

FCC MAIL SECTION

Federal Communications Commission

FCC 99-41

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DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Adopted: February 26, 1999; Released: February 26, 1999

By the Commission: Commissioner Furchtgott-Roth dissenting and issuing a statement at a later date.

I. INTRODUCTION

1. MCI WorldCom, Inc. (MCI WorldCom) has filed a petition for reconsideration of our order concluding our investigation of GTE Telephone Operating Cos.' GTOC Transmittal No. 1148.¹ In addition, the National Association of Regulatory Utility Commissioners (NARUC) filed a request for clarification and/or reconsideration of the *GTE DSL Order*.² In this Memorandum Opinion and Order, we deny both the petition for reconsideration filed by MCI WorldCom and the request for clarification and/or reconsideration filed by NARUC.

II. BACKGROUND

2. In an Order released October 30, 1998, we concluded an investigation of a new access offering filed by GTE that GTE calls its DSL Solutions-ADSL Service (ADSL service). We found that this offering, which permits Internet Service Providers (ISPs) to provide their end user customers with high-speed access to the Internet, is an interstate

¹ GTE Tel. Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79, FCC 98-292, Memorandum Opinion and Order (rel. Oct. 30, 1998) (*GTE DSL Order*).

² A list of parties submitting comments is included at Appendix A. A summary of MCI WorldCom's petition for reconsideration and NARUC's request for clarification is included at Appendix B.

service and is properly tariffed at the federal level.³

3. In the *GTE DSL Order*, we found that the jurisdictional nature of communications traditionally is determined by the end points of the communication and not points of intermediate switching or exchanges between carriers.⁴ We rejected the argument that, for jurisdictional purposes, an end-to-end ADSL communication must be separated into two components: an intrastate telecommunications service, provided in this instance by GTE, and an interstate information service, provided by the ISP.⁵ We emphasized that the Commission's decision to treat ISPs as end users for access charge purposes does not affect the nature of the end-to-end communication or the Commission's jurisdiction over such traffic.⁶ Accordingly, we concluded that ISP traffic must be analyzed as a continuous transmission from the end user to a distant Internet website.⁷

4. We then determined that GTE's ADSL service offering is properly tariffed at the federal level on the ground that it is similar to existing special access services that are subject to federal regulation under the mixed-use facilities rule.⁸ We found that, like point-to-point private line service that high-volume telephony customers purchase for direct access to interexchange carriers' networks, GTE's ADSL service provides end users with direct access to their selected ISPs, over a connection that is dedicated to ISP access.⁹ We determined that the ADSL service also is similar to traditional private line services in that they both may carry interstate and intrastate traffic and both services provide direct access from an end user to a service provider's (ISP or IXC) point of presence (POP).¹⁰ Because more than a *de minimis* amount of Internet traffic is destined for websites in other states or other countries, we concluded that GTE's ADSL service offering is subject to federal jurisdiction under the

³ *GTE DSL Order* at ¶ 1.

⁴ *GTE DSL Order* at ¶¶ 17-19.

⁵ *GTE DSL Order* at ¶ 20.

⁶ *GTE DSL Order* at ¶ 21.

⁷ *GTE DSL Order* at ¶ 21.

⁸ *GTE DSL Order* at ¶ 23. As discussed in the *GTE DSL Order*, under the mixed-use facilities rule, special access lines carrying both interstate and intrastate traffic are subject to the Commission's jurisdiction where it is not possible to separate the uses of the special access lines by jurisdiction. *Id.* Special access lines carrying more than *de minimis* amounts (*i.e.*, more than ten percent) should be assigned to the interstate jurisdiction. *Id.*

⁹ *GTE DSL Order* at ¶ 25.

¹⁰ *GTE DSL Order* at ¶ 25.

mixed-use facilities rule.¹¹

A. MCI WorldCom's Petition for Reconsideration

5. MCI WorldCom requests the Commission to reconsider its finding that ADSL communications "do not terminate at the ISP's local server, . . . but continue to the ultimate destination or destinations, very often at a distant Internet website accessed by the end users."¹² MCI WorldCom states that the Commission's jurisdictional analysis treats the ISP as if it is a provider of telecommunications and presumes that there is end-to-end telecommunications between the end user and the distant website, with one portion provided by GTE and the other portion provided by the ISP.¹³

B. NARUC's Request for Clarification

6. NARUC requests that the Commission clarify that the *GTE DSL Order* does not preclude states from requiring intrastate tariffs of ADSL services designed to connect end users to ISPs.¹⁴ NARUC states that some of its member commissions either currently have under investigation the filing of intrastate tariff arrangements similar to that proposed in the GTE/BOC tariffs or are considering such action.¹⁵

7. NARUC also requests that the Commission clarify that Part 36 separation rules for special access tariffs should remain in effect for GTE's tariff until the Separations Joint Board issues a recommendation on any needed revisions.¹⁶ NARUC states that the question of whether changes to section 36.154(b) of the Commission's rules (entitled "Exchange Line Cable and Wire Facilities (C&WF) -- Category 1 -- Apportionment Procedures") are needed to appropriately allocate line costs associated with virtual special access tariffs like GTE's is currently pending before the Separations Joint Board.¹⁷ NARUC argues that the current separations rules require direct assignment of "special access" line costs to the relevant

¹¹ *GTE DSL Order* at ¶ 26.

