BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by 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 resale and interconnection under the Telecommunications Act of 1996.	DOCKET NO. 960980-TP ORDER NO. PSC-97-0555-FOF-TP ISSUED: May 15, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

FINAL ORDER APPROVING ARBITRATED AGREEMENT BETWEEN GTE FLORIDA INCORPORATED, MCI TELECOMMUNICATIONS CORPORATION, AND MCI METRO ACCESS TRANSMISSION SERVICES, INC.

BY THE COMMISSION:

BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC 151 et. seq., provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements established by compulsory arbitration. Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this

> section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On March 11, 1996, AT&T Communications of the Southern States (AT&T) requested that GTE Florida Incorporated (GTE) begin negotiations for an interconnection agreement pursuant to Sections 251 and 252 of the Act. On August 16, 1996, AT&T filed a petition for arbitration of unresolved issues pursuant to Section 252 of the Act.

On April 3, 1996, MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively MCI) requested that GTE begin negotiations. On August 26, 1996, MCI filed its petition for arbitration with GTE, and also filed a motion to consolidate its arbitration proceeding with the AT&T/GTE arbitration proceeding. By Order No. PSC-96-1152-PCO-TP, issued September 13, 1996, we granted the motion to consolidate.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (FCC Order). The FCC Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the Act. We appealed certain portions of the FCC Order, and requested that it be stayed pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the FCC Order.

On October 14-16, 1996, we conducted a hearing in these consolidated dockets. GTE and MCI sought arbtration of issues in four main areas: network elements; resale; transport and termination; and implementation matters.

On January 17, 1997, we issued Order No. PSC-97-0064-FOF-TP resolving the issues in AT&T's and MCI's petitions for arbitration with GTE. In the Order, we directed the parties to file agreements memorializing and implementing our arbitration decision within 30

days. The parties filed their arbitrated agreement on February 17, 1997. Therein, the parties identified sections in which the specific language to be used remained in dispute.

I. THE AGREEMENT

The parties to the proceeding have agreed to most of the language in the agreement. Section 252(e)(2)(B) states that we can only reject an arbitrated agreement if we find that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to section 251, or the standards set forth in subsection (d) of Section 252 of the Act. We have reviewed the agreed language for compliance with both our Order issued in this proceeding, the Act, and the FCC's implementing rules and orders, and find that the language is appropriate. Therefore, we approve the language contained in the agreement. Below, we discuss the areas where the parties could not agree on appropriate language.

II. LANGUAGE IN DISPUTE

A. Language for Issues Not Addressed in the Arbitration Proceeding

As previously stated, the parties identified certain sections of their agreement where they had failed to agree on language. Upon reviewing the sections, we determined that the issues to be resolved by some of these sections were not unresolved issues that we had arbitrated. Thus, we shall not establish language for these sections. These sections shall be eliminated from the final agreement. They are:

ARTICLE	SECTION
III	13
	20.1
	22
	23.1-23.2
	24.2
	28
	39
	41.1-41.2

ARTICLE	SECTION
IV	1.4 3.1 3.3
V	3.1.3.2
VI	7.2.2.2-7.2.2.3
VII	6.1.2.1-6.1.2.3
VIII	5.1.6 6.1.3.7 6.1.7.6
X	6.2 15.1 17 19.7
XI	4.8.4
XIII	1.7

B. Language Pertaining to Local Interconnection Trunk Groups

As it pertains to Section 4.4.5, Direct Network Interconnection, MCI proposes the following language:

> The interval used for the provisioning of Local Interconnection Trunk Groups will be determined by Desired Due Date, or as mutually agreed upon by the Parties.

MCI states that the parties disagree on the appropriate interval for providing local interconnection trunk groups. MCI suggests that the interval should be resolved by MCI's desired due date. MCI does, however, state that the parties could mutually agree to a different date. MCI states that GTE's proposal would use the desired due date only as a goal. GTE would, however, commit to installation only by a firm order confirmation date, a date which is totally within GTE's control. MCI asserts that its ability to provide service to its customers will be seriously impaired if GTE delays providing the interconnection circuits. MCI

argues that it is not appropriate to allow GTE to define the correct interval.

GTE proposes language that states:

> GTE will provide a Firm Order Confirmation (FOC) within five (5) days after receiving [MCI's] ASR. The Parties shall cooperate towards the goal of provisioning Local Interconnection Trunk Groups by the Desired Due Date.

GTE provided no support for its proposed language.

MCI has provided valid arguments to support its language. We approve, therefore, MCI's proposed language.

