UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| UNITED STATES OF AMERICA, Plaintiff, | Civil Action No. 83-1298 |
| v. | Filed: 5/4/83 |
| GTE CORPORATION, Defendant. | |

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16(b)-(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry against GTE Corporation in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On October 15, 1982, GTE Corporation ("GTE") and Southern Pacific Company ("SP") executed an agreement under which GTE would acquire the telecommunications enterprises of SP, including Southern Pacific Communications Company ("SPCC") and Southern Pacific Satellite Company ("SPSC"). Subsequently, GTE and SP applied to the Federal Communications Commission ("FCC") for authority to transfer SP's construction and radio licenses to GTE under Sections 214 and 310(d) of the Communications Act of 1934 (47 U.S.C. §§ 214, 310(d)). GTE may not consummate its proposed acquisition absent approval by the FCC of these applications.

On May 4, 1983, the United States filed a civil antitrust complaint under Section 15 of the Clayton Act (15 U.S.C. § 25), challenging this acquisition as a violation of Section 7 of the Clayton Act (15 U.S.C. § 18), and under Section 4 of the Sherman Act (15 U.S.C. § 4), challenging GTE's provision of information services as a violation of Section 2 of the Sherman Act (15 U.S.C. § 2). The complaint alleged that the effect of the acquisition may be substantially to lessen competition in the provision of interexchange telecommunications services to those geographic areas, among others, in which GTE provides local exchange telecommunications services. The complaint also alleged that GTE's provision of information services creates a substantial probability of monopolization of the provision of information services in those markets.

The United States and GTE have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce compliance with the provisions of the proposed Judgment, to punish any violations of the proposed Judgment, and to grant further relief should violations of the proposed Judgment occur. The proposed Final Judgment would become effective upon the later of the date of entry by the Court or GTE's comsummation of the acquisition.

## II. Events Giving Rise to the Alleged Violation

Intercity (or "interexchange") telecommunications services in the United States have enjoyed a history similar to that of several other regulated industries. At the close of World War II, one firm, AT&T, enjoyed a de facto monopoly in the provision of intercity voice telecommunications services throughout the country. Since that time competition has slowly but surely begun to emerge. Technological development, steadily increasing demand, and decisions of the FCC and the courts have all aided this trend. In consequence, all segments of the intercity telecommunications industry are now characterized by some degree of competitive activity.

Similar technological and concomitant legal developments have yet to occur within the markets for local (or "exchange") telecommunications services in the United States. Local exchange telecommunications, including local telephone services, are provided by firms that enjoy a monopoly within their franchised serving areas, subject to regulation, including regulation of their rate-of-return on investment, by the states. Although technology may at some point facilitate the introduction of realistic competition into these local markets, 1/ for the foreseeable future local telecommunications services

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1/ Local distribution facilities operated by regulated "wireline" carriers within their franchised serving areas are the dominant form of exchange telecommunications. Although complementary and supplementary technologies, such as cellular radio and digital termination services, are being developed, these technologies have not yet been commercially introduced to the point of providing a widespread competitive substitute for the local exchange "bottleneck."

will remain almost exclusively the province of such franchised rate-of-return regulated monopolists.

Several significant competitive concerns arise from the interface between these local regulated monopoly markets and the more competitive markets for intercity (or "interexchange") telecommunications services. Firms seeking to provide intercity telecommunications services to customers in any market must reach those customers over facilities owned and operated by the firm providing local telecommunications services in that market. These local distribution facilities, including both exchange switching and transmission facilities, are essential facilities to which firms providing intercity services must have non-discriminatory access in order to compete effectively over the full range of services. Thus, when a single firm provides both local, regulated telecommunications and intercity telecommunications services in a given market, its control over local exchange monopolies gives it the ability -- and its simultaneous presence as an intercity carrier provides it an economic incentive -- to foreclose or impede competition in the provision of interexchange telecommunications in that market. Vertical integration by local telephone operating companies therefore creates both the incentive and ability, through abuse of monopoly power over local distribution facilities and through evasion of rate-of-return regulation and

cross-subsidization, for the leverage of monopoly power in regulated markets to impede competition (or the development of competition) in related competitive, or potentially competitive, markets.

These dual concerns, discrimination and cross-subsidization, also arise as a consequence of the vertical integration by local telephone operating companies into the provision of more specialized "information services," such as videotext and some forms of electronic mail. Indeed, because the technologies for such information services are only now beginning to be marketed commercially, and have yet to demonstrate significant, independent profitability, vertical integration by local exchange monopolists creates a very significant potential for retarding the otherwise natural competitive development of the information services industry.

The potential for abuse of monopoly power over exchange access and for evasion of regulatory constraints underlies the present action and the proposed Final Judgment. In its complaint, the United States alleged that the acquisition by GTE of SPCC and SPSC may substantially lessen competition for the provision of interexchange telecommunications services to customers of GTE's regulated, monopoly local operating companies, in violation of Section 7 of the Clayton Act. The United States also alleged that the provision by the GTE operating companies ("GTOCs") of information services creates a substantial probability of monopolization of the provision of

information services in such markets, in violation of Section 2 of the Sherman Act. The United States accordingly sought a judgment that GTE's proposed acquisition of SPCC and SPSC would violate Section 7 of the Clayton Act, and injunctive relief addressing the Section 7 and Section 2 violations, including the following:

(a) The prohibition of the acquisition or any similar arrangement that would combine the ownership or operations of the telecommunications enterprises of SP and GTE; and

(b) The permanent preclusion of GTE, including the GTOCs, from the business of providing information services.

The basic antitrust theories of this action are the same as those of United States v. American Telephone & Telegraph Co., No. 74-1698 (D.D.C.). On August 24, 1982, the AT&T case was terminated upon entry by the United States District Court for the District of Columbia of an agreed upon modification to the Final Judgment in United States v. Western Electric Co., No. 82-0192 (D.D.C.). That Modified Final Judgment (hereinafter referred to as the "AT&T decree" or the "MFJ") mandated "a basic restructuring of the telecommunications industry," 2/ consisting of, among other things, (1) the divestiture by AT&T, no later than February 24, 1984, of the exchange telecommunica-

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2/ United States v. Western Electric Co., Competitive Impact Statement in Connection with Proposed Modification of Final Judgment, 47 Fed. Reg. 7170, 7170 (Feb. 17, 1982).

tions and exchange access functions of 22 of the Bell Operating Companies ("BOCs"), (2) injunctive provisions designed to ensure that the divested BOCs do not disadvantage any competitor of AT&T engaged in the provision of interexchange telecommunications services or information services, (3) injunctive provisions requiring the phased-in provision of equal exchange access by the BOCs to all interexchange carriers and information service providers, and (4) line-of-business restrictions for the divested BOCs barring them from providing interexchange services or other services, except exchange telecommunications, customer premises equipment, and printed directory advertising, that are not natural monopoly services actually regulated by tariff.

The allegations of the complaint in this action, and the provisions of the proposed Final Judgment, must be viewed in the context of the telecommunications industry that will emerge from the restructuring mandated by the AT&T decree. After the divestitures required by the MFJ, AT&T will no longer control local exchanges representing over 80% of the telephones in the country. The United States alleged in the AT&T case that AT&T's control over both the BOCs and its Long Lines intercity operations gave AT&T the incentive and ability, which it had exercised continuously over a number of years, to restrain and impair competition in markets in which competition was increasingly possible given the development of technology and the easing of regulation. The structural separation of the BOCs

from Long Lines, coupled with the mandatory provision of equal exchange access by the divested BOCs, separates the provision of regulated, monopoly telephone service from the provision of intercity services in substantially all of the country. By removing the incentives and abilities that gave rise to the alleged anticompetitive conduct of AT&T, the MFJ opens many new markets to the possibility of realistic competition for the provision of interexchange telecommunications services.

