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In the Matter of:)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

REPLY COMMENTS OF GTE

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Summary

In its opening comments, GTE urged the Commission to adopt GTE's National Advanced Services Plan ("NASP") in lieu of the rigid structural separation and affiliate transaction requirements proposed in the *NPRM*. Built on the *Fifth Report and Order* separation requirements, and including commitments designed to afford competitive local exchange carriers ("CLECs") more flexibility in collocating equipment and accessing unbundled xDSL-capable loops, the NASP fully addresses concerns regarding discrimination and cross-subsidization and assures that all providers of advanced services relate to the incumbent local exchange carrier ("ILEC") on an equal footing. At the same time, the deregulatory nature of the NASP will promote investment and innovation, stimulate competition, and bring added choice to consumers.

Far from offering similarly constructive suggestions, many CLECs profess dissatisfaction even with the intrusive regulatory proposals in the *NPRM*. Their aim, quite simply, is not to promote parity in a competitive market, but to foster protectionism for selected competitors – themselves. According to these carriers, the Commission either lacks authority to define an affiliate that shares a common parent with an ILEC as non-incumbent and non-dominant under any set of safeguards, or must adopt an arsenal of even more restrictive separation requirements to assure that these affiliates do not somehow monopolize the advanced services market. Likewise, these parties ask the Commission to adopt radical new, and *extra-statutory*, unbundling, collocation, and resale obligations, ostensibly in the name of "fair competition." In reality, however, the CLECs' proposals have no basis in law and are contrary to sound public policy. Specifically, adoption of the CLECs' proposals would simply insulate such companies

as AT&T/TCG/TCI, MCI WorldCom/Brooks/MFS/UUNET, and the giant cable MSOs from the risks and rigors of a truly competitive marketplace, while placing burdensome obligations on any affiliate that shares a common parent with an ILEC. Following the CLECs' lead, as Commissioner Powell warned, would "relegate [ILECs and their affiliates] to the sidelines in the data services 'race'" and therefore "deny the economy and consumers of the benefits of these companies' expertise and capital."

There are five key problems with the CLECs' protectionist proposals:

First, the CLECs improperly transform the deregulatory imperative of § 706 into a mandate to load further restraints on the ILECs and their affiliates. Plainly, this provision was not intended to be used as a bludgeon to eliminate ILECs and their affiliates as a competitive force. That, however, would be precisely the effect of adopting the CLECs' pro-regulatory agenda.

Second, the CLECs overlook the long history of successful and fair competition by ILECs and their affiliates pursuant to safeguards that were designed by regulators to address competitive concerns without being overly intrusive. For years, GTE and other companies have provided interexchange services, information services, wireless services, and customer premises equipment either directly through ILEC subsidiaries (under non-structural safeguards such as the *Computer III/ONA* regime) or through affiliates complying with the *Fifth Report and Order* separation requirements (which were developed to prevent cross-subsidization and discrimination while otherwise allowing free market forces to operate). The CLECs do not explain why the history of competition by ILECs and their separate and independent affiliates in other "downstream" markets should be ignored. Nor do they make any effort to argue that

the advanced services market is somehow more dependent on ILEC facilities than these other markets, or that ILECs have any greater ability and incentive to engage in anticompetitive conduct. There would be no basis for such an argument.

Third, the CLECs disregard the multitude of alternative delivery mechanisms that bypass the ILECs' twisted copper pairs. The most loudly proclaimed, but least supported, theme running through the CLECs' comments is that the local loop remains a bottleneck in the provision of advanced services. As GTE explained at length in its Reply Comments in the companion *NOI* proceeding, the local loop "bottleneck" is nothing more than a myth with respect to advanced services. All classes of consumers already enjoy competitive choices for access to advanced services that do not rely on the telephone companies' local loops, and the range of choices is expanding daily.

Fourth, the CLECs' phenomenal rate of investment in advanced technology belies their assertions that ILECs are impeding competition. The actions of the CLECs and the financial community undermine any contention that stringent new rules are required to assure fair competition and free-flowing investment in the advanced services market. Since passage of the 1996 Act, these companies have attracted billions and billions of dollars in financing and deployed thousands of miles of fiber and hundreds of data and voice switches under existing regulatory safeguards. The Commission therefore must judge the arguments of the CLECs on the basis of motives and economic interests. When the CLECs talk to the financial community, they tell a story of success: that they provide robust, profitable and ever-increasing competition to incumbent providers. The analysts evidently have found the CLECs' presentations to be persuasive. In contrast, the CLECs tell a markedly different tale – one complete with

all the usual myths about ILECs impeding competition – when they are before regulators.

Fifth, the CLECs ignore the fact that intrusive regulation of ILECs and their affiliates will undermine competition in the advanced services market. In adopting the *Advanced Services NPRM*, each of the Commissioners recognized the importance of establishing a framework within which affiliates sharing a common corporate parent with ILECs could compete on an even basis with unaffiliated service providers. In contrast, according to the CLECs, no limit on affiliate transactions is too extreme, no reporting requirement is too great, and no unbundling requirement is too radical, to add to the already extensive panoply of regulations governing the ILECs. Not surprisingly, since this is the transparent aim of their proposals, not a single CLEC is willing to concede that the net effect of adopting the CLECs' regulatory agenda would be to neutralize the competitive impact in the advanced services market of any company sharing a corporate parent with an ILEC.

The Commission consequently should reject the wide variety of burdensome new regulations proposed by the parties. Like the Commission's own proposals, these rules exist far outside of the statutory framework, go far beyond what is necessary to ensure that ILEC affiliates are not "successors" or "assigns," and would be inconsistent with both the Commission's own precedents and the deregulatory intent of the 1996 Act. Still more important, as a practical matter, these new regulations would, at best, dramatically undercut the ability of any company sharing a common parent with an ILEC to compete in the growing market for advanced services and, indeed, could effectively eliminate them as competitors. ILECs would have no incentive to make risky

investments in developing and deploying new services and technologies if they must share their successes with competitors at bare bones prices and were prohibited from capitalizing on the economies of scale and scope that are available to all of their rivals.

Such a result plainly would be inconsistent with the Commission's own stated goal of permitting ILEC affiliates to "offer advanced services on the same footing as any of their competitors." GTE therefore urges the Commission to reject the multitude of unjustifiable new restrictions and limitations on ILECs and affiliates urged by competitors, and instead to adopt the pro-competitive rules contained in GTE's NASP. These rules will encourage vigorous competition based on price and performance, while avoiding the pitfalls of unnecessary government intervention in the market.

In short, the goals of this proceeding can be achieved only if advanced service affiliates are treated the same – no better and no worse – than other providers of advanced services. GTE's NASP does precisely this, and it therefore should be adopted in lieu of the proposals made in the *NPRM* and the even more burdensome wish list advanced by the CLECs.

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REPLY COMMENTS OF GTE

GTE Service Corporation and its below-listed affiliates¹ (collectively "GTE") respectfully submit their reply comments in response to the Notice of Proposed Rulemaking ("*NPRM*") in this docket.² In its opening comments, GTE urged the Commission to adopt GTE's National Advanced Services Plan ("*NASP*") in lieu of the rigid structural separation and affiliate transaction requirements proposed in the *NPRM*. As GTE explained, the *NASP* fully addresses any concerns regarding discrimination and cross-subsidization and assures that all providers of advanced services relate to the incumbent local exchange carrier ("ILEC") on an equal footing.³ At the same time,

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., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, GTE Media Ventures Incorporated, and GTE Internetworking Incorporated.

² *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, FCC 98-188 (rel. Aug. 7, 1998) ("*NPRM*"). All comments cited herein were filed in CC Docket No. 98-147 on September 25, 1998, unless otherwise noted.

³ After reviewing the comments of other parties, GTE suggests several enhancements to the collocation elements of the *NASP*, as discussed in Section III., below.

the deregulatory nature of the NASP will promote investment and innovation, stimulate competition, and bring added choice to consumers.

Far from offering similarly constructive suggestions, many competitive local exchange carriers ("CLECs") profess dissatisfaction even with the intrusive regulatory proposals in the *NPRM*. According to these carriers, the Commission either lacks authority to define an affiliate that shares a common parent with an ILEC as non-incumbent and non-dominant under any set of safeguards, or must adopt an arsenal of even more restrictive separation requirements to assure that these affiliates do not somehow monopolize the advanced services market. Likewise, these parties ask the Commission to adopt radical new, and *extra-statutory*, unbundling, collocation, and resale obligations, ostensibly in the name of "fair competition." In reality, however, the CLECs' proposals have no basis in law and are contrary to sound public policy. Specifically, adoption of the CLECs' proposals would simply insulate such companies as AT&T/TCG/TCI, MCI WorldCom/Brooks/MFS/UUNET, and the giant cable MSOs from the risks and rigors of a truly competitive marketplace, while placing burdensome obligations on any affiliate that shares a common parent with an ILEC.

GTE believes the record presents two potential paths to the Commission. The first, represented by GTE's proposed NASP, is a deregulatory road that respects the plain language and intent of § 706, fosters investment and innovation pursuant to the operation of market forces, and provides effective nondiscrimination safeguards. In short, the NASP will "expedite full and fair competition between a multiplicity of bandwidth providers, including ILEC affiliates, and thereby speed the availability of high

quality, reasonably priced, advanced telecommunications capability throughout the nation.”⁴

The second, reflected in the CLECs’ calls for the Commission to engage in a regulatory fiat to eliminate the ILECs and their affiliates as potential competitors in the advanced services market, is antithetical to Congress’s goals and the express desires of the Commission in initiating this proceeding and would undermine investment incentives for ILECs and CLECs alike. It would “relegate [ILECs and their affiliates] to the sidelines in the data services ‘race’” and therefore “deny the economy and consumers of the benefits of these companies’ expertise and capital.”⁵ The choice is clear.

I. IN CONTRAST TO THE CLECS’ ATTEMPTS TO GAME THE REGULATORY PROCESS THROUGH SELF-SERVING PROPOSALS, GTE’S NATIONAL ADVANCED SERVICES PLAN WILL ACHIEVE THE GOALS OF SECTION 706 CONSISTENT WITH THE DEREGULATORY IMPERATIVE OF THE ACT AND MARKETPLACE REALITIES.

A. AT&T, MCI Worldcom, And Other Proponents Of Hyper-Regulation Misunderstand The Statute And Mischaracterize The ILECs’ Role In The Advanced Services Marketplace.

The comments of AT&T, MCI WorldCom, ALTS, and other CLECs paint a dark and distorted picture of the advanced services marketplace. In coarse strokes, they portray the ILECs and their affiliates as ogres roaming the telecommunications landscape, trampling competition wherever it may arise. Thicker chains, tighter

⁴ Separate Statement of Commissioner Susan Ness, CC Docket No. 98-147, at 2.

⁵ Separate Statement of Commissioner Michael K. Powell, CC Docket No. 98-147, at 1.

shackles, and higher walls are needed to restrain these companies; indeed, a few CLECs contend that no safeguards at all can suffice to make the land safe for competitors.

GTE respectfully submits that the CLECs' view of the world, and consequently the relief they seek, is fundamentally at odds with marketplace realities (as they themselves have expressed to the financial community), Congress's intent, and sound public policy in several respects:

First, the CLECs improperly transform the deregulatory imperative of § 706 into a mandate to load further restraints on the ILECs and their affiliates. By its express terms, Section 706 compels deregulation: "The Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."⁶ Plainly, this provision was not intended to be used as a bludgeon to eliminate companies that share a common parent with ILECs, and ILECs themselves, as competitive forces. That, however, would be precisely the effect of adopting the CLECs' pro-regulatory agenda.

Second, the CLECs overlook the long history of successful and fair competition by ILECs and their affiliates pursuant to safeguards that were designed by regulators to

⁶ Telecommunications Act of 1996, Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. (incorporated in 47 U.S.C. § 157 note) ("47 U.S.C. § 157 note").

address competitive concerns without being overly intrusive. For years, GTE and other companies have provided interexchange services, information services, wireless services, and customer premises equipment either directly through ILEC subsidiaries (under non-structural safeguards such as the *Computer III/ONA* regime) or through affiliates complying with the *Fifth Report and Order*⁷ separation requirements (which were developed to prevent cross-subsidization and discrimination while otherwise allowing free market forces to operate). For its part, GTE has separate affiliates providing long distance and competitive local exchange services (including “advanced” services), information services (including a wide variety of Internet-related offerings), wireless services, and multichannel video programming distribution services. GTE has competed vigorously and fairly in these markets and has been motivated to invest and to innovate. In short, GTE has been able to act on marketplace incentives similar to those faced by AT&T, MCI WorldCom, Sprint, TCI, Comcast, and other competitors, in order to bring new services and products to its customers and increase the company's overall profits.

The CLECs nonetheless warn that nothing short of outright divestiture (in whole or in part) of advanced service affiliates, reinforced by a lengthy list of prohibited conduct and “market-opening” measures, can forestall monopolization of the market by nascent (or even not-yet-existent) companies, simply because they share a common parent with an ILEC. They do not explain, however, why the history of competition by

⁷ *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore*, Fifth Report and Order, 98 F.C.C.2d 1191 (1984) (“*Fifth Report and Order*”).

ILECs and their separate and independent affiliates in other "downstream" markets should be ignored. Nor do they make any effort to argue that the advanced services market is somehow more dependent on ILEC facilities than these other markets, or that ILECs have any greater ability and incentive to engage in anticompetitive conduct. In reality, advanced services are even less reliant on ILEC networks than, for example, long distance services, and ILECs (as the newest entrants in this emerging market) have neither the ability nor the incentive to obstruct competition.

Third, the CLECs disregard the multitude of alternative delivery mechanisms that bypass the ILECs' twisted copper pairs. The most loudly proclaimed, but least supported, theme running through the CLECs' comments is that the local loop remains a bottleneck in the provision of advanced services. As GTE explained at length in its Reply Comments in the companion *NOI* proceeding, the local loop "bottleneck" is nothing more than a myth with respect to advanced services.⁸ The validity of the assessment is confirmed by Jack Reich, the President and CEO of e.spire (ironically, one of the CLECs urging the Commission to impose radical and highly burdensome new regulations on the ILECs and their affiliates), who recently stated that "[c]onsumers

⁸ GTE Reply Comments, CC Docket No. 98-146, at section II.A (filed Oct. 8, 1998) ("GTE NOI Reply Comments"). In other official filings, commenters concede the currently competitive nature of the broadband services marketplace. For example, COVAD recently told the Security and Exchange Commission that these markets are "intensely competitive, and the Company expects that such markets will become increasingly competitive in the future. The Company's most immediate competitors are the ILECs, Cable Modem Service Providers ("CMSPs"), IXC's, Fiber-Based CLECs ("FBCLECs"), ISPs, On-Line Service Providers ("OSPs"), Wireless and Satellite Data Service providers ("WSDSPs") and other CLECs." S-1 statement of COVAD Communications Group, Inc., September 21, 1998, p. 13, available at <www.sec.gov/Archives/edgar/1043769/0001012870-98-002428.txt>.

have 'end-to-end' choice today, and that is evidence of the success of the Telecommunications Act."⁹ As Mr. Reich further explained, "[a] business customer and many residential customers can now approach a number of alternative suppliers, including existing interexchange carriers, and have them provide their local, long distance, data transport and Internet access from providers other than the incumbent monopoly."¹⁰ In short, all classes of consumers already enjoy competitive choices for access to advanced services that do not rely on the telephone companies' local loops, and the range of choices is expanding daily.¹¹

Fourth, the CLECs' phenomenal rate of investment in advanced technology belies their assertions that ILECs are impeding competition. The actions of the CLECs and the financial community undermine any contention that stringent new rules are required to assure fair competition and free-flowing investment in the advanced services market. As GTE pointed out in its § 706 NOI Reply Comments, since passage of the 1996 Act, these companies have attracted billions and billions of dollars in financing and deployed thousands of miles of fiber and hundreds of data and voice switches under existing regulatory safeguards:

⁹ *e.spire President and CEO Jack E. Reich Defends Local Telecom Competition in Wall Street Journal Debate*, PR Newswire, Sept. 21, 1998.

¹⁰ *Id.*

¹¹ Even AT&T and MCI WorldCom, which are perhaps the loudest proponents of the "local loop bottleneck" theory, have in other contexts proudly touted their ability to offer integrated local and long distance voice and data services (at least to the business customers they choose to serve) using only their own facilities. See <www.mciworldcom.com/products+services>, <www.att.com/onenet>.

