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

In the Matter of)
)
Promotion of Competitive Networks)
in Local Telecommunications Markets)
)
Wireless Communications Association)
International, Inc. Petition for Rulemaking to)
Amend Section 1.4000 of the Commission's)
Rules to Preempt Restrictions on Subscriber)
Premises Reception or Transmission Antennas)
Designed to Provide Fixed Wireless Services)
)
Cellular Telecommunications Industry)
Association Petition for Rule Making and)
Amendment of the Commission's Rules)
to Preempt State and Local Imposition of)
Discriminatory And/Or Excessive Taxes)
and Assessments)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

WT Docket No. 99-217

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-98

REPLY COMMENTS OF GTE

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REPLY COMMENTS OF GTE

GTE Service Corporation and its affiliated communications companies

(collectively, "GTE")¹ hereby respectfully submit this reply to the opening comments filed

¹ These comments are filed on behalf of GTE's affiliated domestic telephone operating companies, GTE Wireless Incorporated, GTE Media Ventures, and GTE Communications Corporation, Long Distance Division. GTE's domestic telephone operating companies are: GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE

(Continued...)

in response to the Commission's Notice of Proposed Rulemaking ("NPRM")² in the above-captioned matter.

I. INTRODUCTION AND SUMMARY

The record in this proceeding comprehensively supports GTE's proposals to bring competition to the Multi-Tenant Unit ("MTU") marketplace. Through a simple and straightforward process of relocating the demarcation point to the Minimum Point of Entry ("MPOE") when necessary, the Commission can achieve its goals of bringing further competition while encouraging and ensuring compensation for carrier deployment of facilities. Nonetheless, the Commission should reject the proposal to mandate universal relocation of the demarcation point. Such a universal mandate creates tremendous costs without any corresponding competitive gain in buildings where no competition has yet arrived. Moreover, the Commission should maintain carrier discretion in determining the demarcation point to the extent possible in order to adapt to the unique circumstances present in various MTU configurations. The Commission should adopt GTE's proposal, which achieves the agency's goals without stretching statutory provisions or straining its jurisdiction.

(...Continued)

South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., and Contel of the South, Inc.

² *Promotion of Competitive Networks in Local Telecommunications Markets*, FCC 99-141 (Further Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98) (July 7, 1999) ("*Notice*") (All comments cited herein, unless otherwise noted, were filed in WT Docket No. 99-217 and CC Docket No. 96-98 on August 27, 1999).

The Commission should reject various commenters' efforts to use Sections 251 and 224 to address competitive concerns regarding MTUs. Section 251 by its very terms does not reach facilities outside the carrier's network, thus leaving facilities beyond the demarcation point outside the statute's reach. This, combined with the Commission's evolving UNE policies, irretrievably complicates application of Section 251 to MTUs.

Section 224 is similarly fraught with difficulties in the MTU context. First, issues regarding rights-of-way and ownership and control by utilities are matters of state law that should not be disturbed by some universal federal law of property adopted in this proceeding. Section 224 also raises substantial takings concerns for both the utility and the underlying property owners. These concerns were recently highlighted by the Eleventh Circuit's decision in *Gulf Power*. Section 224 also should not be stretched in an effort to reach building rooftops for wireless providers, or to mandate utilities use their highly-limited and state-defined eminent domain powers on behalf of third parties. In sum, Section 224 will not achieve the Commission's goals, creates friction with state law, and exposes Commission action to constitutional challenge.

Finally, the record supports and GTE recommends that the Commission limit the ability of carriers to use exclusive service contracts to lock out competition. Customers should be permitted to choose the carrier of their choice through a competitively neutral policy that treats all carriers identically. GTE joins other parties in urging the Commission to permit existing carriers to recover their sunk costs expended under these exclusive arrangements. In achieving these goals, the agency should reject

detailed regulations in favor of a market-based approach that permits all carriers and consumers to enjoy the benefits of the marketplace.

II. A BROAD RANGE OF COMMENTERS AGREE WITH GTE THAT THE MOST STRAIGHTFORWARD AND SENSIBLE WAY TO FACILITATE COMPETITION IN MTUs IS THROUGH RELOCATION OF THE DEMARCATION POINT TO THE MINIMUM POINT OF ENTRY

GTE's proposal – to address concerns over the growth of facilities-based competition in MTUs directly via the relocation of the demarcation point to the minimum point of entry ("MPOE") – finds support in a vast number of the comments filed in this proceeding.³ Many of these commenters, however, request that the Commission impose the onerous requirement that this relocation occur immediately, in all MTUs, regardless of whether there is an actual need for such extraordinary measures. As GTE explains below, these commenters fail to take into account the host of problems such a radical approach would needlessly create.

A. The Commission Should Amend Part 68 Of Its Rules To Require Relocation Of The Demarcation Point To The MPOE Only When There Is An Actual Need For Competitive Access To The Network Termination Point

A number of commenters urge the FCC to revise Part 68 of its rules to require the immediate relocation of the demarcation point to the MPOE in *all* MTUs.⁴ While

³ See, e.g., Comments of the Association for Local Telecommunications Services at 22-23 ("ALTS"); Comments of the Fixed Wireless Communications Coalition at 13-14 ("Fixed Wireless"); Comments of McCleodUSA Incorporated at 4; Comments of OpTel, Inc. at 5-7 ("OpTel"); Comments Personal Communications Industry Association at 32-33 ("PCIA"); Comments of Teligent, Inc. at 53 ("Teligent"); Comments of WinStar Communications, Inc. at 65-68 ("WinStar").

⁴ See, e.g., Comments of Fixed Wireless ("[T]he Commission should designate the MPOE as the inside wire demarcation point for *all* commercial and residential MTEs, (Continued...)

GTE believes that the optimal policy is revision of the intra-building wire access rules to promote the relocation of the demarcation point to the MPOE, an inflexible mandate requiring such action to occur immediately in all MTUs would be unnecessarily over-inclusive. The sole purpose of the MPOE approach is to facilitate competitive access in MTUs. As such, until a carrier, building owner, or tenant demonstrates an actual need for multiple carrier access to the network termination point, relocation of the demarcation point is not required. Accordingly, GTE offers the following recommended "triggering events" for a requirement to relocate the demarcation point:

1. The building owner or customer requests that the physical location of the network termination be moved or changed;
2. The building owner or customer requires major additions, modifications, and/or rearrangements of network outside plant facilities; or
3. A telecommunications service provider requests use of another telecommunications service provider's intra-building wiring with the building owner's permission.