One of the various aspects of the telecommunications industry not addressed by the AT&T decree was the continuing relationship between AT&T and the non-Bell or "independent" operating companies. Through its ownership of the GTOCs, GTF is the largest of the independents, providing local exchange telecommunications and exchange access services in 31 states to eight percent of the nation's telephones. As a provider of local telephone service, GTE participates in a joint venture with Long Lines, the BOCs, and the independent operating companies for the provision of intercity telecommunications services, a joint venture known in the telecommunications industry as the "partnership". Revenues from intercity telephone services are allocated among the members of the partnership through a procedure, known variously as "settlements" and "division of revenues," which provides a common rate of return to all members of the partnership on the aggregate, undepreciated investment of each partnership member in interexchange telecommunications switching and transmission facilities. In its

complaint in this case the United States alleged that as a member of the partnership, and thus with an economic incentive to favor AT&T, GTE acquiesced in various actions of AT&T which had the effect of impairing competition for the provision of interexchange telecommunications services by competitors of the partnership.

## III. Explanation of the Proposed Final Judgment

The United States and GTE have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act is completed. The proposed Final Judgment does not constitute an admission by any party as to any issue of fact or law. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment is designed to circumscribe GTE's ability, through cross-subsidization or discriminatory actions, to leverage the power the GTOCs enjoy in their regulated monopoly markets to foreclose or impair the development of competition in the related markets for the provision of interexchange telecommunications services and information services. Accordingly, the proposed Judgment encompasses a wide range of restrictions, discussed in greater detail below, including (a) corporate and operational separation of GTE's regulated monopoly and unregulated (or competitive) operations,

(b) a prohibition of discrimination among, and phased-in equal exchange access for, interexchange carriers and information service providers, (c) a ban on the provision by the GTOCs of interexchange services beyond those currently existing, (d) transitional arrangements for use by interexchange carriers of the GTOCs' existing interexchange assets, and for reimbursement to the GTOCs for such use, (e) a ten-year restriction on future acquisitions by GTE, absent the approval of the Department of Justice or the Court, of firms providing interexchange telecommunications services as more than an incidental part of their business, and (f) the limitation of GTOC information services to a subsidiary of each GTOC separated from the GTOC's monopoly exchange and exchange access services and facilities. The proposed Final Judgment also grants the Department the right to seek further relief, including the divestiture of the acquired entities or the GTOCs, should GTE violate the terms of the proposed Judgment.

A. Corporate Separation

Section IV of the proposed Final Judgment requires GTE to maintain complete corporate and operational separation between the GTE operating companies and SPCC and SPSC ("the acquired entities"). This Section would also permit GTE to reorganize its corporate structure by transferring to or consolidating with the acquired entities all of GTE's unregulated operations, or by transferring out of the GTOCs their existing unregulated operations.

The corporate separation requirement of Paragraph IV(A)(1) prohibits the GTOCs, subject to a limited exception discussed below, from transferring to or from the acquired entities any assets, operations, or lines of business. Paragraph IV(A)(2) of the proposed Final Judgment prohibits common facilities, assets, books of account, costs, and expenditures for the acquired entities and any GTOC. Paragraphs IV(A)(6), IV(A)(3), and IV(A)(4), respectively, prohibit the joint provision of telecommunications services and the sharing of proprietary customer information, network engineering data, or research and development, and limit authority over the acquired entities to the highest-level GTE officials or to subordinates who are not directly or indirectly responsible for local telephone operations. Paragraph IV(C) of the proposed Final Judgment precludes GTE from marketing the acquired entities' services through, or identifying them with, the GTOCs or the GTOCs' services, although the acquired entities may be renamed "GTE-Sprint" or otherwise identified with GTE as a parent corporation.

Financial and other interactions between GTE and the acquired entities are expressly limited. The proposed Final Judgment has no effect on GTE's right to invest as much capital in SPCC and SPSC as it may choose. However, Paragraph IV(A)(5) provides that all such capital must be provided directly by GTE, its financial affiliates, or unaffiliated sources. Commercial transactions between the acquired entities and GTE's

unregulated affiliates -- i.e., affiliates other than the GTOCs -- are limited by the two-tier standard of Paragraph IV(A)(7). If products, information (including the results of research and development), or services are offered by any GTE affiliate to the GTOCs, they may not be offered to the acquired entities on more favorable terms or conditions; if they are not offered to the GTOCs, they may not be obtained by the acquired entities at less than their fully allocated cost. Paragraph IV(A)(7) is thus designed to prevent the provision of products, information, and services to the acquired entities from functioning as an indirect vehicle for cross-subsidization from the regulated monopoly operations of the GTOCs. 3/

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3/ The Department does not intend the provisions of Paragraphs IV(A)(4) or IV(A)(7) of the proposed Final Judgment to bar GTE from assessing each of its affiliates, including the GTOCs and the acquired entities, a charge for the provision of general overhead and administrative services by the GTE Service Corporation calculated in proportion to the revenues earned by each such affiliate. However, the Department emphasizes that Paragraph IV(A)(4) of the proposed Judgment expressly prohibits the GTOCs and the Telephone Operations Group of GTE Service Corporation (and its successors) from directly or indirectly providing any administrative, engineering, research and development, or similar services to the acquired entities. The assessment of the general revenue-based charges described above will not, in the Department's view, constitute the indirect provision of administrative or related services by the GTOCs or the Telephone Operations Group of GTE Service Corporation. A similar general revenue assessment may be used to fund general research and development activities of GTE Laboratories, Incorporated, provided that any project or results specifically related to the acquired entities must be paid for by the acquired entities on a fully allocated cost basis as required by Paragraph IV(A)(7).

The key structural requirement of Section IV of the proposed Final Judgment is the internal separation of the acquired entities from the GTOCs and the supporting administrative operations of GTE Service Corporation. Although the principle governing this separation is clear, the proposed Judgment necessarily allows GTE a degree of flexibility in formulating the precise details of its corporate and operational procedures. The constraints imposed by Section IV are designed to circumscribe financial and operational intermingling of the acquired entities and the GOTCs, thereby reducing the anticompetitive potential inherent in the acquisition.

To ensure that the Department of Justice is fully apprised of GTE's implementation of this separation, Paragraph V(E)(1) requires that GTE submit to the Department, prior to the effective date of the proposed Judgment, procedures for ensuring compliance with its obligations under Section IV. Paragraph IV(F) of the proposed Final Judgment also requires GTE to provide the Department with an annual report summarizing all permitted interactions between the regulated and unregulated aspects of GTE's operations accompanied by an affidavit of its chief executive officer certifying the company's compliance with the requirements of Section IV. The Department may request additional information from GTE, pursuant to Paragraph IV(F), in order to evaluate compliance with Section IV of the proposed Final Judgment.

Paragraph IV(D) of the proposed Judgment provides that, consistent with the requirement of separating the acquired entities from the GTOCs and the supporting administrative portions of GTE Service Corporation, GTE may create an "unregulated sector" by transfering to or consolidating with the acquired entities the assets, stock, operations, or telecommunications or information services of (1) GTE's other affiliates operating in unregulated markets, or (2) any "unregulated" exchange telecommunications services, including the provision of customer premises equipment, currently provided by the GTOCs. GTE affiliates which may be consolidated with the acquired entities under Paragraph IV(D) include GTE Satellite Corporation, which operates satellite communications systems, and GTE Telenet Incorporated, which provides enhanced telecommunications services. Following any such corporate reorganization, GTE's unregulated sector would remain subject to the corporate separation obligations of Paragraphs IV(A), IV(B), and IV(C). However, Paragraph IV(D)(3) of the proposed Final Judgment expressly prevents this permissive corporate reorganization procedure from being used as an indirect conduit through which to funnel regulated exchange or exchange access assets or services from the GTOCs to the acquired entities.