C. Language Pertaining to Dark Fiber

As it pertains to Section 18.2, Dark Fiber, MCI proposes the following language:

> If dark fiber facilities are available, MCI shall have the right to lease them subject to the following conditions ....

MCI argues that we have already resolved this issue. MCI contends that we ruled in Order No. PSC-97-0064-FOF-TL that, because GTE agreed to allow Metropolitan Fiber Systems of Florida, Inc., (MFS) to lease dark fiber for the specific purpose of interconnection, GTE is also required to make dark fiber available to MCI under the same terms and conditions. MCI asserts that nowhere in Order No. PSC-97-0064-FOF-TL, or in Order No. PSC-96-1401-FOF-TP, issued November 20, 1996, approving the GTE/MFS interconnection agreement, is it suggested that GTE has the unilateral right to decide whether to offer dark fiber.

GTE argues that the appropriate language should state:

> If GTE decides to offer dark fiber facilities for interconnection purposes, and such facilities are available, MCI shall have the right to lease them subject to the following conditions ....

GTE asserts that we previously determined that dark fiber was not a network element and did not require GTE to lease it, except under explicitly limited circumstances. Specifically, we instructed GTE to lease dark fiber to MCI under the same terms and conditions as those GTE offered to MFS in a contract executed last year. GTE contends that the MFS agreement gives MFS the right to lease dark fiber facilities "if available." GTE argues that MCI's proposed language gives an unintended meaning to the phrase, "if available," thereby, giving MCI immediate rights that go well beyond those MFS obtained in its contract with GTE.

GTE further asserts that the correct interpretation for the contract language cited by MCI is that if GTE ever decides to offer dark fiber and if GTE has facilities available, then MFS has a right to them. GTE contends that we should accept its language and reject MCI's attempt to obtain greater rights than MFS received.

In Order No. PSC-97-0064-FOF-TP, we stated that GTE shall be required to lease dark fiber to AT&T and MCI only for interconnection purposes, under the same terms and conditions as those contained in GTE's agreement with MFS. We did not require GTE to first decide whether to offer dark fiber. Neither GTE's nor MCI's proposed language properly reflects our decision on this issue. Therefore, the following language shall be included in the arbitration agreement:

> If dark fiber facilities for interconnection purposes are available, MCI shall have the right to lease them subject to the following conditions ....

D. Language Pertaining to Ancillary Services

As it pertains to Section 6.6.1, Performance Measurements and Reporting, MCI proposes the following language:

> MCI shall provide information on new subscribers to GTE within one (1) business day of the order completion. GTE shall update the database within one (1) business day of receiving the data from MCI. If GTE detects an error in the MCI provided data, the data shall be returned to MCI within two (2) business days from when it was provided to GTE. MCI shall respond to requests from GTE

> to make corrections to database record errors by uploading corrected records within two (2) business days. Manual entry shall be allowed only in the event that the system is not functioning properly.

MCI argues that while GTE does not appear to object to providing updates to directory listing information as requested by MCI, GTE does object to providing such updates within the intervals requested by MCI. MCI contends that the requested intervals are needed to ensure that GTE is limited as to when listings must be updated. MCI states that these updates will be handled through electronic interfaces in most instances. Thus, MCI argues that its requested intervals are reasonable.

GTE proposes that this section be deleted. GTE asserts that it will provide the requested updates at the same intervals it uses to update its own subscriber information. GTE states that it has no obligation to meet the standards set by MCI. GTE contends that it cannot agree that MCI's requested standards are reasonable or can be met in all cases. Therefore, GTE does not believe that this section should be included in the agreement.

We ordered GTE to provide MCI with services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates. We also ordered GTE and MCI to continue negotiations concerning detailed standards of performance to be incorporated into the proposed interconnection agreement to be submitted for our approval.

In this section, MCI proposes specific reporting requirements regarding service order completions. GTE proposes to delete this section, arguing that GTE has no obligation to meet the standards set by MCI. We have, however, already ordered the parties to develop performance standards and measurements. Thus, we reject GTE's proposal. As stated in the FCC Order at ¶314, if the local exchange carrier (LEC) is requested to provide access or unbundled elements of higher quality then that which it provides itself, there is nothing to excuse the LEC, where technically feasible, from providing the higher quality of service. The FCC Order also states that the LEC should be fully compensated for any efforts it makes to increase the quality of service in its network. If MCI requests a feature or function from GTE that requires additional compensation, above the rates we set, the parties are free to negotiate an agreement or to bring the matter back to us in another

arbitration proceeding. Therefore, we approve MCI's proposed language.

E. Language Pertaining to Business Process

Several sections in Article XIII, Service Order Provisioning and Billing, contain disputed language.