If ILECs have “stifled the development of advanced services,” then how is it that, “[s]ince the passage of the 1996 Telecommunications Act, CLECs have raised between 15-20 billion dollars in capital, primarily for such infrastructure investment [in ATM, frame relay, and xDSL technologies]?” How has NorthPoint secured “millions of dollars in capital from leading venture capital firms and corporate investors” since mid-1997? How has Intermedia raised 2.5 billion dollars in the past 18 months and deployed 150 data switches and 20 voice switches? How have cable companies spent 6 billion dollars in the past year to upgrade their systems to provide advanced services (including voice and high-speed Internet access)? How has e.spire “raised over one billion dollars in the capital markets to support its effort to deploy advanced fiber ring technology, as well as [ATM] and frame relay,” including 70 data POPs, 17 local switches, 32 local networks with 1500 route miles of fiber, and 22,000 route miles of broadband backbone? And how have the CLECs enjoyed a greater percentage increase in fiber miles in the past year than any other industry segment?¹²

As GTE noted, “[i]f these companies were incapable of competing against the ILECs under existing ground rules, they would not have attracted this magnitude of investment. Likewise, if the current panoply of interconnection, unbundling, resale, affiliate transaction, network disclosure, tariffing, and cost support rules were ineffective, these presumably rational competitors would have curtailed rather than expanded their deployment of advanced technologies.”¹³

¹² GTE NOI Reply Comments at 10-11 (footnotes omitted).

¹³ *Id.* at 11-12. GTE notes that, as of July 1998, there were 48 CLECs serving at least ten states (three times the number in July 1997) and another 117 CLECs serving between 2 and 9 states (almost a three-fold increase over a year earlier). In ten states “representing 37 percent of local exchange market value,” there are 30 or more CLECs certified “for each service in each state.” See *Number of Large Multistate CLECs Triples Since 1997*, *Communications Daily*, October 8, 1998, at 4.

Fifth, the CLECs ignore the fact that intrusive regulation of ILECs and their affiliates will undermine competition in the advanced services market. In adopting the *Advanced Services NPRM*, each of the Commissioners recognized the importance of establishing a framework within which affiliates sharing a common corporate parent with ILECs could compete on an even basis with unaffiliated service providers. As Commissioner Ness noted, the Commission hopes to “provide[] a path for ILEC affiliates who are willing to compete on their merits, rather than on the basis of affiliation, to avoid regulation to the same degree as do their competitors.”¹⁴ Commissioner Powell noted the importance of recognizing that companies with ILEC subsidiaries “may be well-positioned to provide services of enormous value to consumers” and urged an emphasis on enforcement rather than prospective regulation in order to “avoid hindering companies from improving their existing offerings and entering new markets that lie outside their traditional regulatory boundaries”¹⁵ And Commissioner Tristani endorsed the use of “separate affiliates as a way for incumbent ILECs to provide high-speed data service with minimal regulation.”¹⁶ Underlying all of these statements is an appreciation of one simple economic truth: that regulation imposes costs on companies, distorts their investment incentives, and impairs their ability to compete.

¹⁴ Separate Statement of Commissioner Susan Ness at 2.

¹⁵ Separate Statement of Commissioner Michael K. Powell at 1.

¹⁶ Separate Statement of Commissioner Gloria Tristani, CC Docket No. 98-147, at 1.

Even the CLECs recognize this truth – at least as applied to their own operations. As GTE noted in its § 706 NOI Reply Comments,¹⁷ CLECs of all stripes vigorously urged the Commission not to impose any new regulations on them:

AT&T, with its acquisition of TCI pending, spends five full pages trying to convince the Commission not to extend common carrier-type regulation to advanced services offered by cable. The reason: “cable Internet platforms . . . are speeding deployment of advanced services to consumers. . . . These efforts should not be dampened by imposition of regulation designed to curb monopoly power.”

Cable companies providing services that compete with ILEC xDSL offerings are similarly aghast at the prospect of common carrier regulation. Comcast, for example, warns that cable operators, ISPs, and broadcasters “will divert resources away from offering services competitive with ‘telecommunications’ if the result of providing such nascent competition is – or even might be – oppressive regulatory obligations such as rate regulation, unbundling, mandatory service to all potential customers on demand, or collocation.”

NCTA sums up these concerns: “[b]urdening cable operators with common carrier-like regulations would turn section 706 on its head by suppressing investment in advanced infrastructure.”

When it comes to applying new regulations to the ILECs and their affiliates, however, the CLECs' creativity in dreaming up new means of tying their competitors in regulatory knots knows no bounds. No limit on affiliate transactions is too extreme, no reporting requirement is too great, and no unbundling requirement is too radical, to add to the already extensive panoply of regulations governing the ILECs. Not surprisingly,

¹⁷ GTE NOI Reply Comments at 15-16 (footnotes omitted).

since this is the transparent aim of their proposals, not a single CLEC is willing to concede that the net effect of adopting the CLECs' regulatory agenda would be to neutralize the competitive impact in the advanced services market of any company sharing a corporate parent with an ILEC.

The goals of this proceeding can be achieved only if ILEC-affiliated providers of advanced services are treated the same – no better and no worse – than unaffiliated providers of advanced services. GTE's NASP does precisely this. If the Commission nonetheless wishes to consider any of the proposals advanced by the CLECs, it should apply a simple test in determining how to proceed. If the CLECs would not object to operating under the same rules they advocate for the ILECs or their advanced services affiliates, then those rules probably could be adopted without distorting the market. If, in contrast, the CLECs would view those rules as interfering with their ability to compete and imposing undue burdens, then the same most assuredly holds true for companies that share a common corporate parent with an ILEC.

* * * *

The Commission must see through these distortions and assure that its actions promote parity in a competitive market rather than protectionism for selected competitors. To that end, GTE urges the Commission to reject the CLECs' calls to impose still further layers of regulation on ILECs and their affiliates and, instead, promptly to adopt GTE's NASP.

The Commission should judge the arguments of the CLECs on the basis of motives and economic interests. When the CLECs are addressing the financial community they tell a story of success: that they provide robust, profitable and ever-

increasing competition to incumbent providers. For their part, financial analysts make an independent determination and assessment of the CLECs' presentation and make recommendations and lend money accordingly. The actual experience in the market is that the analysts believe that competition is ascendant (if not already flourishing) and that the CLECs will be successful. Huge sums of money are lent and invested for the deployment of new services based on these conclusions. This would not happen if the financial community believed that the CLECs were hamstrung by incumbents and they would not recoup the money loaned plus a reasonable profit. In contrast to this success story, the CLECs tell a markedly different tale – one complete with all the usual myths – when they are before regulators.

As set forth below, GTE respectfully reiterates that its NASP presents a viable, effective, pro-competitive, and deregulatory approach exactly along the lines of what Congress intended in passing the 1996 Act, and particularly § 706.

B. GTE's NASP Carefully Balances The Imperatives Of The Competitive Marketplace With The Commission's Concerns.

As GTE explained in its Comments, the NASP includes a combination of (1) structural safeguards (based on the modified *Fifth Report and Order* conditions contained in § 64.1903 of the Rules), (2) targeted modifications to the collocation rules designed to make collocation more flexible and less expensive and to ameliorate concerns about space exhaustion, (3) a requirement to provide sub-loop unbundling upon bona fide request where technically feasible, and (4) a voluntary commitment by GTE to make xDSL-conditioned loops available upon request where technically

feasible, even in areas where neither its ILECs nor its advanced services affiliate provides advanced services, if it fully recovers its costs.¹⁸

GTE strongly believes that this plan effectively addresses the concerns expressed by the Commission in the *NPRM* and extends greater flexibility to CLECs seeking to utilize ILEC facilities. At the same time, it preserves and enhances investment incentives for all competitors by avoiding the imposition of undue burdens on ILECs and their affiliates and assuring that all competitors can innovate, develop service packages, and jointly market advanced services, information services, and other offerings on an equal basis.¹⁹

II. THE STRUCTURAL SEPARATION REQUIREMENTS SET FORTH IN GTE'S NASP APPROPRIATELY SAFEGUARD THE INTERESTS OF COMPETITORS, AND THE COMMISSION SHOULD REFUSE TO IMPOSE MORE ONEROUS REGULATION.

As discussed above, GTE's NASP is a market-based approach to implementing § 706 designed to promote investment by all advanced service providers, and to encourage competition predicated on customer preferences, price, and performance, rather than regulation. The NASP provides sufficient regulatory oversight to assure nondiscriminatory dealings between ILECs and their advanced service affiliates, and assures against cross-subsidization and discrimination through specific criteria –

¹⁸ GTE Comments at section I.D. The key elements of the NASP are set forth in Appendix 1 hereto.

¹⁹ GTE has responded to several reasonable CLEC suggestions in order to build upon the NASP. Therefore, in response to the opening comments, GTE proposes below (in section III.A.2) certain enhancements to the collocation recommendations set forth in the NASP.

modeled on the *Fifth Report and Order* rules that the Commission has adopted in analogous contexts – that affiliates would have to meet in order to be deemed non-incumbent and non-dominant. In addition, GTE’s Comments and those of numerous other commenters also explained why the Commission’s proposed hyper-separation requirements would create powerful disincentives to investment in and deployment of advanced services, and therefore should not be adopted.

In contrast, some CLECs and IXCs argued that even the Commission’s stringent new separation proposals would not justify non-incumbent, non-dominant status for any company that shares a common parent with an ILEC. Indeed, the most extreme parties maintained that the Commission lacks authority to “authorize” advanced service affiliates to operate free of the burdens of § 251(c) and dominant carrier regulation, regardless of the level of separation between ILEC and affiliate.²⁰ Other commenters acknowledge that it is theoretically possible for advanced service affiliates to avoid regulation as ILECs, but only if additional onerous regulations are added to the Commission’s already burdensome proposed separation rules.²¹ Some ISPs also argued that, in addition to structural separation requirements such as those proposed by the Commission, affiliated advanced service providers should be subject to a new, separate category of rules narrowly designed to promote the interests of ISPs.²² Finally, MCI claimed that state commission decisions purportedly denying operating

²⁰ See section II.A, *infra*.

²¹ See section II.B, *infra*.

²² See section II.C, *infra*.

authority to affiliates of ILECs on competitive grounds demonstrate that the Commission should not pursue the separate affiliate option.²³

The Commission should reject these lines of argument. First, not only can the Commission decline to apply § 251(c) and dominant carrier regulation to affiliates, but it must do so except in the narrow circumstances where an affiliate meets the statutory test of a “successor” or “assign.” Second, since GTE and other commenters have already demonstrated that the Commission’s proposed separation requirements are unnecessary, contrary to the Act, and inconsistent with encouraging ILEC investment in advanced services, it is evident that the myriad additional rules proposed by commenters would have no legal or policy justification.

A. The Extreme Position That All Affiliates Sharing A Common Parent With An ILEC Must Be Regulated As ILECs Is Inconsistent With The Act And Commission Precedent And Must Be Rejected.

A number of CLEC and IXC commenters presented variations on the theme that the Commission lacks the legal authority to permit ILEC affiliates to offer advanced services without being subject to the requirements of § 251(c), regardless of any separation requirements that might be imposed.²⁴ Similarly, a few commenters

²³ MCI Comments at 22-31; see section II.D, *infra*.

²⁴ Allegiance Telecom, for example, argued that structural separation is not determinative of whether an affiliate is a successor or assign under the 1996 Act, and that structural safeguards therefore cannot justify classification of affiliates as non-ILECs. See Allegiance Telecom, Inc. Comments at 17-19 (“Allegiance Telecom Comments”); see *also* e.spire Communications, Inc. Comments at 4-5 (“e.spire Comments”) (FCC lacks authority to permit ILECs to establish separate advanced services affiliates); Time Warner Telecom Comments at 4-6 (“Time Warner Comments”)

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suggested that the Commission must impose dominant carrier regulation on advanced services affiliates, no matter what kind of separation rules are adopted.²⁵ These arguments, however, are inconsistent with both the Act itself and Commission precedent.

1. The Act only authorizes the Commission to impose Section 251(c) requirements on an ILEC affiliate if the affiliate is a “successor or assign” of the ILEC.

Although a number of commenters frame the issue here as whether the Commission may “exempt” advanced services affiliates from the requirements of § 251, the 1996 Act plainly indicates that so-called “exemption” from the burdens of § 251(c) is not the exception, but the rule. As set forth in GTE’s Comments,²⁶ and as recognized by the Commission itself in the *NPRM*,²⁷ Congress authorized the Commission to impose § 251(c) regulation on an affiliate if and only if the affiliate qualifies as a “successor or assign” of the ILEC.²⁸ Clearly, however, an affiliate of an ILEC must meet the specific statutory test to be considered a successor or assign and most affiliates

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(FCC lacks authority to forbear from applying § 251(c) to advanced services affiliates); MCI WorldCom, Inc. Comments at 11-14 (“MCI Comments”) (affiliates are subject to § 251(c) even if they receive no assets from an ILEC because they “succeed” to the ILEC’s role as an advanced service provider).

²⁵ Qwest Communications Corporation Comments at 30-36 (“Qwest Comments”); Time Warner Comments at 7-12.

²⁶ See GTE Comments at 30.

²⁷ See *NPRM* at ¶¶ 89-90.

²⁸ See 47 U.S.C. § 251(c) (application limited to “Incumbent Local Exchange Carriers”).

would and could never qualify. As Bell Atlantic aptly explains, the terms “successor” and “assign” have established legal meanings. An entity becomes an “assign” of another only upon “a completed transfer of the entire interest of the assignor in the particular subject of assignment, whereby the assignor is divested of all control over the thing assigned.”²⁹ A “successor,” on the other hand, is a “corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with rights and assumes burdens of [the] first corporation.”³⁰ Thus, the mere fact of being affiliated with an ILEC does not bring an advanced service provider within the statutory imposition of § 251(c) requirements upon ILEC “successors” or “assigns,” let alone require (or permit) the Commission to impose such regulation.

2. Applying Section 251(c) or dominant carrier regulation to advanced services affiliates would be inconsistent with settled Commission precedent.

The Commission’s own precedents from analogous contexts also refute the argument that the Commission may not authorize ILEC affiliates to supply advanced services in a competitive market free from the strictures of § 251(c) and dominant carrier regulation. First, as set forth in GTE’s Comments, the Commission’s *Non-Accounting Safeguards Order* already construed the same term – “successor or assign” – upon which the application of § 251(c) turns in the present context. There, the Commission found that that a BOC affiliate is a “successor or assign” only if the BOC

²⁹ See Bell Atlantic Comments at 26; see also Ameritech Comments at 49-53 (indicating that to be a “successor or assign,” an affiliate must replace the ILEC’s operations).

³⁰ *Id.* at 27.

transfers “key local exchange and exchange access services and facilities” to the affiliate.³¹ Thus, contrary to the claim that the Commission may not lawfully decline to subject advanced services affiliates to § 251(c), the Commission could and should do so by adopting the same interpretation of “successor or assign” here as in the *Non-Accounting Safeguards Order*.

The Commission’s precedents also clearly indicate that dominant carrier regulation has no application to advanced service affiliates sharing a common parent with an ILEC. As BellSouth pointed out, “[s]ince the *Competitive Carrier* proceeding in the early 1980s, the Commission has recognized that stringent pricing and tariffing restrictions for carriers without market power are both unnecessary and . . . unwise.”³² In its recent *Regulatory Treatment Order*, the Commission reiterated that a carrier should be considered to have market power in a particular market “only if it has the ability to raise prices by restricting the output of th[o]se services.”³³ In the competitive market for advanced services, it cannot reasonably be maintained that ILEC advanced service affiliates would have the ability to raise prices by restricting their output. Therefore, like the § 251(c) rules, dominant carrier regulation is inapposite here.³⁴

³¹ See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act, as amended*, 11 FCC Rcd 21905, ¶ 309 (1997) (“*Non-Accounting Safeguards Order*”); GTE Comments at 35-36.

³² See BellSouth Comments at 29-30.

³³ See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC’s Local Exchange Area*, 12 FCC Rcd 15756, ¶ 156 (1997) (“*Regulatory Treatment Order*”).

³⁴ See also Internet Access Coalition Comments at 4-5 (“IAC Comments”)(affiliates

(Continued...)

In sum, the argument advanced by some CLECs and IXCs that the Commission must impose § 251(c) and dominant carrier regulation on advanced service affiliates is incorrect. In fact, the opposite is true. Under the plain language of the 1996 Act and established FCC precedent, the Commission cannot subject independent advanced service affiliates to regulation as ILECs unless they qualify as “successors” or “assigns,” which they plainly would not under GTE’s NASP.

B. The Commission Should Reject Proposals For Separation Requirements And Transfer Limitations Even More Burdensome Than Those Proposed In The *NPRM*.

Although the argument addressed above – that the Commission lacks authority to decline to regulate affiliates as ILECs – may be the most extreme view advanced by commenters, it is by no means the only extreme position. Notably, a number of CLECs and IXCs argue that while some set of separation requirements might theoretically justify non-ILEC treatment for affiliates, even the hyper-separation rules proposed in the *NPRM* would be inadequate in practice. As further discussed directly below, these commenters propose an astonishing array of additional restrictions on relations between ILECs and affiliates.

The sheer volume of these proposals for heightened regulation of ILECs and affiliates renders it impracticable to respond to them all, although GTE specifically rebuts the most common suggestions below. As an initial matter, however, it bears emphasis that all of the new proposals share (and, indeed, exacerbate) the

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should be presumed non-dominant).

fundamental flaws of the Commission's own severely restrictive proposed rules. Indeed, given that GTE demonstrated in its opening Comments that the Commission's proposals far exceed the type of safeguards needed to assure fair competition, it follows *a fortiori* that still more restrictive regulation is unnecessary.

