

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

FEB 17 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
Consumer Federation of America,)	RM-9210
International Communications Association)	
and National Retail Federation Petition)	
Requesting Amendment of Reform and)	
Price Cap Performance Review for)	
Local Exchange Carriers)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local)	CC Docket No. 94-1
Exchange Carriers)	
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
End User Common Line Charges)	CC Docket No. 95-72

REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated domestic local exchange and interexchange telephone companies¹ (collectively "GTE") respectfully submit their Reply Comments on the Petition for Rulemaking ("CFA Petition") filed by

¹ These companies include: 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.; and Contel of the South, Inc.; GTE Communications Corporation.

the Consumer Federation of America ("CFA"), the International Communications Association ("ICA"), and the National Retail Federation ("NRF") (collectively, "Petitioners"). Petitioners ask the Commission to initiate a rulemaking to immediately prescribe interstate access rates to cost-based levels.

Interexchange carriers and users supporting the CFA Petition substantially re-state arguments already considered and rejected by the Commission in the *Access Reform Order* and argue that a market-based approach is not working in promoting competition and reducing access charges.² GTE and others opposing the CFA Petition argue that the underlying assumptions were wrong.³ The Commission properly rejected a prescriptive approach to access charges in the Access Reform proceeding. A prescriptive approach was the wrong choice then and it would be an equally bad decision now.

I. Appellate action has not foreclosed local exchange competition.

Petitioners and their supporters argue that the basic assumptions -- new entrants would become facilities-based competitors through the use of unbundled network elements, and pricing for such elements would be controlled by the FCC at forward-looking cost rates -- relied upon by the Commission in

² See, e.g., Comments of AT&T Corp. in Support of Petition for Rulemaking, MCI Comments on Petition for Rulemaking.

³ See, e.g., Opposition to and Comments of GTE, Opposition of Ameritech, Opposition of Bell Atlantic to Petition for Rulemaking.

adopting its market-based approach are no longer valid. Petitioners suggest that the decisions of the Eighth Circuit Court of Appeals, which vacated two elements of the Commission's plan, now make local service competition highly unlikely.

Nothing in the Eighth Circuit rulings, however, reduces or eliminates the opportunity for Petitioners to compete in the local markets.⁴ Even though the Eighth Circuit found that the FCC had exceeded its authority with regard to pricing and combining of UNEs, the state commissions continue to have a significant statutory role. Petitioners apparently assume, incorrectly, that the state commissions have not or will not fulfill their responsibilities. There is no evidence of this.

Contrary to the Petitioners claims, and those of their supporters, Congress anticipated that competition would involve a variety of entry strategies, including use of UNEs to "round out" entrants' own facilities based networks. The Court's findings that neither the so-called network platform nor bundled UNEs are required by the Act in no way diminishes the usefulness of UNEs in supporting entry into the local markets as Congress envisioned. Congress, quite correctly, saw that new entrants might need access to certain network elements to fill in

⁴ The suggestion that the actions of incumbent LECs in pursuing legal determination of disputed interpretations of the Act is somehow delaying competition must be dispelled. Incumbent LECs and interexchange carriers have understandable and legitimate differences of opinion as to the implementation of the Act. The courts, to a substantial degree, have agreed with the ILECs' arguments. All parties clearly have the right to seek legal redress.

gaps of their own networks. In addition, for those without networks (at least in relevant geographies), resale of ILEC services at a discount provides the ability to enter markets. Therefore, the Commission's finding that availability of UNEs will effectively act as a constraining factor on access charges remains valid, as does the decision to reject prescriptive approaches to access reform.

II. The facts show that competitive entry is developing.

In fact, the more entrepreneurial competitive LECs have been proceeding to enter the local markets. At the recent *en banc* hearing with the FCC, the Association of Local Telecommunications Services ("ALTS") told the Commission that there are now more than 100 competitive LECs, generating \$2.7B revenue in 1997. These competitive LECs now service 1.4 million lines with 50 percent of these lines served on the carrier's own facilities. It is expected that the line growth will be approximately 114% in 1998. This fledgling industry has managed to attract \$14B in new capital since the passage of the Act,⁵ facts that Petitioners and the Commission cannot ignore. These facts belie the need for the Commission to rush in and prescribe lower access charges based on the faulty premise that there is no competition.