1. Section 2.1.4 Number Administration/Number Reservation

The parties have failed to agree on language in two areas of Section 2.1.4. As it pertains to subsection 2.1.4.2, MCI proposes the following language:

> Where MCI has not obtained its own NXX, GTE shall reserve up to 100 telephone numbers, subject to number resource availability, for up to forty five (45) days, per MCI request, per NPA-NXX, for MCI's exclusive use for its provision of Telecommunications Services. GTE shall provide additional numbers at MCI's request as subscriber demand requires. Telephone numbers reserved in this manner may be released for other than MCI use only upon agreement of MCI.

MCI argues that GTE is apparently concerned that MCI might lock up blocks of numbers which might lead to a depletion of the numbering resource. MCI states that this is not its intent. MCI asserts that it has offered to limit its reservation of numbers to blocks of no more than 100, for no more than 45 days. MCI further asserts that by making such limited reservations subject to number resource availability, it has left GTE with control over the reservations of such numbers. MCI argues that GTE's proposed language would, however, treat MCI like a retail customer, not a carrier, and would permit GTE to charge inflated retail rates for reservation of numbers. MCI argues that GTE's proposed language would deny MCI parity, contrary to the Act.

GTE suggests the following language:

> Unless otherwise specifically provided by this Agreement, MCI may only reserve telephone numbers on the same rates, terms, and

> conditions as GTE allows its retail subscribers to reserve telephone numbers.

GTE asserts that MCI is attempting to reserve numbers on a favored basis. GTE states that it does currently reserve blocks of numbers for specific purposes, such as Centranet, and it will still administer these numbers. GTE states that MCI can obtain numbers from the North American Numbering Plan (NANP) administrator just like any other telephone carrier at no charge. Moreover, GTE asserts that MCI is able to reserve numbers on the same terms and conditions as any other purchaser of GTE services. Under GTE's proposal, the reservation of blocks of 100 numbers would apply to all alternative local exchange carriers (ALECs). GTE asserts that for many ALECs, the number resource may be threatened.

We do not believe it is appropriate for GTE to require MCI, or other carriers, to reserve numbers at the same rates, terms, and conditions that GTE allows its retail customers to reserve numbers. Carriers are not retail customers. In addition, if GTE levies a charge on retail customers for number reservations, in order to avoid discrimination, it would levy the same charge on MCI.

While MCI could obtain numbers from the NANP, and has apparently contemplated this, MCI's language limiting the numbers it can reserve to blocks containing 100 numbers for 45 days may not alleviate GTE's concerns regarding number resources. Under MCI's proposed language, GTE would reserve 100 numbers per NPA-NXX. No mention is made of the number of NXX's MCI could obtain per NPA, both from the NANP and from requests made to GTE. With 100 numbers allocated to each NXX, number availability could be strained. In addition, if many ALECs were to reserve numbers under the same requirements as MCI, the strain on number availibility could be significant. Currently, there are not many ALECs operating in GTE's territory, and it does not appear that the number of them is going to increase in the near future. Nevertheless, in Order No. PSC-97-0064-FOF-TP, we concluded that GTE is required to furnish NXX codes in a nondiscriminatory manner at no charge, as required by industry guidelines. Therefore, we approve MCI's proposed language for subsection 2.1.4.2.

As it pertains to subsection 2.1.4.3, MCI proposes the following language:

> When MCI has obtained its own NXX, but purchases GTE services for resale or network

> elements, where technically feasible, GTE agrees to install the MCI NXX in GTE's switch according to the local calling area defined by MCI and perform appropriate network routing functions for interswitch arrangements.

MCI argues that GTE appears not to contend that installation of NXX codes into GTE's switch is technically infeasible. MCI asserts, however, that GTE's objection to the entire section would counter MCI's right to define its own calling scope.

As indicated above, GTE proposes to delete this subsection. GTE asserts that this issue was not addressed in the arbitration proceeding.

GTE states that MCI wants GTE to be required to install MCI NXXs in GTE's switch according to local calling areas defined by MCI. GTE argues that in order to do so, it will have to initiate expensive programming changes in order to adapt its switches to the second local calling area. GTE adds that MCI's proposed language does not mention cost recovery. GTE asserts that this issue was not arbitrated. We did address this matter, however, in Order No. PSC-97-0064-FOF-TP, at page 148, in the discussion regarding Terms and Conditions for Code Assignments and Numbering Resources.

