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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Rules and Policies on Foreign Participation
in the U.S. Telecommunications Market

IB Docket No. 97-142

Market Entry and Regulation of
Foreign-Affiliated Entities

IB Docket No. 95-22

**COMMENTS OF GTE SERVICE CORPORATION
ON PETITIONS FOR RECONSIDERATION**

Pursuant to 47 C.F.R. §1.429 of the Commission's rules, GTE Service Corporation on behalf of its affiliated domestic and foreign telecommunications carriers ("GTE") respectfully submits these comments on the petitions for reconsideration filed by SBC Communications, Inc. ("SBC")¹ and MCI Telecommunications Corporation ("MCI")² with regard to the *Report and Order and Order on Reconsideration* in the above-referenced proceeding.³

GTE supports the SBC Petition and agrees that the Commission should not require prior notification by a U.S. carrier before acquiring a direct or indirect

¹ SBC Communications, Inc., Petition for Reconsideration, filed Jan. 8, 1998 (hereinafter "SBC Petition").

² MCI Telecommunications Corporation, Petition for Reconsideration, filed Jan. 8, 1998 (hereinafter "MCI Petition").

³ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Report and Order and Order on Reconsideration, FCC 97-389 (Nov. 26, 1997) ("*Foreign Carrier Participation Order*").

controlling interest in a foreign carrier. GTE also joins in SBC's objection to the Commission's suggestion that it may impose common carrier regulation on cable capacity providers that neither provide, nor intend to provide, service to the public at large. Finally, GTE opposes MCI's request to condition switched resale authorizations of foreign-affiliated carriers on the foreign affiliates' compliance with the settlement benchmarks. This issue has been fully considered and rejected in the *Foreign Carrier Participation Order*. GTE's detailed comments on the SBC and MCI Petitions are set out below.

I. SBC's Petition for Reconsideration Should be Granted

The Commission will grant a petition for reconsideration "where petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters."⁴ Reconsideration will not be granted concerning decisions as to which interested parties already have had notice and an opportunity to be heard, "for the purpose of debating matters on which [the Commission has] already deliberated and spoken."⁵ The requests for relief contained in SBC's Petition are consistent with this standard and are justified on the merits.

⁴ *800 Data Base Access Tariffs and the 800 Service Management System Tariff, Provision of 800 Services*, 12 FCC Rcd 5188, 5202 n. 84 (1997) quoting, *In re Applications of D.W.S., Inc.*, 11 FCC Rcd 2993 (1996); see also *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom Lorain Journal Co. v. FCC*, 351 F. 2d 824 (D.C. Cir. 1965), *cert. den.*, 383 U.S. 967 (1966).

⁵ *Eagle Radio, Inc.*, 12 FCC Rcd 5105, 5107; *Applications of the Kralowec Children's Family Trust*, 1997 FCC Lexis 6474, at *21 (Nov. 25, 1997).

A. The Commission Should Not require Prior Notification or Approval of U.S. Carriers' Investments in Foreign Carriers

SBC requests reconsideration of the Commission's newly proposed requirement that U.S. carriers notify the Commission before acquiring direct or indirect controlling interests in foreign carriers.⁶ This pre-investment notification rule, which reverses a long-standing Commission policy, was not proposed in the Notice of Proposed Rulemaking in this proceeding, and SBC and other interested parties therefore had no opportunity to comment on that rule.⁷ SBC therefore is entitled to seek reconsideration.

The Commission offers two reasons for imposing its prior notification requirement: (1) that the requirement is needed to prevent "significant risks to competition" posed by U.S. carrier investment in foreign carriers;⁸ and (2) that "the GATS principle of National Treatment obligates the U.S. Government to treat investments by carriers from WTO member countries no less favorably than it treats investments by domestic carriers."⁹ Neither of these contentions justifies the pre-investment notification rule.

⁶ *Foreign Carrier Participation Order* at ¶334. The Commission considered -- and properly rejected -- such a prior notification requirement in the earlier Foreign Carrier Entry proceeding. *Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd 3873, 3912-14 (1995) (*Foreign Carrier Entry Order*).