⁵ *En banc* presentation by Heather Gold, President, Association for Local Telecommunications Services ("ALTS") (Jan. 29, 1998).

American Communications Services, Inc. ("ACSI") reports equally encouraging competitive emergence.⁶ ACSI reports line growth of almost 7800% for the first three quarters of 1997. Revenue has risen from less than a million dollars (\$0.8M) in the First Quarter 1996 to more than 16 million dollars at the end of the Third Quarter 1997. More importantly, ACSI sees an untapped and expanding market opportunity using an aggressive local market strategy. It is apparent that the local market is available to those who want to enter it.

The Comments of United States Telephone Association ("USTA") give a much different picture of local competition than that of Petitioners.⁷ These findings were confirmed by Roy Neel in his presentation to the Commission at the *en banc* meeting.⁸ In addition to the statistical evidence presented, USTA gave evidence that major companies like MCI and MFS with fiber loops into multi-purpose buildings are bypassing residential customers and are only offering local telephone service to businesses within these buildings. USTA also showed that these same fiber loops go right by affluent residential buildings, yet not one resident has been offered competitive local service. These facts raise a real question about the competitive carriers' commitment to local service.

⁶ *En Banc* presentation by Jack Reich, President & CEO, American Communications Services, Inc. ("ACSI") (Jan. 29, 1998).

⁷ Comments of USTA at 6-10.

⁸ *En banc* presentation by Roy Neel, President, United States Telephone Association (Jan. 29, 1998).

Justice Department Antitrust Chief, Joel Klein further underscores the fallacy of the IXCs' contentions that there is no competition now and that there will not be competition in the foreseeable future. Klein suggests that the Act is working because Wall Street is investing heavily in new telecom entrants and because competition is being introduced to business consumers. In Klein's words, "[a] lot of good things are going on quietly. Look at all the IPOs out there."⁹

Petitioners suggest that the relief requested would have been needed notwithstanding the judicial rulings because Petitioners have steadfastly maintained that an immediate transition to TELRIC rates is the only acceptable solution to access charge reform. Without reiterating all the arguments considered in the Access Reform proceeding, GTE maintains its support for the Commission's decision not to adopt a prescriptive approach and to give the competitive market a chance. The record is beginning to show that competition is alive, vibrant and maturing.

The Commission has set a February 2001 date for incumbent LECs to establish forward-looking cost studies using emerging tools needed to complete these cost studies. Petitioners claim that date should be accelerated based on the Commission's commitment to seek forward-looking cost studies sooner if competition is not developing sufficiently for the market-based approach to work.

⁹ Communications Daily, Vol. 18, No. 28 (Feb. 11, 1998).

GTE's Comments show that there is no need for the Commission to change its time schedule as set forth in the *Access Reform Order*.

In remarks before the National Association of State Utility Consumer Advocates, former FCC Chairman Hundt echoed the conclusion that competition already is taking hold in business markets.¹⁰ Hundt suggested state regulators should consider deregulating business pricing wherever possible "and see what happens." According to Hundt, deregulation would accelerate the demise of implicit subsidies and "reveal true prices."

Finally, Bell Atlantic Chairman Raymond Smith, speaking before the Competitive Telecommunications Association ("CompTel"), called local competitors reselling Bell Atlantic service its "best customers" in its "fastest growing" segment. As Smith proclaimed, Bell Atlantic resells service "not just because the Telecom Act requires it, but because it's critical to our growth."¹¹

The evidence should put to rest the question of the viability of competition in local markets. Meaningless statistical analyses presented by Petitioners showing impossibly small percentages of lines lost to competitors serve no purpose. The Commission has already recognized that competition will develop slowly as the participants develop business plans and the numerous disputes are resolved. This process is occurring now and competitive pressures are

¹⁰ *Id.*

¹¹ Communications Daily, Vol. 18, No. 29 (Feb. 12, 1998).

developing. It would be a mistake for the Commission to retreat from its position. A prescriptive approach would send the wrong signals and could disrupt the developing competitive local exchange market.

