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Ms. Blanca S. Bayo, Director
Division of Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

February 17, 1997

Re: Docket No. 960847-TP
Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Comments Regarding Its Proposed Agreement with AT&T Communications of the Southern States, Inc. in the above matter. Also enclosed is a diskette with a copy of the Comments in WordPerfect 6.1 format. The proposed agreement is being filed today by AT&T under separate cover.

Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (813) 483-2617.

Very truly yours,

Kimberly Caswell/dm

Kimberly Caswell

KC:tas
Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996	)	Docket No. 960847-TP Docket No. 960980-TP Filed: February 17, 1997

GTE FLORIDA INCORPORATED'S COMMENTS REGARDING ITS PROPOSED AGREEMENT WITH AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

GTE Florida Incorporated (GTE) files these Comments in conjunction with the interconnection, resale and unbundling agreement (Agreement) AT&T Communications of the Southern States, Inc. (AT&T) and GTE filed today pursuant to the Commission's decision in this arbitration. (Order no. PSC-97-0064-FOF-TP, Jan. 17, 1997 (Order).)

The Order directs the parties to submit for approval a contract containing two types of provisions: 1) those that implement the Commission's "decision regarding the unresolved issues" and 2) and those that reflect "issues resolved by the parties." (Order at 147.)

Most of the contract provisions fall into the second category--issues the parties have themselves resolved. Since this language is agreed, the Commission need do nothing more than consider it for approval. The same is true for most of the provisions conforming

the Agreement to the Commission's rulings on the unresolved issues.[1] In this regard, the parties disagree as to how to structure language that properly implements the Commission's rulings. In these instances, GTE and AT&T have submitted competing language, and ask the Commission to choose the version that most closely embodies the Commission's decision. Because these issues were litigated, the Commission can lawfully make such a choice.

AT&T, however, has proposed that the Commission add to the Agreement a significant amount of language that concerns issues that were never arbitrated and never resolved by the Commission. In many cases, these provisions impose obligations on GTE that go well beyond and even contradict the requirements of the Telecommunications Act of 1996 (Act) and the FCC's regulations under the Act. Approving AT&T's proposals in the absence of any supporting evidence, let alone the requisite competent and substantial evidence, would be plainly arbitrary and capricious.

Part I explains further why AT&T's request for the Commission to summarily decide non-litigated issues is improper and must not be granted. In Part II, GTE comments on AT&T's proposed language for both arbitrated and non-arbitrated provisions. Where appropriate, GTE has suggested competing language. GTE's presentation of competing language for non-arbitrated issues, and its substantive arguments as to why AT&T's language is improper, in no way indicates that the Commission can now decide these issues. This language is included only to make clear that GTE has not agreed to the

[1] GTE emphasizes that "agreement" for purposes of the contract does not mean that the parties voluntarily produced the document. Rather, it is submitted to comply with the Commission's Order.

contract additions AT&T has inserted and to underscore their unreasonableness. GTE is not asking the Commission to choose between the competing language for these non-arbitrated, unresolved issues, most of which are operational, technical or administrative matters. The parties may continue to negotiate these matters, but none of AT&T's language is necessary for approval of a comprehensive interconnection agreement. [2]

I. THE AGREEMENT MUST INCLUDE ONLY PROVISIONS THAT WERE AGREED TO AND ISSUES RESOLVED BY THE COMMISSION

A. The Order Does Not Resolve the Matters AT&T Seeks to Add to the Agreement

The Commission's Order governs the procedures for submission of the arbitrated agreement. As noted above, it instructs the parties to include only two types of provisions: 1) agreed-upon and 2) conformed to the Order. (Order at 147.) There is no category for language that was not agreed to and that does not implement the Commission's decision. AT&T's rationale for including this third category is not clear to GTE, but AT&T may attempt to suggest that the new issues it has introduced into the Agreement were somehow resolved in the Commission's Order. This argument is easily dismissed through a common-sense test: the Commission can simply read AT&T's proposed provision and then look to the Order to see if there is anything there that requires that provision in the Agreement. In all instances, there is not. To illustrate this point with just a few examples,

[2] GTE's comments are based on a version of the Agreement provided by AT&T to GTE a day before the filing date. GTE assumes that its version is materially the same as the one provided to the Commission, but reserves the right to make additional comments if necessary.

AT&T proposes language regarding cooperative testing, examination of GTE's records, and electronic provisioning control of dedicated transport . None of these issues--or any of the others AT&T now raises--were resolved in the Order (or even discussed during the case). Because AT&T's proposals do not embody Commission decisions on unresolved issues (and because they are not mutually agreed), they do not comply with the Order's unambiguous directives for contract content and must be rejected outright.

B. AT&T Did Not Litigate the Issues It Seeks to Add to the Agreement

As an alternative to claiming that GTE has mistakenly construed the Order, AT&T may argue that the fault lies with the Commission--that it failed to resolve the issues AT&T presented for arbitration. This strategy, too, is meritless; AT&T did not properly present or litigate any of the matters it now presents for Commission decision.

GTE does not dispute AT&T's right to present open issues for arbitration. With this right, however, comes the responsibility to actually litigate those issues, so they are capable of Commission resolution. If this obligation was not obvious enough to AT&T, it was made doubly clear in the Prehearing Order, where the Commission directed each party to "participate fully in the litigation" of the issues it presented. (Order no. PSC-96-1275-PHO-TP, issued Oct. 11, 1996, at 3.) AT&T's own actions belie any contention that it even intended to arbitrate the disputed issues it now asks the Commission to resolve.

In its Petition for Arbitration, AT&T asked the Commission to resolve a specifically designated group of issues, which were refined by the parties in an issues identification conference on September 12, 1996. The issues AT&T presented did not include any of

the matters that AT&T now asks the Commission to summarily resolve. In fact, referring to those matters, AT&T asserted that there was "an additional group of issues that AT&T believes the Commission should not have to consider in this arbitration." Instead, AT&T expected that negotiations would resolve them. (AT&T's Petition for Arbitration, filed Aug. 16, 1996 (Petition), at 8.)

AT&T's conduct at every stage of this proceeding was consistent with that expectation. It never indicated an intent to litigate or seek Commission resolution of the relatively minor issues it now raises.

In keeping with the official issues list in this docket, none of AT&T's prehearing filings mentioned, let alone took a position on, the specific matters it now asks the Commission to decide. Because these matters did not appear in AT&T's prefiled direct testimony, GTE could not have rebutted them in its own written testimony. AT&T's prehearing statement did not take any position on the issues it now raises. Nor did AT&T use the prehearing conference to express any concerns about any lack of opportunity to arbitrate all of the issues it felt important.

At the hearing, there was no cross-examination on the issues AT&T now raises, nor would such cross-examination have been permissible, because cross-examination is limited to the scope of the prefiled testimony. As noted, there was nothing in AT&T's prefiled testimony addressing these matters. AT&T's posthearing brief did not mention them either. The Commission's Order did not resolve these issues, nor could it have, because there was no evidence to ground any such resolutions.

AT&T elected to rely on negotiation, rather than litigation, to resolve the details of implementing interconnection, unbundling, and resale. Those negotiations were very successful, as is evident in the hundreds of pages of agreed-to provisions in the Agreement. Still, AT&T is not satisfied that GTE has not accepted its proposals on a number of items. The Commission did not constrain AT&T from litigating these matters; AT&T cannot now expect the Commission to grant it relief from the effects of a fully voluntary strategy just because it may not have yielded exactly the results AT&T wanted.

C. AT&T Asks the Commission to Take Unlawfully Arbitrary Action

If, despite the explicit terms of its own Order governing submission of agreements, the Commission is inclined to accept AT&T's invitation to summarily decide non-arbitrated issues, it will do so unlawfully. It is axiomatic that administrative agencies cannot take arbitrary and capricious action. See, e.g., Seminole County Bd. Of County Comm'rs v. Long, 422 So.2d 938 (Fla. 5th DCA 1982); State ex rel. Watson v. Lee, 24 So.2d 798 (1946). In this regard, a reviewing court will examine whether the agency grounded its decision on competent, substantial evidence in the record and whether it afforded adequate due process. See, e.g., Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So. 2d 996 (1993 Fla. 2d DCA); Rivera v. Dawson, 589 So.2d 1385 (Fla. 5th DCA 1991); Hollywood Firemen's Pension Fund v. Terlizzese, 538 So.2d 934 (Fla. 4th DCA 1989). Adopting AT&T's contract proposals would fail these tests for arbitrary action.

