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

In the Matter of)
) CC Docket No. 98-5
LCI Petition for Expedited Declaratory)
Rulings)

REPLY COMMENTS OF GTE

GTE Service Corporation, and its affiliated domestic local exchange and interexchange telephone companies¹ (collectively "GTE"), respectfully submits these reply comments in opposition to the LCI International Telecom Corp. ("LCI") Petition for Expedited Declaratory Ruling ("Petition") filed on January 22, 1998.

BACKGROUND

In the Petition, LCI proposes a corporate structure that would separate the retail and wholesale activities of the RBOC Holding Company into two separate subsidiaries.² In exchange for an RBOC's voluntary adoption of this corporate structure, it would

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.

² LCI Petition for Declaratory Ruling, filed January 22, 1998, at 3.

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receive a rebuttable presumption of compliance with Section 271 requirements for granting of in-region interLATA long distance service.³

LCI bases its petition on the belief that RBOCs, indeed all incumbent LECs, have an inherent conflict of interest owing to their dual roles as network element providers in a wholesale market and as retail service providers to their existing base of customers. LCI proposes that this conflict of interest is exposed in three critical areas: (1) operations support systems (OSS); (2) availability of unbundled network elements (UNEs); and (3) pricing.⁴ While LCI's petition is directed at the RBOCs, primarily as a result of their Section 271 obligations, LCI clearly implicates other independent ILECs as having the same conflicts of interest and suggests that none of the retail/wholesale plans currently implemented or proposed by these companies is satisfactory.⁵ LCI's rationale for this conclusion is that none of these plans contain the so-called "seven minimums" LCI views as being fundamental requirements to address RBOC conflict of interest.⁶

DISCUSSION

I. THE RBOCS RECOGNIZE THAT THE LCI PETITION DOES NOT ELIMINATE RBOC SECTION 271 OBLIGATIONS.

In writing the Telecommunications Act of 1996, Congress established the fourteen-point checklist that each RBOC is required to achieve in order to enter the in-

³ Id.

⁴ Id. at 2.

⁵ Id. at 15-16

⁶ Id at 29-31

region interLATA long distance market. To further amplify its mandate, the Congress also provided that "[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."⁷ This language clearly indicates that Congress believes specific criteria must be successfully completed before RBOCs can enter the in-region long distance markets. As BellSouth forthrightly puts it, "[i]f LCI believes that Congress should have enacted a different set of local market requirements, or else heaped additional requirements on top of its already stringent checklist, its complaint must be taken to Congress."⁸

GTE supports the RBOCs' contention that the Commission does not have the authority to modify in any way the conditions of compliance with the Act. More fundamentally, however, when analyzed in its most simple terms, the petition is, in actual fact, an offer with no takers. The RBOCs have unanimously rejected LCI's proposal and the Commission should choose to close the proceeding. Since LCI was clear that its intent is to make structural separation voluntary option for the RBOCs, and since not a single RBOC even hinted that there is a possibility that it would avail itself of the option, there can be no purpose to continuing to pursue this proposal.

II. LCI'S ATTEMPT TO MAKE "PICK AND CHOOSE" AND "UNE PLATFORMS" A CONDITION OF ITS PROPOSAL IS IN VIOLATION OF THE EIGHTH CIRCUIT'S REMAND.

LCI further attempts to change the conditions of compliance with the Act by requesting that the Commission require RBOCs to provide combinations of network

⁷ 47 U.S.C. §271(d)(4).

⁸ Comments of BellSouth Corporation at 2.

elements⁹ and by requiring "pick and choose" conditions on interconnection agreements between NetCo and ServCo.¹⁰ LCI's defense that this is a voluntary selection by the RBOC is irrelevant. The Commission cannot justify enforcement of these requirements by claiming they are voluntary. LCI's Petition clearly makes them a condition of the plan and the Commission will be bound to enforce them if the LCI Petition is granted.