First, as a legal matter, these various new proposed rules are generally irrelevant to the fundamental question of whether an affiliate is a statutory "successor or assign." As discussed above, the Commission may only subject an affiliate to the requirements of § 251(c) if the affiliate qualifies as a "successor or assign" of the ILEC. Non-incumbent status for affiliates may not be conditioned on separation or transfer rules that have no bearing on this central question. On their face, however, most of the wide panoply of proposed new rules – including requiring separate ownership of ILECs and affiliates, forbidding joint marketing, research and development, and limiting the use of CPNI – clearly have nothing to do with whether an affiliate is a "successor or assign" of the ILEC. Indeed, most of the commenters proposing such requirements do not even attempt to argue that they are relevant to an affiliate's purported successor or assign status.

In addition, as a matter of policy, these new requirements – like the Commission's proposed hyper-separation rules – would be antithetical to the goals of § 706. Most fundamentally, adopting any of these extreme proposals would directly undercut the Commission's mandate to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability,"³⁵ by needlessly making

³⁵ 47 U.S.C. § 157 note.

deployment more expensive for any company that shares a common parent with an ILEC. The basic thrust of all of the new proposals is to prevent advanced service affiliates from taking advantage of the legitimate efficiencies of scope and scale that are available to all of their competitors, including massive combines like AT&T/TGC/TCI/British Telecom, MCI/Worldcom/MFS/Brooks /UUNet, Sprint/Deutsche Telekom/France Telecom, and the giant cable MSOs. By further exacerbating the existing asymmetry in the regulatory burdens borne by ILECs and their competitors, these proposed rules would virtually guarantee that ILECs and their affiliates could not match, much less out-compete cable companies, CLECs, or IXCs offering similar services, even if the ILECs and their affiliates proved more innovative and more efficient.

This result would, of course, directly contradict the Commission's stated goal in the *NPRM* – namely, to permit affiliates “to offer advanced services on the same footing as any of their competitors.”³⁶ GTE therefore urges that, “to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of customers,” the Commission must reject the vast array of new burdens that commenters propose to place on ILECs and their affiliates.³⁷

1. Separate Ownership of ILECs and Affiliates: A number of commenters proposed that the Commission adopt some form of the ultimate “separation” requirement – separate ownership of ILECs and advanced services affiliates. Such

³⁶ *NPRM* at ¶ 86.

³⁷ *Id.* at ¶ 2.

proposals ranged from requiring a minority of affiliate equity to be held by unaffiliated entities,³⁸ to mandating substantial or majority outside ownership,³⁹ to prohibiting any financial stake at all by an ILEC or the common parent in an affiliate's success.⁴⁰ Regardless of the level of separate ownership required, however, such a limitation would be unlawful, unnecessary, and extremely intrusive, and should be rejected by the Commission.

Requiring partial or complete divestiture of affiliates is a particularly stark example of a proposed new rule that has nothing to do with ensuring that an affiliate is not a "successor or assign" of the ILEC, and would therefore be unlawful. As discussed *supra* at section II.A.1, the Commission cannot impose limitations beyond what is necessary to assure that affiliates are not "successors" or "assigns" of the ILEC. Those terms, however, have established meanings that cannot possibly be contorted to extend to mere ownership of an ILEC and affiliate by the same corporate parent.⁴¹

³⁸ See, e.g., Ad Hoc Telecommunications Users Committee Comments at 24 ("Ad Hoc Telecom Comments"); Commercial Internet Exchange Association Comments at 18 ("CIX Comments").

³⁹ See, e.g., Association for Local Telecommunications Services Comments at 17-21 ("ALTS Comments"); e.spire Comments at 11-12.

⁴⁰ See, e.g., Covad Communications Company Comments at 59-60 ("Covad Comments"); MCI WorldCom Comments at 39-43.

⁴¹ See Bell Atlantic Comments at 26-27. Even under the body of law which has developed regarding whether one company may be found to be the "alter ego" of another - a standard far lower than the "successor or assign" test required by § 251(h)(1)(B)(ii) - common ownership has never been sufficient to "pierce the corporate veil." See, e.g., *Thomson-CSF S.A. V. American Arbitration Ass'n*, 64 F.3d 773, 778 (2nd Cir. 1995); *United States v. Jon-T Chemicals*, 768 F.2d 686, 691 (5th Cir. 1985).

Equally important, separate ownership requirements are unnecessary because the structural safeguards proposed in GTE's NASP effectively assure non-discrimination and prevent cross-subsidization, while permitting the competitive affiliate to take advantage of the efficiencies of scope and scale that come with ownership by the ILEC's corporate parent. Finally, ownership limitations are unacceptably intrusive, because they go to the very core of how a business is structured and operated. The Commission itself has previously stated its intention to avoid such wholesale meddling in the internal affairs of regulated companies, and it should again reaffirm that position here.⁴²

2. Funding/Access to Capital: In a similar vein, a number of commenters recommended additional restrictions on the sharing of financial resources among ILECs, parents, and affiliates. At the more moderate end of this spectrum, some parties asked that the FCC prohibit affiliates from obtaining credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the ILEC.⁴³ GTE's NASP, as set forth in its opening Comments, endorses this restriction as an appropriate means to ensure that ILEC assets are not placed at risk if an advanced service affiliate fails to prosper.

⁴² See, e.g., *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies*, 95 F.C.C.2d 1117, ¶ 70 (Commission should avoid "burdensome regulatory involvement in the operation, plans and day-to-day activities of the carrier"). ("BOC Separations Order").

⁴³ See, e.g., MCI Comments at 46.

However, GTE opposes the myriad more severe limitations on sharing of financial resources proposed by commenters, including requiring affiliates to raise capital only in ways available to other CLECs,⁴⁴ requiring affiliates receiving financing from a corporate parent to prove that the terms of such financing are consistent with those generally available to competitors,⁴⁵ or outright forbidding affiliates from receiving funding from their corporate parent.⁴⁶ Again, like the limitations on affiliate ownership discussed above, such restrictions would go to the very heart of the holding company's business practices, which should be determined by the company's own officers and directors, not intrusive government regulation. Moreover, as Bell Atlantic pointed out, such regulation would affirmatively discriminate against ILEC affiliates, since many other competitors in the advanced services marketplace have access to capital from their parents or corporate families.⁴⁷ Accordingly, the Commission should clarify that the long-standing practice of financing both ILEC and other operations, including separate affiliates, through a common corporate parent remains permissible.⁴⁸

⁴⁴ See, e.g., ALTS Comments at 21-24.

⁴⁵ See, e.g., CIX Comments at 18.

⁴⁶ See, e.g., MCI WorldCom Comments at 44-45.

⁴⁷ Bell Atlantic Comments at 31.

⁴⁸ If such requirements are imposed on affiliates sharing a parent with an ILEC, they must be imposed upon all competitors. Without such regulatory parity, companies with ILEC affiliates would be severely hampered in the market.

3. FCC Pre-approval and Monitoring of Affiliates: Several CLECs and IXCs propose requiring that separate affiliate plans be pre-approved by the FCC,⁴⁹ and that affiliates be subject to reporting requirements and constant monitoring following approval.⁵⁰ Requiring ILEC affiliates to perpetually navigate such a regulatory obstacle course is unacceptable.

Indeed, the requirement of pre-approval appears to be nothing more than a transparent effort to squelch affiliates' attempts to provide advanced services by imposing lengthy delays on the implementation of their plans. As the Commission well knows, in other contexts where pre-approval is required, it can literally take years to obtain the go-ahead.⁵¹ In the rapidly evolving market for advanced services, such delays would render it impossible for affiliates to compete.

⁴⁹ See, e.g., Allegiance Telecom Comments at 24; AT&T Corp. Comments at 18-20 ("AT&T Comments"); CIX Comments at 12; RCN Telecom Services, Inc. Comments at 9-10 ("RCN Comments").

⁵⁰ See, e.g., NorthPoint Communications, Inc. Comments at 27 ("NorthPoint Comments"); MCI WorldCom Comments at 51; Alliance for Public Technology Comments at 7-8 ("APT Comments").

⁵¹ See, e.g., U S WEST Communications, Inc. Petition for *Computer III Waiver*, Docket No. 90-623 (1995) (decision on CEI waiver petition issued one year and seven months after filing); AT&T Petition for Limited Waiver of CEI Requirements, DA 93-1042 (1993) (decision on CEI waiver petition issued one year and 10 months after filing); Public Notice, *Pleading Cycle Established for Comments on the Amendments to Bell Atlantic's Plan to Offer CEI to Providers of Enhanced Internet Access Service in the NYNEX Region States*, DA 97-1039 (rel. May 16, 1997) (decision remains pending). These competitors have taken a page from the cable industry's video dialtone playbook, wherein the entrenched incumbents used the Commission's § 214 process to completely forestall competition and ultimately killed video dialtone as a viable avenue for LECs to enter the MVPD market, thereby leaving the giant MSOs with their monopolies that exist to this day.

Ongoing reporting requirements, while arguably less inimical to competition than pre-approval, are nonetheless simply unnecessary. Under GTE's NASP, affiliates would already be required to maintain separate books of account, to obtain services from the ILEC at publicly tariffed rates, and to disclose all contracts with the ILECs to regulators upon request. These requirements provide more than ample opportunity for "monitoring" by the Commission without the need for additional burdensome rules.

4. Affiliate Resale of ILEC Services, and Vice Versa: A number of commenters proposed that affiliates be prohibited from reselling the telecommunications services offered by affiliated ILECs,⁵² and that ILECs should not be permitted to resell their affiliates' advanced services.⁵³ As set forth in GTE's opening comments, however, requiring ILECs to provide services to competitors for resale, while prohibiting them from offering the same services to affiliates, would give competing carriers an arbitrary competitive advantage over ILEC affiliates.⁵⁴ Moreover, as the Internet Access Coalition pointed out, there is "no statutory or policy basis for attempting to impose limitations on the availability of UNEs to all carriers" under § 251(c)(3).⁵⁵ By the same token, the resale provisions of § 251(c)(4) make no distinction between ILEC affiliates and any other resellers. Indeed, in the *Regulatory*

⁵² See, e.g., AT&T Comments at 28-30; e.spire Comments at 18.

⁵³ See, e.g., Intermedia Communications, Inc. Comments at 19 ("Intermedia Comments"); MCI Comments at 43.

⁵⁴ See, e.g., GTE Comments at 50-53.

⁵⁵ IAC Comments at 6.

Treatment Order, the Commission itself reaffirmed its findings in the *Non-Accounting Safeguards Order* that “BOC section 272 affiliates should be permitted to purchase unbundled elements under section 251(c)(3) of the Communications Act and telecommunications services at wholesale rates under section 251(c)(4) from the BOC on the same terms and conditions as other competing local exchange carriers.”⁵⁶ That conclusion applies equally to resale by advanced services affiliates.

AT&T specifically argues that affiliates should be prohibited from offering ILEC service via resale to eliminate the opportunity for a “price squeeze.” According to AT&T, ILECs would otherwise raise prices to both affiliates and their competitors, because this would enable ILECs’ corporate families to make a greater profit even if their affiliates were to lose money.⁵⁷ This argument, however, ignores the fact that wholesale prices are regulated by state PUCs, which plainly would not stand idly by while ILECs and affiliates implemented the scheme described by AT&T.

The proposal that ILECs be prohibited from reselling affiliates’ advanced services is even less defensible than prohibiting affiliate resale of ILEC offerings. As discussed in section I.A, *supra*, advanced service affiliates obviously have no market power, and, in fact, are only one of many sources of advanced services in a fully competitive market. Resale of affiliates’ services by ILECs thus raises no conceivable risk. In contrast, banning such resale would hamstring the affiliate by depriving it of a significant distribution mechanism. The proposed limitations thus go beyond ensuring

⁵⁶ *Regulatory Treatment Order* at ¶ 164.

⁵⁷ AT&T Comments at 28-30.

nondiscrimination to affirmatively discriminating against ILECs and their affiliates, in violation of the Act itself, as well as Commission and judicial precedent.

5. “Economically Correct” Prices for UNEs: At least one party, the Ad Hoc Telecommunications Users Committee (“Ad Hoc”), proposed that the Commission require ILECs to charge “economically rational” prices for UNEs, not merely non-discriminatory prices.⁵⁸ While GTE endorses economically rational prices, Ad Hoc’s proposal is inconsistent with controlling judicial precedent. In *Iowa Utilities Board v. FCC*, state PUCs and numerous private parties challenged the FCC’s authority to mandate that prices for UNEs be calculated based on the TELRIC method.⁵⁹ The Eighth Circuit held that “the Act specifically calls for the state commissions, not the FCC, to determine the rates for interconnection, unbundled access, resale, and transport and termination of traffic.”⁶⁰ Thus, the Commission lacks authority to require ILECs to charge “economically correct” prices – or, for that matter, any other prices – for UNEs, because that responsibility rests with the states.⁶¹ The Eighth Circuit has also specifically held that the Commission may not, through adoption of “policy”

⁵⁸ See Ad Hoc Telecom Comments at 21.

⁵⁹ *Iowa Utilities Board v. FCC*, 120 F.3d 753 (8th Cir. 1997).

⁶⁰ *Id.* at 798.

⁶¹ AT&T makes a “price squeeze” argument that ILECs will increase the price of UNEs, which is essentially identical to its resale price squeeze argument discussed *supra* at section II.B(4). See AT&T Comments at 28-30. Again, however, this argument ignores the critical point that state PUCs have authority under the Act to regulate the price of UNEs – and, of equal importance, suggests that each and every state commission has willfully ignored its statutory mandate to establish cost-based UNE rates and would tolerate unilateral ILEC efforts to raise those rates.

statements, accomplish “by indirection” what *Iowa Utilities Board* prohibits it from doing through rulemaking.⁶²

6. ILEC/Affiliate Agreements: Commenters also made a number of proposals relating to agreements between ILECs and affiliates. In particular, proposals were made to require ILEC/affiliate agreements to be made available to competitors at least 30 days prior to the transaction,⁶³ and to permit CLECs to adopt all or any portion of ILEC agreements with affiliates.⁶⁴

These proposals are unnecessary and without statutory basis. The provision in GTE’s NASP that contracts should be provided to regulators upon request will be equally effective in permitting regulators to guard against discrimination, and will limit what would otherwise be a substantial burden on ILECs and affiliates. Moreover, the proposal that CLECs be able to pick and choose terms from ILEC/affiliate agreements would also directly contravene the Eighth Circuit’s *Iowa Utilities Board* decision, which specifically held that the Commission lacks authority to adopt such a rule, even where the Act authorizes CLECs to adopt other ILEC interconnection agreements.⁶⁵ Thus, the Commission may not lawfully adopt this proposal.

⁶² See *Iowa Utilities Board v. FCC*, 135 F.3d 535, 538 (8th Cir. 1998) (holding that reasserting invalidated UNE pricing rules as conditions for BOC entry into the interLATA market was impermissible).

⁶³ See ALTS Comments at 26-33.

⁶⁴ See e.spire Comments at 15-16. Notably, not all agreements between an ILEC and an advanced service affiliate are subject to § 251. These other agreements, of course, are not subject to the § 252(i) “most favored nation” provision.

⁶⁵ *Iowa Utilities Board v. FCC*, 120 F.3d at 801.

7. Separate Personnel and Administrative/Support Functions: Commenters suggested a variety of embellishments to the Commission's proposed limitations on ILEC/affiliate sharing of support services and personnel. The basic thrust of these proposals is to prohibit all affiliate use of ILEC administrative and support functions, including procurement, personnel, and legal resources supplied by an ILEC or affiliated service corporation.⁶⁶

As GTE pointed out in its opening Comments, such rules – whether those proposed by the Commission or the still more stringent limitations advocated by some commenters – would be flatly inconsistent with the FCC's approach in earlier proceedings, and, once again, wholly unrelated to the affiliate's successor or assign status.⁶⁷ In the *Regulatory Treatment Order*, the Commission expressly approved “shar[ing] personnel and other resources” by ILECs and affiliates.⁶⁸ Similarly, even in the context of the stringent separation restrictions of § 272, the Commission has acknowledged that “the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for competitive harm created thereby.”⁶⁹ The Commission therefore “decline[d] to prohibit the sharing of services

⁶⁶ See, e.g., Cable and Wireless, Inc. Comments at 6 (“Cable and Wireless Comments”); Covad Comments at 59-60; e.spire Comments at 9.

⁶⁷ GTE Comments at 34-37.

⁶⁸ *Regulatory Treatment Order* at ¶ 165.

⁶⁹ *Non-Accounting Safeguards Order* at ¶ 168.