These three "triggering events" are sufficiently broad in scope to ensure that wherever there is a practical, real-world need for competitive access to the network termination point, the Commission's revised rules will require the relocation of the demarcation point to the MPOE.

(...Continued)

regardless of when the building was wired. Likewise, the rules should apply even if the MTE owner prefers the demarcation point at another location."); Comments of the ALTS at 22; Comments of Teligent. at 53; Comments of WinStar at 68.

B. Proposals That Would Require Immediate Relocation Of The Demarcation Point To The MPOE In All MTUs Ignore The Myriad Problems Such An Approach Would Unnecessarily Create

GTE submits that a flash-cut approach would needlessly create a host of problems. For example, a forced relocation of the demarcation point in all MTUs *en masse* would raise a number of accounting and compensation issues, as the inside wiring between the existing demarcation point and the MPOE would, by definition,⁵ cease to be a part of the ILEC's network facilities.⁶ In addition, building owners would suddenly find themselves responsible for the maintenance of all inside wiring on their side of the MPOE – without having had the opportunity to arrange for alternative maintenance coverage or to make the necessary arrangements to cover potential liability for service outages that this approach would create (such as through amending rental contracts or obtaining insurance). The Commission should avoid unnecessarily forcing carriers, building owners, and tenants to deal with these and other inconveniences. A much more reasonable approach would be to adopt GTE's recommended "triggering effects," which are designed to avoid such issues until an actual need arises and to permit the parties involved to address these matters on a case-by-case basis.

⁵ The demarcation point is "the point at which the telephone company's facilities and responsibilities end and customer-controlled wiring begins." *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, 12 FCC Rcd 11897, 11899 (1997).

⁶ For example, rate making issues related to exogenous cost changes would need to be resolved in both price cap states and at the federal level.

C. The Commission Should Not Eliminate Carriers' Ability To Exercise A Reasonable Amount Of Discretion In Locating The Demarcation Point

When the Commission adopted its revised definition of the demarcation point in 1990, it stated that:

In existing multiunit service configurations, where, under the existing definition, the demarcation point has been determined in accordance with the carrier's reasonable and nondiscriminatory practices, the building owner may be the only customer (e.g., a shared tenant services situation), or there may be several customers with all demarcation points in a single location or group of locations, or the demarcation point for each customer may be in each customer's unit. We believe that for existing multiunit installations the revised definition should be sufficiently flexible to accommodate these existing situations."⁷

This reasoning is as applicable today as it was nine years ago.

No two MTUs are alike. Furthermore, Section 68 of the FCC's rules applies not only to MTUs, but also to continuous property such as campus arrangements, malls, and large resort developments. Thus, a "one-size-fits-all" approach would not only be inappropriate, but would also be difficult, if not impossible, to implement in every property covered by the intra-building inside wire rules. For these reasons, GTE urges the Commission to continue to provide carriers and building owners a reasonable degree of flexibility in determining the location of the demarcation point.⁸

⁷ *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association*, 5 FCC Rcd 4686, 4692-93 (1990).

⁸ This approach is consistent with Section 68.3 of the FCC's rules, which allows carriers to locate the demarcation point "the closest practicable" to the MPOE. 47 C.F.R. § 68.3.

III. SECTION 251(C)(3) IS AN INAPPROPRIATE TOOL FOR PROMOTION OF FACILITIES-BASED COMPETITION IN MTUs

The FCC recently reached a decision in the UNE Remand proceeding,⁹ the precise nature of which will not become clear until the Commission releases its Order. As such, GTE anticipates that it may challenge that decision. In light of these developments, GTE will reserve to that proceeding its comments on the application of Section 251 to MTUs.

Regardless of the ultimate outcome of the UNE Remand proceeding, the FCC cannot ignore the fact that intra-building wiring on the *customer* side of the demarcation point is controlled – and in many cases owned – by the customer.¹⁰ In addition, as GTE and other commenters note,¹¹ customer-side inside wire is, by definition, not part of the ILEC's network. Indeed, the Commission itself has stated that the demarcation point is “the point at which the telephone company's facilities and responsibilities end and

⁹ *FCC Promotes Local Telecommunications Competition*, Report No. CC 99-41 (News Release) (Sept. 15, 1999).

¹⁰ See, e.g., Comments of Ameritech at 5 (“[W]ith respect to incumbent LEC-owned wire located on the customer’s side of the demarcation point, a requirement that incumbent LECs make it available as a UNE to any CLEC . . . is unnecessary . . . because the Commission has already ruled that, with respect to wire whose cost was recovered in the rates for regulated services, the customer has most of the beneficial incidents of ownership already.”) (citation omitted).

¹¹ See, e.g., Comments of Bell Atlantic at 2 (“From a legal perspective, moreover, in-building wiring on the customer’s side of the demarcation point is not part of the network but is unregulated inside wire that is not subject to the unbundling requirements of the Act . . .”).

customer-controlled wiring begins.”¹² Thus, intra-building wiring on the customer side of the demarcation point is beyond the scope of Section 251’s requirement “to provide . . . interconnection with the local exchange carrier’s *network*”¹³

Finally, as Bell Atlantic points out,¹⁴ Section 251(c)(3) only applies to incumbent LECs. As such, unbundling intra-building wire under Section 251 would do nothing to promote competition in MTUs where the wire is owned by a non-incumbent LEC.

For the foregoing reasons, GTE urges the Commission to refrain from applying an unbundling approach in the MTU context. Instead, the Commission should adopt GTE’s proposed “triggering events” approach to the relocation of the demarcation point to the MPOE.¹⁵

IV. SECTION 224 IS A POOR STATUTORY VEHICLE FOR ACCESS TO MTUs

In its opening comments, GTE discussed in detail the reasons why Section 224 is a poor candidate for addressing problems of access to MTUs. In particular, GTE noted that application of Section 224 to MTUs raises significant policy, legal, and constitutional issues. Chief among these are: (1) the Commission’s prior recognition that questions involving the scope of a utility’s ownership or control of a right-of-way is a

¹² *Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, 12 FCC Rcd at 11899 (1997).

