

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF
CTSI, INC.

CTSI, Inc., by its undersigned counsel, files these reply comments in response to initial comments filed in this proceeding concerning petitions for reconsideration filed by MCI WorldCom, Inc. ("MCI WorldCom") and the National Association of Regulatory Utility Commissioners ("NARUC") of the GTE DSL Order.¹ CTSI filed initial comments on January 5, 1999.²

CTSI, in its initial comments noted that the Commission in the GTE DSL Order appeared to have abandoned its prior position that, for regulatory purposes, "information services" and "telecommunications" are mutually exclusive categories. This division between information services and telecommunications is essential to maintain because absent such a division, the Commission would find itself regulating all information services, since information services

¹ In the Matter of GTE Telephone Operating Cos., Memorandum Opinion and Order, CC Docket No. 98-79, FCC 98-292, released October 30, 1998 ("GTE DSL Order"). See Public Notice, DA 98-2502, released December 4, 1998.

² Comments of CTSI, Inc., CC Docket No. 98-79, filed January 5, 1999.

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under the Telecommunications Act of 1996, by definition, are provided via telecommunications. There can be no question that it was not the intent of the 1996 Act as a result of this definition to expand the Commission's traditional Title I jurisdiction over information services. In fact, the Act is explicit in stating that it was Congress' intent to limit the Commission's regulation of the Internet.³

The Commission in its Report to Congress recognized this Congressional intent and reiterated the Commission's long held position that for regulatory purposes, "information services" and "telecommunications" are meant to be mutually exclusive. Neither the Commission, nor the initial comments provide a supportable rationale for abandoning that position.

The Commission in the Report to Congress made it clear that the mutual exclusivity of these categories of services is for purposes of determining the degree of regulation the Commission possessed under the Act. The distinction was not, and is not, relevant to the issue of the Commission's jurisdiction over these services. The Commission clearly possesses Title I jurisdiction over the interstate communications by wire.⁴ Clearly some uses of the GTE ADSL service will encompass interstate communication by wire — many, however, will not. The Commission must not confuse these issues. Doing so is inconsistent with the Congressional intent and creates conflict between the Commission and the states on issues ranging from separations to reciprocal compensation. To the extent the Commission has jurisdiction over the services proposed to be provided by GTE, it is because they involve interstate communications

³ See 47 U.S.C. § 230(b)(2).

⁴ See 47 U.S.C. §§ 153 (22) and (53).

by wire. That determination need not, and should not in any way impact the fact that for regulatory purposes, the “telecommunications” service ends at the ISP at which point the service offered is an “information service” — not telecommunications.

In allowing the GTE tariff to go into effect, the Commission must make that distinction clear by abandoning its analysis of the service offered by GTE by examining the so-called end point of the telecommunication after telecommunication becomes merely a component of information services. That analysis is not supported by the law or precedent. The only known end for the vast majority of an Internet session is the ISP and not the “Global Web” of computers.

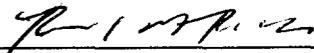
To the extent the ability to reach multiple host computers during any Internet session raises jurisdictional questions, the fact that, for the majority of most sessions the only connection is to the ISP, clearly refutes the Commission’s unsupported assumption that more than 10% of the traffic is interstate. Neither the Commission nor any commentator has provided any support for that assumption. In fact the Commission’s attempt to apply this end-to-end analysis to the Internet appears to be an example of attempting to put a square peg in a round hole. It simply doesn’t work.

The Commission on reconsideration should make clear that it does not intend to abandon the position it set forth in its Report to Congress. It should specifically state that for regulatory purposes telecommunications ends when the ISP is reached, at which point the telecommunications are simply components of information services and are treated as such by the Commission.

Conclusion

The Commission upon reconsideration should reaffirm its position that “telecommunications” and “information services” are, for regulatory purposes under the Act, mutually exclusive categories and that for such purposes the “telecommunications” ends when the “information service” begins.

Respectfully submitted,



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Dated: January 19, 1999

CERTIFICATE OF SERVICE

I, Richard M. Rindler, hereby certify that on this 19th day of January 1999, copies of the foregoing REPLY COMMENTS OF CTSI, INC. were served by hand delivery upon the following:

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