B. Equal and The Partnership

The provisions of Section V of the proposed Final Judgment have a dual function. Paragraph V(A) requires that each GTOC

provide to all interexchange carriers and information service providers, on an unbundled, tariffed basis, exchange access, information access, and exchange services for such access equal in type, quality, and price. This requirement of equal exchange access imposes on GTE the identical substantive obligation imposed on the divested BOCs under the AT&T decree. It is designed to preclude the wide array of practices through which integrated telecommunications enterprises have in the past characteristically exercised the monopoly power of their franchised local operating companies.

Paragraph V(C) of the proposed Final Judgment is designed to redress the long-standing competitive problems created by the GTOCs' integration into interexchange services, and by the joint provision of services and allocation of revenues among AT&T, GTE, and the independents, under the partnership. By requiring a phased-out termination of GTE's partnership cooperation with AT&T, Paragraphs V(C)(2), V(C)(3), and V(C)(4) of the proposed Final Judgment eliminate any lingering incentive the GTOCs may have to discriminate in favor of AT&T. By precluding future vertical integration by the GTOCs, Paragraph V(C)(1) eliminates the potential for monopolization of interexchange markets by the GTOCs in the future.

1. Equal Access/Non-Discrimination

Paragraph V(A) sets out the requirement that each provide to all interexchange carriers and information service providers, on an unbundled, tariffed basis, exchange access,

information access, and exchange services for such access that is equal in type, quality, and price for all such interexchange carriers and information services providers. Appendix B (discussed in more detail below) establishes a timetable for the phasing-in of equal exchange access, and also imposes several requirements with respect to the tariffing of exchange access. Both Paragraph V(A) and Appendix B parallel the provisions of the AT&T decree. 4/

Paragraph V(B) of the proposed Final Judgment prohibits each GTOC from discriminating between the services offered by any GTE affiliate (including the acquired entities) and those offered by other persons with respect to a broad range of GTOC activities. In particular, Paragraph V(B) forbids discrimination with respect to interconnection, technical information, exchange access services, and planning for new facilities or services.

Paragraph V(E)(2) of the proposed Judgment provides that, within nine months following the effective date of the proposed Final Judgment, GTE must submit to the Department procedures

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4/ Because Paragraph V(D) permits the GTOCs to provide information services subject to certain restrictions, Paragraph V(A) differs from the otherwise identical provision of the MFJ to make clear that, for purposes of equal exchange access, a separate entity within the GTOC providing information services is considered an "information service provider."

for ensuring compliance with the equal access and non-discrimination obligations of Section V and the equal access phase-in obligations of Appendix B. Consistent with GTE's obligations under Paragraphs V(B) and V(E)(2), these procedures should ensure that the GTOCs grant the highest quality interconnection offered through any end office to any interexchange carrier requesting that form of interconnection; that the GTOCs fill interconnection orders placed by all interexchange carriers on a uniformly expeditious basis; that GTE create and administer standardized procedures for the resolution of interconnection problems; that GTE ensure uniform review by the GTOCs of interconnection complaints registered by all interexchange carriers; and that the GTOCs uniformly resolve service problems encountered by interexchange carriers with respect to exchange access lines or circuits. The Department believes that such procedures can be developed in a timely fashion without placing an undue burden on GTE in its provision of exchange access services.

2. The Partnership

Paragraph V(C) deals with the existing relationship between GTE and AT&T, under which the GTOCs provide interexchange telecommunications services jointly with AT&T over their proprietary intercity transmission and switching facilities. This portion of the proposed Final Judgment thus relates to the settlements procedures between AT&T and the largest independent telephone company in the United States.

Paragraph V(C)(1) prohibits the GTOCs from providing interexchange telecommunications services and from owning facilities that are used to provide such services. In connection with the definitions of "exchange area" and "serving area," which, as discussed below, delineate the division between exchange and interexchange functions in a manner consistent with the similar definitions contained in the MFJ, Paragraph V(C)(1) is a general prohibition against expansion by the GTOCs of their present interexchange functions. Since "interexchange telecommunications" is defined in Paragraph II(P) to include telecommunications between the United States and foreign countries. Paragraph V(C)(1) contains a proviso which permits GTE's operating companies in Hawaii and Alaska to continue to offer such international telecommunications. This proviso is expressly limited to General Telephone Company of Alaska and the Hawaiian Telephone Company.

Paragraphs V(C)(2), V(C)(3), and V(C)(4) are integrally related to the general prohibition of Paragraph V(C)(1). These provisions allow several alternative methods by which the GTOCs' existing interexchange operations are to be phased out over a transition period. Expansion beyond the interexchange functions permitted by these provisions (except as stated in Paragraph V(C)(4)) is barred by the general prohibition against interexchange services and facilities contained in Paragraph V(C)(1).

Paragraph V(C)(2) permits GTE to lease to any current partnership member the GTOCs' investment in interexchange transmission and switching facilities in service as of January 1, 1984, or planned as of January 1, 1983 and in service as of January 1, 1987. If it enters into the lease or leases permitted by this Paragraph, GTE is required to retain sufficient exchange switching and transmission facilities to meet its obligations under Paragraph V(A) and Appendix B to offer equal exchange access to all interexchange carriers. 5/ The leases permitted by Paragraph V(C)(2) will, if consummated, substitute for the existing division of revenues process under which revenues are divided between GTE and the BOCs.

Paragraph V(C)(3), on the other hand, permits a limited retention of the division of revenues process for any interexchange facilities that are not leased by the GTOCs under Paragraph V(C)(2). GTE may replace the GTOCs' division of revenues agreements with the BOCs with a comparable agreement with any interexchange carrier, other than the acquired entities, per-

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5/ Similarly, the equal access obligations of Paragraph V(A) and Appendix B would apply to the GTOCs after any sale of exchange switching or transmission facilities.

mitting the recovery of the net book value of the GTOCs' capital investment in partnership facilities, 6/ including a reasonable return on debt or equity, provided that the agreement terminates when such net book value has been recovered. 7/

Paragraph V(C)(4) governs three situations: first, where a lease entered into under Paragraph V(C)(2) has expired; second, where an agreement permitted by Paragraph V(C)(3) has allowed the recovery of the net book value (and a reasonable return thereon) of an interexchange transmission or switching asset; and third, where no such lease or capital recovery agreement has been consummated. In these situations, Paragraph V(C)(4) requires GTE to make available such uncommitted facilities to all interexchange carriers on non-discriminatory terms and conditions. As the GTOCs' interexchange investment becomes available 8/ under this paragraph, GTE is then permitted to

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6/ Of course, if any GTOC facility is retired from interexchange service, it is no longer an interexchange facility subject to Paragraph V(C)(3).

7/ Paragraph V(C)(5), in turn, provides that the requirements of the proposed Final Judgment shall not impair any remedies GTE may have, before regulatory bodies and elsewhere, for recovery of the GTOCs' existing financial investment in interexchange transmission and switching facilities.

8/ Paragraph V(D) of the proposed Judgment sets no time period for the leases or capital recovery arrangements contemplated. However, the general prohibition of Paragraph V(D)(1), in connection with the identification of assets in Paragraph V(D)(2), precludes further GTOC investment in interexchange

[footnote continued on following page]

expand or modernize (but not replace) those interexchange switching and transmission facilities. Paragraph V(C)(4) does not require GTE to make these facilities available on a tariffed basis.