¹³ 47 U.S.C. § 251(c)(2) (emphasis added).

¹⁴ Comments of Bell Atlantic at 2.

¹⁵ *See supra* pp. 4-6.

state law issue, rendering the FCC unable to structure general requirements governing such matters; (2) the "takings law" implications of any type of national right-of-way mandate; and (3) the limited scope of Section 224, which, when properly understood, demonstrates the unsuitability of the statute as a means for ensuring that competitive providers have meaningful access to MTUs.

As discussed below, the record contains strong support for GTE's position counseling against reliance on Section 224 as a basis for ensuring access to MTUs. In particular, numerous commenters echo GTE's view that the Commission should refrain from infringing on private property rights implicated by the proposed interpretation of Section 224.¹⁶ Numerous commenters also agree with GTE's view regarding the limited scope of that statute.¹⁷ In addition, the United States Court of Appeals for the Eleventh Circuit recently issued a decision affirming that the mandatory access provision of Section 224 constitutes a "taking," thereby answering the lingering question of whether

¹⁶ See, e.g., Comments of Ameritech at 1-4; Comments of BellSouth Corporation at 14 ("BellSouth"); Comments of Cincinnati Bell Telephone Company at 5-8 ("Cincinnati Bell"); Comments of Florida Power and Light Co. at 8-10 ("Florida"); Comments of Greater St. Paul Building Owners and Managers Ass'n at 1-2 ("Greater St. Paul"); Comments of the Independent Cable and Telecommunications Ass'n at 3-4 ("ICTA"); Joint Comments of the Building Owners and Managers Ass'n International *et al.* at 34-48 ("BOMA"); Joint Comments of the United Telecom Council and Edison Electric Institute at 21 ("UTC/EEI"); Comments of SBC Communications Inc. at 5-6 ("SBC"); Comments of the Electric Utilities Coalition at 7-11; Comments of United States Telephone Ass'n at 6 ("USTA").

¹⁷ See, e.g., Comments of Bell Atlantic at 2; Comments of BellSouth at 11; Comments of Cincinnati Bell at 4; Comments of Florida at 13-27; Comments of BOMA at 48-53; Comments of UTC/EEI at 6-8, 21; Comments of Kansas City Power and Light at 2-4.

the "nondiscriminatory access" provisions of this statute are tantamount to a "taking" with a resounding "yes."¹⁸

A. The Record Clearly Shows That The Commission Should Refrain From Infringing On Private Property Rights Delineated By State Law

In its opening comments, GTE indicated that Section 224 is an inappropriate avenue for MTU policy because a utility's ownership or control of a right-of-way is a matter of state law. In this connection, GTE noted that the *Local Competition Order* explicitly recognized that "[t]he scope of a utility's ownership or control of an easement or right-of-way is a matter of state law[,] meaning that the FCC "cannot structure general access requirements" with regard to such facilities.¹⁹ GTE also indicated that agreements involving private rights-of-way are matters of private contract law. In view of this fact, GTE stressed that regulatory measures granting access to additional parties, without a corresponding change in the terms of the underlying private agreement, unfairly interfere with the bargain entered into between the utility and the private property owner.

The record supports GTE's position. For example, as Ameritech notes, a utility's right to use public property is based upon state statutes and municipal ordinances and franchises while a utility's right to use private property "is created and defined by its

¹⁸ *Gulf Power Co. v. United States*, 1999 WL 699763 (11th Cir. Sept. 9, 1999).

¹⁹ Comments of GTE at 21-23. See also Notice, ¶ 47; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16083 (1996) ("Local Competition First Report and Order").

arrangement with the property owner.”²⁰ Similarly, the Building Owners and Managers Association International, *et al.*, cites a long line of cases in support of the conclusion that property interests and issues involving their scope and extent are matters created and determined by state law.²¹

Along these same lines, UTC/EEI observes that “[t]he ability of utilities to apportion or convey licenses, private easements, and rights-of-way is a matter of state law.”²² As such, “[t]o require third-party access to all licenses and private easements, as well as rights-of-way, used by utilities would be an unauthorized and completely unnecessary usurpation of state authority to control the law of property and contracts.”²³ GTE agrees with UTC/EEI that in enacting Section 224, Congress clearly did not intend such a result.²⁴ GTE also agrees with Ameritech that a third party’s access is dependent on whether the utility’s “ownership or control” gives it a legally enforceable right to permit the use of these facilities by the attaching party.²⁵ The existence of such a right turns on “the nature of the legal interest by which the utility possesses the right to maintain its poles, ducts, conduits or rights-of-way on the public or private property

²⁰ Comments of Ameritech at 2-3. See also Comments of OpTel at 10; Comments of USTA at 6.

²¹ See Comments of BOMA at 54-55.

²² Comments of UTC/EEI at 5.

²³ *Id.* at 5-6.

²⁴ See *id.* at 6-7.

²⁵ Comments of Ameritech at 3-4.

and [on] the particular law of the state. . . ."²⁶ As such, pronouncement of federal access requirements of general applicability is inappropriate and potentially meaningless.²⁷

WinStar's request that the Commission adopt a "single, appropriately expansive interpretation of the scope of a utility's right-of-way,"²⁸ ignores the serious state law implications of such action.²⁹ WinStar has made no colorable showing that a sweeping federal preemption is either necessary or consistent with the judicial standard for upholding FCC state preemption actions.³⁰ For similar reasons, the Commission should

²⁶ *Id.* at 3. GTE agrees with Ameritech's observation that if a utility lacks a legal right to authorize use of its right-of-way without the consent of the underlying property owner, an attempt by an attaching party to use the utility's right could constitute a trespass or a breach of the agreement between the utility and the property owner. See Comments of Ameritech at 3-4.

²⁷ It is also noteworthy in this connection that rather than granting the FCC authority to preempt state laws, Section 224(c)(1) states that "Nothing in this section shall be construed to apply to, or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are . . . regulated by a state." 47 U.S.C. § 224(c)(1).

²⁸ Comments of WinStar at 62.