[between BOCs and their § 272 affiliates] other than operating, installation, and maintenance services.”⁷⁰

Quite apart from the Commission's past statements, the record in this proceeding also amply demonstrates the practical problems that would result from limitations on ILEC/affiliate sharing of support resources. As the Communications Workers of America (“CWA”) set forth at length, requiring different ILEC and affiliate employees for “operating, installation, and maintenance” functions “would create duplicative inefficiencies at best, and absurd workforce deployment at worse.”⁷¹ The end result would be that “[c]ustomers would experience delays in installation and repair as the incumbent and advanced services affiliate ...dispatch technicians to install or troubleshoot only ‘their’ technology.”⁷² Similarly, Bell Atlantic pointed out that barring ILEC personnel from performing any operations for the affiliate would require expensive duplication of functions, the costs of which could not be recovered in the market since affiliates’ competitors will not face the same expenses.⁷³ Ameritech correctly observed that non-affiliated competitors are protected by discrimination rules, and that the Commission should not go further and affirmatively discriminate against ILEC

⁷⁰ *Id.* at ¶ 178. As explained in GTE's opening comments, a ban on ILEC performance of operating, installation, and maintenance functions should not apply in the advanced services context because it would unreasonably raise affiliates' costs and prevent them from achieving efficiencies available to all of their integrated competitors. GTE Comments at Section II.B.3.

⁷¹ Comments of Communications Workers of America at 5-9.

⁷² *Id.* at 6.

⁷³ See Bell Atlantic Comments at 29.

affiliates.⁷⁴ SBC explained the need to permit transfer of personnel if assets and functions are transferred, and to allow joint use of support systems.⁷⁵ In sum, the Commission should not subject affiliates to resource-sharing limitations not faced by their competitors.

Proposals to restrict the use of service corporation resources by advanced service affiliates are even more pernicious. As GTE pointed out in its opening Comments, GTE and other companies have long used service corporation subsidiaries to provide shared services (e.g., legal, finance, human resources) to the parent and any or all of its subsidiaries.⁷⁶ The legitimacy of such service entities has been affirmed repeatedly by the Commission.⁷⁷ Consequently, adoption of such restrictive proposals would undermine long-standing, Commission-sanctioned, corporate structures.

8. Brand Names: A number of parties suggested either banning affiliate use of the ILEC name or logo altogether,⁷⁸ or else imposing a disclaimer requirement.⁷⁹ As GTE set forth in its Comments, limiting the sharing of a corporate brand has nothing to do with whether an affiliate is an ILEC "successor" or "assign," and would be

⁷⁴ See Ameritech Comments at 55-57.

⁷⁵ See SBC Communications, Inc. Comments at 9-10 ("SBC Comments").

⁷⁶ GTE Comments at 18 n.38.

⁷⁷ See, e.g., *Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, FCC 96-490 (Dec. 24, 1996).

⁷⁸ See, e.g., Staff of the Bureau of Economics of the Federal Trade Commission at 10 ("FTC Comments"); MCI WorldCom Comments at 41; Qwest Comments at 45.

⁷⁹ See FTC Comments at 11.

inconsistent with the Commission's past determinations.⁸⁰ Indeed, GTE has already established competitive affiliates that make use of the GTE brand name, in reliance on the Commission's ruling that current separation rules "do not preclude an independent LEC from taking advantage of its good will by providing interexchange services under the same or similar [brand] name."⁸¹ As Bell Atlantic pointed out, permitting ILECs and affiliates to offer a wide variety of services under a single name – just as their competitors do – does not appear to have created any competitive problems to date, and there is no reason to think that it will in the future.⁸²

9. ILEC/Affiliate Joint Marketing: Some parties also proposed banning joint marketing of advanced services and ILEC telecommunications services.⁸³ As an initial matter, it bears emphasis that the Commission itself did not propose to bar joint marketing, and for good reason. Like banning affiliate use of corporate brand names, such a rule would be inconsistent with the FCC's earlier decisions. The Commission has held that even in the closely regulated context of BOC § 272 affiliates, ILECs and affiliates should be permitted to pool their marketing resources: "[W]e conclude that a BOC and its section 272 affiliate may provide marketing services for each other....

⁸⁰ GTE Comments at 45-46.

⁸¹ *Regulatory Treatment Order* at ¶ 183; see also GTE Comments at 45 & n.84 (explaining that the GTE brand is a resource of the parent company, and that GTE does not intend to market advanced services through an affiliate using an ILEC's brand).

⁸² Bell Atlantic Comments at 30-31. Bell Atlantic also correctly observed that barring affiliates from using an ILEC's brand name would raise serious First Amendment concerns. *Id.*

⁸³ See, e.g., CIX Comments at 15-16; e.spire Comments at 9.

Moreover, the parent of a BOC and its section 272 affiliate or another BOC affiliate may perform marketing functions for both entities.⁸⁴ The same conclusion should, of course, apply in the present context.

The record illustrates the negative impact on competition that would result from a prohibition on joint marketing. As Bell Atlantic pointed out, ILECs are currently able to provide advanced services to customers on an integrated basis with voice and vertical services, creating efficiencies that are critical in making advanced services affordable to the mass market.⁸⁵ Prohibiting such joint marketing would needlessly raise costs and thus slow the deployment of advanced services.⁸⁶ SBC also urged that ILECs and affiliates must be able to engage in joint marketing in order to remain competitive, including retaining the ability to offer mixed packages of services, and to utilize shared customer contacts.⁸⁷ These marketing tactics are available to all other competitors in the advanced services market, and it would therefore arbitrarily handicap ILECs and affiliates to deprive them of the same capability.

10. Use of CPNI by Affiliates: Some commenters, including ISP groups, argued that the Commission should either bar ILECs from sharing CPNI with affiliates,⁸⁸ or require that any information provided to affiliates must also be shared with

⁸⁴ *Non-Accounting Safeguards Order* at ¶ 183.

⁸⁵ Bell Atlantic Comments at 29-30.

⁸⁶ *Id.*

⁸⁷ SBC Comments at 6.

⁸⁸ Allegiance Telecom Comments at 21-23; CIX Comments at 15.

competitors.⁸⁹ Once again, this issue revisits ground that the Commission has already covered. In the *Telecommunications Carriers' Use of CPNI* proceeding, the Commission already determined that a carrier's particular corporate structure – e.g., which affiliates or subsidiaries may be the actual providers of telecommunications services – is irrelevant to the use of CPNI within the customer's total service arrangement.⁹⁰ The Commission also addressed the "apparent conflict" between § 222, which clearly contemplates that all telecommunications carriers (whether ILEC or CLEC) may share CPNI with their affiliates, and § 272(c)(1), which requires BOC "information" to be shared only on nondiscriminatory terms. The Commission determined that "imposing section 272's nondiscrimination obligations [on CPNI]...would not further the principles of customer convenience and control embodied in section 222, and could potentially undermine customers' privacy interests . . ." ⁹¹ For the same reasons, ILECs and affiliates should be permitted to share CPNI in the

⁸⁹ CIX Comments at 15; FTC Comments at 12-13; NorthPoint Comments at 29-33.

⁹⁰ *Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, 13 FCC Rcd 8061, ¶ 51 (1998) (*CPNI Order*) ("[T]here should be no restriction on the sharing of CPNI among a carrier's various telecommunications-related entities that provide different service offerings to the same customer.... To the extent a carrier chooses to (or must) arrange its corporate structure so that different affiliates provide different telecommunications service offerings, and a customer subscribes to more than one offering from the carrier, the total service approach permits the sharing of CPNI among the affiliated entities without customer approval."); see also *id.* at ¶ 55 ("We find no reason to believe that customers would expect or desire their carrier to maintain internal divisions among the different components of their service, particularly where such CPNI could improve the carrier's provision of the customer's existing service.").

⁹¹ *CPNI Order* at ¶ 160.

advanced services context without being subject to any nondiscrimination requirement. Sharing of CPNI among affiliates is a legitimate efficiency that Congress clearly wanted affiliates to enjoy, and the efforts of commenters to eliminate that efficiency should be rejected.

11. Collocation Restrictions: Finally, a number of commenters proposed that the Commission should impose special disabilities on affiliates in the collocation arena. Such proposals included restricting the amount of space available to affiliates,⁹² prohibiting affiliates from collocating until after several CLECs have done so,⁹³ and forbidding virtual collocation between ILECs and affiliates.⁹⁴ GTE opposes adopting any such restrictions.

As GTE explained in its opening Comments, and as further discussed below, there is already an extensive federal regulatory framework governing collocation, both physical and virtual, including the issue of space exhaustion. These rules were developed based on an extensive record – in both the *Expanded Interconnection* and *Local Competition* proceedings – and the present record reveals no reason to reexamine them. Moreover, even if the need to overhaul the Commission's collocation rules could be shown, there would be no justification for adopting restrictions that discriminate against affiliates. In order to compete on an equal footing with unaffiliated

⁹² See, e.g., AT&T Comments at 90-91.

⁹³ See, e.g., CIX Comments at 25-26.

⁹⁴ ALTS Comments at 25; e.spire Comments at 32.

CLECs, separate affiliates must receive equal regulatory treatment, including in matters of collocation.

C. The Commission Should Not Subject Advanced Service Affiliates To Special Rules Designed To Favor ISPs.

While CLECs and IXCs primarily urged the Commission to adopt more stringent separation and transfer restrictions than those proposed in the Commission's *NPRM*, some ISP commenters suggested that no amount of such restrictions could effectively protect their interests. The ISPs therefore argued that ILEC advanced service affiliates should be subject to additional regulations narrowly designed to safeguard ISP interests.⁹⁵ In particular, a number of ISPs urged that the FCC should impose the *Computer Inquiry/ONA* rules on ILEC advanced service affiliates, and that the Commission should adopt an affirmative "ISP Choice" or equal access obligation for ILECs and affiliates. GTE believes that imposing *Computer Inquiry/ONA* rules on ILEC affiliates would be improper, and, further, that subjecting ILEC affiliates that offer information services to any additional regulation would have a devastating effect on the ability of ILECs and their affiliates to compete with already-entrenched ISPs.

1. The *Computer Inquiry/ONA* rules are inapplicable to ILEC advanced services affiliates.

As with many of the new restrictions proposed by commenters, the Commission itself has, in a closely analogous context, already considered and rejected the proposal

⁹⁵ See, e.g., Internet Service Providers' Consortium Comments at 8-10 ("ISPC Comments").

that *Computer Inquiry/ONA* rules should apply to separate affiliates. Specifically, in the *Non-Accounting Safeguards* proceeding, a number of commenters argued that the Commission should apply *Computer III* and *ONA* requirements to BOC § 272 interLATA affiliates “until local exchange markets become fully competitive.”⁹⁶ The Commission rejected this argument, noting that “the market for information services is fully competitive,” and that there is no “basis for concern that a section 272 affiliate providing an information service bundled with an interLATA telecommunications service would be able to exercise market power.”⁹⁷

Precisely the same reasoning applies here. If anything, the market for information services is even more competitive today than it was in 1996, at the time of the *Non-Accounting Safeguards Order*. Moreover, as discussed in GTE’s Comments, it is the already-entrenched ISPs that dominate the market for information services, while ILECs and their information service affiliates are relative newcomers without market power.⁹⁸ By the same token, ILEC advanced service affiliates wield no market power in the competitive market for such services. Thus, commenters seeking application of the *Computer III/ONA* rules are in the anomalous position of requesting restrictions on relations between two affiliates, neither of which has any market power. Clearly, in such circumstances, the *Computer Inquiry/ONA* rules should not apply.

⁹⁶ *Non-Accounting Safeguards Order* at ¶ 131.

⁹⁷ *Id.* at ¶ 136.

⁹⁸ See GTE Comments at 53-54.

2. The Commission should not adopt any rules that would impede the ability of ILEC affiliates to compete with entrenched, non-affiliated ISPs.

Because ILECs lack market power in the competitive market for information services, there likewise is no need for the Commission to impose an “equal access” requirement or any additional regulations governing provision of information services. As GTE detailed in its Comments, a plethora of sources for high-speed Internet access already exist, including cable modem services, and a variety of terrestrial wireless and satellite services, in addition to traditional ISPs.⁹⁹ Any ISP is free to enter into a strategic relationship with any of these service providers. Likewise, any ISP would be free to self-provision access by becoming a carrier, obtaining its own unbundled loops and adding the electronics needed to provide xDSL service.

This therefore is not an area in which any industry segment has a competitive advantage, and no remedial regulation is required. If, however, the Commission imposes nondiscriminatory access requirements on advanced service affiliates, it must extend similar obligations to other providers of integrated telecommunications and information services, in particular AT&T/TCI. Such parity of regulation is necessary to avoid creating destructive marketplace distortions that prevent fair competition and harm consumers.

Finally, GTE will of course make advanced services that qualify as “telecommunications services” available to all (including unaffiliated ISPs) on a non-

⁹⁹ *Id.* at 54.

discriminatory basis, consistent with § 202 of the Act. The Act does not, however, place any limitations on the right of ILEC-affiliated entities to offer special service packages (just as all other competitors do), which are uniquely available to customers who purchase the entire package from the affiliates. The Commission must preserve this pro-competitive flexibility.

D. The Commission Must Preempt Any State Regulation That Would Impede The Ability Of Advanced Service Affiliates To Compete.

As the Commission is well aware, customers place an increasing premium on the ability to obtain bundled service packages, including advanced services, interexchange services, local services, and CMRS offerings. Because separate affiliate requirements already apply to some of the components of these packages (interexchange and CMRS services), and because such requirements may effectively be extended to advanced services as a result of this proceeding, any company with ILEC subsidiaries that wants to compete in the bundled services market will have to do so through a separate affiliate. For this reason, as GTE explained in its opening comments, "state decisions prohibiting a separate, in-franchise affiliate of the ILEC from offering local exchange services effectively prevent competition by a vital participant in the bundled services market . . . and therefore meet the statutory standard for preemption."¹⁰⁰

MCI points to such state decisions in support of its position that the Commission cannot and should not permit the parent companies of ILECs to form advanced service

¹⁰⁰ GTE Comments at 56.

affiliates. MCI, however, mischaracterizes decisions of two states, Texas and Michigan, regarding certification of GTE's CLEC affiliate, GTE Communications Corporation.¹⁰¹

While MCI suggests that these decisions were based on competitive considerations, this is simply not true, as GTE has already demonstrated in its Reply Comments in CC Docket No. 98-39:

MCI claims that the actions of the Texas PUC and the Michigan PSC concerning GTE's competitive affiliate "demonstrate" that "ILECs could use their local service affiliates to avoid their Section 251 and 252 obligations." This assertion is incorrect. These proceedings, even as initially decided, do not suggest that GTE has attempted to evade its Section 251 and 252 obligations. In Texas, the state commission based a decision not to grant a certificate to GTE's competitive affiliate on a state code provision it interpreted to disallow any "person" from holding more than one certificate in a given area. Competitive concerns played no part in the decision. In Michigan, the state commission did not deny GTE's competitive affiliate's certificate at all. Instead it conditioned the effectiveness of the certificate on GTE's ILEC accomplishing interconnection and tariffing goals. In any event, GTE Communications Corporation disagrees with these state commissions' findings and is presently appealing the decisions.¹⁰²

Plainly, a state decision barring an affiliate of an ILEC from offering any kind of service within the ILEC's franchise area cannot withstand scrutiny under § 253 of the Act. Moreover, such state decisions are flatly inconsistent with the Commission's stated goal in this proceeding of establishing a framework that permits companies with an ILEC affiliate to compete on an equal basis with any other service provider. The

¹⁰¹ See MCI Comments at 25-26.

¹⁰² Reply Comments of GTE, CC Docket No. 98-38, filed June 1, 1998, at 16 (footnotes omitted).

Commission therefore should commit that it will preempt any state decisions that bar affiliates of ILECs from providing any kind of service in the ILECs' franchise areas.

* * * *

In sum, the Commission should reject the wide variety of burdensome new regulations proposed by the parties. Like the Commission's own proposals, these rules go far beyond what is necessary to ensure that ILEC affiliates are not "successors" or "assigns," and would be inconsistent with both the Commission's own precedents and the deregulatory intent of the 1996 Act. Still more important, as a practical matter, these new regulations would, at best, dramatically undercut the ability of any company sharing a common parent with an ILEC to compete in the growing market for advanced services and, indeed, could effectively eliminate them as competitors altogether.

Such a result would be plainly inconsistent with the Commission's own stated goal of permitting ILEC affiliates to "offer advanced services on the same footing as any of their competitors."¹⁰³ GTE therefore urges the Commission to reject the multitude of unjustifiable new restrictions and limitations on ILECs and affiliates urged by other parties (as well as any state rules that effectively prohibit affiliates of ILECs from providing specific services within the ILECs' franchise area), and instead adopt the pro-competitive affiliate rules proposed as part of GTE's NASP. GTE believes that these affiliate rules, like NASP as a whole, will encourage vigorous competition based on price and performance, while avoiding the pitfalls of unnecessary government intervention in the market.

¹⁰³ *NPRM*, ¶ 41.

