forego incumbent local exchange carriers' ("ILECs") interstate access services, which notwithstanding the *Access Reform Order* are priced to recover universal service support in favor of service-equivalent UNEs, which are often priced below compensatory levels based on state interpretations of the FCC's "TELRIC" methodology. As a result, universal service support clearly would not be sufficient, and ILECs would be burdened with a disproportionate share of universal service support obligations.

Other ILECs agree with GTE that using UNEs as a substitute for access services will undermine universal service support by sharply reducing access charge revenues.[5]

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[4] Comments of GTE Corporation, CC Docket Nos. 96-98, 95-185 at 4-7 (filed Oct. 2, 1997) ("GTE Comments").

[5] *See, e.g.*, Comments of Ameritech, CC Docket Nos. 96-98, 95-185 at 11-14 (filed Oct. 2, 1997) ("Ameritech Comments"); Comments of Southwestern Bell

(Continued...)

For example, Ameritech emphasizes that the "Commission's ability to harmonize access charge reform and universal service reform would be undermined" if "UNE exchange access" replaces existing Part 69 access charges.[6] BellSouth quantifies the potential shortfall for its own operations, predicting that the conversion of transport services to UNEs would result in approximately $300 million in lost revenue.[7] It further states that these losses could substantially increase if transport "UNEs can be used in conjunction with unbundled switching."[8]

GTE strongly disagrees with AT&T's assertion that the Commission's proposed rule would not substantially affect access charge revenues.[9] Quite the opposite is true. For example, GTE's access revenues would be reduced by approximately $608 million if it were to price existing switched transport services (both inter- and intrastate) at rates for service-equivalent UNEs.[10] This estimate does not include reductions that would be

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Telephone Company, CC Docket Nos. 96-98, 95-185 at 8 (filed Oct. 2, 1997) ("Southwestern Bell Comments"); Comments of Sprint Company, CC Docket Nos. 96-98, 95-185 at 2-5 (filed Oct. 2, 1997).

6 Ameritech Comments at 13-14.

7 Comments of BellSouth Corporation, CC Docket Nos. 96-98, 95-185 at 4 (filed Oct. 2, 1997) ("BellSouth Comments").

8 *Id.*

9 *See* Comments of AT&T Corporation, CC Docket Nos. 96-98, 95-185 at 7 (filed Oct. 2, 1997) ("AT&T Comments").

10 GTE has used TSLRIC plus 10 percent as a proxy for service-equivalent UNE rates as this approximates the average price GTE is allowed to charge as a result of the arbitration process. Given the number of interconnection agreements and difficulty in calculating appropriate unit-weighted UNE revenues, this approach provides a reasonable estimate of the impact. Further, both inter- and intrastate revenues must be considered since it is not feasible to limit IXCs to using unbundled transport for only interstate access.

realized if unbundled switching were also used by IXCs, which would greatly expand the shortfall. Contrary to the claims of AT&T and WorldCom that IXCs will only purchase transport unbundled elements, there is no doubt that IXCs will combine unbundled transport and switching elements.[11] For example, AT&T, WorldCom and other IXCs may coordinate through their affiliated competitive local exchange carriers ("CLECs") to combine transport and switching elements, or agree with other CLECs to provide unbundled transport at locations where the CLEC has purchased unbundled switching elements. Therefore, there is no basis for AT&T's claim that potential revenue reductions from the proposed rule would be a "small fraction" of current access revenues.[12]

III. Adoption of the Proposed Rule Would Contradict Judicial and Commission Precedent.

A. The Commission May Not Ignore the Eighth Circuit's *CompTel* and *Iowa Utilities Board* Decisions.

The record also echoes GTE's concern that allowing the purchase of UNEs as a substitute for interstate access services would be inconsistent with the Eighth Circuit's decisions in *CompTel v. FCC*[13] and *Iowa Utilities Board v. FCC,*[14] and contradict several sections of the Act. GTE explained that, consistent with the court's rationale in *CompTel*, the need to preserve access charges remains because these charges play a

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11 *See* AT&T Comments at 4-7; Comments of WorldCom, Inc., CC Docket Nos. 96-98, 95-185 at 4 (filed Oct. 2, 1997) ("WorldCom Comments").

12 *See* AT&T Comments at 7.

13 *CompTel v. FCC*, 117 F.3d 1068 (8th Cir. 1997).

continued role in supporting universal service.[15] Similarly, several commenters concurred with GTE that the proposed rule would erode the clear distinction between unbundled network elements and access services drawn by the Eighth Circuit in *CompTel* and *Iowa Utilities Board*.[16]

Further, Ameritech and Bell Atlantic agree with GTE's conclusion that the Commission's proposal would be inconsistent with Section 251(g) of the Act.[17] This section and the court's rationale in *Iowa Utilities Board* clearly preserve incumbent LECs' existing rights to collect access charges from IXCs for exchange access services. Ameritech correctly notes that allowing UNEs to substitute for exchange access would "render Section 251(g) superfluous and meaningless by completely eliminating the need for the access reform portion of the competitive trilogy and effectively nullifying the Commission's efforts to date in this regard."[18]

In addition, the Commission's proposed rule would unlawfully cede regulatory jurisdiction over interstate access services to the states in violation of Section 201 of

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(...Continued)

14 *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

15 GTE Comments at 8-9; *accord* Comments of the United States Telephone Association, CC Docket Nos. 96-98, 95-185 at 9 (filed Oct. 2, 1997) ("USTA Comments").