To meet the competent and substantial standard, the evidence the Commission relies upon for its findings must be "sufficiently relevant and material that a reasonable

man would accept it as adequate to support the conclusion reached." De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1st DCA 1957); Clark v. Dep't of Professional Regulation, Bd. of Medical Examiners, 463 So.2d 328 (Fla. 5th DCA 1985). Further, there must be some rational connection between the facts found and the choice made. Port of Jacksonville Maritime Ad Hoc Committee, Inc. v. U.S. Coast Guard, 788 F.2d 705 (11th Cir. 1986). In this case, there is no evidence that would support any substantive Commission conclusions on the matters AT&T raises, let alone any evidence that would be adequate under the De Groot definition. There were no facts found on these matters, let alone any that would allow the Commission to make a rational decision. The Commission has no information about, for instance, whether GTE's network or administrative structure can reasonably accommodate AT&T's demands, or what AT&T's new proposals might cost GTE. As explained, AT&T offered no testimony or argument about these issues at any stage of the proceedings. And no matter what arguments or explanations AT&T now offers in support of its new recommendations, they are too late to ground any Commission decisions. By law, GTE had the right to a meaningful hearing on all issues to be resolved in this proceeding, including "an opportunity to respond, to present evidence and argument on all issues involved [and] to conduct cross-examination and submit rebuttal evidence." (Fla. Stat. ch. 120.57(1)(b)(4).) GTE was denied the opportunity to do any of these things because AT&T did not properly present or litigate any of the minor issues it has raised in conjunction with the Agreement's filing. Choosing AT&T's proposals to resolve these issues would plainly deny GTE its due process.

The Commission should disregard the provisions AT&T has unilaterally presented and review only the portions of the Agreement that were resolved by the parties themselves or by the Commission. The parties are, of course, free to continue negotiating the issues AT&T has raised, but their resolution by the Commission is not necessary for approval of the Agreement.

II. COMMENTS ON DISAGREED PROVISIONS

Under GTE's rationale set forth above, certain provisions in the Agreement are represented as disagreed (with GTE's language in double underlined text and AT&T's in regular bold type) in the proposed Agreement for one of three reasons: 1) they were arbitrated and resolved, but the parties have not agreed on conforming language; or 2) they were not arbitrated and not resolved, they should not be included in the Agreement at all; or 3) they relate to liability and indemnification, which was litigated, but which the Commission did not resolve.

In its comments below, GTE specifies the category of disagreement associated with particular provisions in the Agreement. GTE once again emphasizes that it is not asking the Commission to resolve the issues that were not arbitrated and not resolved in the Order. The Commission must disregard these provisions. GTE seeks Commission resolution of only the disputes on implementing language for provisions that were litigated and resolved.

Finally, liability and indemnification provisions are a special case. This issue of the appropriate scope of liability and indemnification obligations was litigated, and GTE

considers limitations of liability essential to governing the parties' relationship under the Agreement. The Commission, however, declined to resolve the liability and indemnification issues, leaving them instead to negotiations between the parties. (Order at 98.) Unfortunately, the parties were unable to successfully conclude their negotiations on these matters within the time allotted for submission of the Agreement. Because the liability issue is so important, GTE asks the Commission to intervene, and to choose GTE's version of the liability and indemnification language. This action is permissible because these matters were properly presented and tried. In the alternative, the Commission could allow the parties additional time for negotiation of the provisions. If those negotiations ultimately fail, the parties should be permitted to seek resolution from the Commission.

In no event should GTE be expected to finalize an agreement without any limitations on its potential liability. Because GTE has been compelled to permit numerous interconnectors access to its network at a very fundamental level, GTE no longer has complete control over that network. It would be unfair and unreasonable to impose virtually open-ended liability on GTE, as AT&T has recommended, when GTE's ability to prevent network errors and failures is necessarily undermined by interconnection and unbundling obligations it did not voluntarily accept.

III. COMMENTS ON DISAGREED PROVISIONS - MAIN AGREEMENT

Introductory Paragraphs - Sixth Recital and "Now, Therefore" clause, Not Arbitrated

GTE's proposed language recognizes that this is not an "agreement" in the sense that it was voluntarily produced by the parties. Rather, this is an "arbitrated agreement" (as that term is used in Section 252 of the Act), where each party specifically reserves its rights to contest both the provisions set forth in the document and the underlying Order in accordance with Section 252(e)(6) of the Act. GTE's filing of the contract is not a voluntary act, but rather performed in compliance with the Commission's Order.

General Terms and Conditions

Section 2 and Attachment 11, "Effective Date" (effective date of agreement), Not Arbitrated

AT&T's proposed language assumes that the Agreement may become effective *prior to* approval by the Commission in accordance with Section 252, which is not necessarily true. In contrast, GTE's language allows, but does not assume, the possibility of Commission approval prior to the Effective Date.

Sections 6 - 8 (environmental liabilities), Not Arbitrated

GTE seeks only to hold AT&T liable for environmental liabilities that occur as a result of AT&T's activities on GTE premises or those that are caused by work required by AT&T pursuant to the Act and the Agreement. An example would be liabilities resulting

from the disturbance of asbestos, not previously in a friable condition,[3] as a result of having to perform a cable pull through the basement of a GTE building to meet an AT&T collocation request. Absent obligations under the Act and the Agreement, GTE could simply decline the request if the only way to comply with the collocation request was to disturb asbestos. Since GTE does not have the option to decline such a request under the Act and the Commission's Order, AT&T should be liable for the costs of any environmental remediation required because of its collocation request. Expecting GTE to bear such costs, when they are caused by AT&T, is unreasonable and not contemplated by the Act, which requires that the alternative local exchange carrier (ALEC) bears the costs of its requests for collocation, unbundled elements, etc.

Sections 9.3 and 9.4 (nature of the Agreement), Not Arbitrated

Again, GTE's proposed language recognizes that this is not an "agreement" in the sense that it was voluntarily produced by the parties. Rather, this is an "arbitrated agreement" (as that term is used in Section 252 of the Act), where each party specifically reserves its rights to contest both the provisions in the document and the underlying Order in accordance with Section 252(e)(6). This language further recognizes that judicial review, if it overturns provisions of either the Order or the FCC's decision interpreting the Act, Implementation of the Local Competition Provisions in the Telecomms. Act of 1996, FCC 96-325, CC Dkt. No. 96-98, Aug. 8, 1996 (First Report and Order), will necessitate modification of related provisions in the Agreement.

[3] Asbestos is generally only a problem under environmental laws if it is "friable."

Section 10.2 (liabilities of GTE), Arbitrated but Not Resolved

AT&T's proposed language inappropriately attempts to expand GTE's potential liability well beyond payments AT&T makes under this Agreement, to the payments it makes under other regulatory requirements (*e.g.*, access charges). This is inappropriate because (amongst other reasons) AT&T should not be able to reduce its validly incurred charges unrelated to this Agreement as a result of any dispute relating to this Agreement.

Section 10.3 (consequential damages), Arbitrated but Not Resolved

Limitations of liability for consequential damages, from any cause, are quite common in contracts and are commercially reasonable. The prices that GTE charges its end-user customers, which are the basis for the discounted wholesale prices to be charged to AT&T under the Agreement, are not set at a level to cover indemnity for consequential damages. If AT&T wishes GTE to indemnify AT&T for these types of damages, GTE's prices to AT&T must be increased accordingly.