²⁹ ALTS's suggestion that the Commission require states to re-certify preemption under Section 224 to include access to MTUs consistent with policies defined by the FCC suffers from a similar flaw and should be rejected. See Comments of ALTS at 22-23.

³⁰ As UTC/EEI notes, "[p]reemption may only be implied when Congress occupies the field's to such an extent that there is no longer any room for state authority . . . when state law conflicts with a paramount federal law to such a degree that one cannot comply with both." See Comments of UTC/EEI at 6-7 (citing *Cipollene v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) and *Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995)). Neither of these circumstances exists here. Federal regulation of telecommunications clearly does not "occupy the field" of all property rights nor can it be said that state and local property rights conflict with federal telecommunications regulation to such an

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reject WinStar's related suggestion that a state's exercise of authority in accordance with Section 224 "must adhere to the Commission's interpretation of the scope of utilities' rights-of-way."³¹ Section 224 does not authorize the Commission to usurp matters grounded in state property law and certainly does not permit a federalization of property law based on some parties' perceived need to reach MTUs under Section 224. Moreover, even under WinStar's approach, the basic extent of the utility's right-of-way would still depend on state property law interpretations.

GTE also urges the Commission to reject the suggestion of the Competition Policy Institute ("CPI") that the FCC adopt rules broadly defining "indicia of control".³² "Control" ultimately hinges on whether a utility has a legal right to permit access to the facilities in question. Because this legal right is a matter of state law, promulgation of federal rules defining "control" is unnecessary and inappropriate. Significantly, the indicia recommended by CPI ignore the most important consideration to be taken into

(...Continued)

extent that they must be preempted. See *id.* at 7-8. Moreover, rather than giving a federal right of preemption, Section 224(c)(1) grants states a right of "reverse preemption" in those cases where the state has exercised jurisdiction over such matters.

³¹ See Comments of WinStar at 62 n. 182.

³² Comments of the Competition Policy Institute at 4 ("CPI"). GTE likewise opposes CPI's suggestion that the Commission develop model rules to be used by states and localities governing nondiscriminatory access to MTUs. See *id.* at 15-17. As discussed above, an attaching entity's legal right to nondiscriminatory access depends on state principles of property law defining the utility's authority to permit the attaching entity access to the facility in question. States are under no compulsion to modify their property law principles on the basis of model rules formulated by the FCC and Section 224 offers no basis for FCC action of this sort.

account in determining whether an attaching party may use the facility in question, namely, whether the utility has an enforceable legal right to permit the attaching party to use the path supposedly under its "control."³³

B. Mandated Access Under Section 224 Is A "Taking"

In its opening comments, GTE also indicated that the potential takings law implications of a national right-of-way mandate under Section 224 counsel against reliance on this statute as a vehicle for gaining access to private rights-of-way in an MTU. Numerous commenters agree.³⁴ These comments demonstrate that the takings issue arises in terms of both a "taking" from the utility and a second "taking" from the underlying property owner.

As mentioned, the United States Court of Appeals for the Eleventh Circuit recently affirmed that the mandatory access provision of Section 224(f) "effects a taking

³³ See Comments of Ameritech at 4. On this issue, GTE agrees with Ameritech that "[a] broad reading of the term 'control' in Section 224 will not have the effect of making access to multi-tenant buildings by competitive service providers any easier, because in almost all instances, the utility does not have a legal right to permit the access to the service provider." GTE further agrees that, for this reason, "the Commission should refrain from extending its interpretation of 'control' for purposes of Section 224 beyond its prior recitation that 'ownership and control' is a matter of state law." *Id.* at 4. Furthermore, as GTE discussed in its opening comments, wire located on the building owner's side of the demarcation point is often owned or controlled by the individual building owner. In addition, in most cases, building owners retain the right to exclude or terminate the relationship with the carrier. As a threshold matter, these MTU facilities therefore cannot be classified as a pole attachment because such facilities and rights-of-way are not owned or controlled by the utility as necessitated by Section 224(a)(4).

³⁴ See, e.g., Comments of Bell Atlantic at 7; Comments of BellSouth at 13; Comments of Cincinnati Bell at 8; Comments of the ICTA at 3; Comments of BOMA at 48; Comments of Florida at 27; Comments of UTC/EEI at 14; Comments of OpTel at 10-12; Comments of SBC at 3; Comments of the Electric Utilities Coalition at 10-14.

of a utility's property" under the Fifth Amendment "[b]ecause Section 224(f) requires a utility to acquiesce to a permanent, physical occupation of its property"³⁵ The Eleventh Circuit's decision therefore addresses – and dispenses with – certain commenters' claims that Section 224 does not involve a "taking" because it simply requires nondiscriminatory access.³⁶ The Eleventh Circuit also clarified that a provision giving a third party mandatory access to a utility's right-of-way or other property interest held by any property owner effects a taking of such property, requiring just compensation, regardless of whether the utility or other property owner acquired the property with knowledge that it would be subject to regulation.³⁷ Based on this ruling, GTE anticipates that any MTU access premised on Section 224(f) is likely to be accompanied by protracted litigation over the adequacy of the compensation to utilities as well as private property owners.³⁸ In GTE's view, this is strong counsel for an MTU policy approach divorced from reliance on Section 224.

³⁵ *Gulf Power Co. v. United States*, 19 WL 699763, at 4.

³⁶ See, e.g., Comments of ALTS at 21-22; Comments of CPI at 8; Comments of Competitive Telecommunications Association at 12 ("CompTel"); Comments of Nextlink Communications, Inc. at 12; Comments of Sprint Corporation at 18-19 ("Sprint"); Comments of Teligent at 66-67; Comments of WinStar at 38-49.

³⁷ *Gulf Power Co. v. United States*, 1999 WL 699763, at 5. In particular, the court stated that "the fact that a utility gained its property knowing it would be subject to extensive regulation for the public use does not mean its property may be taken for a public purpose without payment of just compensation, however laudable that public purpose might be." *Id.* Thus, MTU access could not be provided free of charge.

³⁸ See Comments of the Electric Utilities Coalition at 10, 14 (it will be difficult to determine what compensation is reasonable and utilities and the Commission will incur considerable costs in resolving the surrounding constitutional questions).

