

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

|   |   |                                   |
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| In the Matter of                              | ) |                                   |
|   | ) |                                   |
| Pacific Bell Petition for Expedited<br>Waiver | ) | CC Docket No. 96-45<br>DA 98-1999 |
|   | ) |                                   |

**GTE COMMENTS IN SUPPORT  
OF PETITION FOR EXPEDITED WAIVER**

Dated: October 26, 1998

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

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GTE Service Corporation and its affiliated domestic telephone operating, wireless and long distance companies<sup>1</sup> (collectively, "GTE") respectfully submit comments in support of Pacific Bell's petition for expedited waiver of the sequence in which state and federal discounts are to be applied ("stacking") on certain telecommunications services that are eligible for subsidies from both the federal universal service program administered by the Schools and Libraries Corporation ("SLC") and its state counterpart, the California Teleconnect Fund.<sup>2</sup>

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<sup>1</sup> These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

<sup>2</sup> See Public Notice DA 98-1999 ("Notice"). GTE's comments herein in no manner prejudice its positions set forth in its appeal of the Commission's universal service order. See *Texas Office of Public Utility Counsel v. F.C.C.*, No. 97-60421 (5<sup>th</sup> Cir.) ("*Texas Ofc. of Pub. Util. Counsel*").

## **I. INTRODUCTION AND SUMMARY**

GTE supports Pacific Bell's request for a waiver of the requirement to apply federal discounts before state discounts for the first year of the federal program and urges the Commission to grant the waiver. In the event that the Commission were to deny the waiver, service providers, schools and the SLC would face a costly and time-consuming administrative process to calculate the retroactive federal discounts and recalculate state discounts for each eligible school. Ultimately, as a result of this process, many California schools that have received state discounts since the beginning of 1998 would be required to reimburse the state fund. Similarly, depending on whether pre-discount rates or rates reflecting the state discount were submitted in the schools' applications to the SLC, some California schools will be approved for less federal support by the SLC than they are entitled to receive.

## **II. SERVICE PROVIDERS SHOULD NOT BEAR THE EXPENSE OF IMPLEMENTING A PROCESS TO "STACK" THE FEDERAL AND STATE DISCOUNTS BECAUSE OF DELAYS IN IMPLEMENTING THE FEDERAL PROGRAM.**

Service providers in California could not, on January 1, 1998, and still cannot, comply with the Commission's requirement to apply federal discounts before state discounts because the federal discounts are still not known. The current situation in California developed not because of a lack of insight or initiative on the part of the service providers, but rather because of unanticipated administrative and regulatory delays in implementing the federal program. Specifically, the Commission did not identify the requirement to apply federal support first and then state support until

December 30, 1997 when it issued the Fourth Order on Reconsideration.<sup>3</sup> The California commission then issued a resolution on February 4, 1998, and therein indicated that it would hold workshops to address service providers' administrative concerns, including the "stacking" issue.<sup>4</sup> Having participated in one workshop on March 3, 1998, the service providers were led to believe that the California commission would schedule at least one more workshop after federal guidelines on retroactivity were announced. As of the filing of these comments, the federal guidelines on retroactivity have just been finalized but the California commission has not yet convened a second workshop.

To further complicate this situation, service providers were compelled to continue to provide state mandated discounts to California schools because the California commission did not intervene to adjust or temporarily discontinue the state funding mechanism until such time as the federal program was initiated. Such intervention would have permitted service providers to apply discounts in the required order (albeit retroactively) and all schools would have received the correct amount of federal and state funding to which they are entitled. While neither service providers nor schools created this anomaly in California, they will bear the brunt of correcting it because of

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<sup>3</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Fourth Order on Reconsideration*, FCC 97-420, 13 FCC Rcd 5318, 5432 (released December 30, 1997) ("Fourth Order on Reconsideration"), ¶ 196.

<sup>4</sup> Public Utilities Commission of the State of California, Resolution T-16118, All Telecommunications Utilities to Realign the Discounts for Intrastate Services Provided to Schools and Libraries Under the California Teleconnect Fund with the Federal Communications Commission's Discount Program Pursuant to Its Report and Order (FCC 97-157) In the Matter of Federal-State Joint Board On Universal Service (CC Docket No. 96-45), February 4, 1998 at 11.

federal delays and the impact those delays have had on the distribution of support from the state, absent a Commission approved waiver.

**III. WITHOUT A COMMISSION APPROVED WAIVER, SCHOOLS MAY BE REQUIRED TO REIMBURSE THE STATE FUND.**

If the Commission does not grant Pacific Bell's request for waiver, it will place service providers and schools in California in the untenable position of determining which schools received too much state support because federal discounts were not applied prior to state discounts. Some schools will ultimately be required to reimburse the state fund for any amount of discount that exceeded the amount to which they were actually entitled.

To illustrate how this might happen, suppose that a school purchased \$100 worth of eligible services under the state program. Each month, that school received a \$50 state discount. Upon receiving SLC established federal discounts, that same school may be eligible for a federal discount rate of 90%. Assuming that the same \$100 worth of services were eligible for both federal and state discounts, the school would be eligible to receive only a \$5 per month state discount. In applying the federal discount first and then the state discount, the school would owe the state fund \$45 for each month it was over-compensated.<sup>5</sup>

In reality, since January 1, 1998, no service provider in California has had the ability to apply a federal discount that does not yet exist. Nonetheless, without the state commission's intervention, the service providers were compelled to continue offering the

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<sup>5</sup> This illustrative example is overly simplified because the list of products and services that are eligible for federal support is more expansive than the list of products and services that are eligible for California state support.

state's authorized discount to eligible schools. Now, without a Commission approved waiver, every service provider and school would have to institute a retroactive reconciliation process that would be both costly and time-consuming. In the end and most importantly, many California schools and their students who relied on the state support that they have received may be harmed.

Indeed, since many schools probably relied on the discounted price of services in their applications for federal support, schools would be required to resubmit their applications for federal support using a pre-discounted price. Although these schools would be eligible to receive more federal support based on submitting the pre-discounted price, it is unlikely that they would be able to obtain any additional federal support because it has already been committed. Schools would be required to reimburse the state fund but would be unable to obtain additional federal funding. This surely is not the desired outcome anyone envisioned.

#### **IV. CONCLUSION**

GTE is cognizant of the fact that California's 1998 funding requirements are greater than they otherwise might have been if events related to the implementation of the federal program had not been delayed. However, placing the costly and time-consuming burden to correct this situation upon the service providers and schools does not recognize the harm a retroactive remedy may cause many California schools and students. Accordingly, it would be more constructive to maintain the *status quo* regarding the state discounts that have already been distributed and to apply the federal

discount on the customer's account balance as Pacific Bell recommends.<sup>6</sup> With such "reverse" stacking, schools will receive no less total federal and state support than they would otherwise receive.

GTE urges the Commission to grant Pacific Bell's request for waiver to all affected service providers in California for the first funding cycle of the federal program. When the second funding cycle of the federal program begins on July 1, 1999, all service providers will be prepared and should be required to implement federal and state discounts as the Commission intended.

Dated: October 26, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated  
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<sup>6</sup> Petition, at 8.