

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of GTE Card)
Services Incorporated dba GTE Long Distance) Case No. 96-252-CT-ACE
For a Certificate of Public Convenience and)
Necessity.)

ENTRY ON REHEARING

The Commission finds:

- (1) By Finding and Order (Order) issued in this case on August 22, 1996, as amended by entry issued February 6, 1997 (February Entry), GTE-Long Distance (GTE-LD) was granted an interim certificate to resell interexchange services and other related telecommunications services effective until June 30, 1997 or until the Commission specifically ordered otherwise. GTE-LD was directed to file any request for an extension of the interim certificate at least 30 days before expiration of the interim certificate.
- (2) GTE-LD is a wholly-owned subsidiary of GTE Information Systems, Inc. which is a wholly-owned subsidiary of GTE Corporation. GTE North Inc. (GTE North), the local exchange carrier, is also a wholly-owned subsidiary of GTE Corporation.
- (3) On February 26, 1997, GTE-LD filed an application for rehearing of the February Entry. GTE-LD asserted that the February Entry was unlawful, unreasonable and an abuse of discretion in the following particulars as it:
 - (a) improperly and unlawfully tied the authority of GTE-LD to the conduct of its affiliate, GTE North and GTE North's implementation of 1+ equal access and the furtherance of competition;
 - (b) improperly and unlawfully continued restriction on the authority of GTE-LD in violation of Section 253(a), Telecommunication Act of 1996 (the Act); and
 - (c) failed to articulate any clear standards by which the authority of GTE-LD to operate

will be granted in violation of federal law and GTE-LD's fundamental due process rights.

Alternatively, GTE-LD sought Commission clarification of the conditions under which it would grant GTE-LD a permanent unconditional certificate of public convenience and necessity and the procedure the Commission would follow to determine and find the existence of such conditions.

More specifically, GTE-LD argued that, pursuant to Section 253 (a) - (b) of the Act, states are prohibited from, or having the effect of prohibiting the ability of any entity to provide intrastate telecommunications service except to advance universal service, protect the public safety and welfare and ensure the continued quality of telecommunications services. GTE-LD submitted that the restrictions placed on its marketing activities and the denial of a permanent and unconditional certificate did not further any of the enumerated purposes outlined in the Act.

- (4) By entry issued March 27, 1997, the Commission granted GTE-LD's application for rehearing solely to afford the Commission additional time to consider the issues on which rehearing and clarification were requested.
- (5) On May 30, 1997, GTE-LD filed a renewed motion for a permanent and unconditional certificate or, alternatively, an extension of the interim certificate until a permanent certificate was issued.
- (6) By entry issued June 26, 1997 (June Entry), the Commission denied GTE-LD's motion for a permanent and unconditional certificate to resell interexchange services and other related telecommunications services but granted GTE-LD's motion for an extension of the interim certificate. The interim certificate was extended to October 3, 1997 or until the Commission specifically ordered otherwise.
- (7) On July 28, 1997, GTE-LD filed an application for rehearing and request for clarification of the June Entry.
- (8) GTE-LD's most recent application for rehearing, like GTE-LD's previous application for rehearing, asserts that the June Entry

is unlawful, unreasonable and an abuse of discretion. GTE-LD argues that the June Entry:

- (a) improperly and unlawfully tied the authority of GTE-LD to the conduct of its affiliate, GTE North and GTE North's implementation of 1+ equal access;
 - (b) improperly and unlawfully continued restriction on the authority of GTE-LD in violation of Section 253(a) of the Act; and
 - (c) failed to articulate any clear standards by which the unfettered authority of GTE-LD to operate in Ohio will be granted in violation of federal law and GTE-LD's fundamental due process rights.
- (9) More specifically, GTE-LD argues that the June Entry, requires additional findings concerning a non-party before GTE-LD's right to operate without restriction will be addressed, fails to articulate any clear standard by which GTE-LD's request for a permanent and unconditional certificate will be resolved and prolongs the uncertainty as to GTE-LD's right to unrestricted intrastate operation for several months.
- (10) On August 7, 1997, AT&T Communications of Ohio (AT&T), an intervenor in this proceeding, filed a memorandum contra GTE-LD's July 28, 1997 application for rehearing. AT&T argues, among other things, that GTE-LD's application does not claim that the June Entry is based on erroneous conclusions of fact but merely restates the arguments previously considered and rejected by the Commission in the February Entry. Furthermore, AT&T states that, although AT&T and MCI have consistently maintained that GTE-LD should be permitted to provide long distances services in Ohio, the joint marketing of its services with that of GTE North was, and continues to be, anti-competitive. AT&T's memorandum contra also contends that GTE-LD has not established that the requirements of the February Entry have been met. Finally, AT&T argues that the Act provides the Commission with express statutory authority to impose such joint marketing restrictions on GTE-LD. AT&T cites Section 261(c) of the Act as granting the Commission approval to take any measures "necessary to further competition in the

provision of telephone exchange service." Therefore, AT&T requests that the Commission deny GTE-LD's most recent application for rehearing.

- (11) The Commission continues to consider the issues raised by GTE-LD in its February 26, 1997 application for rehearing. Therefore, the Commission deems it appropriate to grant rehearing in this matter solely to afford the Commission additional time to consider the issues on which rehearing and clarification have been requested.

It is, therefore,

ORDERED, That GTE-LD's application for rehearing is granted for the purpose of affording the Commission additional time to consider the issues raised on rehearing. It is, further,

ORDERED, That a copy of this Entry be served upon GTE-LD and its counsel, GTE North and its counsel, each of the intervenors and their counsel, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Ronda Hartman Fergus

David W. Johnson

Judith A. Jones

GNS/pdc