⁷ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, FCC 97-195 (Jun. 4, 1997) ("*Foreign Carrier Participation NPRM*") The *NPRM* sought comment only on whether [the Commission] should, for purposes of countries that are not WTO members, apply the ECO test to U.S. carriers that own more than 25 percent of, or control, a foreign carrier from a non-WTO country. *Foreign Carrier Participation NPRM* at ¶57. The *NPRM* did not suggest that the Commission would require pre-notification of investments in foreign carriers.

⁸ *Foreign Carrier Participation Order* at ¶140.

⁹ *Id.*

The Commission's first concern – that U.S. carriers that control foreign carriers may impede competition – is better addressed through the section 214 approval process, which permits the Commission to scrutinize the competitive conditions under which services actually are provided. As the Commission concluded in 1995, protection of competition does not require the Commission to scrutinize U. S. investments in foreign carriers in the abstract.¹⁰

The second rationale, based on the WTO National Treatment obligation, also is flawed. National Treatment requires only that the Commission treat investments in U.S. carriers from WTO Member countries on an equal footing with domestic investment in U.S. carriers. National Treatment does not require the Commission to scrutinize any investment made in foreign carriers, whether that investment comes from U.S. or other sources.¹¹

¹⁰ The Commission explained in 1995 why there is no competitive need to approve investments by U.S. carriers in foreign carriers. "While a substantial investment by a U.S. carrier in a dominant foreign carrier may raise competition concerns with respect to traffic between the foreign country and the United States, there are established Commission rules and policies, as well as antitrust laws, that address such concerns . . . In contrast, we do not have as effective means to guard against anticompetitive conduct made possible by a foreign carrier's control over the foreign bottleneck when the foreign carrier invests in a U.S. carrier. We do not have jurisdiction over the foreign carrier that has bottleneck control and that may leverage that control to gain an unfair advantage in the U.S. market." *Foreign Carrier Entry Order* at 3912-3. The *Foreign Carrier Participation Order* offers no adequate rationale for the Commission's departure from this well-reasoned conclusion.

¹¹ This Commission has defined National Treatment as the obligation of a WTO Member nation to "treat foreign services and service suppliers *seeking to serve its country* no less favorably than it treats its national services and service suppliers." *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 12 FCC Rcd 14220, 14224 (1997) (*emphasis added*). As this definition shows, National Treatment does not require a WTO Member nation to review investments that carriers within its jurisdiction make in foreign markets.

As the Commission correctly pointed out in the *Foreign Carrier Entry Order*, requiring prior notice or approval of investments by U.S. carriers in foreign carriers would "be tantamount to an export control and would be directly contrary to long-standing U.S. policy in favor of U.S. investment abroad."¹² Accordingly, and for the reasons stated herein and in SBC's Petition, the FCC should grant reconsideration of this question and restore its former policy, articulated in its 1995 *Foreign Carrier Entry Order* of not requiring prior notification or approval of investments by U.S. carriers in foreign carriers.

B. The Commission May Not Impose Common Carrier Regulation on Private Providers of Cable Capacity

GTE also joins in SBC's objection to the Commission's suggestion that it may impose common carrier regulation on cable capacity providers that neither provide, nor intend to provide, service to the public at large.¹³ As SBC points out, the Commission is not empowered to classify a service provider as a common carrier without first examining the terms under which that entity does business and finding a correspondence between those activities and the controlling definition of common carriage.¹⁴ The Commission therefore should confirm that it

¹² *Foreign Carrier Entry Order* at 3913.

¹³ SBC Petition at 8; *Foreign Carrier Participation Order* at ¶95. As SBC's Petition points out, the Notice of Proposed Rulemaking included no suggestion that the Commission would consider reclassifying private providers of cable capacity as common carriers. SBC therefore had no notice and opportunity to comment on this proposal and is entitled to seek reconsideration of the Commission's suggestion.