The distinction between exchange and interexchange telecommunications, which closely tracks the provisions of the AT&T decree, relates both to prohibition of GTOC interexchange services and facilities under Paragraph V(C)(1), and to the exchange access services to be provided by the GTOCs under Paragraph V(A) and Appendix B of the proposed Final Judgment. 9/ Paragraph II(H) of the proposed Judgment provides a procedure, similar to the procedure involved in implementation of Paragraph IV(G) of the MFJ, under which GTE is to establish exchange areas where it presently has the facilities and capabil-

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8/ [continued from preceeding page]
assets after January 1, 1984, unless such investment was already in the GTOC's construction program as of January 1, 1983 and is in service as of January 1, 1987. GTE is permitted to expand or modernize its interexchange facilities under Paragraph V(D)(4) only when and to the extent that such expanded or modernized capacity is made available to all interexchange carriers on non-discriminatory terms and conditions. Accordingly, GTE retains the discretion to determine the manner and length of the phase out, but is limited to its present GTOC interexchange facilities until, with respect to a given asset, the phase out is completed.

9/ For a detailed explanation of the interrelationship between the definitions of "exchange area," "telecommunications service," and "interexchange telecommunications" see United States v. Western Electric Co., Competitive Impact Statement in Connection with Modification of Final Judgment, 47 Fed. Reg. 7170, 7175 (Feb. 17, 1982).

ity to provide traffic switching above end offices and delivery and receipt of such traffic at a point or points designated by an interexchange carrier for the interconnection of its facilities with those of the GTOC. GTE is required to submit to the Department for its approval a list of all such exchange areas by July 5, 1983, which will permit the Court to make reference to GTE's proposed exchange areas in making its determination whether the proposed Judgment is in the public interest. Areas in which a GTOC provides exchange telecommunications services but does not have such facilities and capability are denominated "serving areas" under Paragraph II(R) of the proposed Judgment. The equal access obligations of the GTOCs in these serving areas are set out in Paragraph A(2) of Appendix B, discussed below. 10/

GTOC exchange areas are required by Paragraphs II(H)(1), II(H)(2), and II(H)(3) to meet the same criteria applied in the MFJ for the establishment of BOC exchange areas. Paragraph II(H) also requires that when and where such criteria are met in the future, the GTOCs are to establish new exchange areas with the approval of the Department of Justice and the

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10/ Under Paragraph II(R)(1) of the proposed Final Judgment, all GTOC geographic areas associated with a single BOC exchange area pursuant to an order of the Court in United States v. Western Electric Co. may be combined into a single GTOC serving area.

Court. 11/ The Department believes this procedure is extremely important to effective implementation of the terms of the proposed Final Judgment. Given the nature of the similar proceedings before the District Court for the District of Columbia in United States v. Western Electric Co., it is clear that the process of drawing exchange boundaries involves the resolution of numerous considerations. Providing for a similar process under this proposed Final Judgment ensures that GTOC exchange area boundaries are drawn in a manner consistent with the substantive provisions of the proposed Judgment and with the "association" of some GTOC and independent exchange areas with BOC exchange areas under the supervision of the District

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11/ Paragraph II(I) of the proposed Judgment defines "exchange telecommunications" to include not only telecommunications between points within an exchange area, but also telecommunications between or among points in a GTOC exchange or serving area, the serving area of an independent operating company, and a BOC exchange area, if both the GTOC exchange or serving area and the independent serving area have been associated with the BOC exchange area pursuant to an order of the Court in United States v. Western Electric Co. In addition, where a GTOC exchange or serving area is associated with the adjacent serving area of an independent operating company, as permitted under Paragraph II(P) with the approval of the Department of Justice, telecommunications between the GTOC exchange or serving area and the independent serving area are exchange telecommunications. In reviewing proposed associations of independent serving areas, the Department will apply criteria consistent with those established in Paragraph II(H) of the proposed Final Judgment for approval of GTOC exchange areas. Paragraph II(P) excludes from the definition of "interexchange telecommunications" those telecommunications considered "exchange telecommunications" under Paragraph II(I).

Court for the District of Columbia. 12/

C. Appendix B: Phased-In GTOC Equal Access Obligations

Appendix B of the proposed Final Judgment sets out in further detail the obligations established by Paragraph V(A). The GTOCs are to provide all interexchange carriers and information service providers with exchange access, information access, and exchange services for such access equal in type, quality, and price. The general principles of the MFJ -- and the vast majority of the specific provisions governing unbundled, tariffed, element-by-element cost justified exchange access services -- are also contained in Appendix B of the proposed Judgment.

The provisions of Appendix B are based on three basic principles that also support the MFJ. First, the GTOCs should have the flexibility to provide equal exchange access in the manner and with the facilities they deem most efficient. Second, notwithstanding the flexibility granted the GTOCs with respect to the physical configuration of facilities used to provide exchange access, each GTOC must meet specified performance and pricing criteria to ensure the availability of equal access. Finally, because facilities to provide fully equal exchange access do not now exist in most GTOC exchanges, a transition

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12/ This process is underway in United States v. Western Electric Co., No. 82-0192 (D.D.C.), and in connection with it GTE has already drawn some exchange and serving areas for the GTOCs.

period is necessary to phase in the proposed Final Judgment's equal access requirements.

Given the great similarity between Appendix B of the proposed Judgment and Appendix B of the AT&T decree, the Department's explanation of these provisions in the Department's Competitive Impact Statement in United States v. Western Electric Co., 13/ and in the Department's Response to Public Comments on the Proposed Modification of Final Judgment in United States v. Western Electric Co., 14/ are incorporated by reference herein. 15/ Accordingly, the following discussion addresses only those aspects of Appendix B which differ from the MFJ.

Appendix B of the proposed Final Judgment permits a phase-in of the GTOCs' equal exchange access obligations on a schedule somewhat different than that required for the BOCs under Appendix B of the MFJ. This schedule reflects the significant differences between the demographic characteristics of GTOC and BOC franchise areas. Virtually all major metropolitan areas, which account for a substantial majority of interexchange telecommunications in the United States, are served by

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13/ 47 Fed. Reg. 7170, 7177-78 (Feb. 17, 1982).

14/ 47 Fed. Reg. 23320, 23331-32, 23347-49 (May 27, 1982).

15/ See also Brief of the United States in Reponse to the Court's Memorandum of May 25, 1982, at 33-36 (filed June 14, 1982), United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).

the BOCs. GTOC franchise areas are generally smaller and have lower population densities than those of the BOCs. 16/ As a result, GTOC areas have not attracted significant entry, or demand for entry, by interexchange carriers other than AT&T. In addition, the GTOCs have fewer advanced switching systems than the BOCs and lack the traffic and demand necessary to support rapid conversion to more sophisticated facilities. Appendix B of the proposed Judgment requires the conversion of a significant proportion of GTOC end office facilities, but the schedule it sets out takes into account the demographic and technical characteristics of the GTOCs.

GTE is obligated to provide exchange access to all interexchange carriers and information service providers equal in type and quality to that provided for the interexchange telecommunications services of the partnership 17/ as promptly as possible, but in no case more than twelve months after a

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16/ Nationwide, the density of the BOCs is more than twice that of the GTOCs. See Department of Commerce, Telephone Areas Serviced by Bell and Independant Companies in the United States, Table 1 (1982).

