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Public Service Commission

January 20, 1999

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

JAN 21 1999
FCC MAIL ROOM

Re: EX PARTE FILING - CC Docket No. 98-79 - GTE Telephone Operating Companies; GTOC Tariff No. 1; GTOC Transmittal No. 1148.

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), enclosed you will find an original and two copies of the ex parte comments from the Florida Public Service Commission.

Please direct any questions you may have regarding this filing to the undersigned at (850) 413-6082 or to Walter Bolter at (850) 413-6550. Thank you for your cooperation.

Sincerely,

Cynthia B. Miller
Senior Attorney

CBM:jmb
Enclosure

cc: Honorable William E. Kennard
Honorable Harol Furchtgott-Roth
Honorable Susan Ness
Honorable Michael Powell
Honorable Gloria Tristani
International Transcription Service
Competitive Pricing Division

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

FLORIDA PUBLIC SERVICE COMMISSION COMMENTS

The Florida Public Service Commission ("FPSC") hereby files the following comments in the above docket.

Specifically, these comments are responsive to the National Association of Regulatory Utility Commissioners' ("NARUC") request for clarification and/or reconsideration and MCI WorldCom, Inc.'s ("MCI WorldCom") petition for reconsideration respecting the Federal Communications Commission's ("FCC" or "Commission") ADSL Tariff Order, released October 30, 1998.¹

The FPSC submits these comments for consideration with regard to tariffing of xDSL services and formulation of federal policy on a prospective basis. Although the FPSC currently has proceedings before it on the issue of reciprocal compensation for ISP traffic, no generic decision has been made. Rather,

¹ In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 11548, Memorandum Opinion and Order, CC Docket No. 98-97, released October 30, 1998, (hereinafter referred to as "ADSL Tariff Order").

decisions have been based on what would be a reasonable interpretation of the law and of existing orders at the time the interconnection agreements in question were entered into, based on the provisions of the agreements themselves. Our comments here should not be construed as having any effect on existing contracts.

The FPSC believes, as NARUC does, that the ADSL Tariff Order is in need of clarification, particularly so that application of the Commission's findings is strictly limited to this proceeding. Also, there is need to assure that state commissions are not precluded from requiring intrastate tariffing of GTE's DSL Solutions-ADSL Service, or xDSL type services generally, and to make certain that ADSL related cost allocation procedures are not altered prior to action of the Separations Joint Board.

Further, we believe that MCI WorldCom raises a valid concern in its contention that xDSL type services extend only to the Internet Service Provider's (ISP) point of presence (POP), and terminate there for purposes of jurisdictional determinations. The FCC should clarify that xDSL services are not necessarily interstate in nature, nor are they inherently access services.

NARUC Request for Clarification and/or Reconsideration

We wholeheartedly support the positions taken by NARUC regarding clarification of the ADSL Tariff Order. These include requests that the FCC further resolve that the rationale presented is tentative, and is strictly limited to this proceeding. In some policy areas, the Order is clear, e.g., that it "does not consider or address issues regarding whether local exchange carriers are entitled to receive reciprocal compensation when they deliver to information service providers, including Internet service providers, circuit-switched dial-up traffic originated by interconnecting LECs."² However, the Commission should confirm that its findings do not in any way foreclose or restrict determinations to be made respecting State tariffing or the cost allocation procedures being considered by the Separations Joint Board.

The FPSC is especially troubled by the possibility that the ADSL Tariff Order will be applied to preclude States from requiring the filing of intrastate tariffs for xDSL services generally, wherever these are utilized to connect end users to Internet service providers. Dual tariffing of xDSL offerings

² Id. at ¶2.

must not be called into question as an unexpected result of what is purportedly a limited decision. Of course, this eventuality would not have presented itself if, as Commissioners Furchgott-Roth and Tristani have observed, the Order were bereft of "sweeping statements about this agency's jurisdiction -- and even more importantly the logical application of that framework -- [that] could have broad and even unintended implications for many state commission decisions."³

Importantly, there are substantial numbers of loop and service configurations where intrastate tariffing unambiguously applies. And, as NARUC points out, many states have under investigation or are considering GTE/BOC intrastate tariff arrangements not unlike the one at issue in this proceeding. Indeed, intrastate tariffing of xDSL services is much more compatible with evolving industry structure, whereby Internet telephony is likely to fall beyond the practical reach of even the most ambitious regulatory scheme. In our view, tariffing xDSL type services primarily at the local level, within the context of federal guidelines, should constitute the next logical

³ Id., Separate Statement of Commissioners Harold Furchgott-Roth and Gloria Tristani, Dissenting in Part, October 30, 1998.

adaptation of the Commission's regulatory regime to communications change.