Section 10.5 (indemnification procedures), Not Arbitrated

While the general scope and nature of liability and indemnity were litigated, the specific procedures for dealing with claims were never discussed. GTE's proposed language requires an Indemnitee to be consulted if a compromise or settlement would *adversely* affect the Indemnitee. An Indemnitee also has the right to employ separate counsel if the claimant requests equitable relief. AT&T's proposed language, by contrast, is excessively broad and refers to ambiguous "other rights" and "other relief." Since GTE

doesn't know what AT&T means by this ambiguous language, GTE cannot agree to include it.

Section 11.3 (penalties for violation of service standards), Not Arbitrated

GTE has proposed language that would require GTE to deliver services, etc., at parity with what GTE delivers to itself and to its own customers, as well as specific performance and service quality standards, set out in Attachment 12 to the Agreement. The performance standards in Attachment 12 also contain certain penalties for failure to meet the performance criteria. Absent this language, AT&T would arguably be permitted to "double dip," *i.e.*, to obtain payment of performance penalties from GTE under the provisions of Attachment 12 and seek additional monetary damages or other remedies under other provisions of the contract. GTE cannot agree to language that could permit AT&T to recover twice for the same item.

Section 11.5 (payment for higher standards), Not Arbitrated

As the requesting party, AT&T must pay the cost of any higher standard it requests. AT&T's proposed language "prorated on a competitively neutral manner" is an obvious attempt to unfairly force other ALECs, and probably also GTE, to bear costs AT&T causes.

Section 18 (branding), Not Arbitrated by AT&T

Section 18.1

GTE believes this issue may be resolved, but was not able to confirm this before submission of these comments. In any case, the Commission cannot decide this nonarbitrated issue.

As the Commission pointed out in its Order, "The issue of branding is specific to MCI and GTE" in this consolidated arbitration. (Order at 78.) Early in this proceeding, the Commission made clear that only the parties involved in an issue would have the right to litigate it. (Order PSC-96-1275-PHO-TP, Oct. 11, 1996 (Prehearing Order), at 3.) Although the Commission resolved MCI's branding issues, AT&T proposed no such issue, and so it was not resolved for AT&T. As stated in the Prehearing Order, "The Commission's decision on the unique issues shall be binding only on the parties who litigated the issue." (Prehearing Order at 3.) Therefore, the Commission must disregard this language.

Further, as a substantive matter, AT&T's proposal offers no incentive to prohibit it from requiring GTE to reconfigure its network, only for AT&T to start using its own platform to provide OS/DA a short time later. GTE's language would fairly compensate GTE for its expenses incurred in reconfiguring its network, and also oblige AT&T to carefully consider its branding requests.

If this issue has been settled between the parties, it will inform the Commission of the resolution as soon as possible.

Section 23.3, 23.15 (signatures; execution in counterparts), Not Arbitrated

Since this is an "arbitrated agreement" for purposes of Section 252(b), rather than a voluntary agreement under Section 252(a)(1), there is no requirement that the parties actually execute the Agreement. *Compare* Section 252(a)(1) (an ILEC may "enter into" a voluntary and binding agreement) *with* Section 252(e)(1) ("an interconnection agreement adopted by...arbitration" [emphasis added]).

Sections 23.9 (governing law), Not Arbitrated

Since this is an "arbitrated agreement", *i.e.*, it is the equivalent of a Commission order as it merely effectuates the terms of the Order, jurisdiction over the Agreement is properly limited to the Commission. It would be poor public policy and inconsistent with the Commission's responsibilities, both under the 1996 Act and state law, for every trial court in the state to have the ability to pass on the parties' regulatory responsibilities under the Agreement.

Section 23.12 (renegotiation), Not Arbitrated

AT&T's proposed language conflicts with GTE's language in Section 9.4, and attempts to impose obligations upon GTE which do not exist in the Act. For example, in the First Report and Order, the FCC determined that operations support systems (OSS) are network elements which an ILEC must provide to competing carriers, and set forth certain rules pertaining thereto. However, whether OSS is, in fact, a network element under the Act is an issue squarely before the Eighth Circuit. If the Eighth Circuit were to

rule that OSS is not a network element, then GTE would be under no obligation to provide OSS to AT&T. However, AT&T proposes language that would resurrect such an obligation--as a matter of contract, rather than statute--by making it incumbent upon GTE to "renegotiate" with respect to the provision of OSS. While in such circumstances GTE would certainly be willing to discuss the provision of OSS to AT&T--even outside of any statutory obligation--there can be no obligation independent of the Act which would require GTE to come to any agreement with AT&T regarding OSS. Thus, any duty to "renegotiate" would be inconsequential at best.

PART I LOCAL SERVICES RESALE

Section 24 (telecommunications services provided for resale), Arbitrated and Resolved

The Commission ruled that, under the Act, GTE is required to resell any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers. (Order at 51.) AT&T's proposal to extend GTE's resale obligation to "service support functions" therefore lacks any foundation in the Order and is, in any event, ambiguous.

GTE's obligation in a resale environment is to provision a service to AT&T's customers in essentially the same manner in which the service is provisioned to GTE's customers. This will obviously involve the use of the same "service support functions" whether the customer is AT&T's or GTE's. To the extent that AT&T's proposed language requires this, it is superfluous. However, to the extent that AT&T's language means

something else, then it goes beyond GTE's obligations under the Act. Either way, this language should not be included in the final contract.

Section 25.3 (cross-class selling), Arbitrated and Resolved

GTE believes that AT&T's language in this section unduly circumscribes the cross-class selling resale restriction as the FCC contemplated it in the First Report and Order. A cross-class restriction on resale of residential service to business customers is necessary and appropriate because residential service is priced below its relevant costs. While residential service is now GTE's only below-cost offering, AT&T's narrow language would preclude any possibility of restricting resale of other below-cost services if, for example, GTE is ordered to offer such services in the future. This is a distinct possibility because universal service is an evolving concept. Likewise, AT&T's use of the specific terms "Lifeline" and "Linkup" will not permit restrictions on other means-tested services should they be offered in the future.

The Commission should approve GTE's language, which is better from a policy standpoint, as well as more consistent with the FCC's rulings upon which this Commission based its resale restrictions.

Section 25.5.1 (number portability features and quality standards), Not Arbitrated

AT&T's proposed language in this section is governed by other provisions of the Agreement, and hence introduces ambiguity into it by setting forth potentially disparate obligations in different places. Specifically, (1) the features and functionalities attendant

to number portability are governed by Attachment 8, and (2) quality standards are governed by Attachment 12. AT&T's language here should thus be stricken.

Section 26.6 (telephone relay service), Not Arbitrated

It is not clear whether AT&T is requesting telephone relay service for resale or whether it seeks to have GTE continue to provide this service to AT&T's customers. Regardless of how AT&T wishes to proceed, the phrase "at no additional charge" fails to convey any idea whatsoever of the price that GTE must charge for the service. In contrast to AT&T's ambiguous language, GTE's alternative pricing language reasonably assumes that qualifying AT&T customers will continue to receive such service from GTE at the same price at which GTE provides the same service to its own qualifying customers.

Section 26.7 (voice mail-related services), Arbitrated and Resolved

AT&T and GTE disagree as to the nature of the Commission's resolution of the issue of voice mail resale, which was litigated in this case. GTE opposed a resale obligation for voice mail, inside wire maintenance, and other ancillary services, because the Act does not require resale of such non-telecommunications services.

In the section of the Order discussing miscellaneous "other services" proposed for resale, the Commission stated that ILECs are required to offer for resale:

> any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Therefore, we find that GTE shall be required to resell such services as special access, including private line services tariffed

> under the special access tariff, COCOT coin and coinless lines, and operator and directory assistance services.

(Order at 51.) The Commission did not include voice mail in this list, despite the fact that it is specifically mentioned earlier in the resale section, where the Commission refers to an MCI witness' testimony on this issue. (Order at 44.) As such, GTE does not believe the Commission intended to impose a resale obligation on voice mail, which it did not rule was a telecommunications service.

The Commission should thus adopt GTE's proposed revision to AT&T's language--specifically, the opening phrase: "If GTE agrees to provide voice mail services to AT&T." (This competing language was erroneously left out of the version of the Agreement submitted to the Commission.)