17/ Paragraph A(1) of Appendix B requires that access be provided equal in type and quality to that provided for "the interexchange telecommunications services of AT&T or any IOC." Paragraph II(C) of the proposed Judgment in turn defines "interexchange telecommunications services or information services of AT&T" to include those provided by GTE or a GTOC on a joint through or concurring tariff basis with AT&T. Thus, whether partnership interexchange services are provided by a GTOC, GTE, AT&T, or an interconnected IOC, Appendix B requires that, during the phase-in period, all carriers must be offered exchange access equal in type and quality to that provided for the interexchange telecommunications services of the partnership.

written request for such access from any carrier other than AT&T. 18/ Paragraph A(1) of Appendix B obligates GTE to provide such phased-in equal exchange access through GTOC end offices that employ switches technologically capable of providing equal exchange access or for which the capability of providing equal exchange access is commercially available to the GTOCs.

Paragraph A(1)(a) of Appendix B sets out a timetable for the offering of equal exchange access through end offices employing specific types of switches. Under this schedule, GTE must offer equal access through all GTOC end offices utilizing electronic, stored program control switches capable of providing equal exchange access (other than the GTD-5, 1-EAX, and 2-EAX switches) no later than January 1, 1985. Subject to the general obligation of Paragraph A(1) of Appendix B to provide equal access no later than twelve months after a request from an interexchange carrier other than AT&T, GTE is obligated under this timetable to offer equal access through all GTOC end offices employing electronic, stored program control switches by September 1, 1987.

Paragraphs A(1)(b) and A(1)(c) require GTE, during the equal access phase-in period, to equip a progessively increasing proportion of GTOC end offices with switches technologically capable of providing equal exchange access. Paragraph

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18/ There is no limitation on how early such written requests may be made.

A(1)(b) requires that, not later than September 1, 1987, equal exchange access shall be offered through end offices, regardless of size, serving at least two-thirds of the exchange access lines provided by the GTOCs. Paragraph A(1)(c) further requires that, not later than December 31, 1990, equal exchange access shall be offered through all GTOC end offices serving greater than 10,000 exchange access lines. 19/ In order to meet these obligations, it is necessary for GTE to replace many of its existing step-by-step and other electromechanical switches with switches technologically capable of providing equal access. 20/

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19/ As discussed infra, Paragraph A(4) of Appendix B requires the GTOCs to offer an enhanced form of interconnection at end offices employing its remaining electromechanical switches as soon as the means for such enhanced interconnection becomes commercially available.

20/ The provisions of Appendix B of the MFJ require the BOCs to provide equal exchange access through all electronic, stored program control end offices upon a bona fide request by 1987. The provisions of Appendix B of this Final Judgment are slightly different. They require that the GTOCs "offer" equal exchange access through certain end offices by certain dates. GTE must "provide" equal exchange access to any carrier requesting such access only within 12 months after such a request. In effect, Appendix B requires the GTOCs to lay the groundwork on a phased-in schedule for the provision of equal exchange access, but does not require the actual installation of software packages necessary to provide such access until it is clear that non-AT&T interexchange carriers desire to obtain equal exchange access in any particular GTOC exchange. In addition, Appendix B contemplates, as did the MFJ, that certain interexchange carriers may not find it economically advantageous to reach customers in certain exchanges through arrangements for equal access, and thus permits lesser-quality access at charges reflecting the lesser cost, if any, of such access.

The requirements of both Paragraphs A(1)(b) and A(1)(c) are suspended to the extent that, because of changed circumstances which could not reasonably have been foreseen, it is no longer economically feasible to employ at any end office a switch technologically capable of providing equal exchange access. Neither GTE nor the Department is aware of any present reason why GTE should not find it economically feasible to install switches technologically capable of providing equal exchange access at the requisite percentage of end offices by September 1987, and at all larger (i.e., greater than 10,000 exchange access line) end offices by the end of 1990. 21/

Paragraph A(2) of Appendix B is related to the definition of "serving area" contained in Paragraph II(R) of the proposed Final Judgment, which defines serving area to include those geographic areas, not within a GTOC exchange area, in which the GTOC provides telephone services but does not have the facilities and capability to provide traffic switching above end offices and delivery and receipt of such traffic at a point or points designated by an interexchange carrier within such geographic area for the connection of its facilities with those of the GTOC. Such serving areas of the GTOCs are thus those GTOC franchised areas in which the GTOCs do not have control of

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21/ Paragraph A(1)(b)(ii) makes clear that, if the capability of providing equal exchange access through switches manufactured by non-affiliates is not commercially available to the GTOCs, the two-thirds requirement imposed by Paragraph A(1)(b) is reduced accordingly.

transmission and switching facilities necessary to provide the exchange access services required in order to provide equal exchange access to all interexchange carriers. Under Paragraph A(2) of Appendix B, the GTOCs are not required to provide such exchange access services in their serving areas other than by direct GTOC transmission facilities, but are required to use their best efforts to obtain from the BOC or from any other carrier the exchange access functions which they have been relieved of the responsibility of providing.

Paragraph A(4) of Appendix B provides an exemption from the phased-in provision of equal exchange access for exchange areas served by GTOC end offices employing switches of the technology known generically as step-by-step. This exemption is subject to two conditions. First, GTE must comply with the phase-in schedule set out in Paragraph A(1), including the requirement in Paragraphs A(1)(b) and A(1)(c) that the GTOCs offer equal exchange access through end offices serving two-thirds of their exchange access lines by September 1987, and through all end offices serving more than 10,000 exchange access lines by the end of 1990. Second, the GTOCs must provide a commercially available trunkside interconnect arrangement 22/ to all interexchange carriers at all end offices employing electro-

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22/ Thus, as means of providing interexchange carriers with improved interconnection are developed, whether by GTE's Automatic Electric subsidiary or by other manufacturers, they will be installed by the GTOCs.

mechanical (including step-by-step) switches, unless such access is not physically possible except at costs that clearly outweigh potential benefits to users of telecommunications services. Paragraph A(4) also requires GTE to provide the Department of Justice with such information as the Department may request in order to evaluate the cost/benefit analysis permitted by subparagraph (b).

Appendix B of the proposed Judgment also includes some minor variations from the MFJ, designed to take account of the modifications suggested by the Court in United States v. Western Electric Co. and incorporated into the MFJ upon the consent of the parties. Paragraph B(1) of Appendix B requires the GTOCs to file their unbundled exchange access tariffs by January 1, 1984. 23/ Paragraph C(1) of Appendix B has been altered for consistency with the provision of Paragraphs V(B) and V(D) of the proposed Final Judgment. Paragraph V(B) requires non-discriminatory treatment of all interexchange carriers and information services providers (including a separate entity within a GTOC providing information services under Paragraph V(D)). Paragraph V(D) requires the GTOCs, if co-location rights are granted to the separate entities providing information services, to provide co-location on the same

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23/ This coincides with the deadlines for filing access tariffs under the FCC's Third Report and Order, In the Matter of MTS and WATS Market Structure, CC Docket No. 78-72, Phase I (released Feb. 28, 1983). However, Paragraph V(D) of Appendix B requires GTE to file with the FCC such requests for waivers of orders of the Commission as may be necessary to permit full compliance with all the requirements of the proposed Judgment.

terms and conditions, on an unbundled, tariffed basis, to all information service providers. 24/

The proposed Final Judgment also permits the GTOCs to provide a limited additional form of exchange access service which the BOCs may not provide by virtue of the definition of "exchange access" contained in the MFJ. Under Paragraph II(G) of the proposed Final Judgment, a GTOC may provide as an ancillary service included in its exchange access tariffs the routing of traffic (solely at the option of an interexchange carrier) among multiple points of presence designated by the interexchange carrier within an exchange or serving area based on the destination of such traffic outside of the exchange or serving area. Such an ancillary service may not include the routing of traffic among trunk groups from an end office or access tandem to a particular point of presence or any routing beyond such points of presence.