C. MTU Wiring Is Not A Right-of-Way Or Conduit Owned Or Controlled By Utilities Under The Act

In its opening comments, GTE indicated that the Commission may not obtain jurisdiction over MTU wiring through either the "conduit" or the "right-of-way" language of Section 224. Other commenters echo GTE's view that MTU wiring is not a "conduit" as that term has clearly and repeatedly been defined.³⁹ These commenters therefore agree with GTE that the Commission has no legal basis for expanding the definition of a "conduit" under Section 224.

Consistent with these observations, GTE endorses BellSouth's view that the Commission's proposed broad reading of the terms "right-of-way" and "conduit" is without legal foundation.⁴⁰ In addition, GTE agrees with BellSouth's observation that prior attempts "to piggyback to, in and through private property premises" – such as what the Commission now proposes to permit under Section 224 – have been rejected by the courts.⁴¹ In short, the expansive approach proposed by the Commission is unsupported by the language of the statute, impinges on private property rights, and would effectuate an unconstitutional taking of private property without just compensation from the perspective of both utilities and underlying building owners.⁴²

³⁹ See, e.g., Comments of BellSouth at 9-10; Comments of Cincinnati Bell at 4; Comments of SBC at 5.

⁴⁰ See Comments of BellSouth at 9-10.

⁴¹ *Id.* at 12.

⁴² *Id.* at 13.

D. The Scope of Section 224 Is Limited To Wireline Distribution Facilities

As discussed in detail in GTE's opening comments, the language of Section 224 and the legislative history of the statute support limiting its compass to "poles, ducts, conduits, and rights-of-way used, in whole or in part, for wire communications."⁴³ GTE explained that the statute was designed to reach potential bottleneck facilities for telecommunications and cable wires. In light of this purpose, Congress declined to make Section 224 apply to all utilities – and instead limited its reach to utilities that control pathways for "wire communications" – because it did not believe that bottleneck facilities existed outside the wireline context.⁴⁴ For this reason, Congress did not intend for wireless facilities, such as microwave transmission facilities and rooftops used for wireless transmissions, to fall within the purview of Section 224. GTE's interpretation of Section 224 is supported by a broad range of commenting parties.⁴⁵

GTE agrees with American Electric Power Service Corp., *et al.*, that the right to place an antenna on a rooftop is typically in the form of a contractual arrangement, such as a lease or a license, as opposed to a right-of-way.⁴⁶ Section 224 does not

⁴³ 47 U.S.C. § 224(a)(1).

⁴⁴ This purpose particularly undercuts any effort to extend Section 224's rate formula to wireless sites. Nonetheless, by its plain terms, the access provisions of Section 224(f) extend to all "telecommunications carriers" regardless of technology used.

⁴⁵ See, e.g., Comments of American Electric Power Service Corp., *et al.* ("American Electric Cos."), at 21-23; Comments of BOMA at 48-49; Comments of Cincinnati Bell at 4; Comments of UTC/EEI at 10-14.

⁴⁶ See Comments of American Electric Cos. at 16-21.

reach arrangements of this nature for good reason – a reading of the statute to encompass private contractual arrangements of this sort would raise numerous complicated issues involving interference with the contractual rights of private parties. Indeed, as noted by certain commenters, even if a utility's access, granted in this manner, were considered a right-of-way, the utility would be powerless to expand the scope of the right-of-way to include additional uses for additional parties.⁴⁷

E. Utilities Should Not Be Required To Use Their Eminent Domain Powers To Obtain Access To MTU Property For The Benefit Of Competitive Carriers

The Fixed Wireless Communications Coalition suggests in its comments that utilities "be required to exercise their power of eminent domain where necessary to accommodate qualified entities seeking access to rights-of-way."⁴⁸ GTE opposes this request for the following reasons.

It is true that, in the *Local Competition First Report and Order*, the Commission stated that "a utility should be expected to exercise its eminent domain authority to expand an existing right-of-way over private property in order to accommodate a request for access, just as it would be required to modify its poles or conduits to permit attachments."⁴⁹ The Commission's determination in this regard is, however, the subject

⁴⁷ *Id.*

⁴⁸ Comments of the Fixed Wireless at 10.

⁴⁹ *Local Competition First Report and Order*, 11 FCC Rcd at 16083. In support of this determination, the Commission stated that "Congress seems to have contemplated an exercise of eminent domain authority in such cases when it made provisions for an owner of a right-of-way that 'intends to modify or alter such . . . right-of-way . . .'" *Id.*

of pending petitions for reconsideration, which GTE supported in the context of the *Local Competition* docket.⁵⁰

Specifically, in their petition for reconsideration of *the Local Competition First Report and Order*, American Electric Power Service Corp., *et al.*, (American Electric, *et al.*) argue that the Commission's approach "goes well beyond Congressional intent or any reasonable construction of Section 224 with regard to access to utility infrastructure."⁵¹ These petitioners also point out the inconsistency between the Commission's requirement that utilities exercise their eminent domain authority on behalf of others and the Commission's express recognition – in the same proceeding – that "the scope of a utility's ownership or control of an easement or right-of-way is a matter of state law[.]" meaning that the FCC cannot craft general access requirements with regard to such facilities.⁵² In this latter regard, the petitioners observe that "[t]he authority granted by many state eminent domain statutes expressly limit[s] the use of lands condemned by a utility to the utility's own operations."⁵³ On this basis, the

⁵⁰ See, e.g., American Electric Power Service Corp., *et al.*, Petition for Reconsideration and/or Clarification, CC Docket No. 96-98, at 14-21 (filed Sept. 30, 1996) ("American Electric Petition for Reconsideration"); Opposition and Comments of GTE Service Corp., CC Docket No. 96-98, at 39-40 (filed Oct. 31, 1996) ("GTE Opposition/Comments").

⁵¹ American Electric Petition for Reconsideration at 15.

⁵² *Id.* at 15-16. See also *Local Competition First Report and Order*, 11 FCC Rcd at 16083.