¹⁴ SBC Petition at 8-10. As SBC points out, in *Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC*, 525 F.2d 630, 644 (D.C. Cir.), *cert. den.*, 425 U.S. 992 (1976), the D.C. Circuit Court of Appeals expressly rejected "an unfettered discretion in the Commission to confer or not confer common carrier status on a given entity, depending upon the regulatory goal it seeks to achieve . . ." Instead, the D.C. Circuit confirmed that a service provider "is a common carrier by virtue of its functions, rather than because it is declared to be so." *Id.*

will impose common carrier regulation only on those cable capacity providers that actually operate as common carriers.

II. MCI's Petition Reargues Claims that the Commission Properly Rejected as Unsupported

MCI's Petition urges the Commission to reconsider its refusal to condition switched resale authorizations of foreign-affiliated carriers on the foreign affiliates' compliance with the FCC's accounting rate benchmarks. In support of its request, MCI repeats arguments that were exhaustively presented in the comments of MCI, WorldCom and AT&T and fully considered by the Commission. Specifically, MCI argues: (1) that switched resellers are capable of predatory price-squeeze strategies that will harm U.S. consumers; (2) that price squeezes by switched service resellers will be difficult to detect; and (3) that failure to condition switched resale applications on accounting rate reductions reduces the incentive for foreign carriers to bring their accounting rates in line with costs. Because each of these arguments was made and fully considered in the course of the rulemaking proceeding, they are improperly brought here only "for the purpose of debating matters on which [the Commission has] deliberated and spoken." Accordingly, the Commission is not required to reach the substance of MCI's requests.

The *Foreign Carrier Participation Order* has already properly considered and rejected MCI's arguments.¹⁵ As the Commission explained at great length, resellers of switched services cannot successfully exploit above-cost accounting rates of their foreign affiliates to engage in price-squeeze strategies. If a switched service reseller nonetheless attempts such a strategy, by setting its publicly-available resale price below the wholesale rate at which it takes service

¹⁵ *Foreign Carrier Participation Order* at ¶194.

from the underlying facilities-based carrier, that strategy will be detected immediately and the FCC can bring prompt enforcement action.¹⁶ Accordingly, as the Commission properly concluded, conditioning switched resale authorizations on a foreign affiliate's compliance with accounting rate benchmarks will impede competition in the switched resale market without protecting U.S. consumers from anticompetitive behavior.¹⁷

MCI also contends that switched resale authority should be conditioned on an affiliated carrier's compliance with the accounting rate benchmarks, regardless of whether that linkage is needed to protect U.S. consumers from undetected price squeeze strategies, as a means of pressuring foreign affiliates into lowering their accounting rates.¹⁸ This suggestion is entirely inappropriate. As the Commission pointed out in the *Foreign Carrier Participation Order*, the FCC's "goal in this proceeding is to adopt a regulatory framework that is narrowly tailored to address identifiable harms to competition and consumers in the U.S. market."¹⁹ Because conditioning of switched resale authority on accounting rate benchmark compliance is not needed to protect U. S. competition and consumers, the Commission properly refused to impose that condition. In fact, to do otherwise – that is, to impose a restriction on foreign entry into the U.S. market for reasons not related to the protection of U.S. consumers – would violate the commitments of the United States under the WTO Basic Telecom Agreement.

¹⁶ *Id.* at ¶204.

¹⁷ *Id.* at ¶213.

¹⁸ MCI Petition at 3.

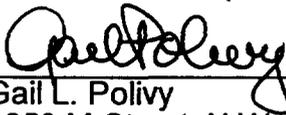
¹⁹ *Foreign Carrier Participation Order* at ¶194.

CONCLUSION

For all of the reasons stated herein, GTE urges the Commission to grant SBC's Petition for Reconsideration and deny MCI's Petition for Reconsideration.

Respectfully submitted,

GTE Service Corporation on behalf of
its affiliated domestic and foreign
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By 

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Comments of GTE Service Corporation on Petitions for Reconsideration" have been mailed by first class United States mail, postage prepaid, on February 10, 1998 to all parties on the attached list.


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