This provision permits interexchange carriers efficiently to construct their own facilities within an exchange area while, at the same time, preventing the GTOCs from effectively

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24/ Thus, consistent with the Department's interpretation of the AT&T decree, the GTOCs have no obligation to permit the co-location on their premises of the facilities of any competing interexchange carrier or information service provider. If a GTOC leases space in its buildings used to provide exchange access services to any affiliated interexchange carrrier or information service provider, however, the GTOC would then be required to make such space available to all interexchange carriers or information services providers, respectively, in a non-discriminatory manner.

avoiding the prohibition against interexchange traffic routing contained in Paragraph II(G). 25/ The provision also mandates that there is not to be more than one point of presence of an interexchange carrier at any physical location (which could include any facilities leased from a GTOC). This clause precludes undercutting of the restriction on GTOC interexchange routing through the establishment of "sham" multiple points of presence, for example by establishing several points of presence in a single building or on a single switching or transmission facility. 26/

The provision of this ancillary routing function by the GTOCs should not raise any significant competitive concerns, particularly given the relatively small areas that the GTOCs

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25/ For example, GTE's Santa Barbara-Oxnard territory is located between Los Angeles and San Francisco. An interexchange carrier might construct facilities at the northern end of that territory heading toward San Francisco and other facilities at the southern end of the territory, heading toward Los Angeles, but have no switching capability within the territory. In such a circumstance, the GTOC could route originating traffic destined for San Francisco and points north, e.g., Oregon and Washington, either directly or through an access tandem, to the point of presence at the north end of the territory and direct all other interexchange traffic to a point of presence at the Los Angeles end of the territory. The GTOC, however, could not switch traffic among various circuits and trunk groups headed toward these points of presence based on additional destinations beyond the point of presence, i.e., could not also sort traffic heading for the northern point of presence between that destined for San Francisco and that destined for Seattle.

26/ However, this would not prohibit the location of points of presence for different types of services, e.g., private line and switched services, at the same location.

serve and the limited number of multiple points of presence that might efficiently be located there by interexchange carriers. In addition, the GTOCs may be performing interexchange routing for AT&T and other carriers through use of existing interexchange routing facilities, as permitted on a transitional basis pursuant to Paragraphs V(C)(2) and V(C)(3) of the proposed Final Judgment. Finally, so long as such ancillary interexchange routing functions are performed by the GTOCs on a non-discriminatory basis under tariff, as required by Paragraphs II(G) and V(B), each interexchange carrier is free to choose the most efficient means of routing its traffic within GTOC exchanges.

D. Information Services

Paragraph V(D) places specific separation obligations on the GTOCs as a condition of their being permitted to provide information services. These separation provisions are intended to circumscribe leverage by the GTOCs of their market power as rate-of-return regulated monopolists into the competitive information services industry.

Paragraph V(D)(1) contains a general prohibition against the provision of information services, and the ownership of facilities used to provide such services, by the GTOCs. Paragraphs V(D)(2) and V(D)(3) are integrally related to the general prohibition of Paragraph V(D)(1). The GTOCs are permitted to offer information services only through a separate entity, either an incorporated subsidiary or an unincorporated division maintaining separate books of account and reporting

directly to the chief operating officer of the GTOC. This separate entity may obtain telecommunications services, telecommunications facilities (including co-location of its equipment with facilities used to provide exchange telecommunications), and billing services from the GTOC only to the extent that such services and facilities are made available to non-affiliated firms on an unbundled, tariffed basis, and in accordance with the non-discrimination obligations of Paragraph V(B) of the proposed Final Judgment. Use of the GTOCs' local exchange networks must therefore be provided to all information services providers on an equal and non-discriminatory basis.

Administrative and other services, including those provided by GTOC maintenance and installation personnel, may be obtained by the separate entity under Paragraph V(D)(2) only in accordance with a two-tier standard similar to that contained in Paragraph IV(A)(7). If such services are obtained from the GTOC by non-affiliated firms, they may be provided to the separate entity only on the same terms and conditions; if such services are proprietary, and are not offered to non-affiliated firms, they may be obtained by the separate entity only at their fully allocated costs. 27/

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27/ Nothing in Paragraph V(D)(2) prohibits a GTOC, if it chooses to do so, from providing to the separate entity administrative services not offered to non-affiliates at greater than their fully allocated cost. This provision of the proposed Final Judgment sets a minimum standard designed to prevent artificially low internal prices from serving as a vehicle for cross-subsidization, and does not represent a maximum for intra-corporate pricing.

Paragraph V(D)(2) also requires separation of the facilities of the separate entity used to provide information services from facilities of the GTOC used to provide regulated exchange telecommunications and exchange access services. No such separate entity may to any extent own or control facilities used to provide exchange telecommunications or exchange access services. This requires the separate entity to utilize information service technologies not integrated with the exchange switching and transmission facilities of the GTOCs. The GTOC and the separate entity may not maintain marketing personnel who simultaneously market both regulated exchange telecommunications or exchange access services and information services. 28/ Finally, Paragraph V(D)(2) prohibits the separate entity from directly or indirectly obtaining proprietary GTOC marketing, customer, or network engineering information.

Paragraph V(D)(3) provides for a sunset of the separation obligations of Paragraphs V(D)(1) and V(D)(2). This sunset may occur in one of two ways. Under Paragraph v(d)(3)(a), the limitations of Paragraphs V(D)(1) and V(D)(2) expire automatically five years after the effective date of the proposed Final Judgment, unless the Department of Justice applies to the Court

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28/ The term "simultaneous" is used to preclude an individual from performing both functions while in the same corporate position, but makes clear that this provision does not bar transfer of marketing personnel between the GTOC and the separate entity, so long as such transfers are not utilized to evade the explicit prohibition of Paragraph V(D)(2).

for an extension of the limitations as to one or more categories of information services and the Court finds by a preponderance of the evidence that, without the limitations, there is a substantial danger that competition in the relevant information service in any exchange or serving area will be substantially lessened. 29/ Among the factors that are to be taken into account in making such a determination under Paragraph V(D)(3)(a) are the development of competition in the provision of the relevant information service, and the development of competition and potential competition in the provision of exchange telecommunications facilities and services. Therefore, the development of alternative local exchange networks, which might represent a realistic limitation on the market power of the GTOCs within their franchised exchange and serving areas, may be a factor that could ameliorate the competitive concerns arising from GTOC provision of information services without the necessity of extending the limitations of Paragraph V(D)(1) and V(D)(2). Any application by the Department under this Paragraph must be made at least one year prior to the expiration of the separation obligations, in order to allow

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29/ Paragraph V(D)(3)(a) also permits the Department to apply to the Court for the imposition of further relief relating to the provision of information services by the GTOCs. Further relief available to the Department under this provision includes, upon an appropriate showing, divestiture by the GTOCs of their information services operations and of the assets used to provide such services.

GTE a reasonable lead time in which to conduct its corporate planning.