Section 26.8 (voluntary federal customer financial assistance programs), Not Arbitrated

AT&T is asking for information in an electronic format that GTE does not maintain electronically or in a centralized location. Although a customer's qualification for and participation in LifeLine-type programs is generally noted on the customer service record, which will be transmitted to AT&T in accordance with other requirements of the Agreement, any application forms, letters from the appropriate federal agency, etc. are maintained on file by GTE in a paper format, usually in the local business office serving that customer.

In addition, it is senseless to require GTE to provide information to AT&T concerning certification procedures. As a LEC, AT&T will have to understand and comply with these procedures for its own new customers. That is part of the business of being a

LEC and AT&T has the same access to that information as GTE does--from the appropriate federal or state agency. AT&T's asking GTE to provide information on certification procedures is like asking GTE to provide advice to AT&T on legal or regulatory matters in general.

Sections 28.1, 28.4 (routing for repair service), Arbitrated and Resolved

AT&T's proposal for routing of repair calls goes beyond the terms of the Order. In this arbitration, AT&T and MCI requested that repair calls be routed to AT&T and MCI, respectively, using the same dialing arrangements that GTE provides for its customers. GTE does not use 611 for repair calls in Florida. (Order at 88.) (In fact, in its Posthearing Brief, MCI recognized that this is no longer an issue since competing carriers can use similar 1-800 numbers to reach their repair centers.)

Because AT&T's language does not comport with the Order or with the way GTE receives repair calls, it should be deleted.

Section 28.6 (emergency calls), Not Arbitrated

GTE does not currently maintain in a distinct file the emergency response-related data AT&T seeks. GTE told AT&T that it is willing to work on a solution to extract this information from its files and provide it in an electronic format if AT&T is willing to pay for such extraction. GTE, however, cannot commit to the language AT&T has suggested, as the information does not exist in the format requested and AT&T has not agreed to pay for the service to be rendered (the extraction), as required by the Act.

Sections 30.6, 30.7, 30.8 and 30.9 (resale of pay phone lines), Not Arbitrated

AT&T's proposed language for these provisions goes beyond its testimony and argument with regard to resale for coin lines and GTE's tariffs and capabilities. GTE will provide support and service functions as described in Section 276 of the Act. Screening and blocking will be done in accord with GTE's tariffs.

PART II: UNBUNDLED NETWORK ELEMENTS

Sections 32.4 (use of network elements), Not Arbitrated

AT&T's use of unbundled network elements is governed by the Act and the FCC's Rules, and thus cannot exceed what is permitted by the Act and those Rules *(e.g.*, even if the element happens to be capable of a particular use). In addition, some networks elements may be capable as a general matter of providing a particular use, but may not be so in specific instances. *See* discussion regarding Attachment 2, which recognizes that no telecommunication carrier's network (including AT&T's) meets the technical specifications which AT&T attempts to impose upon GTE.

Sections 32.7 and 32.8 (cost recovery for interconnection of network elements), Not Arbitrated

Pursuant to the First Report and Order, GTE should be allowed to recover any costs incurred for combining various unbundled network elements as requested by AT&T. In addition, according to section 251(d)(1) of the Act, GTE should be allowed to recover its costs plus a reasonable profit.

Section 32.10.3.1 (examination of network data), Not Arbitrated

AT&T's proposed language is totally unnecessary, burdensome, and over-reaching. It would permit AT&T to go on fishing expeditions, even when there is no indication of any service quality or other problems. The contract already establishes performance criteria and service standards, and contains penalties for failure to meet service standards. AT&T agreed to remove this language from the arbitrated agreement in California.

Section 32.10.3.2 (obligation to "work cooperatively") Not Arbitrated

AT&T's proposed language--requiring GTE to "work cooperatively with AT&T to provide Network Elements"--is too vague to have any meaning. Also, the Network Elements GTE must provide and the associated provisioning requirements are already specified in Part II and Attachment 2. This new language would only introduce ambiguity which AT&T might try to use to increase GTE's obligations under this Agreement. Those obligations are spelled out in the Act, the FCC's Rules (to the extent to which they are effective and applicable), and the Commission's existing orders. Nothing requires GTE to ensure that AT&T will succeed in the marketplace, as its proposal implies. This provision should thus be stricken from the final agreement.

PART III: ANCILLARY FUNCTIONS

Sections 34.1, 34.2, 34.3, 35.1, 35.2, 35.3, 35.4 (Provision of Ancillary Functions/ Standards for Ancillary Functions), Not Arbitrated

GTE has the same objection to this language as it did for the substantially identical language in the Unbundled Network Elements section discussed above. It is completely unnecessary and burdensome and is an example of AT&T overkill–asking for performance standards, reporting on those standards, penalties if the standards are not met, and a license to ask GTE for broad categories of information, even when there is no evidence of a problem. AT&T's complaint that GTE will not provide ancillary functions to AT&T equal to what it provides GTE's end-user customer is nonsensical. As GTE has pointed out to AT&T many times, GTE does not provide ancillary functions (i.e., collocation, rights of way, conduit pole, attachments, etc.) to its end-user customers.

PART IV: INTERCONNECTION

Section 37.6.3 (interconnection activation date), Not Arbitrated

Interconnection services may in most cases be provided within a set time period, often as short as 15 days. But depending on whether facilities are already present and the type of interconnection requested, new facilities may need to be constructed, which would require additional time. AT&T is not willing to recognize this basic fact, and instead wishes to hold GTE to an unreasonable period, unless AT&T "agrees" otherwise. GTE needs more assurance that it will be given adequate time to fulfill interconnection requests.

Section 37.8 (cost recovery for higher quality interconnection), Not Arbitrated

GTE objects to AT&T's proposed language because it would require GTE to share the cost of "higher quality" interconnection, whether GTE wants or has any use for such higher quality for the services it provides. The requesting party--AT&T--should bear the cost of its request, as required by the Act.

Section 37.10.1 (911 Service), Not Arbitrated

GTE requires a minimum of two trunks for each NPA to GTE's E911 selective routers. This same requirement has been included in the E911 agreements approved by the Commission for MCI and ICI.

GTE disputes the words "and the 10 Digit POTS number for each PSAP" because GTE does not maintain a list of PSAP 10-digit numbers; therefore, under AT&T's language, GTE would have to create a process to obtain and forward these to AT&T. GTE would have to hire persons to perform the tasks of telephoning Directory Assistance, compiling the lists, then periodically telephoning Directory Assistance to ask for updates. In addition, an automated delivery system to an AT&T contact would have to be established. GTE believes that AT&T could perform the same function internally at a lower cost.

GTE has proposed the last sentence of this section because the selective routers were installed to handle a certain maximum quantity of trunks. With wireless companies, private switch companies and ALECs requiring access to the selective routers, their capacity will soon be exhausted. The fee proposed by the last sentence imposes a portion of the selective router costs to enable GTE to expand the processing capacity (or purchase

a new router if expansion is not viable) to serve these new customers. The pro-rata fee is being applied to all carriers using the selective routers.

Section 37.10.3.6 (911 overflow), Not Arbitrated

GTE does not provide this service to any other entity. Routing overflow 911 traffic to GTE operator services will not result in more efficient handling of this traffic because (1) GTE operator services will often be located in a geographic region other than the 911 call and will not be familiar with the proper routing of the regional 911 traffic, (2) such overflow calls will not result in the ANI being forwarded to the PSAP, thus eliminating the automatic retrieval of the Automatic Location Identification (ALI) that identifies the calling party's telephone number, address and responsible Emergency Response Agencies, and (3) the 911 caller can more often reach the correct PSAP faster by hanging up and re-dialing than by discussing their location with the operator to help him search databases for the responsible PSAP. In addition, AT&T can choose to route overflow calls directly to the PSAP. Thus, GTE believes that sending overflow calls to an operator, rather than requiring the 911 caller to redial, would diminish the level of 911 service, to the detriment of the public.

