

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

In the Matter of:)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Implementation of the Local)	
Competition Provisions of the)	CC Docket No. 96-98
Telecommunications Act of 1996)	

**OPPOSITION TO AND COMMENTS ON
PETITIONS FOR RECONSIDERATION**

GTE Service Corporation and its affiliated domestic telephone operating companies (collectively "GTE"),¹ pursuant to Section 1.429 of the Commission's Rules, respectfully submit their Opposition to and Comments on the Petitions for Reconsideration of the Commission's Ninth Report & Order and Eighteenth Order on Reconsideration in the above-captioned docket.² GTE supports both SBC's recommendation that the Commission minimize reporting requirements and the Puerto Rico Telephone Company's request that the Commission ensure that Puerto Rico receives sufficient support to allow its residents to enjoy the same subscribership levels as exist throughout the United

¹ 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 South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc.

² Ninth Report & Order and Eighteenth Order on Reconsideration, CC Docket No. 96-45 (rel. Nov. 2, 1999), *published*, 64 Fed. Reg. 68,637 (Dec. 8, 1999) ("Ninth Report & Order").

States. GTE opposes AT&T's Petition, which would deter facilities-based competition and unduly constrain carriers' and states' flexibility to use universal service funding.

I. QUARTERLY REPORTING OF LINE COUNT DATA SHOULD BE REQUIRED FOR STATES WHERE CARRIERS RECEIVE SUPPORT, BUT ALL OTHER COST AND LINE COUNT REPORTING SHOULD BE ON AN ANNUAL BASIS.

In the Ninth Report & Order, the Commission requires that “[a]ll carriers serving customers in areas served by non-rural incumbent LECs will be required to file data on a quarterly schedule, instead of the present annual schedule with voluntary quarterly updates.”³ SBC asks that the Commission reconsider its decision and require that data only be filed on an annual basis.⁴ In addition, SBC asks the Commission at a minimum to clarify “that quarterly reporting requirements pertain only to those carriers that receive support for their loops from the federal high cost fund.”⁵

GTE agrees that quarterly reporting of *cost* data on a study area basis is unnecessary. Cost data do not change substantially from quarter to quarter, but reporting these data on a quarterly basis requires significant carrier resources. Since the burdens substantially outweigh the benefits, the Commission should require the submission of cost data only on an annual basis.

In contrast, carriers should submit *line count* data quarterly in states where they receive high-cost support. Although line count data also do not change substantially from quarter to quarter, filing on a frequent basis will ensure that new entrants are able to

³ Ninth Report & Order, ¶ 87.

⁴ Petition for Clarification and/or Reconsideration of SBC Communications Inc., CC Docket No. 96-45 at 2 (filed Jan. 3, 2000) (“SBC Petition”).

⁵ SBC Petition at 3 (initial capitalization removed from original).

collect support for high-cost customers on a timely basis. If line count data are submitted only annually, new entrants' ability to obtain support for high-cost customers will be delayed.

For study areas where an ILEC will not get support because the study area average cost does not meet the Commission's requirements, carriers should be required to provide both cost and line count data only on an annual basis. Requiring quarterly reporting for areas where the carrier does not receive support imposes significant costs with no corresponding benefit, since both cost and line count data do not change substantially between quarters and no support is being awarded. Therefore, the Commission should clarify that carriers are required to file quarterly reports only for line count data for those states in which they receive support and that all other reports should be filed on an annual basis.

II. THE COMMISSION MUST ENSURE THAT SUFFICIENT UNIVERSAL SERVICE SUPPORT IS AVAILABLE FOR PUERTO RICO.

The Puerto Rico Telephone Company has asked the Commission to reconsider both the Ninth Report & Order and the Tenth Report & Order.⁶ GTE shares the Puerto Rico Telephone Company's concerns. Puerto Rico currently receives \$130 million in federal universal service support, and yet subscribership island-wide is only 74.2 percent. Although this shows great improvement compared with a penetration rate of 25 percent twenty-five years ago, this is still far below the United States' average of 94.2 percent.⁷

⁶ Petition for Reconsideration of Puerto Rico Telephone Company, Inc., CC Docket Nos. 96-45, 97-160 (filed Jan. 3, 2000) ("PRTC Petition").

⁷ PRTC Petition at 2-3.

Under the cost proxy model and inputs adopted by the Commission, Puerto Rico stands to lose *all* federal universal service support. This result highlights the deep-rooted problems with the Commission's new universal service mechanism. However, at a minimum, the Commission must ensure that Puerto Rico continues to receive at least the current level of support and should consider increasing that support so that residents of Puerto Rico can enjoy the same levels of subscribership as those who live in other parts of the United States.