III. GTE'S PROPOSED NASP ADDRESSES CLECS' REASONABLE INTEREST IN EFFICIENT AND FLEXIBLE COLLOCATION ARRANGEMENTS.

A. GTE Supports Adoption Of Targeted Modifications To Existing Collocation Rules.

GTE's opening comments emphasized that the Commission's existing collocation rules promote the deployment of advanced services by appropriately relying on privately negotiated agreements and by recognizing the important role of the states in ensuring that the Act's non-discrimination requirements are met. The record in this proceeding bears out this fact. CLECs, state commissions, and ILECs alike describe the various collocation arrangements and processes that are being developed through private negotiations and state-developed rules.¹⁰⁴ While differing expectations among carriers and operational issues are bound to arise, these isolated and specific concerns do not compel the Commission to undertake a broad revision of its collocation rules or to impose detailed national standards.

At the same time, however, GTE believes that targeted modifications to the Commission's existing collocation rules may be warranted in order to afford parties additional flexibility to structure efficient collocation arrangements. To this end, GTE proposed, as part of its NASP, to permit CLECs to: (1) place equipment in "common"

¹⁰⁴ See, e.g., Ameritech Comments at 37-39; Intermedia Comments at 23-31 (describing cageless and other arrangements offered by U S WEST and consideration of cageless collocation options in Tennessee and New York); Comments of the Public Utility Commission of Texas at 9 ("Texas PUC Comments").

collocation space dedicated to CLEC use,¹⁰⁵ with or without using cages; (2) have the flexibility to lease collocation space in increments of 25 square feet; (3) sub-lease space within collocation cages, as long as the original requesting party remains liable for payment and security; and (4) use third-party inspection of central office space in conjunction with state commission review in order to verify ILEC assertions that space has been exhausted.¹⁰⁶ These measures address legitimate CLEC requests for additional flexibility, while ensuring network integrity and allowing private parties and state commissions to continue to develop mutually acceptable collocation arrangements.

1. GTE's NASP is a workable approach to promote efficient collocation.

In a comment typical of CLEC calls for additional types of collocation arrangements, AT&T asserts that such action is necessary to "increase the availability of collocation space, reduce the costs of collocation, increase collocation efficiency, and increase the speed of collocation deployment."¹⁰⁷ The modifications to the Commission's existing collocation rules set forth in its NASP meet these concerns, however, thereby obviating the need for stringent new rules that would undermine the existing private negotiations process.

¹⁰⁵ GTE used the term "shared" in its Comments but believes that "common" is a more accurate term.

¹⁰⁶ GTE Comments at 66-73.

¹⁰⁷ AT&T Comments at 79.

For example, as part of its proposed NASP, GTE is willing to support “common” collocation under which multiple CLECs may place equipment (with or without a separate cage) in an area that is physically separated from the ILEC’s network facilities.¹⁰⁸ As GTE explained, such an alternative can give CLECs additional flexibility to meet their specific requirements, while ensuring that the local telephone company can continue to secure access to its network facilities.¹⁰⁹ Indeed, a number of CLECs appear to concur that shared collocation arrangements will permit more efficient utilization of space and potentially reduce the costs of collocation.¹¹⁰

In its comments, GTE also proposed to allow CLECs to request space in increments of 25 square feet.¹¹¹ As GTE explained, allocating space in such increments will promote more efficient use of central office space and accommodate CLEC requests for smaller space, without the inherent difficulties and inefficiencies associated with requests for space in non-standard sizes.¹¹² The Commission, however, should reject the suggestion of NorthPoint and others that “CLECs should be able to request space configured in any arrangement and of any size.”¹¹³ Such a non-

¹⁰⁸ GTE Comments at 67.

¹⁰⁹ *Id.*

¹¹⁰ See ALTS Comments at 47; AT&T Comments at 84; Comments of the Competitive Telecommunications Association at 40-45 (“CompTel Comments”); Intermedia Comments at 25-26; NorthPoint Comments at 8-10.

¹¹¹ GTE Comments at 67-68.

¹¹² *Id.*

¹¹³ NorthPoint Comments at 8; see also Cable & Wireless Comments at 11-12; Time
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standard approach would lead to inefficient use of collocation space in either a caged or “common” collocation environment.

Lastly, GTE supports allowing CLECs to sub-lease space within existing collocation cages, so long as the original party serves as the single point of contact and remains responsible for payment and security.¹¹⁴ To this end, GTE concurs with NorthPoint's assessment that permitting shared and/or subleased collocation cages would be a relatively straightforward approach to encouraging efficient collocation.¹¹⁵ Accordingly, the Commission should recognize that such measures provide a reasonable response to CLEC concerns and eliminate the need for more extensive regulation of collocation arrangements.¹¹⁶

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Warner Telecom Comments at 26.

¹¹⁴ GTE Comments at 68.

¹¹⁵ NorthPoint Comments at 8.

¹¹⁶ As noted in its opening Comments, GTE supports a reasonable approach to determining the standards applicable to CLECs' collocated equipment. While compliance with NEBS level 3 standards is the most dependable way to maintain network integrity, GTE would not oppose allowing a CLEC to deploy equipment that meets NEBS level 1 and/or level 2 standards (and is enclosed in an earthquake zone 4-compliant cabinet) where it can be “reasonably determined that collocation of particular equipment will not impact the safety or reliability of an ILEC's network.” GTE Comments at 66. Several CLECs want to be able to collocate NEBS level 1-compliant equipment. See ALTS Comments at 45; NorthPoint Comments at 6-7; Comments of Sprint Corporation at 13 (“Sprint Comments”).

2. In response to CLEC comments, GTE proposes certain enhancements to the NASP's collocation recommendations.

In response to the opening comments, GTE seeks to enhance the collocation elements of the NASP in several respects. In particular, GTE submits that the following three specific recommendations will promote more efficient and cost-effective collocation.

a) Collocating parties using common collocation space may cross-connect their equipment.

GTE supports allowing CLECs that use common collocation space (whether in a caged or cageless capacity) to cross-connect their equipment with other CLEC equipment.¹¹⁷ Of course, such cross-connections must strictly adhere to applicable local building codes and GTE cabling standards.¹¹⁸ Where a carrier desires to utilize GTE infrastructure (conduits, raceways, etc.), cable installation will be provided by GTE technicians and charged to the requesting CLEC. Alternatively, where cable installation does not use GTE infrastructure, GTE supports allowing CLECs to use their own technicians to perform the cross-connect work. For example, cross-connection within a single CLEC cage may be performed by CLEC technicians.

¹¹⁷ Obviously, a CLEC must properly be collocating in GTE's central office in the first instance, *i.e.*, for the purposes of interconnection with GTE or access to GTE unbundled network elements. 47 U.S.C. § 251(c)(6).

¹¹⁸ GTE reserves the right to remove any cabling that creates a dangerous condition or otherwise fails to comply with these codes and standards.

b) Obsolete equipment (if any) should be removed by ILECs so long as they recover their costs.

GTE agrees with the suggestion that obsolete equipment (if any) that has been left in place due to the economic cost of removal should be removed by the ILEC at the request of any collocating CLEC, provided that the requesting CLEC agrees to pay the costs of such removal.

c) CLECs should be permitted, on a case-by-case basis, to lease unused ILEC property in order to construct their own adjacent facility where central office collocation space is exhausted.

GTE submits that ILECs should consider permitting CLECs to lease unused ILEC property (at fair market value) for the purpose of constructing their own adjacent facility where central office collocation space is exhausted. Because availability of space and local circumstance vary, such requests should be handled on a case-by-case basis.¹¹⁹ Further, where an ILEC and CLEC mutually agree to adopt such an arrangement, the requesting CLEC should be responsible for all building permits, zoning variances, filing fees, other related administrative approvals, and the actual construction of the facility. Various other issues attendant to such construction would also be subject to private negotiations between the parties.¹²⁰

¹¹⁹ For example, not all central office locations – and particularly those in urban areas – will have adjacent unused property owned by the ILEC. Even where currently unused property exists, it may be reserved for future ILEC use or could even be designated for sale on the open market (in which case a CLEC could certainly purchase, rather than lease, it).

¹²⁰ For example, in GTE's case, lease of its property would always be contingent upon

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3. Third-party verification may be used to substantiate ILEC claims of space exhaustion.

In its comments, GTE supported allowing CLECs to verify ILEC claims of space exhaustion in conjunction with state determinations.¹²¹ Under its proposal, CLECs would be permitted to request an independent, third-party inspection of an ILEC's central office where the ILEC claims that space is exhausted and the state commission has not already verified that space is unavailable in that office.¹²² Where a state has made such a finding, this conclusion would be binding unless and until there is a material change in the ILEC's central office.¹²³

These procedures provide an efficient means to address CLECs' concern that they be able to substantiate claims of central office space exhaustion and "identify potential exhaustion conditions" before requesting collocation.¹²⁴ By relying on publicly available state determinations and conducting additional inspections where necessary, CLECs would be able readily to verify ILEC claims and obtain information concerning those offices where space is not available. Further, this approach would allow ILECs to avoid duplicative and unnecessary individual tours where the state has already made a

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approval of the architectural plans for the new CLEC facility. GTE also would reserve the right to construct the communications facilities across its property from the new CLEC location to the central office.

¹²¹ GTE Comments at 71-73.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ CompTel Comments at 43; see also MCI WorldCom Comments at 69-70.

determination that space no longer exists. Accordingly, the Commission need not require – as some CLECs suggest¹²⁵ – that ILECs allow CLECs to tour and inspect any central office upon a claim of space exhaustion.¹²⁶

* * * *

The proposals set forth in GTE's NASP build upon the existing framework of private negotiations and market-driven solutions to advance the Commission's stated goal in this proceeding – to develop alternative collocation arrangements that "facilitate[] deployment of advanced services to the greatest extent possible."¹²⁷ Moreover, by taking these additional steps, the Commission will obviate the need for a more sweeping expansion of its rules, such as national collocation standards and "cageless" collocation.

B. There Is No Basis For Requiring Collocation Of Switching Equipment Or Equipment Used To Provide Enhanced Services.

Several CLECs and IXC's urge the Commission to broadly revisit its existing rules and expand the scope of ILECs' collocation obligations to include a variety of switching

¹²⁵ See, e.g., Allegiance Telecom Comments at 6; Comments of NEXTLINK Communications, Inc. at 15 ("NEXTLINK Comments").

¹²⁶ An inspecting CLEC will have no incentive to agree with the ILEC that collocation space has been exhausted, even if this is manifestly the case. Thus, state commissions will be called upon to resolve these disputes in any event. GTE's NASP proposal eliminates this inefficiency, and provides the financial incentive for both ILECs and CLECs to ensure that their claims regarding the availability of central office space are accurate.

¹²⁷ *NPRM*, ¶ 138.

equipment, such as remote switching modules (“RSMs”), packet switches, and frame relay switches.¹²⁸ In addition, Intermedia suggests that ILECs should be obligated to collocate equipment such as “Internet routers and equipment associated with IP telephony,”¹²⁹ while NorthPoint supports allowing CLECs to place “remote monitoring equipment and order remote management facilities” in an ILEC’s central office.¹³⁰ Even further still, ALTS, CompTel, and MCI WorldCom propose that the Commission remove all restrictions on the type of equipment that an ILEC is required to collocate.¹³¹

Contrary to the assertions of these carriers, collocation of switches, routers, and other similar equipment is not compelled by § 251(c)(6) of the Act. Rather, as GTE and other commenters explained, extension of collocation requirements to switches and other equipment can neither be squared with the plain language of the Act, which only extends collocation obligations to equipment “necessary for interconnection or access to unbundled network elements,” nor with Commission precedent interpreting the Act.¹³²

¹²⁸ Allegiance Telecom Comments at 3; AT&T Comments at 73-77; CIX Comments at 24-25; Covad Comments at 22-23; e.spire Comments at 27; Intermedia Comments at 32-34; Qwest Comments at 52.

¹²⁹ Intermedia Comments at 35-36.

¹³⁰ NorthPoint Comments at 4; *see also* Covad Comments at 22-23.

¹³¹ CompTel Comments at 39; *see also* ALTS Comments at 43; MCI WorldCom Comments at 60-61 (all equipment necessary to provide local services should be collocated).

¹³² GTE Comments at 61-63; Bell Atlantic Comments at 37-38; Comments of U S WEST Communications, Inc. at 37-38 (“U S WEST Comments”). A number of federal district courts, acting under their Section 252(e)(6) authority to review interconnection agreements, have confirmed that ILECs may not be required to collocate switching equipment. *See, e.g., MCI Telecommunications Corp. v. Pacific Bell, and related*

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Further, U S WEST cautions that, “the Commission’s authority must not be stretched beyond what the statute clearly warrants” in order to avoid constitutional infirmities under the Takings Clause, as *Bell Atlantic v. FCC* makes clear.¹³³

Even if the Commission did have the authority to expand ILECs’ collocation obligations, which it does not, the effect of such rules would not ultimately inure to the benefit of CLECs. Most notably, as Bell Atlantic explains, “[e]xpanding the type of equipment that may be collocated would quickly deplete the available space in many offices and deprive potential competitors of the ability to collocate their legitimate network equipment.”¹³⁴ Indeed, even AT&T and other CLECs acknowledge the problems inherent in mandating collocation of switching and other equipment given that “physical collocation space is finite.”¹³⁵ Accordingly, GTE maintains that collocation of equipment beyond that clearly mandated by the Act should be left to private negotiations that permit parties to develop collocation arrangements suited to their particular needs and the circumstances present in the ILEC’s central office.

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cases, Nos. C 97-0670 SI, Order Regarding Parties’ Cross Motions for Summary Judgment (N.D. Cal. Sept. 29, 1998), *slip op.* at 24-26.

¹³³ U S WEST Comments at 36-37; *see also* GTE Comments at 62-64.

¹³⁴ Bell Atlantic Comments at 38; *see also* SBC Comments at 17; Ameritech Comments at 39-41.

¹³⁵ AT&T Comments at 75 (noting that “some reasonable limits on the types of equipment that can be placed in collocation spaces are appropriate” given finite space concerns); *see also* Intermedia Comments at 36 (“some limits on collocated equipment must be maintained in order to prevent space exhaust and to maximize available central office space”).

C. The Commission Should Decline To Follow The Suggestion Of Some Commenters That Comprehensive Changes To Existing Collocation Rules Are Warranted.

1. Uniform national collocation standards are unnecessary and impractical.

CompTel, Covad and others contend that the Commission should adopt national minimum collocation standards and detailed procedures for addressing collocation requests.¹³⁶ To this end, these parties submit detailed rules to govern, among other things, the time intervals for processing collocation requests, collocation price estimates, conditioning and construction of collocation facilities, and ILECs' allocation of site preparation costs.¹³⁷

GTE submits that national collocation standards would be unwise and unnecessary. As the record confirms, the substantial variations in local conditions, ILEC facilities, and CLEC needs make it impractical to craft uniform, detailed collocation rules that would encompass these unique circumstances. For example, the availability

¹³⁶ See CompTel Comments at 38; Covad Comments at 20-22; AT&T Comments at 72-73; NEXTLINK Comments at 13-14; NorthPoint Comments at 10-15.

¹³⁷ See, e.g., AT&T Comments at 73 (the Commission may rely on ILEC "best practices" to establish requirements governing the timeframe for responding to CLEC requests, processing of applications, space preparation, and supplying floor plans or other documentation upon a refusal to allow physical collocation); Covad Comments at Attachment 4 (ILECs must provide physical collocation within 45 days if conditioned space is available and may only charge *pro rata* amounts for conditioning charges); Intermedia Comments at 29 (urging the adoption of liquidated damages provisions); NEXTLINK Comments at 13-14 (ILECs should be required to provide quotes for collocation within 15 days, deliver standard collocation cages within 90 days, and provide conditioned space within 120 days); NorthPoint Comments at 13-15 (ILECs should be required to deliver collocation cages within 90 days); Sprint Comments at 16-

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of labor and materials varies widely by geographic area and with local demand factors, thereby precluding ILECs from having uniform preparation time intervals.¹³⁸ Moreover, the range of collocation arrangements discussed in the record – and the specific efforts noted by state commissions – further suggests that uniform rules are neither feasible nor appropriate.¹³⁹ Rather, the Commission should continue to allow these matters to be governed by private negotiations that encourage parties to develop appropriate implementation parameters that meet their specific requirements.¹⁴⁰

Along similar lines, the Commission should reject CLEC requests for broad rules regarding the technical feasibility of collocation between an ILEC's facilities within a region – and even among ILECs throughout the country. For example, Intermedia suggests that a particular collocation arrangement offered by an ILEC in one location

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18.

¹³⁸ See, e.g., Ameritech Comments at 37-38; Bell Atlantic Comments at 43-44.

¹³⁹ See Comments of the New York State Department of Public Service at 10-11 (“NYDPS Comments”); SBC Comments at 27-29; Texas PUC Comments at 2-10; U S WEST Comments at 39-40.

