June 11, 1979

CONCURRING STATEMENT OF COMMISSIONER JOSEPH R. FOGARTY
IN WHICH COMMISSIONERS JAMES H. QUELLO AND ANNE P. JONES JOIN

In Re: Modification of Authorization to General Telephone and Electronics Corporation to Acquire Control of Telenet Corporation

The modifications and clarifications adopted by this Memorandum Opinion and Order represent improvements over the conditions initially imposed upon the grant of the GTE/Telenet acquisition authorization. These changes should permit GTE and Telenet to realize some of the potential benefits of an integrated company, while allowing the Commission to monitor any cross-subsidization or other anti-competitive practices.

Despite these revisions, I would prefer additional modifications of the conditions. As the Order now stands, the Commission has prohibited certain other GTE companies from providing Telenet with marketing services, software development, and installation and maintenance of Telenet's services. While there may be a greater potential for cross-subsidization in the provision of these services, there may also be significant cost savings which would accrue to GTE's ratepayers if it were permitted to supply these services. To enable the Commission to conduct the necessary surveillance of cost allocations to such services, I would require GTE to submit a cost-accounting system for Commission approval which would isolate the costs of these services when provided to Telenet by other GTE companies. I would have approval of such a system automatically trigger modification of the grant conditions to permit the other GTE companies to provide Telenet with these services. By tying automatic modification to approval of such an accounting system, the Commission would give GTE a clear incentive to develop and submit promptly a system that would provide us with the information needed to check the possibility of cross-subsidization.

179

There remains, however, the larger and more critical issue of the degree of separation required in balancing the economies of integration with the dangers of potential anti-competitive practices. In the past, the Commission has imposed separate subsidiary structures and requirements on a number of carriers[1/] without any analysis of the costs inherent in various degrees of separation. While the Commission has been quick to assume that potential evils of cross-subsidization and other anti-competitive practices are inherent in integration, it has shown little interest to date in assessing the potential benefits to be derived from integration. This, for me, is extremely troublesome from the standpoint of ultimate consumer welfare--and it should be the welfare of the telecommunications consumer that is our primary focus and objective. Competitive considerations are, of course, important, because the number of competitors and the variety of services offered contribute to consumer choice and may often have a positive effect on the quality and cost of service. However, we must not forget that our fundamental statutory mandate is protection of the consumer, the ratepayer, rather than competitors per se. As the Supreme Court has cautioned:

> . . . the Commission must at least warrant, as it were, that competition would serve some beneficial purpose, such as maintaining good service and improving it. . . . [I]t is not too much to ask that there be ground for

---

1/ See, e.g., First Computer Inquiry, 28 FCC 2d 267 (Final Decision, 1971), aff'd in part sub nom. GTE Service Corp., v. FCC, 474 F.2d 727 (2d.Cir., 1973); Resale and Shared Use, 60 FCC 2d 261 (1976), aff'd sub nom. American Telephone & Telegraph Co. v. FCC, 572 F.2d 17 (2d.Cir., 1978), cert. denied, ___U.S.___, 47 U.S.L.W. 3225 (1978); Domestic Communications Satellite Facilities, 35 FCC 2d. 844, 853 (1972); United States Transmission Systems, 48 FCC 2d 859 (1974); RCA Global Communications, Inc., 42 FCC 2d 774 (1973); General Telephone & Electronics Corp., ___FCC 2d ___, FCC 79-262, released May 11, 1979.

> reasonable expectation that competition may have some beneficial effect. Merely to assume that competition is bound to be of advantage, in an industry so regulated and so largely closed as this one, is not enough. 2/

In determining the requisite degrees of separation, our principal concern, therefore, must be benefit to the consumer--not merely potential anti-competitive practices.

In our recent consideration of the Second Computer Inquiry, Docket No. 20820, we gave instructions to revise the draft Tentative Decision to leave open, and to solicit comment on, these issues of separate subsidiary requirements. In approving this acquisition by GTE of Telenet, we have an opportunity to monitor and, if necessary, to modify further the degree of separation imposed based upon operational experience. I believe that it is imperative for this Commission to review all available data and to conduct an intensive cost/benefit analysis of existing separate subsidiary requirements before these policy questions come to us again. AT&T's application for an Advanced Communications System (ACS) will very likely cause this debate to resume.

I concur in the clarifications and modifications of the GTE/Telenet grant conditions adopted by the Commission, with the exception I have noted. However, I cannot endorse with confidence the wisdom of imposing arm's length subsidiary requirements until the Commission obtains sufficient data and conducts the necessary analysis to determine the ultimate costs and benefits to consumers of such restrictions.

2/ FCC v. RCA Communications Inc., 396 U.S. 86, 97 (1953).