Sections 38.3.3, 38.3.4 (tandem connections), Not Arbitrated

AT&T's proposed language contradicts itself. The first sentence says that a tandem connection will permit completion to all end offices that subtend that tandem, as well as all other end offices subtending other tandems in the LATA--in other words, a single

tandem connection to serve the entire LATA and no necessity to connect directly to each tandem of the other party. The second sentence then states the opposite; *i.e.,* that each party must interconnect at each of the other party's tandems. This makes no sense. GTE has agreed to provide LATA-wide access from a single access tandem, conditioned upon AT&T entering into the same type of intraLATA toll compensation agreement with GTE as GTE has with other LECs.

In any case, this issue is moot for the time being, as GTE has only one tandem switch in Florida.

Sections 38.4 and 38.4.1 (signaling interconnection), Not Arbitrated

Since GTE is not an interexchange carrier, CCIS signaling between switches (SPs and SSPs) interconnected to the GTE network can only be provided on an intraLATA basis via a GTE STP pair serving that LATA. AT&T's language does not properly reflect this fact. Also, the statement that "Each Party shall charge the other Party equal and reciprocal rates for CCIS signaling in accordance with the pricing schedule" does not acknowledge that the Parties' signaling costs may differ.

Section 38.4.4 (bona fide request), Not Arbitrated

GTE's language here simply makes clear that in this instance, AT&T, as well as GTE, will have to use the bona fide request process that the parties have established elsewhere in the Agreement.

Section 39.2.4 (tandem subtending), Not Arbitrated

This provision again demonstrates AT&T's lack of understanding of interconnection issues. On the one hand, AT&T insists on having LATA-wide access with a single access tandem connection; then it states the opposite--that it must connect to every access tandem. AT&T must take a consistent position, rather than leaving GTE to guess at what AT&T really means.

Section 43.3.5 (compensation for ported toll calls), Not Arbitrated

GTE's language makes clear that, for toll calls completed through an interim service provider's number portability arrangement, the new carrier will be entitled to only a portion of the applicable end office terminating switched access charges.

Section 43.3.6.4 (transiting traffic), Not Arbitrated

AT&T's proposed language is unacceptable because it purports to make GTE pay AT&T transport and termination charges for calls which GTE end users did not originate. Under the transiting scenario in this section, GTE's only responsibility is to tandem switch traffic between the trunk groups of the third party and the trunk groups of AT&T.

Section 43.3.6.5 (responsibilities for transiting traffic), Not Arbitrated

GTE's proposed language correctly specifies the respective obligations of each Party. It allows for the condition set forth in § 43.3.6.4 but does not assume it.

Section 43.3.6.6 (compensation for transiting traffic), Not Arbitrated

GTE's proposed language correctly states the obligations of AT&T to compensate the third-party LEC based on the third-party LEC's rates, and not GTE's. GTE, as provider of the tandem switching and transport functions, would bill AT&T for the elements.

Signature Page, Not Arbitrated

See discussion of the Sixth Recital and "Now, Therefore" clause, above.

ATTACHMENT 2

SERVICE DESCRIPTION: UNBUNDLED NETWORK ELEMENTS

Sections 4.2.1.4, 4.2.1.6, 4.2.1.9 (local switching cost recovery), Arbitrated and Resolved

GTE's proposed cost recovery language is necessary because, pursuant to the Act and the Order, GTE should be allowed to fully recover its costs for any function performed by GTE for AT&T. (See Order at 24-25.)

Section 4.2.1.28 (customized routing), Arbitrated and Resolved

GTE's proposed language is more precise than AT&T's. The Commission decision requires customized routing for local operator services only. (See Order at 89-90.) Furthermore, GTE's language specifies the routing requirements for situations where intraLATA presubscription may or may not be available at a particular central office.

Section 4.2.1.30 (customized routing), Arbitrated and Resolved

The Commission decision requires customized routing for local directory assistance and operator services only. AT&T's proposed language to use customized routing to send incoming calls to an AT&T provided voice mail systems goes beyond the requirements of the Order.

Section 5.1.1 (technical feasibility of customized routing), Arbitrated and Resolved

The technical feasibility limitation stated by GTE is consistent with the requirements of the Act and the Commission's Order. (See Order at 9-10.)

Sections 5.1.2, 5.1.2.15, 6.1.1, 6.2.2 (duration of customized routing), Not Arbitrated

Providing the customized operator services modifications AT&T requests will require substantial time, effort, and expense on GTE's part. Ultimately, AT&T is likely to provide its own OS/DA services from its own platform. As proposed, there is no incentive in the Agreement to prohibit AT&T from requiring GTE to reconfigure its network, only for AT&T to abandon the GTE service a short time later. GTE, therefore, proposes contract language which will fairly compensate GTE for its expenses incurred in reconfiguring its network. GTE's language also obliges AT&T to carefully consider its branding requests, in that it requires AT&T to use the GTE OS/DA services that it has reserved, for the duration of the agreement.

Section 8.2.10 (POT access), Not Arbitrated

This language is unacceptable because GTE does not man its wire centers on a seven-days-a-week, 24-hours-a-day basis. As such, it cannot provide AT&T this level of access. If AT&T's request is within the physical collocation context, where the POT is within the AT&T cage, this clarification could make AT&T's language otherwise acceptable.

Section 8.2.11 (dedicated transport system design), Not Arbitrated

This language is unacceptable because the dedicated transport systems (*e.g.*, S.S.) GTE provides to AT&T will meet the technical specifications of the underlying equipment which GTE utilizes in these transport systems. If AT&T requests dedicated transport provided as a system at different technical standards, then AT&T should pay for such dedicated transport systems on an individual case basis.

Section 8.2.12 (electronic provisioning control), Not Arbitrated

GTE does not provide electronic provisioning control of dedicated transport. To do so would potentially allow one customer to "bump" the facilities of another customer.

Section 11.3.2.11 (customer data maintenance) , Not Arbitrated

This provision would be acceptable if GTE's proposed language is included and the words "card numbers" in line 3 are deleted. These changes conform to the parties' understanding that when a customer changes to a local service provider other than GTE, this customer's GTE line-based calling card number is to be canceled. A new line-based

calling card will be provided by the new service provider. Since the GTE calling card number is no longer valid, it would no longer make sense--and AT&T likely would not want--that GTE maintain the line-based calling card number in the customer's data.

Section 11.7.1.3 (payment for testing resources), Not Arbitrated

GTE must require AT&T to pay for testing resources and staff necessary for service deployment, since these costs are not included in the prices AT&T will pay for resale services and unbundled network elements.

Figure 2 (and all other figures), Not Arbitrated

GTE opposes the use of all of AT&T's figures because, although AT&T takes the position that they are merely illustrative, GTE is concerned that they may introduce ambiguity into the Agreement. It is the language of the Agreement which sets forth the parties' respective obligations. Consequently, if these figures remain in the Agreement, it should be with the caveat that they may only be used for illustrative purposes and not in any interpretation of the Agreement for, by example, an arbitrator in accordance with Attachment 1.

Section 11.7.2.1 (payment for service creation environment resources), Not Arbitrated

The additional language proposed by GTE is necessary to assure that it is able to recover its costs for making Service Creation Environment resources available to AT&T.

Section 12.2.15 (payment for traffic data), Not Arbitrated

In accordance with the Act and the First Report and Order, AT&T is required to pay all costs not already included in the underlying cost and price of the service requested.

Section 12.3.4 (billing records) , Not Arbitrated

AT&T's proposed language is ill-defined and overly broad. GTE supports instead reference to the MECAB guidelines, which specifies instances where the tandem will produce records which enable the end office company (i.e., AT&T) to bill.

Section 12.3.5, (cost recovery for overflow routing), Not Arbitrated

The additional language proposed by GTE is necessary to ensure that GTE can recover its costs in making available to AT&T overflow routing of traffic through tandem switching.