Paragraph V(D)(3)(b) allows an alternative means by which the separation obligations may expire. Under this provision, the restrictions of Paragraphs V(D)(1) and V(D)(2) of the proposed Final Judgment are tied to the line-of-business restrictions imposed on the divested BOCs under Section II(D) of the AT&T decree, which prohibit the divested BOCs from providing information services. The GTOCs will be freed of these limitations to the extent that the BOCs are freed of the line-of-business restrictions. If those restrictions are lifted for a BOC throughout a state, then the separation obligations of the proposed Judgment expire with respect to the information services of a GTOC within that state. If the line-of-business restrictions are lifted in any BOC exchange area, then the separation obligations of the proposed Judgment expire with respect to the information services of a GTOC within any GTOC exchange or serving area that is associated with the BOC exchange area under the orders entered by the Court in United States v. Western Electric Co. 30/

Paragraph V(D)(4) provides expressly that neither failure

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30/ Paragraph V(D)(3)(b) accomplishes this by incorporating by reference the definitions of "exchange telecommunications" and "interexchange telecommunications" contained in Paragraphs II(I) and II(P).

by the United states to apply for an extension of the separation obligations or for further relief as permitted by Paragraph V(D)(3)(a), nor any findings made by the Court in any such proceeding, shall prevent, or constitute an estoppel in, any subsequent action by the United States under the antitrust laws.

E. Future Acquisitions

Section VI of the proposed Final Judgment places certain restrictions on GTE's ability to expand its presence in the interexchange telecommunications industry through future acquisitions.

Paragraph VI(A) provides that for ten years after the effective date of the proposed Judgment, except with the approval of the Department of Justice or of the Court, GTE may not acquire a direct or indirect equity interest in, or the assets of, any interexchange carrier providing services in the United States. Paragraph VI(A) does not limit or affect the provisions of, or any obligations of GTE under, the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C. § 18a) and the Premerger Notification Rules and Regulations (16 C.F.R. § 803.20 et seq.).

Paragraphs VI(B) and VI(C) exempt from the approval requirement of Paragraph VI(A) acquisitions by GTE or its affiliates which would not present competitive concerns similar to those alleged in the complaint in this action and addressed in

the proposed Final Judgment. Paragraph VI(B) exempts acquisitions by GTE's pension and profit-sharing trusts or subsidiaries, in the ordinary course of business, solely for investment purposes. Paragraph VI(C) exempts the purchase by GTE 31/ of assets used to provide exchange telecommunications which are only incidentally used to provide interexchange services, thus permitting GTE, if it chooses, to acquire other local operating companies in the future notwithstanding the de minimis provision of interexchange services by such operating companies. 32/ Paragraph VI(C) also exempts acquisitions by GTE of international record carriers, or other carriers providing interexchange telecommunications services, which obtain less than five percent of their gross telecommunications revenues from the provision of telecommunications services between points located within the United States. The exemptions contained in Paragraphs VI(B) and VI(C) are not intended by the Department of Justice or GTE to grant any antitrust immunity to the acquisitions described therein, or to limit or affect the provisions of, or any obligations of GTE under, the Hart-Scott-Rodino Antitrust Improvements Act (15 U.S.C. § 18a) and the

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31/ Because GTE is defined in Paragraph II(J) to include the GTOCs, the exemptions in Paragraph VI(C) also apply to the GTOCs.

32/ Of course, under Paragraph II(J), any after-acquired operating company becomes a GTOC, and succeeds to all the obligations of a GTOC under the proposed Final Judgment.

Premerger Notification Rules and Regulations (16 C.F.R. § 803.20 et seq.).

F. Enforcement

Under Section VIII of the proposed Final Judgment, GTE is required to undertake several steps to insure that, after entry, its employees become familiar with the terms of the proposed Judgment and GTE's policy regarding compliance with the antitrust laws and with the proposed Judgment. Under Section IX, the Department of Justice is given extensive rights of investigation to ensure that GTE, the GTOCs, and the acquired entities comply with the provisions of the proposed Final Judgment.

Under Section VII of the proposed Final Judgment, the Department of Justice and GTE are granted the right to seek Court modification or construction of the terms of the proposed Judgment, and to seek from the Court further orders and directions that may be necessary for implementation of the proposed Judgment. Paragraph VII(A) also provides the Department with the right to seek enforcement of the proposed Judgment and subsequently to seek punishment of any violation.

Paragraph VII(B) provides that, upon application of the Department of Justice, the Court may require divestitures that would separate GTE's ownership of local exchange monopolies from ownership of competitive interexchange facilities, either by divestiture of the acquired entities or, at the election of GTE, of the GTOCs. A condition precedent to any such further

relief is a finding by the Court that GTE has engaged in a pattern of substantial violations of Section IV, Section V, or Appendix B of the proposed Final Judgment, or that any GTOC has violated Section IV, Section V, or Appendix B of the proposed Judgment in a manner that materially injures interexchange carriers or information service providers in their ability to offer services competitive with those offered by GTE or the acquired entities. The listing of divestitures considered appropriate as further relief is intended to be non-exhaustive. For example, Section VII also encompasses the right of the Department to request divestiture of the separate entities through which the GTOCs are permitted to provide information services by Paragraph V(D)(2) if GTE or the GTOCs is found to have violated the requirements of Paragraph V(D).

IV. Competitive Effect of the Proposed Final Judgment

The proposed Final Judgment provides some significant competitive benefits, and thus continues the transition to a competitive interexchange telecommunications industry begun in the AT&T case. While there is also the possibility that some competitive harm may result from the acquisition, the proposed Judgment significantly reduces that potential for competitive harm. Moreover, in the event a violation does occur, the proposed Final Judgment makes clear that the Department of Justice will be prepared to seek appropriate divestitures.

The guarantee of equal exchange access and non-discrimination for all interexchange carriers in Paragraphs V(A), V(B),

and Appendix B of the proposed Judgment removes GTE's basic ability to disadvantage competitors of SPCC and SPSC through exercise of its control of the local exchange bottleneck. The prohibition of GTOC interexchange services and assets, and the phased elimination of GTE's partnership relation with AT&T, mitigates the incentives that GTE's operating companies have enjoyed in the past to favor AT&T and to restrain competition in interexchange markets in the future. In addition, the separation obligations imposed by Section IV and Paragraph V(D) of the proposed Judgment circumscribe GTE's ability to explcit the ratebase regulated nature of local telephone communications.

Although not as extensive as the relief sought by the United States in its complaint, these measures substantially reduce the competitive problems raised by this specific set of facts. The proposed Final Judgment permits GTE to consummate the acquisition on the basis of separation between its regulated affiliates and the acquired entities. Such a separate subsidiary requirement cannot, as the Department of Justice has stated frequently, eliminate the incentive for cross-subsidization from regulated to unregulated markets. 33/ However,

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33/ See, e.g., Comments of the Department of Justice, In the Matter of Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Fnhanced Services and Cellular Communications Services by the Bell Operating Companies, CC Docket No. 85-115, at 13 (filed April 25, 1983); Reply Comments of the Department of Justice in Cellular, CC Docket No. 79-318 (filed July 3, 1980); Brief for United States at 20-34, CCIA v. FCC, 693 F.2d 198 (D.D.C. 1982) ("Computer II"); Pretrial Brief for United States at 79-84, United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982).

the Department's prior comments on this issue have generally been directed to the AT&T factual context and the low probability that a separate subsidiary would be of appreciable value where a firm historically has been fully integrated, with common facilities and personnel and joint and common costs. Here, the separate subsidiary requirement is imposed on two firms that have never been integrated, and the proposed Final Judgment places significant limitations on the degree to which they may be integrated in the future.

The proposed Judgment constrains GTE's ability to cross-subsidize by precluding the most likely and most serious forms of such cross-subsidization. For example, under Section IV of the proposed Final Judgment, common costs, facilities, and services for the GTOCs and the acquired entities are prohibited. Transactions between them must be on an arm's-length basis, under contract or tariff as appropriate. And in Paragraph IV(A)(3), the proposed Judgment precludes the use of customer information or engineering information as an indirect means of cross-subsidization and discriminatory treatment.

