

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
GTE Telephone Operating Companies)
GTOC Tariff FCC No. 1)
GTOC Trans. No. 1148)

CC Docket No. 98-79

OPPOSITION TO AMERITECH MOTION TO STRIKE

RCN Telecom Services, Inc. ("RCN"), by its undersigned counsel and pursuant to Rule 1.45 of the Commission's Rules, 47 C.F.R. §1.45, hereby opposes the Motion to Strike filed by Ameritech Operating Companies ("Ameritech") in this proceeding.

As Ameritech concedes in its Motion, "Ameritech is not sure whether the procedures specified in Section 1.106 of the Commission's rules, including the ten-page limit set forth in section 1.106(h), applies in this proceeding. That provision, by its terms, contemplates procedures that may have been superseded by the public notice in this proceeding. For example. . . it contemplates Oppositions to a petition for reconsideration, not supporting comments." Motion to Strike at 2-3. Thus, RCN submits that Section 1.106 does not apply to the comments and reply comments in this proceeding because an alternate procedural mechanism was established by the Public Notice of December 4, 1998.¹ That Notice provided for alternative procedures for the Petitions for Reconsideration by, among other things, extending the opportunity to file reply comments to

¹Pleading Cycle Established for Petition of MCI/WorldCom and National Association of Regulatory Utility Commissioners (NARUC) for Reconsideration of GTE DSL Order, Public Notice, CC Docket 98-79, DA 98-2502 (rel. Dec. 4, 1998).

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"interested parties," rather than just the Petitioners as directed by Section 1.106. *See* 47 C.F.R. §1.106(h).

Ameritech also bases its Motion upon the fact that "a number of parties filed comments" in the proceeding rather than "oppositions" as prescribed by Section 1.106. The Public Notice, however, specifically asked for "comments" and "reply comments" rather than oppositions only. The fact that parties filed "comments" was entirely consistent with the Public Notice.

Finally, Ameritech criticizes the comments that were filed on the grounds that they "raised a host of new challenges" to the *GTE ADSL Order*. RCN submits that all of the arguments raised by commenters in support of the Petitions for Reconsideration are relevant to the Commission's consideration of the MCI WorldCom and NARUC Petitions. For example, arguments that the application of traditional jurisdictional analysis is anachronistic when considering Internet communications are wholly germane to the points raised by MCI WorldCom and NARUC, in essence, that the *GTE ADSL Order* raises more questions than it answers with respect to state authority over xDSL services and the application of separations rules to ADSL traffic. In addition, argument regarding the nature of the information service provided by ISPs underscores the MCI WorldCom argument that information services are mutually exclusive from telecommunications services for regulatory purposes.² RCN further submits that it would not be possible for the

²As the Commission recognized in the *Universal Service Order*, the nature of the functions performed by the ISP is essential to the severability of the underlying components in an Internet transmission:

We observe that ISPs alter the format of information through computer processing applications such as protocol conversion and interaction with stored data, while the statutory definition of telecommunications only includes transmissions that do not alter the

Commission to legally or factually separate arguments raised by comments in support of the Petitions for Reconsideration such that some could be considered and others stricken from the record without violating parties' rights to comment on issues raised in this proceeding. For all of these reasons, none of the comments filed in this proceeding should be stricken and Ameritech's Motion should be denied.

Even if the Commission were to decide that the restrictions in Section 1.106 on the content of comments filed regarding Petitions for Reconsideration were applicable, the Commission should, pursuant to Section 1.3, waive those restrictions with respect to the Comments filed. This proceeding has far-reaching regulatory and policy implications concerning the Commission's jurisdiction over local service used to access the Internet. The Commission should accept and fully consider all comments in order to base its decision on a complete record. Accordingly, good cause exists to waive any restrictions on the comments that have already been filed.

Finally, because either Section 1.106 is not applicable to this proceeding, or its application should be waived for good cause, the Commission need not consider Ameritech's alternative Motion for Permission to Exceed Page Limits. RCN sees no harm in permitting Ameritech, or any other party, to state its arguments in more than ten pages on this important issue. To the extent it is

form or content of the information sent. When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's offering.

Federal-State Joint Board on Universal Service, CC Dkt. No. 96-45, Report & Order ¶ 789 (May 8, 1997) ("*Universal Service Order*").

considered, however, Ameritech's alternative Motion should be granted and made applicable to all parties that filed comments and reply comments in this proceeding.

Respectfully submitted,



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Dated: January 29, 1999

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CERTIFICATE OF SERVICE

I, Michael W. Fleming, hereby certify that the foregoing OPPOSITION TO AMERITECH MOTION TO STRIKE was served on this 29th day of January, 1999 upon the following persons by first class mail, postage prepaid, except as indicated.

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