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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of the Commission's Ex Parte)
Rules in Joint Board Proceedings)

GC Docket No. 98-73

COMMENTS OF GTE

Dated: August 14, 1998

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

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GTE Service Corporation and its affiliated domestic telephone operating, wireless and long distance companies¹ (collectively, "GTE") respectfully respond to the Notice of Proposed Rule Making ("Notice") which seeks comments on the Commission's proposal to amend its *ex parte* rules to facilitate communications by the states in Joint Board proceedings and proceedings before the Commission involving a recommendation from a Joint Board.

I. INTRODUCTION AND SUMMARY

GTE is supportive of efforts to revise the Commission's procedural rules and practices to encourage more open dialogue and enhance the working relationship between state and federal decision-makers. However, rather than modifying the *ex parte* rules, GTE supports the use of alternative forums in which ideas, opinions and

¹ These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: 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.

facts may be openly shared, not only between Joint Board members and staff, but industry and public interest participants as well. GTE is concerned that a closed environment as suggested by the Notice would disadvantage participants not only in the federal regulatory process but perhaps later in state regulatory proceedings.

II. THE COMMISSION HAS RECENTLY USED ALTERNATIVE FORUMS TO SHARE IDEAS, OPINIONS AND FACTS.

The Commission has recently increased its reliance on *en banc* hearings in order to examine alternative proposals regarding universal service funding. The Commission has held open workshops on Joint Board related issues and the Common Carrier Bureau staff has held regularly scheduled open meetings on the proposed universal service cost models with state joint board staff participating. The Separations Joint Board staff has also invited industry and other interested parties to openly share opinions and ideas in their staff meetings.

GTE believes that alternative forums such as these provide appropriate avenues for all interested participants to air and share their views. In contrast, alteration of the *ex parte* rules would facilitate only closed-door discussions excluding interested participants and leave the Commission open to the charge of "back room" deals. GTE therefore supports the alternative forums with which participants and the Commission are familiar, in place of closed door discussions.

III. THE NOTICE DOES NOT ADEQUATELY ADDRESS WHAT CONSTITUTES "SUBSTANTIAL SIGNIFICANCE" AND WHEN THE RULE WOULD APPLY.

The proposed rule changes allow for substantial subjectivity in that "presentations from a state commission, one or more of its members or its staff regarding the proceeding shall be treated as *ex parte* presentations **only if the presentations are of substantial significance and clearly intended to affect the**

ultimate decision." (Emphasis added.) It is not at all apparent when that line of "significance" is crossed. If the purpose of the meeting is clearly intended to persuade the Joint Board, does a state commission's argument that is rejected by the Joint Board affect the ultimate decision? Likewise, if the purpose of the meeting is to only inform or provide input to the Joint Board, might the information provided subsequently affect the ultimate decision? Will the Commission make a determination of the significance and intention of each meeting prior to the conclusion of the meeting so that a state commission or its representatives know whether they need to prepare and file notice of the meeting? The Notice fails to adequately address these shortcomings.

IV. PREPARING AN *EX PARTE* NOTICE IS NOT ADMINISTRATIVELY BURDENSOME TO ANY PARTY.

Based on experience, *ex parte* notices generally take one of two forms. The visiting party either provides a copy of any handouts that were distributed during the meeting or simply files a letter indicating such a meeting took place and the general topics of discussion. Neither notification is so administratively burdensome as to require extensive effort on the part of the visitor to file documentation following a meeting with the Joint Board. Such simple notification allows other interested parties to pursue further discussion either with the individual state commission, as permitted by state law, or with the Joint Board or Commission, in which case, an *ex parte* submission would be required. By limiting exposure of various parties' opinions and views on issues vital to many other parties, the Commission would restrict the opportunity for frank and open discussion among all parties.

V. **EXEMPTING CERTAIN PARTIES FROM FILING EX PARTE NOTICES MAY IMPACT DUE PROCESS IN BOTH FEDERAL AND STATE REGULATORY PROCEEDINGS.**

The Notice references the exemption of oral *ex partes* in Section 271 proceedings claiming "any new factual information obtained through such exempt presentations upon which the Commission relies in our decision-making process must, however, be disclosed in the record no later than the time the decision is released." It is unclear if the Commission and Joint Board intend to follow the same practice here but if either does so, they would appear to be violating their own standard regarding information of "**substantial significance and clearly intended to affect the ultimate decision.**" Other parties to the proceeding may be materially disadvantaged in that they have not been provided a timely opportunity to address the issue except in comments on the Joint Board's recommendation or through reconsideration of the Commission's decision. Other parties' opportunities to influence the outcome or persuade are lessened in the federal arena.

The potential for further harm to due process may then occur in state regulatory proceedings and rule makings. Some states may propose to adopt the Commission's decision or rules as their own in an effort to further the goal of federal-state cooperation. While there are state processes in place for interested parties to present their own opinions in the appropriate manner, there may also be a strong inclination for some states to be influenced by the Commission's prior decisions, particularly those endorsed by the Joint Board.

VI. THE PUBLIC INTEREST IS NOT SERVED WHEN THE AVAILABILITY OF INFORMATION IS LIMITED BASED SOLELY ON THE IDENTITY OF THE INTERESTED PARTY.

One must question the public interest of limiting the availability of information based solely on the identity of the interested party. As the Notice notes, Section 410(c) of the Telecommunications Act of 1996 ("Act") requires the establishment of Federal-State Joint Boards with respect to any matter concerning jurisdictional separations of common carrier property and allows the Commission to refer to a Joint Board any other matter relating to common carrier communications of joint federal-state concern. If the issues are of such importance (*i.e.*, Universal Service) that it is necessary to establish a separate Joint Board, it should be obvious that all parties should be afforded access to information that is relevant to the various parties and should be provided the opportunity to address other parties' issues in a similar manner. As an example, the Federal-State Joint Board on Universal Service recently announced Rural Task Force members² representing seven different sub-groups including incumbent local exchange carriers, rural competitive local exchange carriers, consumer advocates, interexchange carriers, representatives of insular areas, state regulators and other non-LEC participants. The logical extension of this Notice would permit only one of the seven subgroups to hold "closed" discussions with the Joint Board to the exclusion of the other six sub-groups under the proposed *ex parte* rules. The primary purpose of the Task Force is to make recommendations to the Joint Board regarding the forward looking cost proxy model and inputs that should apply to rural carriers in the future. One can only wonder why "insignificant" discussions would ever take place or need to take place between any of

² CC Docket 96-45, FCC 98J-1, released July 1, 1998.

the sub-groups and the Joint Board or the Commission. In this particular example, the application of the rule as proposed in the Notice would afford the single sub-group representing state regulators unique opportunities to communicate with the Joint Board and the Commission that the other sub-groups are denied simply because of who they represent. Making such a distinction is clearly not in the public interest.

VII. CONCLUSION

GTE encourages the Commission to leave the current *ex parte* rules in place and consider alternative forums in which ideas, opinions and facts can be shared by all interested parties.

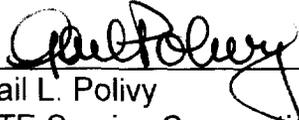
Dated: August 14, 1998

Respectfully submitted,

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