

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

JAN - 5 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
GTE Telephone Operating Companies) CC Docket No. 98-79
GTOC Tariff No. 1)
GTOC Transmittal No. 1148)

OPPOSITION COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association ("USTA") hereby files its Comments in response to the Commission's Notice¹ in the above-referenced proceeding. USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECs").

USTA opposes the Petitions for Reconsideration ("PFRs) filed by the National Association for Regulatory Utility Commissioners ("NARUC")² and MCI WorldCom.³

¹ *Public Notice* DA 98-2502, released December 4, 1998.

² *Request for Clarification and or Reconsideration of the National Association of Regulatory Utility Commissioners*, CC Docket No. 98-79, filed November 30, 1998 ("NARUC PFR").

³ *MCI WorldCom Petition for Reconsideration*, CC Docket No. 98-79, filed November 30, 1998 ("MCI WorldCom PFR").

USTA OPPOSITION COMMENTS
CC DOCKET NO. 98-79
JANUARY 5, 1999

No. of Copies rec'd
List ABCDE

014

The Commission has twice ruled that ADSL services provided by ILECs are jurisdictionally interstate.⁴ NARUC's *Request for Clarification* and alternative request for reconsideration, and the PFR filed by MCI WorldCom provide no compelling evidence to support their requests that the Commission modify in any way the correct decisions reached in two separate *Memorandum Opinions and Orders*.

NARUC requests that the Commission (1) clarify that states may require intrastate tariffs of XDSL services, (2) clarify that cost allocation procedures remain in effect until separations issues are resolved by the Separations Joint Board and the Commission, and (3) review the reasoning for its *Order*.⁵ MCI WorldCom claims it "does not seek reconsideration of the ADSL Tariff Order."⁶ According to MCI WorldCOM, the Commission should "reconsider its finding that the use of GTE's ADSL service to connect end users to an Internet Service Provider (ISP) Point of Presence (POP) in the same state is an interstate use."⁷

⁴ See *Memorandum Opinion and Order, In the Matter of GTE Telephone Operating Cos., GTE Tariff No. 1, GTOC Transmittal No. 1148*, CC Docket No. 98-79, released October 30, 1998; *Memorandum Opinion and Order in the Matter of Bell Atlantic Telephone Cos., Bell Atlantic Tariff No. 1, Bell Atlantic Transmittal No. 1076*, CC Docket No. 98-168, *BellSouth Telecommunications, Inc., BellSouth Tariff FCC No. 1, BellSouth Transmittal No. 476*, CC Docket No. 98-161, *GTE System Telephone Cos., GSTC FCC Tariff No. 1, GSTC Transmittal No. 260*, CC Docket No. 98-167, *Pacific Bell Telephone Co., Pacific Bell Tariff No. 128, Pacific Bell Transmittal No. 1986*, CC Docket No. 98-103, released November 30, 1998 (The Commission affirmed the Order regarding GTE's ADSL tariff as the basis for its findings).

⁵ NARUC PFR at 1.

⁶ MCI WorldCom PFR at 1.

⁷ *Id.* at 2.

In its *Order*, the Commission rejected the jurisdictional arguments raised anew by NARUC and MCI WorldCom in their respectively PFRs regarding the jurisdictional nature of the traffic delivered by GTE's ADSL service offering. The Commission summarized the arguments as follows:

Many competitive LECs and ISPs urge the Commission to treat Internet traffic delivered via GTE's ADSL service offering as one intrastate "local" call terminating at the ISP's local server, followed by a second, separate transmission from the ISP server to the Internet. Specifically, these commenters argue that, for jurisdictional purposes, the end-to-end ADSL communication consists of two distinct components: an intrastate "telecommunications service," which ends at the ISP's local server, and an interstate "information service," which begins where the telecommunications service ends. In addition, many competitive LECs observe that, because ISPs are permitted to purchase services from incumbent LECs under the same intrastate tariffs available to end users, ISP traffic delivered via GTE's ADSL service offering constitutes local traffic for separations purposes. Therefore, competitive LECs argue that such traffic must terminate at the ISP's point of presence. Finally, several commenters maintain that GTE's ADSL service offering must be tariffed on the state level, because it does not qualify as an "access service"⁸

In rejecting these arguments the Commission, consistent with prior precedent, examined the totality of the communication to determine the jurisdictional nature of the traffic involved and concluded that GTE's ADSL service offering was jurisdictionally interstate, involving a single transmission which does not terminate at the ISP's POP.⁹ The Commission also stated that should "GTE or any other incumbent LEC offer XDSL service that is intrastate in nature

⁸ *Memorandum Opinion and Order* at 9, ¶15, CC Docket No. 98-79, released October 30, 1998.

⁹ *Id.* at 10-19, ¶¶16-33.

that service should be tariffed at the state level."¹⁰ Therefore, there is no need for further clarification of this issue as requested by NARUC.

The Commission need not address the separations issue raised by NARUC in this proceeding. The issues raised by NARUC are beyond the scope of this tariff proceeding. In any event there is no basis to assume, as NARUC does, that the Separations Joint Board will change the 10% rule because that issue is not currently before the Joint Board.

USTA urges the Commission to deny the requests by NARUC and MCI WorldCom to raise issues already decided by the Commission. By eliminating further regulatory uncertainty, the Commission will ensure that ILECs can provide competitive XDSL services.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION



Lawrence E. Sarjeant

Linda Kent

Keith Townsend

John W. Hunter

1401 H Street, NW

Suite 600

Washington, D.C. 20005

(202) 326-7371

Its Attorneys

January 5, 1999

¹⁰ *Id.* at 16, ¶27.

CERTIFICATE OF SERVICE

I, Sharron V. Turner, do certify that on January 5, 1998 copies of the foregoing Opposition Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


Sharron V. Turner

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street SW
TW-A325
Washington, DC 20554

(Original & 4 Copies)

Chief
Competitive Pricing Division
1919 M Street, NW
Room 518
Washington, DC 20554

ITS
1231 20th Street, NW
Washington, DC 20036

Alan Buzacott
Richard S. Whitt
MCI WORLDCOM, INC.
1801 Pennsylvania Ave., NW
Washington, DC 20006

David Porter
MCI WORLDCOM, INC.
1120 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

James Bradford Ramsay
National Association of
Regulatory Utility Commissioners
P.O. Box 684
1100 Pennsylvania Avenue, NW
Suite 603
Washington, DC 20044-0684