⁵³ American Electric Petition for Reconsideration at 16 (citing Alabama and Ohio statutes as examples). The petitioners also note, based on the language of Sections 224(c)(1) and (f), that Section 224 does not provide any basis for application of a federal requirement obligating utilities to exercise their eminent domain power on behalf

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petitioners correctly note that such utilities "of course, cannot provide to telecommunications carriers authority that they do not have themselves."⁵⁴ Finally, the petitioners underscore that "[h]ad Congress intended to dramatically rework local regulation of eminent domain authority, it would have done so expressly in the Telecommunications Act of 1996. Instead, Congress expressly and clearly preserved the states' jurisdiction to determine who will exercise eminent domain authority and the circumstances under which it will be exercised."⁵⁵ GTE endorsed these views in its opposition/comments and reiterates its position that the Commission has no authority to compel the use of state eminent domain powers on behalf of third parties.⁵⁶ As such, the Commission should not pursue such a path here.⁵⁷

(...Continued)

of others even in those states where eminent domain authority is not expressly limited. *Id.* at 17.

⁵⁴ *Id.*

⁵⁵ *Id.* at 18-19.

⁵⁶ GTE Opposition/Comments at 41.

⁵⁷ Bell Atlantic's comments in this proceeding support American Electric *et al.*'s reconsideration request. In particular, Bell Atlantic observes that a utility's eminent domain authority is under exclusive state or local jurisdiction, depending on applicable state law. Bell Atlantic notes that eminent domain authority granted to utilities is generally restricted so that the utility may condemn property needed only to allow that utility to provide service to its own customers. Bell Atlantic states that this authority does not envision allowing a utility to condemn private property for the benefit of others, and public policy considerations dictate against an expansion of eminent domain authority to allow utilities to condemn property for broader purposes. See Comments of Bell Atlantic at 8-9. GTE's own experience likewise exemplifies that these issues have unique local ramifications, meaning that inherent tensions are likely to arise if broad federal rules infringing on such matters are formulated.

Moreover, as the Eleventh Circuit's decision in *Gulf Power Co. v. United States*, makes plain, any mandatory access to rights-of-way under Section 224 is a taking for which just compensation must be paid. The Eleventh Circuit expressly rejected the argument that "a property owner who initially obtained his property for public use should henceforth be on notice that the sovereign can authorize permanent occupation of his property without payment of just compensation" ⁵⁸ In response to this claim, the court clarified that "[a] property owner is entitled to expect that the property it acquired via eminent domain, and paid just compensation for, came with the right all property has – not to be subject to government-coerced, permanent physical occupation without just compensation." ⁵⁹ Thus, if a utility were required to exercise its eminent domain authority, just compensation would have to be provided to the utility itself and the underlying property owner. ⁶⁰

F. Any Regulations Adopted Under Section 224 Must Apply To All Carriers, Not Simply To Incumbent Local Exchange Carriers

If despite the numerous considerations dictating against reliance on Section 224, the Commission nevertheless chooses to proceed under this statute and establishes rules providing requesting attachers access to facilities in MTUs, it is critical that these regulations apply to all carriers and not simply to incumbent local exchange carriers

⁵⁸ *Id.*

⁵⁹ *Gulf Power Co. v. United States*, 1999 WL 699763, at 5.

⁶⁰ Significantly, the Eleventh Circuit's holding clarifies that any access to a utility's right-of-way, regardless of how the utility uses the right-of-way and whether it occupies it entirely, is a "taking" requiring just compensation.

(ILECs) alone. There is no basis for concluding that ILECs have any greater ability to negotiate with building owners and thus, no logical rationale for imposing more stringent requirements on ILEC property. Likewise, ILECs should have the same rights of access as those given to other carriers.⁶¹ Accordingly, GTE submits that any rules governing nondiscriminatory access to MTUs extend equally to incumbent and competing telecommunications carriers.⁶²

⁶¹ GTE recognizes that Section 224(a)(5) denies ILECs the rights to access CLEC facilities. See 47 U.S.C. § 224(a)(5). This provision illustrates as a threshold matter how ill suited Section 224 is as a vehicle for access to MTUs. The fact is that CLECs and other providers often lock up entire buildings, denying ILEC entry. Section 224 assumes otherwise, demonstrating that reliance on the statute makes no policy sense in this context. If the FCC nonetheless determines that Section 224 should be extended to MTUs, ILECs should be provided with a right to access these facilities so that they may compete with the dominant CLEC. In this connection, GTE notes that its proposed MPOE policy does not create inequities of the sort posed by Section 224, which serve to undermine competition.

⁶² As a final matter in this regard, GTE notes its concurrence with BellSouth that this proceeding provides an excellent opportunity for the Commission to take what might, in the long run, be more meaningful steps toward its overall policy goals by encouraging building owners to properly plan for support structure design and installation techniques that will accommodate the intra-building wire distribution facilities of multiple carriers. See Comments of BellSouth at 16-18. GTE agrees with BellSouth that proper education and planning is all that is needed to obviate many of the access problems identified in the Notice. Mandatory access laws are not needed because building owners will respond to market forces in the same way that they respond to other issues occurring in the real estate industry. Moreover, an approach that relies on an educational campaign and market forces has the added advantage of minimizing unnecessary regulatory oversight and maximizing the expertise and resources that exist in the private telecommunications and construction industries. See *id.* at 18.

V. THE VAST MAJORITY OF COMMENTERS AGREE THAT EXCLUSIVE SERVICE CONTRACTS INTERFERE WITH THE COMPETITIVE MARKETPLACE AND SHOULD NOT BE ALLOWED

A wide array of parties representing all aspects of the telecommunications business agree that the Commission should limit the ability of telecommunications carriers to use exclusive service contracts⁶³ to thwart competition.⁶⁴ GTE urges the Commission to take heed of this strong position in the record and fashion a competitively neutral and reasonable policy that permits customers, including building owners and individual tenants, to choose the provider of their choice. In crafting any rules, however, the Commission should: (1) ensure that existing carriers are compensated for their sunk costs; and (2) refrain from imposing detailed regulations by relying instead on the marketplace to govern carrier arrangements on access to MTUs.

A. Commenters Spanning A Broad Range Of Competitive Interests Agree With GTE That Exclusive Contracts Should Not Be Allowed To Interfere With A Customer's Ability To Choose The Telecommunications Provider Of Choice

New entrants, established carriers, and many ILECs agree that exclusive service contracts can interfere with competition by precluding carriers and customers, including building owners and individual tenants, from receiving service from the carrier of choice. WinStar and Teligent argue that exclusive contracts make it more difficult for

⁶³ GTE does not intend for this discussion to apply to exclusive contracts used in other contexts between carriers and customers.