The Department does not believe that this relief alone would be sufficient to curb the inherent anticompetitive potential of this acquisition. The equal access and corporate separation obligations of the proposed Judgment, however, are mutually reinforcing. By opening the corporate interface to public scrutiny, Section IV makes the evasion of regulatory

constraints more difficult and increases the likelihood that such conduct will be detected. The requirement that GTE provide equal, non-discriminatory exchange access to all intercity carriers -- including its newly acquired long-distance carriers -- reinforces this separation by removing a major avenue for anticompetitive conduct. The corporate separation provisions in turn reinforce the equal access provisions by barring preferential treatment in the various subtle ways engendered by the otherwise close cooperation typical of affiliated companies. Finally, the interconnection conduct of the divested BOCs, freed of their incentive to favor any interexchange carrier, will serve as a significant benchmark against which to measure the conduct of the GTOCs following consummation of the acquisition.

The compliance requirements contained in the proposed Final Judgment also enhance the potential for restraining exercise of the GTOCs' power as regulated monopolists. Each present and new managerial employee must affirm that he or she is aware of the obligations imposed by the Judgment and sign a certificate to that effect. GTE's chief executive officer must annually affirm the compliance of his company with all terms of the Judgment. Absent willful misconduct, GTE itself will therefore be carefully monitoring its compliance with the requirements of the proposed Judgment. The deterrent effect of these specific obligations, backed by the contempt power of the Court, is significantly greater that the general obligations imposed by

the antitrust laws.

The proposed Final Judgment does not -- and cannot, given the lack of complete structural separation -- eliminate all possibilities for exercise of GTE's power as a regulated monopolist in its franchised serving areas. However, the proposed Judgment grants the Department the right to seek further relief, including divestiture of the acquired entities or the GTOCs, should the proposed Judgment not prove to be adequate protection. The Department will not hesitate to move expeditiously for divestiture or further relief under the proposed Final Judgment if the present relief proves insufficient to assure the continued progression toward a competitive intercity telecommunications industry. 34/ Indeed, the possibility of such divestitures should serve as a further deterrent to anticompetitive conduct by GTE following comsummation of the acquisition.

Paragraph V(D) of the proposed Judgment permits the GTOCs to expand into some information services markets; the divested BOCs are prohibited from offering such services by the line-of-

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34/ Any proceeding for further relief under the proposed Final Judgment would be shorter, since it would involve a more limited inquiry, than an action under Section 2 of the Sherman Act. Of course, the Department of Justice also retains the right to bring an action under Section 2 of the Sherman Act at any time that GTE uses its newly acquired intercity carriers to monopolize, or attempt to monopolize, the provision of interexchange telecommunications services in any relevant market or markets.

business limitations of the MFJ. The proposed Judgment permits the GTOCs to offer information services on the condition that they do so through an entity separated from the operation and facilities involved in exchange telecommunications and exchange access. From the Department's perspective this is a second-best solution. The Department's preferred remedy would be a complete prohibition on a regulated monpolist's provision of any competitive service.

But the proposed Final Judgment is a negotiated resolution; this provision is a compromise. The Department believes that, for several reasons, this compromise reduces the danger that GTOC provision of information services would lessen competition in those markets. First, the BOCs' treatment of information services providers will serve as a clear benchmark against which to measure the the GTOCs' conduct. Second, the structural separations imposed will eliminate the most likely and most problematic forms of cross-subsidization. Finally, the Department retains the right to seek further relief, including divestiture under the decree, should anticompetitive consequences arise. The proposed Final Judgment permits the Department to file such a separate lawsuit even after a proceeding for further relief under the Judgment itself. Therefore, at worst, this negotiated settlement simply postpones a Sherman Act challenge to the GTOCs' integration into information services, while in the interim reducing the likelihood that such integra-

tion will have significant anticompetitive consequences.

The proposed Final Judgment thus achieves a balance. Opportunities are granted to GTE to engage in new businesses. These opportunities are subject to continuing restrictions designed to circumscribe GTE's ability to leverage the monopoly power of its operating companies through cross-subsidization or discriminatory actions. The United States retains the option to obtain complete structural relief, through appropriate divestitures, if these opportunities are exploited to impair the otherwise efficient competitive development of the interexchange telecommunications and information services industries.

V. Remedies Available to Potential Private Litigants

Entry of the proposed Final Judgment will in no way affect the right of any present or potential private plaintiff who has been or may be damaged by an alleged violation of the antitrust laws to bring an action for monetary damages or equitable relief. Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured in his business or property as a result of conduct prohibited by the antitrust laws may bring suit for treble damages and reasonable attorneys' fees. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), however, the proposed Final Judgment has no prima facie effect in any private lawsuit that is pending or

may subsequently be brought against the defendant.

## VI. Procedures Available for Modification of the Proposed Final Judgment

The proposed Final Judgment is subject to a stipulation between the United States and the defendant providing that the United States may withdraw its consent to the proposed Judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the Court's determination that the proposed Judgment is in the public interest. Under Section VII of the proposed Final Judgment, the Court would retain jurisdiction over this action in order, among other things, to permit either party to apply for any necessary or appropriate modification of the proposed Judgment or construction of its provisions.

The Antitrust Procedures and Penalties Act provides a period of at least sixty (60) days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States invites comments from any interested person regarding the proposed Judgment. The United States will evaluate the comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and pub-

lished in the Federal Register in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to:

Stanley M. Gorinson, Chief
Special Regulated Industries Section
Antitrust Division (SAFE 504-B)
United States Department of Justice
Washington, D.C. 20530

## VII. Alternatives to the Proposed Final Judgment

As an alternative to a consent decree, the United States had considered seeking a preliminary and permanent injunction blocking the acquisition and a permanent injunction barring GTE from providing information services. However, considering the likelihood that a preliminary injunction could be obtained in this matter, and the further likelihood that protracted litigation might follow if a preliminary injunction were not granted, the United States decided to accept a negotiated resolution dealing with a wide range of concerns related to GTE's position in the telecommunications industry. An essential element of that resolution is the right of the United States to seek further relief under the decree in the event the safeguards it incorporates prove inadequate.

Unlike the situation in AT&T, where a vertically integrated structure had been in existence for more than a century, GTE has never been operated in common with SPCC. The prospective effectiveness of a separate subsidiary requirement, including

its policeability, should be greater in this situation than with respect to the BOCs. Although the proposed Final Judgment permits GTE's ownership of both local operating companies and interexchange and information service operations, and thus does not reduce GTE's economic incentive to engage in anticompetitive conduct, the proposed Judgment reduces GTE's ability to cross-subsidize and removes GTE's ability to deny equal access. Coupled with other provisions of the proposed Final Judgment, such as the extension of equal exchange access obligations to the second largest telephone operating company in the nation and the phased elimination of GTE's partnership with AT&T, the proposed Judgment should significantly reduce the present anticompetitive potential of the acquisition and should allow for the development of competition in those markets where, given the development of technology and the changing nature of the telecommunications industry following the AT&T divestitures, realistic competition is now possible.

Although most of the provisions of the proposed Final Judgment were revised and refined in the course of negotiations, no other relief substantially different in kind was considered by the United States.

## IX. Determinative Documents

There are no materials or documents that the United States considered determinative in formulating the proposed Final

Judgment. Accordingly, none is being filed along with this Competitive Impact Statement.

Respectfully submitted,

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## Certificate of Service

I, Glenn B. Manishin, an attorney for the United States, hereby certify that I have on this day served the foregoing Competitive Impact Statement on defendant GTE Corporation by delivering a copy thereof to Dean Rohrer, Esq., GTE Corporation, 1120 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036.

Glenn B. Manishin

May 4, 1983