Sections 13.1.1, 13.1.2.12, 13.1.2.14, 13.1.2.15, 13.1.2.16 (designed network elements), Not Arbitrated

GTE has requested the use of the term "designed" before "Network Elements" in these provisions to clarify that only specifically fashioned Network Elements are to be included under cooperative testing. A designed network element is a service for which GTE is required to review the facility and add or remove network equipment in order to meet the standard technical specifications. In such cases, GTE will produce a circuit design layout record from which it will build the facility to the specifications. Designed

loops include: 4 wire voice grade, 4 wire DATA, 4 wire DATA with conditioning and 4 wire DEI loops. Voice grade loops are not designed services.

Another example of a network element which is not designed is a NID. GTE does not design the NID to meet any particular performance specifications. A NID is, rather, just a piece of equipment which GTE uses in its Network. GTE will cooperatively test only those Network Elements which have been designed and engineered to definite specifications. The testing will be to ensure that such engineered and designed elements meet the specification that they have are intended to fulfill.

Section 13.1.2.16 (rejection of Network Elements), Not Arbitrated

AT&T's proposed Section 13.1.2.16 is too broad in that it would allow AT&T to reject any Network Element, even if it was not engineered to meet any particular specifications. For example, a NID is not specifically designed by GTE to meet any particular performance specifications. To allow AT&T to reject a NID, as its language would permit, would be nonsensical because the NID has not itself been designed to meet any particular specification.

GTE has proposed the following clarification to AT&T's proposed language: Insert "designed" before "Network Element" in lines 1 and 3 and replace "requirements stated herein" at the end of this provision with "technical or performance requirements for such designed Network Elements." GTE's revisions would narrow the scope of this provision to encompass only designed Network Elements which can be tested to ensure that they meet the applicable specifications. (See comments to Section 13.1.1 above.)

Section 13.5.1 (SS7 network interconnection), Arbitrated and Resolved

AT&T's language defining SS7 interconnection is broader than the Order contemplates. (See Order at 19-20.) GTE will provide connectivity to components of its SS7 network on an intraLATA basis via interconnection with a GTE STP pair serving the desired LATA, with the exception of access to GTE's 800/888 (toll-free calling) database, which can be accessed via interconnection to any GTE STP pair.

ATTACHMENT 3

SERVICE DESCRIPTION: ANCILLARY FUNCTIONS

Section 2.1.1 (collocation tariff reference), Not Arbitrated

GTE's collocation tariff contains many pages of specific rules and procedures for collocation. In the interest of consistency among ALECs, and to lessen the administrative burden on GTE, GTE has taken the position in negotiations that it wishes to apply those rules and procedures set out in the tariff to all collocators. Rather than repeat pages and pages of specific detail in an already very long agreement, and to ensure against deviations in language that could lead to inconsistent treatment, GTE has asked to incorporate tariff terms and conditions rather than set them out in their entirety in the Agreement. GTE gave AT&T a copy of GTE's federal tariff, and GTE's state tariff mirrors the federal tariff except for Commission requirements. AT&T has not provided GTE with any specific objections to the terms and conditions contained in GTE's tariff, but has simply flatly refused to consider incorporation of tariff terms and conditions. This is eminently unreasonable.

GTE disagrees with AT&T's interpretation of the Act and the FCC's First Report and Order as well as AT&T's characterization for GTE's motivation in seeking to incorporate terms and conditions of its collocation tariff into the Agreement. GTE's proposed language does not state that collocation tariff terms and conditions are exclusive or that the provision of collocation is not subject to the terms of the Agreement. On the contrary, the contract language the parties have agreed to contains many specific terms and conditions concerning collocation--specifics that were not already included in GTE's collocation tariff and to which GTE did not object. If GTE were taking an "it's the tariff and that's it" stance as AT&T suggests, GTE would not have agreed to this additional language.

Section 2.2.1.1 (reservation of collocation space), Arbitrated and Resolved

GTE's proposed language reflects the duty to provide collocation for interconnection equipment on a nondiscriminatory basis. It prohibits GTE from reserving space for the type of equipment that AT&T may collocate for interconnection functions without allowing AT&T and other ALECs to reserve space for the collocation of the same type of equipment. AT&T's proposed language goes beyond the scope of GTE's obligation as set forth in the Act and the Order (which incorporates the collocation requirements in the Act, Order at 129) as it would allow AT&T to reserve space for equipment that is not for interconnection purposes. The Commission should thus adopt GTE's more reasonable language.

Section 2.2.3 (payment for escorts), Not Arbitrated

GTE's language is more appropriate because it clearly states that if GTE must provide escort service for AT&T, it will be at AT&T's expense, as is fair and reasonable. AT&T has not previously objected to paying this fee when it is required.

Section 2.2.4, Arbitrated and Resolved

GTE's language is more consistent with the Commission's Order regarding equipment that may be collocated. Among other things, the Commission found that AT&T should not be permitted to place only equipment "necessary for interconnection and access to unbundled network elements." (Order at 128.) Equipment that performs switching functions does not fall into this category. With its language, AT&T intends to introduce a significant loophole to the Commission's Order, as well as the Act and the FCC Rules the Order is based on. AT&T's language would allow collocation of remote switching modules, which perform switching functions--exactly the type of use the Order was intended to prevent. GTE's formulation should be approved as it is more reasonable and faithful to the Order.

Section 2.2.14 (advance notice of work), Not Arbitrated

AT&T's language is inappropriate because GTE can not in all instances plan and provide notice 5 days before performing work within its central office that could affect the general area in which AT&T has collocated equipment. GTE proposes one day's notice,

which gives AT&T a reasonable opportunity to closely monitor its collocated equipment during any required work activities.

Section 2.2.15 (construction of collocation space), Not Arbitrated

AT&T's language is inappropriate because of the harmful impact that deviation from GTE's normal safety and engineering practices could have on the network. For example, departing from GTE's normal grounding requirements could introduce noise into the network and degrade signal transmission quality. GTE's language provides for the construction of collocated space in GTE's normal manner in compliance with its collocation tariff. Under the GTE language, if AT&T requires special construction procedures, these can be handled on a case-by-case basis, taking into account the potential impact any procedures may have on the network.

Sections 2.2.23.3.8 and 2.2.23.3.8.1 (contract bid documentation), Not Arbitrated

AT&T seriously misconstrues C.F.R. section 51.323(j), which merely indicates that a collocating ALEC may construct its own facilities within the collocation space provided by GTE, not that the ALEC has the right to construct the collocation arrangement itself (*i.e.*, the cage, the power facilities, etc.). Nothing in the Agreement would prevent AT&T from constructing or installing its own equipment or facilities. The provisions of section 2.2.23.3.8.1 of Attachment 3, however, have to do with the construction of the collocation space itself, not the construction of AT&T's facilities within the space. Nothing in the Act or the FCC's regulations gives AT&T the right to do that and thus AT&T's entire

justification for why it "needs" documentation of bids falls apart. GTE's rates for the construction of collocation facilities have been determined by the Commission. Given that, the specific terms and conditions of GTE's arrangements with its contractors are simply irrelevant.

Sections 3.1.4, 3.1.6, 3.1.7, 3.1.8, 3.2.2, 3.2.5, 3.4.1, 3.5.1, 3.5.3, 3.6.7, 3.9.1, 3.9.2, 3.10.1, 3.10.2, 3.11.2, 3.12.1, 3.12.2, 3.13.1, 3.17.1 ("facilities" definition), Not Arbitrated

AT&T's proposed definition of "facility" and its refusal to adopt GTE's proposed definitions for the terms "facility" and "structure" is nonsensical. Throughout Section 3 of Attachment 3, AT&T apparently proposes using the term "facility" for three distinct purposes. First, AT&T uses it to describe items that are attached to poles, placed in conduits or ducts or on Rights of Way (see e.g., Sections 3.1.6, 3.1.7 and 3.4.1). Second, the term is used to describe poles, conduits, ducts and Rights of Way (see e.g., Sections 3.9.2 and 3.11.2). Finally, the term "facility" is used in its general "everyday" meaning (see e.g., Section 3.6., line 3 "and related facilities"). Instead of proposing language that would clarify what "facility" means in a given section, AT&T suggests a definition that makes the term ambiguous and confusing. In the first sentence of AT&T's definition, the use of the word "any" yields the absurd result that "facilities" could be anything owned by anyone. AT&T's definition even encompasses items that have nothing to do with providing exchange services and that are owned by third parties. This definition is unreasonable as well as beyond the scope of the Act and this arbitration.