⁶⁴ See, e.g., Comments of Bell Atlantic at 5; Comments of CPI at 19; Comments of Fixed Wireless at 11; Comments of Global Crossing at 3-4; Comments of Level 3 at 6; Comments of PCIA at 11; Comments of Sprint at 20.

competitive carriers to meet customer needs.⁶⁵ Ameritech, Bell Atlantic, and Sprint all agree that exclusive service contracts have no place in today's competitive environment.⁶⁶ The potential anticompetitive impact of any existing or future exclusive service contracts can be eliminated by adopting a clear rule that allows a carrier, building owner, or individual tenant to request service from a carrier other than the existing carrier, notwithstanding the existence of any exclusive contract.

With such a rule in place, there is no need to invalidate immediately all exclusive contracts. Immediate invalidation of all exclusive contracts would, in fact, create havoc and place in doubt other provisions of carrier-building owner contracts that govern a variety of aspects of the relationship and which do not create anticompetitive consequences.⁶⁷ As opposed to such an approach, the ability to break the "exclusivity" once a competitive choice is desired is all that is necessary in these circumstances. Therefore, the Commission should reject requests for immediate invalidation of exclusive service contracts.

The ability to break the "exclusivity" should not, however, be allowed to undermine legitimate cost recovery needs of the existing carrier. Adopting a rule to this

⁶⁵ Comments of Teligent at 17; Comments of WinStar at 24. See also Comments of CompTel at 13, 18; Comments of Metromedia Fiber at 5; Comments of Level 3 at 6; Comments of CPI at 17-19.

⁶⁶ Comments of Ameritech at 9-11; Comments of Bell Atlantic at 5; Comments of Sprint at 12, 20.

⁶⁷ For instance, such contracts may contain obligations of the carrier to restore service within a certain period of time or require the building owner to provide access to certain private areas of the building, etc.

effect reflects the practical reality that carriers often recover the costs of a service commitment over time in order to minimize up-front costs to the building owner or end user customers. Allowing recovery for these costs is clearly consistent with competition because it will create a level playing field where all carriers are assured of retaining the benefit of their bargains with building owners or customers. In fact, failure to provide for such compensation would be anticompetitive and anti-consumer because it would give some carriers an unfair competitive advantage and discourage carriers from making customer-friendly arrangements that minimize up-front costs.

It is critical to point out that compensation for the use of inside wiring must be derived from the end user who is obtaining telecom service over that inside wiring and not from the LEC whose service is being provided over the wiring. As GTE noted previously,⁶⁸ the Commission's rules clearly identify the network interface device as the point of demarcation between a telecommunications carrier's network facilities and the inside wiring owned by the consumer or a third party provider. In fact, ILEC tariffs approved by state regulatory agencies establish the network interface device as the point at which the company's responsibility for the provision of dial tone services ends and the customer's responsibility for the remainder of the telecommunications path, *i.e.*, the inside wire, begins. Thus, the telecommunications carrier is not the party using the inside wiring and cannot be the party responsible for payment of charges to the third party inside wiring owner.

⁶⁸ See *supra* page 4.

B. A Rule Against Service Exclusivity Should Be Enforced In An Even-Handed Manner For All Telecommunications Service Providers

For the following four reasons, GTE adamantly opposes the suggestions of certain commenters that an exclusive contract should be invalidated only when an ILEC is a party to it.⁶⁹ First, if GTE's proposal is adopted, a rule to this effect is unnecessary for existing contracts because a building owner or customer could select a new provider even if such an exclusive contract existed. Second, as applied to existing and new contracts, such a rule would be manifestly anticompetitive because it would give a lopsided advantage only to certain parties vying to provide local services to consumers.⁷⁰ Third, a lopsided rule of this sort is not justified for new contracts since all players are on an equal competitive footing to bid for the new business because the 1996 Act has eliminated entry barriers.⁷¹ Finally, maintaining the enforceability of an

⁶⁹ See Comments of AT&T at 25-26 ("The short answer is that to prevent incumbent LECs from locking up multiple tenant environment buildings before competition can develop, the Commission should, at least for now, prohibit them from entering into exclusive service arrangements with building owners. . . . The same concerns are *not* raised, however, with respect to agreements between building owners and new entrants."); Comments of Shared Communications Services, Inc. at 12-13 ("In the absence of ILEC market power, there should be no ban on exclusive or partially exclusive agreements, and no restrictions on term."); see also Comments of Sprint at 12.

⁷⁰ The legitimate concerns raised by such commenters as OpTel and ICTA concerning the need to protect unrecovered investment associated with servicing new customers are accommodated by GTE's proposed rule. See Comments of OpTel at 14-15; Comments of ICTA at 4.

⁷¹ See also Comments of Ameritech at 10-11 ("[I]f the Commission adopts any rule prohibiting carriers from entering into exclusive contracts for building access, it must apply in a uniform and nondiscriminatory manner to all carriers.").

exclusive contract between a building owner and any carrier can interfere with the ability of an individual tenant in an MTU to select the carrier of its choosing.⁷² Such results are anti-consumer and are not good for competition in the long run.⁷³

The Commission should resist the pleas of well-heeled new entrants to create a lopsided competitive situation that will not serve the 1996 Act's and the Commission's long term competitive goals.⁷⁴ Establishing a level playing field with fair compensation and market-based access rules will withstand the test of time and signal to the market at the outset what the rules of the game will be. This approach is consistent with the Commission's "home-run" wiring rules for cable companies, which allow competitors to gain access to the wiring – regardless of what MVPD has installed and provides service through that wiring.⁷⁵

⁷² Press reports indicate, for example, that Bell Atlantic recently encountered precisely this situation when Bell Atlantic Mobile opened a store at a shopping mall whose developer had awarded AT&T affiliate Cox Communications a five-year contract to be the exclusive provider of telephone, Internet, and cable television services within the mall. As a result of this agreement, mall stores, including the Bell Atlantic Mobile store, cannot choose their telecommunications provider. See Timothy C. Barmann, *Bell Atlantic Unhappy that Cox Gets To Make the Call at Mall*, Providence Journal-Bulletin, Sept 21, 1999, at 1G.