¹² MCI WorldCom Petition at 2, citing *GTE DSL Order* at ¶ 19.

¹³ MCI WorldCom Petition at 3.

¹⁴ NARUC Request at 2.

¹⁵ NARUC Request at 2.

¹⁶ NARUC Request at 3, 6.

¹⁷ NARUC Request at 5.

jurisdiction.¹⁸ NARUC states that in the case of GTE's ADSL tariff, that is the interstate jurisdiction.¹⁹

III. DISCUSSION

8. MCI WorldCom presents no new facts or arguments in its petition that would lead us to change the decisions that we made in the *GTE DSL Order*. We therefore affirm our decision for the reasons stated therein and deny MCI WorldCom's petition.²⁰ To the extent NARUC also seeks reconsideration of our jurisdictional determinations in the *GTE DSL Order*, we deny its petition as well.²¹ We reiterate, however, that in some circumstances, ADSL services may be appropriately tariffed as intrastate services.²² For example, GTE may tariff an ADSL service with the states so that those customers whose Internet use is 10 percent or less interstate may purchase the service out of state tariffs and those customers whose Internet use is more than 10 percent interstate may purchase the service out of the federal tariff.

9. The request for clarification filed by NARUC raises separations and cost allocation issues that go beyond the scope of the limited issue that was subject to investigation in this tariff proceeding. These are important questions that we intend to address in a separate proceeding in conjunction with the Federal-State Joint Board. Accordingly, we refer NARUC's petition to the Joint Board proceeding in Docket No. 80-286.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 4(j), 201-205, and 405 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, and

¹⁸ NARUC Request at 3.

¹⁹ NARUC Request at 4.

²⁰ See *GTE DSL Order* at ¶¶ 16-29.

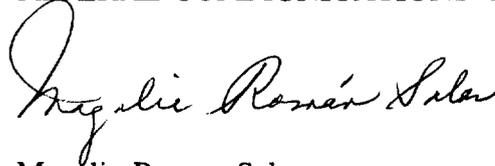
²¹ See *GTE DSL Order* at ¶¶ 16-29. We made a similar determination in an Order released on November 30, 1998, concluding our investigation of new access offerings filed by Bell Atlantic, BellSouth, GTE System Telephone Cos., and Pacific Bell (collectively, the "ILECs") establishing ADSL service. Bell Atlantic Telephone Cos., CC Docket No. 98-168; BellSouth Telecommunications, Inc., CC Docket No. 98-161; GTE System Telephone Cos., CC Docket No. 98-167; and Pacific Bell Telephone Co., CC Docket No. 98-103. FCC 98-317, Memorandum Opinion and Order (rel. November 30, 1998). In that Order, the Commission concluded that, for reasons set forth in the *GTE DSL Order*, the ILECs' ADSL service offerings are interstate services and are properly tariffed at the federal level. *Id.* at ¶ 1.

²² *GTE DSL Order* at ¶ 27.

405, that the petitions for reconsideration filed by MCI WorldCom, Inc., IS HEREBY DENIED.

11. IT IS FURTHER ORDERED, that the request for clarification and/or reconsideration filed by the National Association of Regulatory Utility Commissioners IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Magalie Roman Salas".

Magalie Roman Salas
Secretary

APPENDIX A**Parties Filing Comments**

ACI Corp.
Ameritech
Association for Local Telecommunications Services (ALTS)
Bell Atlantic
BellSouth Corporation
California Public Utilities Commission (CPUC)
Commonwealth Telecom Services, Inc. (CTSI)
Florida Public Service Commission (FPSC)
GTE Service Corporation
Hyperion Telecommunications, Inc.
KMC Telecom, Inc.
Logix Communications Corp.
MCI/Worldcom, Inc. (MCI)
Minnesota Department of Public Service (MDPS)
National Association of Regulatory Utility Commissioners (NARUC)
Pacific Bell
Public Utility of Texas (TPUC)
RCN Telecomm Services, Inc.
Telecommunications Resellers Association (TRA)
Transwire Communications, Inc.
United States Telephone Association (USTA)
US West, Inc.
Washington Association of Internet Service Providers (WAISP)
Washington Utilities and Transportation Commission (WUTC)