In the second sentence, the phrase "include, but not limited to" and "or any other items" again effectively makes the term "facilities" broad enough to include virtually any item.

GTE's proposed definition for the terms "Facility" and "Facilities" and "Structure" and "Structures" contained in sections 3.1.4 and 3.1.4.1 and the use of these terms throughout Section 3 of Attachment 3 should be adopted. The GTE language differentiates between "poles, conduits, ducts and Rights of Way" and the various attachments and hardware that are connected to them. The language clarifies the parties' responsibilities and eliminates any confusion as to what items are within the scope of the agreement. AT&T's refusal to agree to this language is patently unreasonable.

Section 3.2.3 (negotiations for access to ancillary pathways), Not Arbitrated

GTE proposes deletion of the third sentence in this section, which would force GTE to "exercise its rights as controller of [ancillary pathways] on AT&T's behalf when negotiating with landowners." As an initial matter, it is not clear what "exercise its rights as controller" means in practice. GTE cannot agree to such a vague contract condition. If this language would, in effect, force GTE to negotiate with landowners on AT&T's behalf, it is unduly burdensome and unwarranted. AT&T has ample resources and is well-equipped to negotiate its own access to facilities that GTE does not own. GTE cannot be compelled to act as AT&T's agent, particularly because AT&T does not plan to pay for this service.

Sections 3.4.2(d) and 3.4.3(e) (payment for pole space), Not Arbitrated

Once AT&T requests pole space and GTE approves the request, that pole space is reserved for AT&T and it is immediately available for AT&T's use. GTE cannot lease that pole space to another carrier. If AT&T reserves the space, but does not occupy at once, GTE loses the benefit of that asset, but collects nothing for it under AT&T's proposed scenario. If a person rents a house or office space and the landlord holds that space open and available for the tenant, the landlord charges the tenant rent, whether he moves his furniture in or not. GTE is simply asking for normal commercial terms for the leasing of its assets[4], and its language for these sections reflects those terms.

Section 3.4.3(f) (access to cable equipment vaults), Not Arbitrated

Cable equipment vaults in GTE's network are typically located directly underneath a switch. Providing access to these areas would threaten network integrity. GTE is willing to offer the compromise it made in California--and which AT&T accepted--and accept the cable vault language with the addition of the following qualifier: "(except where such vault is under a GTE switch, in which case entry will be considered on a case-by-case basis)."

Section 3.5.3 (period for removal of attachments), Not Arbitrated

AT&T's proposed 120-day period for removing its attachments is excessive. If AT&T's permission to attach to GTE's facilities has been revoked, AT&T should be

[4] The same logic would support advance payment for a pole attachment--charging for attachments from the date of approval.

required to remove their facilities as soon as possible. Sixty days should be ample time for AT&T to relocate its facilities. Given the number of attachment requests that GTE is likely to get, it will need all available space as soon as reasonably possible. It is not reasonable to allow AT&T to remain on GTE's structures after its permission has been revoked, especially when other ALECs are waiting for space. In addition, AT&T's proposed 120-day period could cause GTE to have to unnecessarily construct additional space (e.g., install taller poles).

Sections 3.6.2, 3.6.3 (payment for escorts), Not Arbitrated

AT&T proposes that the escort service only be required and/or paid for by AT&T when the physical integrity of the conduit or manhole is in question. This is contrary to the standard practice of GTE to have an escort on site when a company is working in GTE's manholes or conduit. The escort is necessary not only to ensure that structural integrity is maintained but because the potential for damage to the network and the facilities of both GTE and third parties is greatly magnified in manholes and conduits as opposed to poles. GTE also needs to insure that the proper practice and procedures are maintained. Failure by an ALEC or cable company to get the municipal approvals before entering a manhole, can affect GTE's ability to obtain timely approvals for work activities from municipalities in the future because as the owner of the manhole the municipality faults GTE for the other operators noncompliance. In addition, having an escort on-site when work is being done eliminates future disagreements about who is responsible for damages that are later discovered. It is also standard practice for the company doing the work to pay for GTE's

escort's time since he/she has been pulled away from their normal duties with GTE to ensure that the work done by the operator is done in a safe and correct manner. Requiring an escort is simply another way that GTE tries to ensure that its network remains reliable since it is accountable to the public and regulatory bodies if something goes wrong.

Section 3.6.5 (spare inner ducts), Not Arbitrated

GTE objects to AT&T's language because it would require GTE to affirmatively "offer" conduit or duct space, rather than to merely permit AT&T to use it upon request, and it would appear to require GTE to allow AT&T to use all such space. The Act does not require an ILEC to "offer" conduit or duct space for which it has not received a request; AT&T's language would imply that GTE has some obligation to reserve all this space for AT&T rather than making it available to other ALECs. This obligation has no basis in the Act or the Commission's Order.

In addition, AT&T's language requiring GTE to offer AT&T "the use of at least one inner duct" whenever two inner ducts are available, contradicts the agreed to language at the end of section 3.2.5. That language allows GTE to reserve one full duct in each conduit section for emergency and maintenance purposes. Requiring GTE to provide an inner duct where a full duct, except for the emergency duct, is not available would contradict that provision.

Section 3.7.1 (negotiations to obtain third-party ROW), Not Arbitrated

AT&T's proposed language would create an affirmative duty on GTE to negotiate with landowners on AT&T's behalf to obtain permission to use a right of way or to increase the amount of space granted by a landowner in a right of way. There is no reason why AT&T cannot conduct these negotiations on their own behalf. In addition, requiring GTE to negotiate for AT&T effectively requires GTE to act as an agent for AT&T without compensation. In California, AT&T removed the language to which GTE objects here.

Sections 3.7.2, 3.7.2.1 (use of ROWs), Not Arbitrated

These sections require GTE to allow AT&T to use ROWs even beyond what GTE's own agreement with the property owner would allow. Section 3.7.2.2 would require GTE to offer available space to AT&T beyond the collocation requirements of Section 2.2.1 and even in GTE's other business offices. In addition, subsection 3.7.2.1 enumerates items that are not even ROW--such as spare metallic or fiber optic cable. In its Agreement with GTE in California, AT&T dropped all of subsection 3.7.2.

Section 3.11.1 (charges for unauthorized attachments), Not Arbitrated

GTE's concern with unauthorized attachments is well-founded. Entities make unauthorized attachments to its poles on a frequent basis. Because of the number and remoteness of many of its poles, this is very hard to police. Although AT&T may not present a particularly great risk for unauthorized attachments, given GTE's nondiscrimination obligations, GTE must take a uniform approach on this issue with all

attaching entities. If an entity that makes an unauthorized attachment only has to remove the attachment, there is no disincentive for the activity--it just becomes a cost of doing business. It will often be cheaper to remove an unauthorized attachment than it would have been to pay the attachment fee for the period of time prior to discovery. GTE must be able to impose a charge that will act as a disincentive for unauthorized attachments.

Section 3.11.2 (unauthorized attachment definition), Not Arbitrated

The proposed GTE language prevents third parties from attaching to GTE facilities without GTE's permission. Any entity that wants space on GTE's poles or ducts should be required to sign a pole attachment agreement directly with GTE. The omission of this provision would allow AT&T or another carrier to buy more space than they need and then sublease the space to a third party. This would prevent GTE from efficiently allocating the space among carriers and controlling the uses for which its facilities are employed.

Section 3.13.1 (pole modifications), Arbitrated and Resolved

Upon further review, GTE believes its proposed new sentence can be eliminated, but a major concern is that AT&T's proposed language would allow it to block a modification by refusing to move its attachment. In addition, GTE's proposal for thirty days' notice is more than adequate for AT&T to decide whether it wants to participate in a modification. A 60-day notice period, as AT&T proposes, would unreasonably complicate GTE's ability to plan for future modifications.