16 *See, e.g.*, BellSouth Comments at 7; Comments of Time Warner Communications Holdings, Inc., CC Docket Nos. 96-98, 95-185 at 3-5 (filed Oct. 2, 1997).

17 See Ameritech Comments at 5-10; Comments of the Bell Atlantic Telephone Companies, CC Docket Nos. 96-98, 95-185 at 3 (filed Oct. 2, 1997) ("Bell Atlantic Comments").

18 Ameritech Comments at 9-10.

the Act.[19] Since there would be no difference between access provided through the combination of transport and switching elements and access provided under Part 69, the Commission would, as Southwestern Bell Telephone states, "effectively transfer regulation of jurisdictionally interstate traffic to state Commissions."[20] Similarly, Ameritech correctly recognizes that, as a result, the proposed rule would "effectively eliminate the Commission's Section 201 authority over interstate access charges -- authority Congress specifically retained for the Commission in Section 251(i)."[21] Moreover, this result would directly undercut the conclusion in the *First Interconnection Order* that the FCC's unbundled element rules would not cede authority to the states because the states would not be setting prices for "interstate exchange access services."[22]

Along similar lines, GTE also explained that the proposed rule would violate Section 2(b) of the Act by effectively forcing the states to permit bypass of intrastate access charges.[23] Any attempt to "limit" the use of combined transport and switching elements for interstate access is simply not feasible because an IXC purchasing these unbundled elements would have no incentive, and probably no ability, to block

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19 *See e.g., id* at 11-12.

20 Southwestern Bell Comments at 7.

21 Ameritech Comments at 12.

22 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Service Providers, First Report and Order*, 11 FCC Rcd 15499, 15679-80 (1996) (*"First Interconnection Order"*), *rev'd in part, Iowa Utilities Board et al. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *modified, Iowa Utilities Board et al. v. FCC*, Nos. 96-3321 et al. (8th Cir. Oct. 14, 1997).

23 GTE Comments at 12.

intrastate toll calls.[24] The Act simply does not permit the Commission to obviate state mechanisms for assessing and collecting intrastate access charges.

B. The Proposed Rule Is Inconsistent With Commission Precedent Concerning Unbundled Switching Elements.

The proposed rule also does not square with the Commission's conclusions concerning the use of unbundled switching elements.[25] In the *First Order on Reconsideration*, the Commission expressly concluded that purchasers of unbundled switching elements obtain exclusive access to that element on a per-line basis and may not use a switching element to provide interexchange service without also offering local exchange service to such customers.[26] GTE agrees with those commenters who point out that there is no reasoned basis for departing from such a policy in the context of transport elements used in conjunction with switching.[27]

WorldCom's and CompTel's attempts to distinguish this conclusion fail to consider that shared transport services are provided with unbundled local switching.[28]

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[24] *Id.*

[25] *See, e.g., id.* at 12-13 (citing *First Order on Reconsideration*, 11 FCC Rcd 13042, 13048-49 (1996)); USTA Comments at 11; Comments of U S West, Inc., CC Docket Nos. 96-98, 95-185 at 2 (filed Oct. 2, 1997).

[26] GTE Comments at 12. As Ameritech and USTA note, the proposed rule is likewise inconsistent with the *First Report and Order*, which held that purchasers of unbundled elements receive the "right to exclusive access or use of an entire element." *First Interconnection Order* at 15679-80; *see* Ameritech Comments at 15-18; USTA Comments at 5. The Commission's proposed rule would contradict this holding because LECs would be required to share portions of the switch element between the IXC and the local service provider in order to unbundle transport elements.

[27] *See, e.g.*, Ameritech Comments at 15-17; Bell Atlantic Comments at 5; USTA Comments at 11; U S West Comments at 2.

[28] See WorldCom Comments at 7-8; Comments of the Competitive

(Continued...)

Shared transport may not be separated from unbundled switching on a practical basis because to do so would create a conflict over control and use of the switching element, in particular, the routing table in a LEC's switch. Under the FCC's *First* and *Third Reconsideration Orders*, purchasers of an unbundled local switching element have "the right to exclusive access or use" of that element, including the switch routing table.[29] However, a carrier that intends to use unbundled transport instead of access services also would need to use the LEC's end-office routing tables in order to properly route originating or terminating traffic. In this instance, neither entity would have exclusive use of the routing table in the LEC's switch for a particular end-user. Accordingly, the Commission should avoid this potential conflict by not permitting shared transport to be purchased by an IXC that does not also provide local service to the customer.

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Telecommunications Association, CC Docket Nos. 96-98, 95-185 at 8-10 (filed Oct. 2, 1997).

[29] See *First Order on Reconsideration*, 11 FCC Rcd at 13048-49; *Third Order on Reconsideration* at ¶ 46.

IV. Conclusion

In light of the foregoing, the Commission should not permit a requesting carrier to use unbundled dedicated or shared transport with unbundled switching in order to terminate or originate interstate traffic to customers to whom the requesting carrier does not provide local exchange service. As the record demonstrates, such a rule is contrary to the Act and sound policy.

Respectfully submitted,

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