III. The Commission should take actions to enhance its market-based approach.

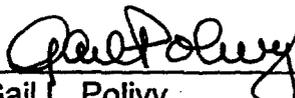
GTE has argued that prescriptive approach to access reform moves in the wrong direction. GTE agrees with Bell Atlantic that a developing competitive market would be enhanced by adopting rules permitting pricing flexibility.¹² The Commission expressed an intention to address pricing flexibility in a forthcoming proceeding. However, no action has been taken even though an extensive record already has been developed in the Access Reform proceeding. The Commission should take action on this next critical step in realizing the full benefits of the Act by moving swiftly and decisively to grant incumbent LECs pricing flexibility. In addition, the Commission needs to fulfill its obligation to create a new universal service mechanism, remove implicit subsidies and move to resolve the incumbent LEC's historical cost dilemma.

¹² Opposition of Bell Atlantic to Petition for Rulemaking at 12.

Accordingly, GTE submits that the Commission should deny the CFA
Petition to re-evaluate a prescriptive approach to access charges.

Respectfully submitted,

GTE Service Corporation and its
affiliated domestic local exchange and
interexchange telephone companies

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

February 17, 1998

THEIR ATTORNEY

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 February 17, 1998 to all parties on the attached list.


Ann D. Berkowitz

Robert J. Aamoth
Reed Smith Shaw & McClay
1301 K Street, NW
Suite 1100 East Tower
Washington, DC 20005

Anne K. Bingaman
LCI International Telecom Corporation
8180 Greensboror Drive
Suite 800
McLean, VA 02209

Ronald J. Binz
Competition Policy Institute
1156 15th Street, NW
Suite 310
Washington, DC 20005

James S. Blaszak
Levine, Blaszak, Block & Boothby
2001 L Street, NW
Suite 900
Washington, DC 20036

Alan Buzacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20006

Aimee M. Cook
Arter & Hadden
1801 K Street, NW
Suite 400K
Washington, DC 20036

Mark N. Cooper
Consumer Federation of America
1424 16th Street, NW
Suite 604
Washington, DC 20036

Joseph DiBella
NYNEX Telephone Companies
1300 I Street, NW
Suite 400 West
Washington, DC 20005

Susan M. Hafeli
Keller & Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001

Cathy Hotka
National Retail Federation
325 7th Street, NW
Washington, DC 20004

Charles C. Hunter
Hunter Communications Law Group
1620 I Street, NW
Suite 701
Washington, DC 20006

H. Richard Juhnke
Sprint Communications Company
1850 M Street, NW
Suite 1100
Washington, DC 20036

Richard A. Karre
U S WEST INC.
1020 19th Street, NW
Suite 700
Washington, DC 20036

Peter B. Keisler
AT&T Corporation
1722 Eye Street, NW
Washington, DC 20006

Linda Kent
United States Telephone Association
1401 H Street, NW
Suite 600
Washington, DC 20005

Rebecca M. Lough
BellSouth Telecommunications, Inc.
1155 Peachtree Street
Suite 1700
Atlanta, GA 303093610

Robert M. McDowell
Helein & Associates
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Brian R. Moir
Moir & Hardman
2000 L Street, NW
Suite 512
Washington, DC 200364907

Genevieve Morelli
Competitive Telecommunications
Association
1900 M Street, NW
Suite 800
Washington, DC 20036

Michael S. Pabian
Ameritech Operating Companies
2000 West Ameritech Center Drive
Room 4H76
Hoffman Estates, IL 601961025

Thomas A. Pajda
Southwestern Bell Telephone Company
One Bell Plaza
Room 2403
Dallas, TX 75202

Judy Sello
AT&T Corporation
295 North maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

James M. Smith
Excel Telecommunications, Inc.
3000 K Street, NW
Suite 300
Washington, DC 20007

Rocky N. Unrue
Morgenstein & Jubelirer
Spear Street Tower
32nd Floor
San Francisco, CA 94105

Richard S. Whitt
WORLDCOM, Inc.
1120 Connecticut Avenue, NW
Suite 400
Washington, DC 20036