¹⁴⁰ GTE remains fully committed to working with its CLEC customers to develop mutually agreeable operational and implementation procedures for collocation. For example, GTE operating telephone companies have been working with both Covad and MGC to ensure that critical implementation issues are addressed promptly and that agreed-upon deadlines are met. Such CLEC-specific issues should continue to be addressed by good-faith efforts of the parties themselves and through state-established complaint procedures, if necessary. Accordingly, this proceeding is a wholly inappropriate venue in which to raise and seek to address CLEC allegations against GTE and other carriers. See, e.g., Covad Comments at 11; MGC Comments at 28.

should be presumed to be “technically feasible at all other ILEC offices.”¹⁴¹ ALTS further contends that “all state collocation determinations should be presumptively enforceable in any other jurisdiction.”¹⁴² These suggestions ignore the reality that collocation arrangements are tailored to specific ILEC and CLEC needs, including the technical capabilities of the ILEC’s central office. Accordingly, the feasibility of collocation should be left to case-by-case determinations developed in the context of private negotiations.

In an attempt to support its demand for new and burdensome collocation rules, at least one CLEC – MGC Communications – expends considerable effort enumerating a “list of horrors” concerning GTE’s collocation practices. While the instant proceeding is clearly an inappropriate forum to address such allegations, some warrant a brief response.¹⁴³ For example:

- MGC claims that GTE will only reimburse collocation set-up charges if a subsequent collocater enters within one year. While GTE briefly did adopt this practice, it has long since abandoned it. Set-up charges are, in fact, apportioned between all collocators.
- MGC compares BellSouth power rates in Georgia and Florida (\$5.00/amp) with a GTE rate in California (\$13.85/amp). What MGC fails to mention, however, is that the quoted California rate includes the cost of new

¹⁴¹ Intermedia Comments at 37; *see also* e.spire Comments at 25.

¹⁴² ALTS Comments at 52 n.36 (citing NTIA *ex parte* dated Jul. 17, 1998); *see generally* NorthPoint Comments at 8.

¹⁴³ Given the nature of this proceeding, GTE declines to engage in a complete point-by-point rebuttal of MGC’s allegations. Rather, its responses are intended to be concise and illustrate the baseless nature of MGC’s claims. GTE’s disinclination to address a particular allegation should not be interpreted as lending any credence to such a claim.

distribution equipment, which must be purchased and installed by GTE solely for the benefit of collocators.

- MGC challenges the timeliness with which GTE provides collocation facilities, but fails to acknowledge the impact of its own actions. For example, in the Alamitos project referenced by MGC, the project was delayed due to MGC's failure to deliver cables when it promised. In the Marina Del Rey project, the cage turn-over date is scheduled for October 30th because MGC's application requested completion by November 1.
- MGC complains that GTE is not meeting the "equal in quality" standard by delivering floor space with sealed concrete floors instead of tiles. In reality, GTE frequently places its own transmission equipment on sealed concrete floors rather than tiled floors, and the same have been provided to MGC and other collocators in a non-discriminatory manner. Indeed, MGC has accepted cages where the concrete floor has been sealed.
- MGC complains that GTE limits access to its physical collocation space to office hours only. In reality, GTE central offices in certain locations do not have separate CLEC entrances. In these situations, GTE still permits 24-hour access, but does require collocators to request an escort since access to the CLEC equipment is through GTE's equipment area.

As these brief responses show, MGC's allegations are meritless, and certainly form no basis for the Commission to contemplate the imposition of new, unlawful, and imprudent collocation rules.

2. Commenters confirm GTE's concern that "cageless" collocation options raise grave security concerns and would substantially increase collocation costs.

A number of CLECs submit that the Commission must require ILECs to offer "cageless" collocation so that CLEC equipment can be located in the same conditioned environment as the ILEC's own equipment.¹⁴⁴ According to Covad, these purely

¹⁴⁴ See, e.g., ALTS Comments at 47; AT&T Comments at 85-87; CompTel Comments at 41; e.spire Comments at 23-24; Comments of the Information Technology Association of America at 17, 20 ("ITAA Comments"); RCN Telecom Comments at 12-13.

“cageless” arrangements are necessary – notwithstanding the potential availability of smaller cages and shared collocation – because otherwise CLECs will be required “to finance the construction of large, partitioned, and separate collocation ‘rooms’” in order to physically collocate equipment.¹⁴⁵ GTE disagrees for several reasons.

First, the record underscores the substantial security concerns inherent in any “cageless” environment where the ILEC does not retain the ability to ensure network integrity and prevent intentional or unintentional service interruptions. As SBC explains, cageless collocation presents an “unacceptably high risk of harm to the ILEC’s services” and proposed alternatives to address such concerns simply cannot “affirmatively prevent unauthorized access or harm to another carrier’s equipment and network.”¹⁴⁶ Echoing these security concerns, the Public Utility Commission of Texas notes that it has required “physical partitioning of collocation areas” in central offices given security issues, and other states recognize the implications of giving non-ILEC personnel access to ILECs’ facilities.¹⁴⁷ Indeed, in a recent ruling denying Covad’s request for “cageless” collocation in Massachusetts, the Massachusetts Department of Energy and Telecommunications noted that cageless collocation raises a potentially

¹⁴⁵ Covad Comments at 27.

¹⁴⁶ SBC Comments at 22, 26 (emphasis omitted).

¹⁴⁷ Comments of the Minnesota Department of Public Services at 18 (“MNDPS Comments”) (noting the security concerns and service quality issues that may be presented in “cageless” arrangements); Comments of the Illinois Commerce Commission at 10-11 (“Illinois Commerce Commission Comments”) (noting that ILECs should have the flexibility to determine the type of security necessary for a particular central office).

“uncontrollable and therefore unacceptable” increased risk of human error and damage to telephone company facilities and “intractable security problems.”¹⁴⁸

These issues present a very real threat to life and property. For example, if a CLEC technician even inadvertently knocks out an ILEC’s switch, the problem is not one of placing the blame on the CLEC; it is the fact that customers served by the switch cannot contact 911 or make other emergency calls. These concerns should be afforded great weight by the Commission and not lightly dismissed based solely on unsubstantiated CLEC claims that security issues may be readily overcome.

Second, even if it were feasible to address security concerns adequately, GTE agrees that the “purported benefits of unsecured ‘cageless’ – reduced cost, less space and quicker installation – are all illusory.”¹⁴⁹ The additional security measures proposed by CLECs – such as remote video monitoring, escorts, or access by controlled security cards – each involve significant upfront and ongoing investment of resources. In turn, these costs would ultimately increase collocation costs and must be borne by those who impose them.¹⁵⁰

¹⁴⁸ See *Petitions of Covad Communications Company, Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration of an Interconnection Agreement Between Covad and New England Telephone and Telephone Company, d/b/a Bell Atlantic-Massachusetts*, D.T.E. 98-21, slip op. at 11 (June 5, 1998).

¹⁴⁹ Bell Atlantic Comments at 34.

¹⁵⁰ The Commission should reject Covad’s claim that the costs for security arrangements (including those associated with cageless collocation) must be placed upon “the carrier that desires more security.” Covad Comments at 30-31. Contrary to Covad’s mischaracterization, ILECs merely seek to preserve existing levels of security, network reliability, and integrity, rather than imposing additional security measures. Further, allowing CLECs to benefit from cageless collocation while avoiding any

(Continued...)

3. Reconfiguration of ILEC central office space will not facilitate cost-effective collocation.

Several CLECs urge the Commission to require ILECs to reconfigure their central offices, remove equipment, and relocate non-network related functions to other locations, claiming that such drastic steps are needed to increase the amount of space available for physical location.¹⁵¹ The Commission should decline to follow these suggestions because they are unworkable and would increase, rather than decrease, the cost of collocation for all parties.

GTE designs its central office locations in the most efficient manner possible, taking into account a variety of business, technical, and operational concerns. It is neither feasible nor economically efficient to reconfigure these offices at the whim of a CLEC that believes equipment should be replaced or administrative functions could be practically accomplished elsewhere. Moreover, it is not for the CLEC to make business and operational decisions about the utility of ILEC equipment or facilities.¹⁵² Thus, the Commission should not permit CLECs to dictate space deployment in ILEC offices.

(...Continued)

associated cost will create perverse economic incentives to collocate in a cageless environment at the ILEC's expense.

¹⁵¹ See Allegiance Telecom Comments at 5 (urging the Commission to require ILECs, *inter alia*, to "replace older equipment and to install all new equipment in a space efficient manner"); AT&T Comments at 88-91; CompTel Comments at 44; NEXTLINK Comments at 14-15. With respect to removal of obsolete equipment, see section III.A.3., *supra*.

¹⁵² See Bell Atlantic Comments at 43.

Of course, even if it were practical for an ILEC to reconfigure a particular central office, the costs of this effort would have to be borne by the party requesting that the space be freed up. Given other collocation options available to CLECs, it does not seem reasonable to conclude that such extensive efforts would be cost-effective.

IV. THE EXPLOSIVE GROWTH IN THE ADVANCED SERVICES MARKET IS SUBSTANTIAL EVIDENCE THAT ADDITIONAL, DETAILED LOCAL LOOP RULES ARE UNNECESSARY.

In its opening comments, GTE demonstrated that the Commission's existing local loop rules are sufficient to ensure fair competition in the advanced services market.¹⁵³ GTE further detailed how incumbents and CLECs are both actively proceeding with testing, developing deployment schedules, and rolling out advanced services.¹⁵⁴ The commenting parties only further confirm that competition and innovation are aggressively driving this market. There is no better way to halt the vigorous investment and product development occurring today in the advanced services market by all participants than to impose intrusive new regulations on a select few – the ILECs. Accordingly, GTE and a number of other parties urged the Commission to resist the temptation to over-regulate this dynamic market by adopting additional rules addressing only one means of providing advanced services – local loops.

¹⁵³ GTE Comments at 76-79.

¹⁵⁴ *Id.*

In lieu of overly broad loop rules, the Commission should adopt GTE's proposed NASP. As part of its NASP proposal, GTE is willing to provide xDSL-conditioned loops voluntarily, where technically feasible, regardless of whether it is serving that particular market (so long as it recovers its actual costs of conditioning the loops). This plan demonstrates GTE's firm commitment to working with the Commission and CLECs to ensure that advanced services are delivered to all customers and geographic areas as expeditiously as possible.

A. Detailed National Rules Governing The Provision Of Local Loops Would Undermine Flexible Private Negotiations As Well As States' Authority.

The Commission need not establish additional nationwide standards to govern the provision of local loops. As GTE and a number of other parties demonstrated in their initial comments, the Commission's existing local loop framework is more than sufficient to ensure that advanced services are delivered to the public.¹⁵⁵ These parties agree that the rules established in the *Local Competition* proceeding provide the incumbents and their competitors with a basic set of local loop standards. As the Commission recently recognized in the *Advanced Services NPRM*, any further requirements concerning the local loop should be left to the states and/or private negotiations.¹⁵⁶ This combination of broad federal standards, specific state requirements, and private negotiations is a framework that allows interested parties to

¹⁵⁵ See, e.g., GTE Comments at 76-80; Bell Atlantic Comments at 44-45.

¹⁵⁶ *NPRM*, ¶ 155.

tailor their arrangements in a mutually acceptable manner. The additional, detailed national local loop standards advocated by some parties would only undermine the flexibility intended by Congress in enacting the local competition provisions of the 1996 Act.

Indeed, expanding the mandatory national local loop rules as requested by some IXCs and CLECs will do more harm than good.¹⁵⁷ For example, ALTS proposes a set of national local loop standards as well as “technology principles” to guide the provision of advanced services.¹⁵⁸ In addition, AT&T requests that the FCC establish minimum transmission speed and service standards for certain loop configurations.¹⁵⁹ These proposals require far too much regulatory micromanagement; federal prescriptions for OSS and sub-loop unbundling, for example, are simply unwarranted. As SBC points out, “[n]ational design rules would have a significant and negative effect on the efficiency of the procedures used to provision loops, while having no significant effect on the quality or capability of the unbundled loops.”¹⁶⁰ Other commenters also recognize that uniform, nationwide rules for loop provisioning are inappropriate given the variations among ILEC networks and the types of equipment deployed by CLECs.¹⁶¹

¹⁵⁷ See, e.g., Allegiance Telecom Comments at 7; ALTS Comments at 56-58; Cable & Wireless Comments at 13-14; e.spire Comments at 33-34; MCI WorldCom 70-71; Sprint Comments at 19.

¹⁵⁸ ALTS Comments at 56-58.

¹⁵⁹ AT&T Comments at 50-52.

¹⁶⁰ SBC Comments at 30.

¹⁶¹ See U S WEST Comments at 43-44.

The Commission should resist any temptation to regulate every minute detail of local loop provisioning. The 1996 Act, judicial precedent, the realities of the marketplace, and prior experience confirm that the adoption of any further local loop requirements should be left to the states as well as negotiations between interested parties. These entities are in a far better position than the Commission "to address specific issues associated with incumbent LEC loop provisioning."¹⁶²

Neither the *NPRM* nor any commenter has demonstrated a need for additional federal local loop rules. While GTE does not believe any additional Commission action is needed, at most, the agency should identify a range of acceptable, but not mandatory, outcomes. This approach would preserve the rights of the states to develop their own standards, as well as the rights of private parties to develop tailored approaches given the varying circumstances (*e.g.*, local conditions, ILEC networks, CLEC equipment). The Commission should adhere to the words of ALTS and "let the marketplace sort out the best" solutions.¹⁶³ Rigid national standards are simply unwarranted, unlawful, and would, in fact, thwart competition.

B. The Commission Need Not Adopt Any Further OSS Rules To Ensure That Competitors Have Nondiscriminatory Access To Necessary Loop Information.

The Commission's existing rules governing operations support systems ("OSS") already require incumbents to grant CLECs nondiscriminatory access to their OSS

¹⁶² Illinois Commerce Commission Comments at 13.

¹⁶³ ALTS Comments at 58.

functions for pre-ordering, ordering, and provisioning of loops.¹⁶⁴ Nonetheless, some CLECs and IXCs urge the FCC to require ILECs to provide electronic access to an extensive list of details concerning ILECs' local loops.¹⁶⁵ MCI WorldCom, for example, demands that ILECs provide nondiscriminatory access to the following information: (1) whether the loop passes through a remote terminal; (2) whether it includes any attached electronics; (3) the condition and location of the loop; (4) the loop length, and (5) electrical parameters of the loop.¹⁶⁶

GTE agrees with SBC that requests for access to electronic databases with detailed loop information are premature.¹⁶⁷ As SBC points out, the Commission's statements (as well as those of the commenting parties) regarding access to extensive loop inventory records and electronic databases¹⁶⁸ "seem to be based upon beliefs that such records exist and are entirely in electronic format, and thus providing access is as 'simple' as providing access to another OSS."¹⁶⁹ These assumptions are flatly incorrect.

¹⁶⁴ See 47 C.F.R. § 51.319(f).

¹⁶⁵ See, e.g., e.spire Comments at 35; MCI WorldCom Comments at 71-72. As it did in the context of collocation, MGC proffers a long list of unfounded allegations against GTE. GTE will not attempt to address the specifics of these claims here, as the parties are still in discussions and the allegations are being considered, as appropriate, by state commissions. Suffice it to say that, the instant rulemaking proceeding is a wholly inappropriate forum in which to raise these issues.

¹⁶⁶ MCI WorldCom Comments at 72; see also e.spire Comments at 35.

¹⁶⁷ See SBC Comments at 31.

¹⁶⁸ See NPRM, ¶ 158.

¹⁶⁹ SBC Comments at 31.

Most, if not all ILECs, are in the same position. They simply do not have the type of electronic databases referred to by the Commission and the commenting parties. Nor do they compile and maintain the type of detailed loop records sought by some.

As GTE explained, it is in the process of developing an interface for delivery in 1999 that will allow CLECs to access GTE databases to determine the feasibility of offering xDSL services over a specific loop.¹⁷⁰ Although this database will permit competitors to determine if a loop is xDSL-capable, it will not provide the type of specific loop characteristics requested by a number of commenters (e.g., wire gauge, loop length, presence and type of equipment that might interfere with advanced services, presence and type of equipment to facilitate the provision of advanced services, and pre-qualification criteria and data).¹⁷¹ Sprint is in a similar position: “[N]o such database exists at this time for Sprint ILECs....”¹⁷²

Even when GTE's electronic interface is finally activated, it still will not (and cannot) be 100 percent accurate, and human intervention will remain necessary. As SBC explains, loop make-up, which is essential to understanding a specific loop's characteristics, often is available only through a manual look-up using engineering cable maps.¹⁷³ Furthermore, as Ameritech illustrates, there are significant limitations associated with an electronic system that stores loop information:

¹⁷⁰ GTE Comments at 82 n.173.

¹⁷¹ See AT&T Comments at 55.

¹⁷² Sprint Comments at 21.

¹⁷³ SBC Comments at 31.

The assessment of loop availability is provided by human engineering knowledge, know-how and experience, not solely databases and software. Since the loop inventory database contains only partial and dynamic information, providing access to it would mislead CLECs by leaving the false impression that xDSL-compatible loops are not available at a location, where [an ILEC] may in fact be able to provide one.¹⁷⁴

The human component of determining whether a loop is xDSL-compatible is inescapable.