LCI is simply trying to make an end run around the decisions made in the 8th Circuit Court of Appeals. Although these decisions will be reviewed by the Supreme Court later this year, the law is now clear on each point and the Commission must summarily reject any petition seeking to reinstate these rules vacated by the federal court.

III. CONGRESS HAS ALREADY DETERMINED THAT THERE WAS NO NEED TO EXTEND THE STRUCTURAL SEPARATION REQUIREMENTS TO INDEPENDENT LECs.

Several Commenters urge the Commission to expand the scope of this proceeding to include GTE and other independent ILECs arguing that they have the same structural problems vis-a-vis CLECs as do the RBOCs.¹¹ These calls for the type of structural separation recommended by LCI for independent LECs clearly ask the Commission to venture well beyond requirements even Congress considered unnecessary.

⁹ LCI Petition at 19

¹⁰ *Id.* at 21

¹¹ *See, e.g.,* Comments of MCI at 3, Comments of KMC at 11, and Comments of RCN at 12

Congress specifically removed all structural requirements for GTE by eliminating the GTE Consent Decree.¹² The legislative history of Section 601 of the Telecommunications Act of 1996 strongly reflects Congress' intention that Independent LECs not be subject to the kind of structural separation proposed by LCI. It seems contradictory that Congress would remove separation requirements applicable to GTE under the GTE Consent Decree only to have the Commission consider re-creating them.

By applying the requirements of Sections 271 and 272 only to the BOCs, Congress declined to apply the same requirements to GTE and other Independent LECs. It is clear that Congress determined that there was no need to extend the structural separation requirements of Section 272 to Independent LECs.¹³ Therefore, given that Congress has found these kinds of separation requirements unnecessary for all Independent LECs, the FCC must summarily reject suggestions by some Commenters that it now place such burdens on Independent LECs.

¹² See Telecommunications Act of 1996, Section 601(a)(2).

¹³ When Congress intended sections of the Act to apply to GTE *and* other non-BOC local exchange carriers, it stated so unambiguously, see, e.g., 47 U.S.C. § 251. Coupled with the fact that the Conference Report's discussion of Section 272 makes no mention of GTE or other Independent LECs, there can be no doubt that Congress did not intend to apply a Section 272 separate affiliate requirement to Independent LECs.

IV. REQUESTS FOR STRUCTURAL REORGANIZATIONS OBSCURE THE REAL ISSUES OF IMPLICIT SUBSIDIES, EMBEDDED COST, GEOGRAPHICAL DEAVERAGING AND RATE REBALANCING.

Most CLEC Commenters support, in some manner, LCI's suggestion that complete divestiture of the local company into wholesale and retail units with no common ownership. While some Commenters argue for the divesting of the local loop portion of the network, others propose creating an Independent System Operator (ISO) to manage, but not to own, the local loops, a concept that is being used in the electric industry.¹⁴ These suggestions fail both to take into account the additional costs of structural separation and to explain how such structural separation will resolve the many significant issues of rational pricing and cost recovery.

GTE submits, as it has for several years, that the answer to economically efficient pricing and the availability of UNEs and total service resale does not lie in artificial structural reorganizations. Rather, the longstanding opportunities associated with rate rebalancing, geographical deaveraging, depreciation and embedded cost remedies, and the true elimination of implicit universal service subsidies must be resolved in a competitively neutral manner.

Local competition will advance only when competitors and regulators have resolve these issues. Rather than focusing any more attention on self-serving plans, the Commission should send a clear message that it is ready to tackle the hard issues using the tools and mechanisms established by the 1996 Act.

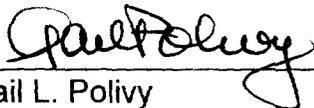
¹⁴ See Comments of the Connecticut Department of Public Utility Control at 8-9.

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Respectfully submitted,

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on April 22, 1998 to all parties of record.



Judy R. Quinlan