III. THE COMMISSION SHOULD NOT REQUIRE THAT UNIVERSAL SERVICE SUPPORT BE TARGETED TO HIGH-COST DEAVERAGED UNE ZONES.

In the Ninth Report & Order, the Commission determined that federal universal service support should be targeted to wire centers, but allowed states to file a petition for waiver requesting that support be targeted to areas different than wire centers, such as a UNE cost zone.⁸ AT&T asks the Commission to “*require* states to target support based on UNE zones,”⁹ arguing that using different geographic units for UNE pricing and universal service support creates arbitrage opportunities. GTE agrees that using different geographic units for UNE pricing and universal service support gives CLECs arbitrage opportunities. However, even greater arbitrage opportunities and disincentives to competition and investment are created when universal service support is not aligned to the same geographic units as retail rates.

⁸ Ninth Report & Order, ¶ 76.

⁹ AT&T Petition for Reconsideration and Clarification, CC Docket No. 96-45 at 5 (filed Jan. 3, 2000) (emphasis in original) (“AT&T Petition”).

If retail rates are not deaveraged on the same basis as universal service support, CLECs are discouraged from serving and investing in high-cost areas. As GTE explained in its Petition for Reconsideration:

Local competition for most residential customers and many geographic areas is currently constrained by implicit subsidies contained in local rates. Most states rely on geographic rate averaging and above-cost business rates to subsidize high-cost residential rates, *i.e.*, business customers and low-cost residential customers pay more than the cost of their service so that high-cost customers can pay less than the cost of their service.¹⁰

If universal service support (both federal and state) is not aligned with retail rates, CLECs will be unable to compete with ILECs' artificially low rates in high-cost areas and will have no incentive to enter those markets or construct facilities. In addition, CLECs have an artificial advantage in low-cost urban markets because of ILECs' above-cost rates. This will allow CLECs to continue to attract low-cost customers from ILECs, regardless of whether they are the more efficient service provider, further undermining implicit subsidies supporting high-cost customers.

In its Petition, GTE showed that state commissions must implement a comprehensive regulatory plan that simultaneously deaverages UNE rates, removes implicit subsidies from retail rates, and replaces the implicit subsidies in retail rates with explicit, portable universal service funding. In developing such a plan, state commissions need flexibility to ensure that federal universal service support is targeted to minimize arbitrage opportunities while maximizing competitive incentives. The Commission's decision in the Ninth Report & Order requires that federal universal service support be

¹⁰ Petition for Reconsideration of GTE Florida Incorporated, CC Docket Nos. 96-45, 96-98
(Continued...)

targeted to wire centers, but allows states to seek a waiver of that requirement if targeting support in a different manner serves the public interest. GTE urges the Commission not to require that support be targeted to UNE zones, but to allow states the opportunity to implement a comprehensive plan that ensures that competition will flourish in both high-cost and low-cost areas.

IV. THE COMMISSION SHOULD CONTINUE TO ALLOW CARRIERS FLEXIBILITY IN DETERMINING HOW UNIVERSAL SERVICE SUPPORT IS USED.

Section 254(e) of the Act requires that universal service support be used for the “provision, maintenance and upgrading of facilities and services for which the support is intended.”¹¹ In the Ninth Report & Order, the Commission determined that “states will take the appropriate steps to account for the receipt of federal high-cost support and ensure that the federal support is being applied in a manner consistent with section 254” and that “it is most appropriate for states to determine how the support is used to advance the goals set out in section 254(e).”¹²

The Commission also stated that “states can direct carriers to spend the federal support in a manner consistent with section 254(e), though not necessarily in the wire center to which the support was targeted.”¹³ AT&T asks the Commission to “clarify this last point to ensure that a LEC must use the support within the group of wire centers to

(...Continued)
at 3-4 (filed Jan. 3, 2000).

¹¹ 47 U.S.C. § 254(e).

¹² Ninth Report & Order, ¶ 95.

¹³ Ninth Report & Order, ¶ 83.

which it was targeted.”¹⁴ The Commission should not place such a limit on carriers’ and states’ flexibility. Carriers should be able to use universal service support in a variety of ways, including to reduce intrastate rates in high-cost areas, replace implicit subsidies (which hold down rates in high-cost areas) with explicit subsidies, or invest in facilities that serve high-cost areas. In addition, improved facilities in one wire center can benefit the provision of service in other areas. For example, installing route diversity facilities or tandem switching upgrades in one wire center brings better service to a much wider area than is served by that one wire center.