Not only would an electronic database be less than 100 percent accurate, but, as BellSouth points out, the creation and maintenance of such a database would also be an “administrative nightmare”:

Large ILECs such as BellSouth have literally millions of loops across their regions. Compiling information about loop conditions could take years and the expenditure of an enormous amount of resources. Moreover, such information would almost never be reliable. Changes to loop conditions occur constantly, and attempting to keep track of loop information that competitors might desire would be an administrative nightmare.¹⁷⁵

Even Sprint echoes the fact that compiling data and maintaining a detailed electronic database would require a “massive amount of work.”¹⁷⁶ Gathering the data is only part of the problem.

Clearly, the Commission should not require ILECs to develop and maintain a new database and collect the detailed information sought by some commenters. First,

¹⁷⁴ Ameritech Comments at 16-17.

¹⁷⁵ BellSouth Comments at 48-49.

¹⁷⁶ Sprint Comments at 21.

the 1996 Act does not mandate such an outcome; an ILEC is merely required to provide its competitors with the same access it provides to itself.¹⁷⁷ To ensure that CLECs receive equal treatment, GTE handles all loop requests in the same manner. Besides the lack of statutory authority to require ILECs to create a new database, the costs associated with such an endeavor significantly outweigh the benefits, especially in light of the fact that physical inspections and human involvement will remain indispensable components of the loop assignment process for advanced services. As GTE explained, it requires a prior physical evaluation of any loop over which advanced services will be provided, both for its own advanced services as well as those of any competitor purchasing the loop as an UNE.

As a reasonable alternative, GTE supports SBC's proposal that, "[i]nstead of providing a CLEC direct access to an ILEC's loop inventory, the more feasible approach would be for the CLEC to provide to the ILEC the parameters of the technology the CLEC intends to use on the loop. The ILEC would then be able to thoroughly search the terminals that feed the service location and determine whether a CLEC's request could be fulfilled and, if not, what alternatives may be available."¹⁷⁸ This framework strikes a reasonable balance between the CLECs' need for information regarding loop capabilities and the ILECs' need to derive loop information from a variety of sources, including human input. GTE also concurs with Ameritech's conclusion that, "[a]s long as an ILEC provides loop information and provisioning within its contractual or tariff

¹⁷⁷ *Iowa Utilities Board*, 120 F.3d at 812.

¹⁷⁸ SBC Comments at 32.

commitments, this is an area that neither requires, nor lends itself to hard and fast national rules.”¹⁷⁹ There is no need for the Commission to further complicate the matrix of OSS requirements by imposing additional obligations not mandated by the 1996 Act.

C. The Record Supports An Industry Consensus Approach To Spectrum Management.

All of the commenting parties recognize that spectrum management is absolutely critical to network reliability and interoperability.¹⁸⁰ Several parties acknowledge the current work being done by the various standards bodies, including the T1E1.4 Working Group.¹⁸¹ Like AT&T, Sprint, Ameritech and a number of others, GTE supports a collaborative process in which all interested parties work together to develop appropriate standards.¹⁸² The industry forum process will allow technical experts to identify and resolve potential and real interference problems. Indeed, as Ameritech notes, “[s]uch collaboration involving all competing interests is the best way to quickly sort real from imaginary problems.”¹⁸³ The industry is already moving forward on this

¹⁷⁹ Ameritech Comments at 17.

¹⁸⁰ See, e.g., ALTS Comments at 60; Ameritech Comments at 26-27; AT&T Comments at 57-60; Bell Atlantic Comments at 48; Covad Comments at 44-45; e.spire Comments at 36; MCI WorldCom Comments at 73.

¹⁸¹ See, e.g., ALTS Comments at 61; Ameritech Comments at 26-27; BellSouth Comments at 52; MCI WorldCom Comments at 74-75.

¹⁸² See, e.g., AT&T Comments at 60-61; Ameritech Comments at 26-27; Intermedia Comments at 52; Sprint Comments at 21. A number of parties, including GTE, also support an industry consensus approach to the development of standards for attaching equipment at the central office end of a loop. See, e.g., Bell Atlantic Comments at 50; GTE Comments at 90-91.

¹⁸³ Ameritech Comments at 27.

issue. For example, the T1E1.4 Working Group has already begun the development of a draft ANSI standard for Local Loop Spectral Compatibility.¹⁸⁴ The Commission should take a hands-off approach and allow the standards process to resolve spectrum management and interference problems.

In the interim, however, while these standards are being developed, incumbents must be permitted to manage their networks in a manner that ensures service reliability and integrity. As GTE explained in its initial comments, it is responsible for spectral compatibility of all services deployed in its network.¹⁸⁵ To accomplish this task, GTE establishes a site-specific spectral compatibility deployment guideline, based on existing technologies in the network and any new technologies being implemented. In the absence of industry standards, GTE has developed a comprehensive system of equipment testing and deployment guidelines to minimize spectrum interference problems.

CLECs also play a critical role in avoiding spectrum interference. As GTE explained, any carrier seeking to provide xDSL service “must clearly indicate that the loop is intended to provide xDSL service and identify the power spectral density intended for the service.”¹⁸⁶ Bell Atlantic also recognizes that, to ensure compatibility, an ILEC must “know the characteristics of the technology a carrier wishes to deploy and

¹⁸⁴ *Id.*

¹⁸⁵ GTE Comments at 83-85.

¹⁸⁶ *Id.* The power spectral density (“PSD”) is the transmission power level across the frequency range of the service being provisioned. The facility provider must manage PSD so as to avoid spectral interference.

the specific type of loops over which they intend to use the technology.”¹⁸⁷ The Commission therefore should allow the industry forum process to develop spectrum management standards and guidelines, and, in the interim, permit ILECs to manage their networks in the most efficient manner to preserve service reliability.

D. Spectrum Unbundling Is Not Required By The Act, Raises Significant Technical And Administrative Difficulties, And Should Not Be Mandated.

A number of parties support spectrum sharing and urge the Commission to require ILECs to unbundle loop spectrum so that different carriers may provide voice and data services over the same loop.¹⁸⁸ GTE continues to oppose this type of spectrum unbundling for a number of reasons. First, as demonstrated in GTE’s opening comments, loop spectrum is not a network element under the 1996 Act.¹⁸⁹ Spectrum, defined as the range of electromagnetic radio frequencies used in the transmission of sound, data, and television,¹⁹⁰ falls outside the category of network elements as delineated by Congress. Specifically, spectrum is not part of the physical facilities of the local network; neither is it a feature, function, or capability. As a result, loop spectrum is not subject to the unbundling requirements of § 251(c)(3).

¹⁸⁷ Bell Atlantic Comments at 48.

¹⁸⁸ See, e.g., Ad Hoc Telecom Comments at 28; AT&T Comments at 62-63; e.spire Comments at 37; Information Technology Association of America Comments at 18.

¹⁸⁹ GTE Comments at 86-87.

¹⁹⁰ Federal Communications Public Service Division; A Glossary of Telecommunications Terms (1998 Ed.), <<http://www.fcc.gov/consumers/glossary.html>>.

Second, even if loop spectrum were a network element, it would not be subject to unbundling. Loop spectrum satisfies neither the “necessary” nor the “impair” standards of § 251(d)(2), which the Commission must use to determine whether a network element should be made available as a UNE. Unbundled loop spectrum is not “necessary” to enable CLECs to provide advanced services. Furthermore, the lack of access to a portion of spectrum on a loop in no way “impair[s]” the ability of the requesting carrier to provide advanced services. As GTE explained, a CLEC that does not wish to provide voice service over an xDSL-capable loop purchased as a UNE can make arrangements with other carriers, including the ILEC, to provide such service.¹⁹¹

Third, not only is spectrum unbundling contrary to the 1996 Act, but as a number of commenters have shown, it raises significant interference and administrative concerns. A few parties erroneously assert that loop sharing raises no technical or interference difficulties. For example, Allegiance Telecom states, “loop sharing would not create significant technical difficulties because existing modems and DSLAMs already permit provision of different data services, or voice and data, over the same loop.”¹⁹² This assertion is oversimplified. GTE urges the Commission to consider thoroughly the technical and operational difficulties associated with spectrum sharing/unbundling. Ameritech and SBC identified a number of trouble spots. For example:

¹⁹¹ GTE Comments at 89.

¹⁹² Allegiance Telecom Comments at 8.

- “Spectrum sharing may adversely impact existing and potential new advanced CPE and voice services.”¹⁹³
- “Spectrum sharing is a complex, multi-faceted issue that will require development of new and modified industry standards, administration capabilities, operational procedures, and OSS.”¹⁹⁴
- “The feasibility and cost of manufacturing such equipment [to provide spectrum sharing] in a manner that meets industry standards will need to be analyzed and understood based on new standards and capabilities.”¹⁹⁵
- “The shared use of the local loop could result in multiple complaints from different parties, all arising from a problem with one carrier’s service.”¹⁹⁶
- “Without a clear point of demarcation between each carrier’s responsibility and the ability of each to manage and control its network, it would be difficult, if not impossible, to perform testing, repair and maintenance on a timely basis....”¹⁹⁷

Ameritech is right when it states: “it is premature to mandate spectrum sharing on unbundled loops until the potentially undesirable/unintended adverse impact of that decision on voice services is understood.”¹⁹⁸ The unknowns are too great, and the risks too severe, to move full steam ahead without more information on the technical constraints. If the Commission were to conclude that loop spectrum is a UNE (which it is not), significant up-front work must be done to resolve a number of issues, including:

¹⁹³ Ameritech Comments at 22.

¹⁹⁴ Ameritech Comments at 21-22.

¹⁹⁵ Ameritech Comments at 21-22.

¹⁹⁶ SBC Comments at 38.

¹⁹⁷ SBC Comments at 38.

¹⁹⁸ Ameritech Comments at 22.

service quality and reliability; equipment compatibility; inter-carrier cooperation; operational procedures and practices; administrative systems; and OSS.¹⁹⁹

GTE and others support a permissive spectrum sharing framework that would allow carriers to share spectrum over the same loop, but would not mandate that ILECs offer such unbundling arrangements.²⁰⁰ Specifically, the Commission should state that, if a competitor purchases an xDSL-capable loop as a UNE, it should be responsible for not only the provisioning of all services that a customer desires over that particular facility but also all maintenance and customer care. The CLEC would be free to negotiate with other carriers (including the ILEC) to take the voice traffic as a subcontractor to the CLEC.

E. The Commission Should Not Modify Its Existing Definition Of The Local Loop.

GTE's opening comments explained that there is no need to modify the loop definition established in the *Local Competition* proceeding in order to promote the deployment of advanced services.²⁰¹ Parties such as AT&T, Covad and MCI WorldCom, however, propose extensive modifications to the Commission's definition of

¹⁹⁹ Ameritech Comments at 21; see also SBC Comments at 39-41 (detailed discussion of the problems associated with trying to provision, install, maintain, troubleshoot, and manage spectrum unbundling).

²⁰⁰ See, e.g., Ameritech Comments at 27-28; SBC Comments 42.

²⁰¹ GTE Comments at 91-92.

the local loop. For example, AT&T asks the FCC to adopt three separate loop definitions.²⁰²

The Commission has already spoken on this issue. When the agency initially devised the local loop definition, it was fully cognizant of the existence of advanced service capabilities and incorporated these capabilities into its definition.²⁰³ AT&T and other parties now want the Commission to broaden the definition to include components that cannot, by any means, be considered part of the local loop.²⁰⁴ For example, contrary to AT&T's suggestions,²⁰⁵ DSLAMs and splitters are separate and distinct pieces of equipment with their own specific functions within the network. Such equipment can hardly be considered part of the local loop. Moreover, as GTE showed, electronics that make copper loops xDSL-functional, such as DSLAMs, are not network elements subject to the unbundling requirements of § 251(c)(3).²⁰⁶ AT&T's proposed loop definitions are nothing more than a thinly veiled attempt to bypass the 1996 Act and unlawfully obtain access to ILEC electronics as UNEs. Moreover, AT&T's

²⁰² AT&T Comments at 43-47. AT&T proposes that the FCC establish three loop definitions: (1) basic loop; (2) xDSL capable loop; (3) xDSL equipped loop. *Id.* at 45.

²⁰³ A local loop is defined as "two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS-1 level signals." *Local Competition Order*, 11 FCC Rcd 15499, 15691 (1996).

²⁰⁴ See AT&T Comments at 45 (defining an xDSL equipped loop as a basic loop that includes all necessary transmission enhancing equipment within the local network, such as a DSLAM and splitters).

²⁰⁵ *Id.*

²⁰⁶ GTE Comments at 103-106.

proposed definition of a loop (loop plus DSLAM) clearly violates the Eighth Circuit's prohibition on requiring ILECs to recombine network elements.²⁰⁷ Simply stated, modification of the loop definition in the manner requested by some parties would violate the law and add another unnecessary layer of regulation. Thus, the Commission should not revise its local loop definition.

F. The Commission's Proposed Rule Requiring Incumbents To Unbundle DLC-Delivered Loops Ignores Technical Realities.

GTE was joined by a number of commenters in detailing the serious technical and operational difficulties associated with unbundling loops at the digital loop carrier ("DLC") or similar remote concentration device.²⁰⁸ This situation is a perfect example of the problems that can arise when regulators act prematurely and apply inappropriate rules to new or future technologies. In the *Local Competition Order*, the Commission concluded that it was "technically feasible" to unbundle loops that pass through DLCs and required ILECs to unbundle such loops for requesting carriers.²⁰⁹ As a number of parties point out, the Commission's conclusion was, at best, hasty.

For example, according to U S WEST, "[p]resently, no one served over a DLC-delivered loop can receive DSL service."²¹⁰ In addition, Ameritech states that, "DLC

²⁰⁷ See *Iowa Utilities Board*, 120 F.3d at 813.

²⁰⁸ See, e.g., GTE Comments at 93; U S WEST Comments at 48-49.

²⁰⁹ *Local Competition Order*, 11 FCC Rcd at 15692.

²¹⁰ U S WEST Comments at 48.

systems cannot yet support xDSL-compatible loop transmission.”²¹¹ Ameritech further notes that the FCC’s tentative conclusion (*i.e.*, providing an xDSL-compatible loop as a UNE is presumed to be technically feasible if the ILEC is capable of providing xDSL-based services over that loop) “incorrectly implies that, in a majority of cases, it is technically feasible for ILECs to provide xDSL-based service over DLC systems; in fact, just the opposite is true.”²¹² Thus, the record firmly establishes that the industry is still in the infancy stage of developing the equipment needed to accomplish unbundling of DLC-delivered loops:

Even though certain vendors are developing plug-in units that may facilitate unbundling of certain DLC systems, these units have not yet been commercially introduced or fully tested. Moreover, these units will not provide the capability of supporting unbundled xDSL-transmission via DLC systems supported by copper facilities, and may require significant augmentation before unbundled loops provided over fiber-based DLC systems can support xDSL-compatible loops.²¹³

Even the ILECs’ competitors acknowledge that the equipment necessary to unbundle DLC loops does not yet exist. For example, Covad explains that DSL equipment vendors are still in the development stage of creating “suitable digital line cards that may be inserted into these DLCs.”²¹⁴ In addition, Sprint describes in detail the host of technical difficulties associated with unbundling a DLC-delivered loop.

²¹¹ Ameritech Comments at 13.

²¹² *Id.*

²¹³ Ameritech Comments at 13 n.26.

²¹⁴ Covad Comments at 52.

According to Sprint, such unbundling will work only under very specific conditions. For example, the loop must be a certain length or there must be sufficient space at the remote terminal to collocate a DSLAM.²¹⁵ In any event, Sprint concludes that “[t]here may not be enough industry experience with provisioning [loops passing through DLCs] that all of the problems – much less the solutions – can even be identified at this time.”²¹⁶ Indeed, “it may simply be impractical for competing carriers to use UNEs and collocation to deploy xDSL-based services where intermediate concentration devices are used.”²¹⁷ GTE urges the Commission to consider seriously the technical limitations associated with unbundling DLC-delivered loops.

GTE also urges the Commission not to adopt its tentative conclusion that CLECs may request any technically feasible method of unbundling a DLC-delivered loop.²¹⁸ As demonstrated above, the technical complexity associated with such unbundling, not to mention the lack of equipment, overwhelmingly supports a veto of unrestricted unbundling via any “technically feasible” method. As GTE stated, the dozens of different types of DLCs and switch remote units throughout its network would make the task of accommodating every feasible method of unbundling staggering.²¹⁹ Thus, to ensure network reliability and avoid the onerous burdens associated with multiple

²¹⁵ Sprint Comments at 29-30.

²¹⁶ Sprint Comments at 27

²¹⁷ Sprint Comments at 30-31.

²¹⁸ See *NPRM*, ¶ 171.

²¹⁹ GTE Comments at 93.

unbundling methods, the Commission should not mandate that an ILEC must unbundle a DLC-delivered loop via the particular method requested by the CLEC. An incumbent should be deemed to have fulfilled its § 251(c)(3) obligation when it provides an unbundled conditioned loop, regardless of the method used to achieve the unbundling.