MCI WorldCom Petition for Reconsideration

MCI WorldCom requests that the Commission clarify that xDSL offerings are not inherently interstate or access services, and that "ADSL, like any other transmission technology, clearly has both interstate and intrastate uses, and is thus properly tariffed at both the federal and state levels."⁴ Importantly, the company questions the FCC's determination that GTE's DSL Solutions-ADSL Service does not terminate at the Internet service provider's local POP, but, instead, continues on "to the ultimate destination or destinations, very often at a distant Internet website accessed by the end users."⁵ The FCC "analyzes ISP traffic as a continuous transmission from the end user to a distant point," and avers that it has "never found that 'telecommunications' ends where 'enhanced' information service begins."⁶

⁴ MCI WorldCom Petition for Reconsideration (hereinafter referred to as "MW Petition"), CC Docket No. 98-97, pg. 1 (citation omitted).

⁵ ADSL Tariff Order, ¶19.

⁶ Id. at ¶20.

MCI WorldCom believes that the Commission is in error in assuming that "telecommunications continues through the ISP POP *simply because the ISP uses telecommunications.*"⁷ The Company notes that the FCC's position is inconsistent with its conclusion in the Universal Service Report to Congress, where the Commission found that "information service providers are not transformed into providers of telecommunications simply because they use telecommunications."⁸ In the Report, the Commission concluded that an ISP offering is properly categorized as an information service, not subject to Title II, and that the ISP "is itself a user of telecommunications; that is, telecommunications is an *input in the provision of an information service.*"⁹

MCI WorldCom concludes:

Because ISPs do not provide telecommunications to their subscribers, there *cannot be end-to-end telecommunications* between the end user and the distant website. Telecommunications must "end" at the ISP POP . . . The Commission should reconsider its conclusion, and find instead that the relevant end points for the purposes of jurisdictional analysis are the end points

⁷ MW Petition, pg. 3 (emphasis added).

⁸ Id. at 3-4.

⁹ Universal Service Report to Congress at n. 138 (emphasis added).

of GTE's ADSL telecommunications service -- the end user and the ISP POP.¹⁰

We think the MCI WorldCom analysis has merit.

The category of xDSL offerings cannot necessarily be considered interstate in nature, nor are these offerings inherently access services. They have a wide range of applications, and, clearly, these need not have any relationship whatsoever to the Internet. The Commission fails to perceive that such offerings are inputs to information services, not vice versa. To categorize the output product in terms of the input factor of production, for whatever reason, is simply spurious logic.¹¹

The practical fact must be recognized that the bulk of communications between the end user and ISP are "intrastate, even when the ISP is providing an interstate information service."¹² While Internet usage may be an interstate service, it is not a telecommunications service. As MCI WorldCom notes, the "precedents cited by the Commission do not provide any support

¹⁰ MW Petition at 4-5 (emphasis added).

¹¹ An analogy would be categorizing eggnog that contains fine whiskey as "fine whiskey" (rather than "fine eggnog").

¹² Id. at 7.

for the Commission's conclusion that a telecommunications service provider and an information service provider can combine to provide 'end-to-end' communications."¹³

We believe that the FCC is clinging to a weathered end-to-end jurisdictional approach that is particularly ill-suited for the years ahead. The end-to-end analysis will not fit well with an environment in which Internet telephony has become commonplace, nor is it appropriate if significant elements of the current facilities based local exchange network monopoly persist indefinitely. Taken to a logical extreme, the Commission's approach could have the particularly unwanted effect of extending federal jurisdiction beyond telephony, while simultaneously emasculating the type of (state) regulation that is best suited to handle a residual local "pipeline" monopoly.

Conclusion

The time has come for the FCC to reconsider the "end-to-end" view of communications that underlies its jurisdictional reasoning. The FPSC believes that the sweeping statements found in the ADSL Tariff Order, in what should have been the most narrowly focused of findings, constitute dangerous "leaps of

¹³ Id. at 6.

Comments of the Florida Public Service Commission
CC Docket No. 98-79

logic" that could artificially extend federal jurisdiction. The
FCC's conclusions are factually in error and simply bad policy.
For the reasons stated herein, the Commission should grant the
MCI WorldCom petition and provide the clarification and/or
reconsideration sought by NARUC.

Respectfully submitted,



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Dated: January 20, 1999

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CC Docket No. 98-79

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Ex Parte Comments of the Florida Public Service Commission have been furnished to the parties on the attached list, this 20th day of January, 1999.



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