⁷³ Such a result would also encourage new entrants to pay, and for building owners to require, large payments in order to secure the benefits of such exclusive access, notwithstanding the desires of individual tenants.

⁷⁴ AT&T is perhaps the best example of a deep-pocket, facilities-based competitor that seeks to gain for itself a competitive advantage by applying the anti-exclusive contract rule only to its ILEC competitors and not to itself. See Comments of AT&T at 25-26.

⁷⁵ See 47 C.F.R. § 76.804.

C. The Commission Should Refrain From Establishing Detailed And Burdensome Rules Governing The Relationship Between Building Owners And Carriers

The Commission should reject certain commenters' suggestions that additional governmental rules are necessary to ensure reasonable access to intra-building wiring.⁷⁶ There is no justification for establishing rigid or complex rules to govern existing contractual relationships between building owners and carriers. The needs of building owners, customers, and competitors vary widely – a circumstance that can be adequately met only by maintaining the necessary flexibility to meet these diverse needs. The marketplace is currently working toward solutions on issues relating to access to MTUs. Although some difficult issues exist, and the confusion surrounding those issues has not yet entirely been resolved, an inflexible, forced solution at this early stage of marketplace development would do far more damage than good. In addition to being more efficient in the long run, reliance on marketplace solutions will also foster competition and accommodate consumer needs far better than a “one-size-fits-all” rule devised by the Commission.

In particular, the Commission should reject the ever-detailed and unnecessary rules that CompTel asks it to adopt.⁷⁷ CompTel requests numerous new rules including (1) requiring all access arrangements to be committed to writing; (2) requiring ILECs to turn over contracts with building owners to CLECs; (3) requiring a response to a CLEC's access request within 30 days of request; (4) including access complaints on

⁷⁶ See, e.g., Comments of Teligent at 16; Comments of WinStar at 23.

⁷⁷ See Comments of CompTel at 22-24.

the FCC's accelerated complaints docket;⁷⁸ (5) providing for the payment of attorneys' fees to carriers filing complaints against ILECs for failure to provide access;⁷⁹ (6) requiring ILECs to include a variety of terms in their contracts with building owners such as technology neutral access rights, a nondiscrimination pledge and providing third-party beneficiary status to CLECs; (7) declaring it per se unreasonable for an ILEC to accept MTU access arrangements if any CLEC is denied access to that MTU; (8) requiring ILECs to inform CLECs of terms they are negotiating with building owners prior to finalizing an agreement; (9) requiring ILECs to disclose contracts with building owners upon request; and (10) requiring ILEC penalties to be paid directly to CLECs for failure to provide access to buildings.⁸⁰

These requirements are more appropriate to the Soviet Politburo than to an American free-market economy. CompTel appears to be in search of a government-instilled advantage in the marketplace rather than reasonable rules to promote fair competition.⁸¹ This astonishing array of intrusive, burdensome, and unworkable

⁷⁸ Section 1.730 of the commission's rules already appears to accommodate this request if FCC staff agree that the particular complaint is suitable to be processed under the accelerated docket's procedural rules. 47 C.F.R. § 1.730.

⁷⁹ The FCC has already concluded that it has no authority to require the payment of attorney's fees in the context of complaint cases. See, e.g., *Allnet Communications Services, Inc. v. The Bell Atlantic Telephone Companies, and Cincinnati Bell Telephone Company*, 8 FCC Rcd 1347, 1358 (1993).

⁸⁰ The FCC, of course, has no jurisdiction to require that direct penalties be made to competitors, but is required to follow the forfeiture rules contained in Section 503 of the Act. 47 U.S.C. § 503.

⁸¹ What's more, these rules appear to be an attempt to impose rules on building owners through regulation of ILECs, a clearly wrong-headed approach to regulation. If the FCC

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requirements should be rejected out of hand. First, they are unnecessary if the Commission adopts GTE's simple, market-oriented solution. Second, they will entangle government in virtually every competitive situation involving MTUs. Having the FCC be the third-party at every negotiating table is the antithesis of allowing competition to function and directly contrary to Congress's desires in enacting the 1996 Telecommunications Act. Third, there is no showing on this record that ILECs are at the root of any potentially discriminatory access rights that CompTel is seeking to prevent.⁸² As such, there is no justification for imposing these detailed requirements on ILECs. Fourth, these rules do not adequately protect confidential business information that may be the subject of ongoing negotiations or contained in contracts. Fifth, the FCC lacks the authority to adopt many of these rules, which go far beyond anything contemplated by the Commission or the 1996 Act.⁸³ The Commission should, therefore, reject these ludicrous proposals in favor of a neutral, market-oriented approach to fair competition as urged by GTE.

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has concerns about building owner activities, the issues should be addressed directly, rather than indirectly through another party.

⁸² See *supra* n. 72.

⁸³ For instance, even negotiated interconnection arrangements under Section 251 between carriers are not shackled with such detailed rules, such as disclosure of terms under negotiation. See *generally* Part 59 of the Commission's Rules. 47 C.F.R. § 59.1 *et seq.*

VI. CONCLUSION

As the foregoing discussion demonstrates, the record supports GTE's recommendation that the Commission use a balanced, market-based approach to ensure open access to intra-building wiring in MTUs. The Commission should modify its existing inside wire rules to speed relocation of the demarcation point to the MPOE for MTUs in existence as of August 13, 1990. Such agency action will effectively promote facilities-based competition in the provision of telecommunications services by ensuring competitive access to MTUs. The Commission should decline invitations to utilize the UNE process or Section 224 in an effort to exercise jurisdiction over MTU owners. These approaches to MTU service raise serious constitutional issues and place the Commission on shaky jurisdictional ground. GTE's MPOE approach far better achieves the Commission's goals while respecting private property rights and acting within jurisdictional limits.

Respectfully submitted,

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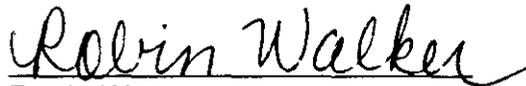
September 27, 1999

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 27th day of September, 1999, I caused copies of the foregoing "Reply Comments of GTE" in WT Docket No. 99-217 and CC Docket No. 96-98 to be sent via hand-delivery to the following:

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