G. Sub-Loop Unbundling Should Be Provided By A Bona Fide Request Where Technically Feasible.

GTE continues to support allowing carriers to address sub-loop unbundling on a case-by-case basis. As explained in its opening comments, GTE has established a framework whereby a CLEC can submit a bona fide request ("BFR") for sub-loop unbundling.²²⁰ To date, GTE has already entered into 172 interconnection agreements that provide for sub-loop unbundling upon a bona fide request. This approach allows an ILEC to address the specific needs of the requesting carrier and to determine how best to achieve the capabilities sought by the carrier given the ILEC's network configuration. Furthermore, this approach is incorporated into GTE's NASP proposal – the goal of which is to establish a flexible yet effective framework that allows market forces, rather than regulation, to drive the development and deployment of advanced services. Accordingly, GTE urges the Commission to conclude that the bona fide request process is more appropriate to achieve sub-loop unbundling than an inflexible, FCC-imposed obligation.

²²⁰ GTE Comments at 99.

H. The Commission's Proposed Rule Regarding Collocation At The Remote Terminal Raises Serious Technical And Operational Issues.

The ILECs' comments persuasively detail the difficulties associated with collocation at the remote terminal. For example, BellSouth explains, "[i]n most remote terminals, space is quite limited, and ILECs often will be required to deny requests for remote terminal collocation. Additionally, DLC cabinets have severe power and heat dissipation limitations, which could require denial of collocation requests even if space were available."²²¹ Not only does collocation at the remote terminal raise space and other physical concerns, but it typically carries a higher price tag and offers inferior service quality. All of these factors make sub-loop unbundling at the remote terminal less desirable for CLECs.²²² In addition to being less desirable, collocation at the remote terminal is also typically unnecessary.²²³ As BellSouth explains, CLECs can obtain access to sub-loop elements through negotiated agreements without collocation at the remote terminals.²²⁴

Even Covad correctly recognizes that remote terminal collocation is not a perfect solution. According to Covad, collocation at remote terminals "is not likely to have much immediate, near-term impact upon deployment [of advanced services], because substantial remote terminal collocation would involve . . . physical space, access, rights

²²¹ BellSouth Comments at 50.

²²² Ameritech Comments at 18.

²²³ Ameritech Comments at 18; BellSouth Comments at 50.

of way, and local zoning and permit issues.”²²⁵ The Commission therefore should not mandate that ILECs permit collocation at remote terminals.

V. THE RADICAL AND OVERBROAD UNBUNDLING REQUIREMENTS PROPOSED BY THE COMMISSION AND COMMENTING PARTIES FOR OTHER FACILITIES CONFLICT WITH THE ACT AND THE PUBLIC INTEREST.

In its opening comments, GTE urged the Commission not to impose new and intrusive unbundling obligations on incumbents. For example, GTE demonstrated that the electronics needed to make a copper loop xDSL-functional (e.g., DSLAMs) do not satisfy the statutory criteria of a network element, and, therefore, are not subject to the § 251(c)(3) unbundling requirement.²²⁶

A few parties suggest that the Commission should expand its list of network elements that must be offered as UNEs. For example, Allegiance Telecom, Qwest, and RCN Telecom ask the Commission to conclude that dark fiber is an unbundled network element.²²⁷ Dark fiber, however, does not meet the statutory definition of a network element. The 1996 Act defines a “network element” as those facilities that are “used in the provision of telecommunications service.”²²⁸ Since ILECs do not use dark fiber in

(...Continued)

²²⁴ BellSouth Comments at 50.

²²⁵ Covad Comments at 53.

²²⁶ GTE Comments at 103.

²²⁷ Allegiance Telecom Comments at 14; Qwest Comments at 14-16; RCN Telecom Comments at 17-20.

²²⁸ 47 U.S.C. § 153(29) (emphasis added).

their networks (transport circuits must be "lit" to be used), dark fiber does not satisfy the statutory definition of a network element.²²⁹

Intermedia likewise asks the Commission to expand its unbundling requirements. Intermedia asserts that all equipment used to provide advanced services should be unbundled, including packet switching.²³⁰ Packet switches, however, cannot be subject to unbundling for the same reason that xDSL electronics cannot be subject to unbundling: packet switches are readily available in the market on a nondiscriminatory basis and therefore do not satisfy the § 251(d)(2) standard.

Finally, it is an inescapable fact that imposing additional unbundling obligations on ILECs will depress investment incentives. Scott Cleland, a telecommunications analyst for the Legg Mason Precursor Group, accurately explains the realities of the marketplace:

By forcing deep [] discounts of incumbent's networks not based on actual costs but on the forward-looking costs regulators want them to be, regulators powerfully discourage deployment of new technologies by everyone concerned. Why should a competitor invest capital if they can lease the incumbents' network without risk at a lower cost than even the competitor could build it for? Why should an incumbent invest to upgrade its plant if it will be forced to resell it for less than it costs to provide it?²³¹

²²⁹ See, e.g., *MCI Telecommunications Corp. v. Pacific Bell*, and related cases, No. C 97-0670 SI, Order Regarding Parties' Cross Motions for Summary Judgment (N.D. Cal. Sept. 29, 1998), *slip op.* at 34-35.

²³⁰ Intermedia Comments at 59.

²³¹ Scott Cleland, Legg Mason Precursor Group Research Technology Team, Testimony Before the Antitrust Subcommittee on the Judiciary (May 19, 1998).

Commissioner Tristani has also rightfully expressed concern about the chilling effect of overbroad unbundling requirements on investment: "In the rush to unbundle networks, . . . we need to carefully consider the effect of unbundling on the incumbent's incentive to innovate and deploy new technologies . . ." ²³² Thus, "in order to strike a balance between facilitating market entry for CLECs and preserving innovation incentives for ILECs," ²³³ the Commission should deny requests to unbundle xDSL electronics, packet switches, dark fiber, and other new elements.

VI. ADVANCED SERVICES ARE NOT SUBJECT TO DISCOUNTED RESALE UNDER SECTION 251(c)(4).

The *NPRM* tentatively concluded that advanced services, whether telephone exchange services or exchange access services, should be subjected to wholesale discounts. ²³⁴ In its initial Comments, GTE objected to a wholesale discount requirement on advanced services because the § 251(c)(4) resale obligation applies only to a telecommunications service that is both: (1) provided "at retail" and (2) provided "to subscribers who are not telecommunications carriers." ²³⁵ GTE demonstrated that advanced services do not meet either of these criteria. ²³⁶

²³² "Section 706: An Opportunity for Broadband Competition Policy," Remarks of Commissioner Gloria Tristani Before the U S WEST Regional Oversight Committee, (April 27, 1998).

²³³ *Id.*

²³⁴ *NPRM*, ¶ 187.

²³⁵ GTE Comments at 108-110, citing 47 U.S.C. § 251(c)(4)(A). GTE also noted that it is erroneous for the Commission to conclude that all advanced services are telecommunication services; in reality, some advanced services may be information

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First, both the *NPRM* and many commenters fail to give independent meaning to the “at retail” requirement of § 251(c)(4) and instead focus their inquiry only on the “subscribers who are not telecommunications carriers” language.²³⁷ However, regardless of ISPs’ status as “end users” as opposed to “carriers,” the statute independently requires the subject services to be offered “at retail.” The selective statutory interpretation advanced by the *NPRM* and many CLECs is not defensible. Each word in a statute should be read to have an independent meaning; these commenters’ interpretation would simply edit “at retail” out of the statute.²³⁸

Advanced services are not “retail services” because they merely constitute one component of a larger retail service. For example, consumers will rarely purchase ADSL as a stand-alone service. Instead, typically an ISP or IXC will purchase ADSL in bulk and provide the consumer with ADSL as part of its Internet access service. BellSouth, in supporting the conclusion that advanced services are not offered at retail, states:

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services, cable services, or fall into still other categories.

²³⁶ Other commenters supported the conclusion that advanced services should not be subjected to resale. See Bell Atlantic Comments at 52-54; BellSouth Comments at 27-28; U S WEST Comments at 13-15; USTA Comments at 10-11.

²³⁷ See *NPRM*, ¶¶ 187-189; see also Intermedia Comments at 60; ALTS Comments at 67-68; TRA Comments at 46-47; MCI WorldCom Comments 77-78; AT&T Comments 108-109.

²³⁸ See *Exxon Commercial Union Insurance Co. v. U.S.*, 999 F.2d 581, 587 (D.C. Cir. 1993)(citing *In Re Surface Mining Regulation*, 627 F.2d 1346, 1362 (D.C. Cir. 1980) (“[E]ffect must be given, if possible, to every word, clause and sentence of a statute . . . so that no part will be inoperative or superfluous, void or insignificant.”)).

There clearly are scenarios where ILEC advanced services offerings will not be sold at retail, but will be sold in bulk to ISPs or carriers for incorporation into the service they provide to their customers.²³⁹

Similarly, U S WEST points out that advanced services are “simply a component of a larger service offered to retail customers.”²⁴⁰ Thus, ADSL service generally is purchased as only one input of an end-to-end Internet service that will ultimately be offered to end users; the capability is not being offered “at retail.”

First, common sense is not to be checked at the agency’s door when interpreting a statute.²⁴¹ Everyday understanding of the terms “retail” and “wholesale” compels the conclusion that advanced services are not “retail” services as required by the statute. For example, a person can walk into a hardware store and buy wiring for the inside of her telephone receiver; in this instance, she is a “retail” customer. However, common sense also recognizes that if she buys 1000 wires as a component part of telephones that she manufactures, she is a wholesale purchaser. Indeed, the vast majority of telephone internal wiring is purchased wholesale by manufacturers, not consumers at retail. Likewise, in most cases, advanced services (xDSL) will be a wholesale

²³⁹ BellSouth Comments at 28.

²⁴⁰ U S WEST Comments at 14.

²⁴¹ See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241 (1989)(“We need not leave our common sense at the doorstep when we interpret a statute.”); see also *Buckley v. Valeo*, 424 U.S. 1, 77 (1976) (When a statute is ambiguous, a court must draw upon “those common-sense assumptions that must be made in determining direction without a compass.”).

component of a final retail service (often an ISP's Internet service) offered to residential and business users. Therefore, advanced services are not themselves "retail" services.

Second, the Commission's broad tentative conclusion that most advanced services will not be provided predominantly to "subscribers who are not telecommunications carriers" also misses the mark. Advanced service offerings are an evolving set of capabilities, some of which may well be offered predominantly to "telecommunications carriers." Moreover, the development of the IP telephony market may alter the consumer profile of advanced service purchasers. Thus, "the Commission should not impose Section 251(c)(4) resale obligations on an ILEC that chooses to market its advanced services on a predominantly wholesale basis, regardless of whether end users occasionally purchase such services."²⁴²

GTE also suggested that, even if the Commission determines that § 251(c)(4) applies, the Commission should forbear from requiring advanced services to be offered at a resale discount.²⁴³ As required by § 160 of the Act, the provisions of § 251(c)(4) "have been fully implemented" because GTE has already made available all of its retail telecommunications services for resale on a nondiscriminatory basis. Advanced services also satisfy the other standards set forth for forbearance. Specifically, forbearance is warranted because: (1) enforcement of the resale provision is unnecessary to ensure that rates for advanced services are just and reasonable; (2) forbearance would not harm consumers due to improved competition and more rapid

²⁴² BellSouth Comments at 29.

²⁴³ GTE Comments at 110-112.

deployment; and (3) the public interest is served by forbearance because of increased incentives for investment in advanced services and fuller competition.

The detrimental effect of discounted resale on investment incentives should not be underestimated. As U S WEST pointed out in CC Docket No. 98-146:

. . . the fundamental economic truth [is] that requiring a broadband network provider to share an innovation or investment with a competitor – whether through discounted resale or unbundling – necessarily diminishes and often eliminates the network provider’s and its prospective competitors’ incentives to invest.²⁴⁴

Resale would merely make ILECs subcontractors for other providers, bearing all of the risks and none of the rewards of deploying new services. As USTA points out, “imposition of resale obligations on ILECs serves as a disincentive, is discriminatory, anti-competitive, and contrary to the Section 706 requirement that the Commission remove barriers to infrastructure investments.”²⁴⁵ In contrast, forbearance from the resale requirement would spur investment by ILECs and other providers alike and prompt increased competition and full deployment of advanced services.²⁴⁶

²⁴⁴ U S WEST Comments at 26; see also GTE Comments at 111 (discounted resale would “force ILECs to give competitors significant cost breaks for non-bottleneck facilities, thereby inhibiting investment and innovation for incumbents and competitors alike”).

²⁴⁵ USTA Comments at 9-10.

²⁴⁶ Remarkably, Intermedia argues that discounted resale will speed ILEC capital recovery and reduce capital risk and therefore not impact an ILEC’s incentives to invest. Intermedia Comments at 61. Intermedia’s efforts to rewrite fundamental economics should be rejected. In providing service at a wholesale discount, an ILEC will, at best, merely recover its implementation and delivery costs (assuming the reseller does not order service, cause the ILEC to invest, and then abandon the service before such costs are fully recovered). The ILEC has no opportunity to earn a profit, let alone a

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VII. CONCLUSION

The *Advanced Services Order and NPRM* rightly states that “[t]he role of the Commission is not to pick winners or losers, or select the ‘best’ technology to meet consumers demand, but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.”²⁴⁷ GTE’s proposed National Advanced Services Plan accomplishes this stated objective in a manner that will assure fair competition, maximize deployment of advanced technology and services, and minimize government intervention in the market. The Commission accordingly should adopt GTE’s plan promptly and remove the cloud of uncertainty that currently overhangs the advanced service market.

As fully explained in GTE’s opening comments and the submissions of a multitude of other ILECs, the proposals in the *NPRM* unfortunately will not accomplish the Commission’s goal and will in fact powerfully deter investment by both ILECs and other competitors in the market. Efforts by CLECs to impose even more radical separation, unbundling, collocation, and resale requirements are directly contrary to §§ 222, 251, 252 of the Act, and § 706 of the 1996 Act and would effectively eliminate ILECs and their affiliates as competitors in the provision of advanced services. They have no bearing on whether an ILEC’s affiliate is a “successor or assign” and are unnecessary to assure such an affiliate is non-dominant. Rather, they are blatant pleas

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significant enough profit to justify the risks of developing and deploying new services.

²⁴⁷ *NPRM*, ¶ 2.

for regulatory protectionism aimed at promoting the interests of individual competitors rather than competition, which must be summarily dismissed.

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APPENDIX 1
DESCRIPTION OF GTE'S NASP

1. Separate Affiliate Elements of the NASP

- An ILEC's advanced service affiliate should maintain separate books of account.
- The affiliate should not jointly own transmission or switching facilities with the ILEC, but should be permitted to transfer personnel and other resources or assets that were deployed before the final date of the Commission's order resulting from the *Advanced Services NPRM*.
- The affiliate should acquire any tariffed services from the ILEC at the tariffed rates and should be permitted to obtain unbundled network elements and services for resale pursuant to an approved interconnection agreement.
- The affiliate shall be a separate legal entity from the ILEC.
- The affiliate may be staffed by personnel hired from the ILEC and affiliate personnel should be housed in segregated space.
- The affiliate should not obtain credit under any arrangement that would permit a creditor, upon default, to have recourse to the assets of the ILEC. Holding companies typically finance both ILEC and other operations through the common corporate parent. The rule does not disturb this longstanding practice.
- Contracts between the ILEC and its affiliate should be disclosed to regulators upon request.

2. Collocation Elements of the NASP

- Upon request, collocating parties should have the flexibility to place their equipment in "shared" collocation space dedicated to CLEC use, with or without employing cages.
- CLECs should be permitted to use a third-party inspection in conjunction with state commission review to confirm that space in a central office is exhausted. Upon confirmation by the state commission, the third party's finding would be conclusive with respect to that central office unless and until space becomes available. Its fee would be paid by the CLEC if the ILEC's

finding of exhaustion is upheld, and by the ILEC if the finding of exhaustion is overturned.

- CLECs should have the flexibility to lease collocation space in increments of 25 square feet.
- CLECs should be able to sub-lease space within collocation cages, as long as the original requesting party remains liable for payment to the ILEC and for security within its collocation cage.
- CLECs using common space (whether or not caged) should be permitted to use their own technicians to cross-connect their equipment with one another, provided that they do not use GTE infrastructure and follow all applicable building codes and GTE cabling standards.
- ILECs should remove obsolete equipment (if any) at the request of any collocating CLEC, so long as the CLEC agrees to pay the costs of such removal.
- On a case-by-case basis, ILECs should permit CLECs to lease unused ILEC property for the purpose of constructing their own adjacent facility where central office collocation space is exhausted.

3. Loop-Related Elements of the NASP

- ILECs should permit sub-loop unbundling upon bona fide request where technically feasible.
- ILECs may voluntarily provide conditioned loops even where they have not deployed advanced services, if they recover their actual costs of performing the conditioning.