AT&T fears that LECs will use universal service support to invest in facilities in low-cost wire centers.¹⁵ However, state commissions must certify that LECs are using support as intended by Section 254(e), and these commissions have every incentive to ensure that these funds are used to support service in high-cost areas. In addition, the Commission emphasized in the Ninth Report & Order that it has the authority to take enforcement action against any carrier that does not use universal service support as required by Section 254(e) and that parties can take advantage of the Commission’s Section 208 complaint process if they believe a carrier is misusing universal service funds.¹⁶

¹⁴ AT&T Petition at 7.

¹⁵ AT&T Petition at 7.

¹⁶ Ninth Report & Order, ¶ 110.

V. CLECS THAT PROVIDE SERVICE EXCLUSIVELY USING UNES SHOULD CONTINUE TO RECEIVE SUPPORT LIMITED TO THE COST OF THESE UNES.

In its Report and Order adopted in May 1997, the Commission determined that “in order to avoid creating a competitive disadvantage for a CLEC using exclusively unbundled network elements, that carrier will receive the universal service support for the customer’s line, *not to exceed the cost of the unbundled network elements used to provide the supported services.*”¹⁷ In the Ninth Report & Order, the Commission “reiterate[d]” its finding that “where a competitive eligible telecommunications carrier is providing services to a high-cost line exclusively through unbundled network elements (UNEs), that carrier will receive the universal service support for the high-cost line, not to exceed the cost of the unbundled network elements used to provide the supported services.”¹⁸

Despite the fact that the Commission adopted this policy in May 1997, AT&T asks the Commission to reconsider it now, three years later, arguing that subsequent Commission actions have made this decision “unnecessary and profoundly anticompetitive.”¹⁹ Specifically, and with no supporting explanation, AT&T alleges that the adoption of a forward-looking high-cost support mechanism, the targeting of support to specific high-cost serving wire centers, and the establishment of different rate zones for UNEs makes the limit on CLEC support “inapposite.”²⁰ This is not the case.

¹⁷ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8932-33 (1997) (emphasis added).

¹⁸ Ninth Report & Order, ¶ 91 (footnote omitted).

¹⁹ AT&T Petition at 3.

²⁰ AT&T Petition at 3.

CLECs providing service through UNEs collect a monthly charge from their customer (set at a level they determine) in addition to the high-cost support. Accordingly, if a CLEC serves a high-cost line exclusively through UNEs and collects support in excess of the cost of those UNEs, it would receive a windfall. Providing support beyond the cost of the UNEs will create an artificial incentive to serve high-cost customers via UNEs rather than deploying facilities. Thus, disincentives to invest in facilities in high-cost areas would exist if CLECs were to receive more than the cost of UNEs, notwithstanding the other Commission actions cited by AT&T.

AT&T then argues that “if the support amount above the cost of UNEs were to go to the incumbent, the incumbent would be compensated above economic cost even though it is no longer serving the customer”²¹ and that high-cost support “belongs to the *customer* not the incumbent.”²² GTE disagrees with these claims. First, the forward-looking rates established in many states do not adequately compensate the ILEC for the cost of serving high-cost areas. Second, since it is the ILEC’s facilities that are serving the high-cost line when a CLEC uses UNEs, the ILEC should receive any additional universal service funds to support the building and maintenance of those facilities. High-cost support does not “belong” to the customer; it is intended to support the facilities serving a high-cost customer, whether the facilities are built and maintained by an ILEC or a CLEC. Therefore, GTE urges the Commission not to reconsider its decision in the May 1997

²¹ AT&T Petition at 4. AT&T also argues that CLECs have costs in excess of the cost of UNEs to serve a customer and therefore deserve the additional universal service support. *Id.* However, AT&T fails to note that CLECs will be collecting a monthly service charge that can be used to cover any costs of service above the costs of the UNEs.

²² AT&T Petition at 5 (emphasis in original).

Report and Order, confirmed in the Ninth Report & Order, to limit universal service funding to CLECs serving customers exclusively through UNEs to the cost of those UNEs.

VI. CONCLUSION

For the reasons given above, GTE urges the Commission to reject the reconsideration requests made by AT&T, which would limit competition in high-cost areas and hamper carriers from employing universal service funds consistent with Section 254(e). In addition, the Commission should require only that carriers file cost data on an annual basis and clarify that carriers are not required to provide quarterly line count data for those states in which they do not receive support. Finally, the Commission should ensure that Puerto Rico has sufficient universal service support available to maintain and increase subscribership levels.

Respectfully submitted,

GTE SERVICE CORPORATION and its
affiliated domestic telephone operating
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February 7, 2000

CERTIFICATE OF SERVICE

On this 7th day of February 2000, I, Helene Marshall, hereby certify that this Opposition to and Comments on Petitions for Reconsideration has been served upon the parties listed below via first class mail:

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