Section 3.14.1 (material default determination), Not Arbitrated

GTE has no objection to using arbitration to determine whether, in a particular instance, AT&T has committed a Material Default under the Agreement. *See* Main Agreement, Section 3.3. However, AT&T's refusal to pay or perform under the terms of this Attachment should not leave GTE without a remedy; therefore, GTE should be permitted to declare AT&T in default.

Section 3.15.1 (period for removal of attachments), Not Arbitrated

AT&T's proposed 120-day attachment removal window is excessive. The same reasons why AT&T should be provided a more reasonable 60 days to remove an attachment in the case of the revocation of the right to attach to a GTE facility (Section 3.5.3) apply here.

ATTACHMENT 8

INTERIM NUMBER PORTABILITY

Section 3.7 (use of 911 infrastructure; shadow numbers), Not Arbitrated

GTE will let AT&T use the existing 911 infrastructure, but GTE should not be required to do so where provision of such access would reduce GTE's transmission grade of service below acceptable industry levels.

Further, AT&T's proposed use of the word "ported" is inappropriate in this context. A "shadow" number is the number generated by the ALEC to correspond to a specific "ported" number of an ILEC. In the context of the disputed sentence, AT&T will be creating

the shadow numbers corresponding to GTE's ported numbers. Thus, GTE's language is more accurate.

Finally, GTE's charging for verification services is consistent with its cost recovery rights under the Act.

ATTACHMENT 9

NETWORK SECURITY

Section 2.1 (access to OSS fraud prevention), Not Arbitrated

GTE should not be required to provide access to fraud prevention, detection and control functionality within pertinent OSS as this could compromise network security.

ATTACHMENT 11

DEFINITIONS

"Central Office Switch,", Not Arbitrated

GTE's proposed definition is more accurate and descriptive because it properly considers the class of the switch utilized.

"Combinations", Arbitrated and Resolved

GTE believes the dispute about this definition has been settled, but the final resolution was not clear to GTE at the time these Comments were submitted. GTE will submit a supplemental filing, if necessary, to clarify its position on this definition.

Facility" and "Facilities", Not Arbitrated

See discussion of Attachment 3, Section 3.1.4 et al.

"Interconnection", Arbitrated and Resolved

The use of the words "within networks" is incorrect. Interconnection is between networks. This understanding is inherent in this Commission's Order, which does not in any way indicate that interconnection, as contemplated by the Act, may be within networks.

"Local Traffic", Not Arbitrated

A definition of Local Traffic is necessary because it is used as a defined term throughout the body of the agreement (*e.g.*, section 37.4).

"LSR", Not Arbitrated

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition in the text of the Agreement should instead be used.

"Quality Standards", Not Arbitrated

This definition merely refers to the Quality Standards set for in Attachment 12, so it is redundant. GTE does not know why AT&T insists on its inclusion here.

"Real Time", Not Arbitrated

GTE objects to the definition of Real Time proposed by AT&T because it would, by means of the definition, require virtually simultaneous recording or reporting of an event in circumstances where it is not technologically feasible to provide such reporting or recording.

"Service Order", Not Arbitrated

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition in the text of the Agreement should instead be used.

"Work Locations", Not Arbitrated

AT&T's definition is too broad and would encompass all real estate owned, leased or licensed by GTE. GTE believes that in order to properly conform to the context in which this term is used, the term "Work Locations" should also include real estate owned, leased or licensed by AT&T and should be limited to such real estate that is used for the purposes of providing telecommunications services. For instance, under AT&T's proposed language, GTE's administrative offices would be considered a "Work Location," whether or not they are used for providing telecommunications services.

ATTACHMENT 14

PRICING

Attachment 14, page 4, section 1.2 and page 6, introduction ("contract" reference), Not Arbitrated

GTE objects to the word "contract" because the universe of the retail offerings that is subject to this Agreement includes far more than the limited number that may be offered on an individual contract basis. For this reason, GTE considers the reference to "contract" retail elements as grossly under-inclusive or, at best, redundant. The reference to "tariff" retail rate elements should suffice, since GTE's tariff will affect all the retail services that are available for resale.

Attachment 14, pages 8 and 17 (certain nonrecurring charges), Arbitrated and Resolved

GTE's additional language is necessary to reflect that the Order does not prescribe nonrecurring rates for dedicated transport, database and signaling systems, and channelization systems. This language further reflects that cost studies associated with these elements will be provided to the Commission in accordance with the Order. (Order at 34.)

Attachment 14, page 13, Appendix 3, Annex 1 (unit detail), Arbitrated and Resolved

In this instance, GTE has simply added the types of units (e.g., per month) that correspond to the particular rate element to determine the charge to be assessed. This language clarifies the basis for the charges.

Attachment 14, page 15, Appendix 4, Annex 1 (rates for transiting traffic), Not Arbitrated

GTE's language more clearly states the rates that will be charged for transiting traffic.

Attachment 14, Appendix 8 Page 19 (make-ready work), Not Arbitrated

GTE will accept AT&T's proposed language if AT&T agrees to GTE's proposed additional language. As the last paragraph of Appendix 8 clearly states, "GTE shall not commence work on the request until it receives prior authorization from AT&T." GTE's additional language flows logically and reasonably from the above statement. If GTE cannot commence "make ready" work on a route without "prior authorization" from AT&T, then, notwithstanding GTE's advice that a route is available, AT&T cannot claim to be completely free of fault if it fails to independently verify the availability of the route and it turns out that it is, in fact, not available. GTE's proposed language attempts to make *both* parties, not just GTE, responsible for avoiding such a costly "mistake of fact." Without GTE's proposed language, AT&T may decline (unreasonably) to avail itself of an opportunity and a "last clear chance" to avoid wasteful expenditure on its behalf as a result of a prior non-intentional error on GTE's part.

ATTACHMENT 15

RECIPROCAL COMPENSATION FOR CALL TERMINATION

AT&T and GTE are in substantial agreement as to reciprocal compensation issues. Where the parties diverge is over the application of the Residual Interconnection Charge (RIC) on the interstate side and the Network Interconnection Charge (NIC) on the intrastate side, as well as the Carrier Common Line (CCL) Charge. GTE's position is that these charges, and the costs they represent, are not included in the unbundled switching element charge, and that ILECs should be permitted to charge these rate elements in connection with intrastate and interstate toll calls where the GTE unbundled switch is used.

Section 2, Not Arbitrated

AT&T's proposed language is redundant since the compensation arrangement in Attachment 14, Appendix 4, section 2 will apply, as specified in the heading for section 2B. Furthermore, AT&T's proposed language is incorrect since bill and keep compensation does not apply when there are symmetrical rates, but when the exchange of traffic is in balance.

Sections 2B(3)(a)(1) & (4); 2B(3)(b)(1); 2B(3)(c)(1); 2B(3)(d)(1) & (3); 2B(3)(e)(1) & (3); 2B(3)(f)(1); 2B(3)(g)(1); 2B(4)(a)(2); 2B(4)(b)(2); 2B(4)(c)(2); 2B(4)(d)(2); 2B(5)(a)(2); 2B(5)(b)(2); 2B(5)(c)(2); 2B(5)(d)(2), Arbitrated and Resolved

AT&T's proposed language should be deleted. The Commission unquestionably held that intrastate access charges would continue to be applied on toll calls. See Order,

at 123-24. Relying upon Section 364.16(3)(a) of the Florida Statutes, as well as the Commission's toll default policy established in Order NO. PSC-96-1231-FOF-TP, the Commission concluded that carriers cannot avoid switched access charges with respect to toll traffic. Id. at 124. Rather, local and toll traffic must be separately identified and the appropriate charges shall be assessed respectively for each type of call. GTE's proposed language merely clarifies this aspect of the Order.

Respectfully submitted on February 17, 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Comments of GTE Florida Incorporated in Docket No. 960847-TP was hand-delivered(*) or sent via overnight delivery(**) on February 17, 1997 to the parties listed below.

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