Subsection 2.1.4.1, which is undisputed, states that GTE shall provide testing and loading of MCI's NXX on the same basis that GTE provides itself or its affiliates. One tool a new entrant might use to compete with the incumbent is to define a calling scope that differs from that of the incumbent. MCI has indicated that it wants the freedom to define its own calling scope. If, however, GTE incurs additional costs in order to install MCI's NXXs according to MCI's defined calling scope, there is no provision preventing GTE from charging MCI for the service. Therefore, we hereby approve MCI's proposed language for subsection 2.1.4.3.

2. Section 4 Connectivity Billing and Recording

As it pertains to subsection 4.7, MCI proposes the following language:

> Subject to the terms of MCI and GTE's agreement, including without limitation Section 3.2 of this Article VIII, MCI shall pay GTE within thirty (30) calendar days from

> the Bill Date, or twenty (20) calendar days from the receipt of the bill, whichever is later. MCI shall pay CBSS bills to GTE within sixty (60) calendar days from the Bill Date or forty (40) days from the receipt of the bill, whichever is later. If the payment due date is a Saturday, Sunday or has been designated a bank holiday, payment shall be made the next business day.

MCI argues that it will pay CABS-formatted bills on the 30/20 schedule specified in section 4.7. CABS-formatted billing is, however, not currently available from GTE. Until it is available, MCI states that GTE will provide MCI with CBSS bills. MCI asserts that it cannot audit and process these bills on a mechanized basis and must process them manually. MCI further asserts that it cannot process hundreds of bills per month and still meet the bill payment date. As a result, MCI argues that it needs additional time to process the bills. MCI also states that this issue is within the scope of the arbitrated issues.

GTE suggests that the following language is more appropriate:

> Subject to the terms of this Agreement, including without limitation Section 3.2 of this Article VIII, MCI shall pay GTE within thirty (30) calendar days from the Bill Date, or twenty (20) calendar days from the receipt of the bill, whichever is later. MCI shall pay CBSS bills to GTE on the bill payment date. If the payment due date is a Saturday, Sunday or has been designated a bank holiday, payment shall be made the next business day.

GTE argues that this issue will only be relevant as long as GTE is issuing CBSS-formatted bills. GTE estimates that it will be able to make the transition to CABS-like billing in just a few months.

GTE argues that the longer payment period needed by MCI in order to process CBSS-formatted bills will force GTE to adjust its current billing cycles at an extra cost to GTE. Thus, GTE states that it cannot agree to the longer period for CBSS bills. GTE further argues that this issue was not arbitrated. However, we did

address this matter in our discussion of the timeframe for CABS-formatted billing.

As an ALEC with a small portion of the market, MCI will not likely receive and pay "hundreds" of bills per month in the near future. Consequently, it should have no trouble paying the bills on the bill payment date. We forsee that by the time MCI is confronted with hundreds of bills per month, GTE will have made the transition to the CABS billing system. Therefore, we approve GTE's proposed language for the payment period for CBSS-formatted bills.

3. Section 7.1 General Requirements

As it pertains to subsection 7.1.11, MCI proposes the following language:

> In the event GTE fails to provide performance and service quality at parity, MCI may request, and GTE shall perform and deliver to MCI, a root cause analysis on the reasons for GTE's failure to conform, and GTE shall correct said failures as soon as possible, at its own expense.

MCI argues that keeping performance records is useless unless such records are subject to being analyzed to determine the reason for performance failures. MCI asserts that its proposed language is essential to ensure parity. MCI further asserts that this issue was arbitrated.

GTE proposes that this subsection be deleted since this issue was not arbitrated. GTE further states that it is willing to inform MCI of the reason it might be unable to provide service at parity. By requiring GTE to perform an analysis on the failure at its own expense, GTE argues that an additional unwarranted remedy is imposed that can be exercised at MCI's option. GTE states that it is opposed to the imposition of an additional remedy.

This issue was addressed in the arbitration proceeding. In Order No. PSC-97-0064-FOF-TP, we stated, at page 94:

> [W]e find it appropriate to require the parties to negotiate processes and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and

> unbundled network elements that are equal in quality to those that GTE provides itself and its affiliates. To the extent that the parties are able to reach agreement on such processes and standards, these should be included in the arbitrated agreements submitted for approval in this proceeding. We will make a decision on the areas upon which the parties cannot agree at a later time.

The phrase "processes and standards" was included in the above language in order to ensure that GTE provide service at parity. One means of ensuring quality of service is to analyze the causes of service failures, in order to find and correct problems to prevent a failure from recurring. MCI should be concerned that any failure be corrected as soon as possible. Requiring GTE to provide a report based on a root-cause analysis at MCI's every request, however, goes beyond requiring equality of service. Therefore, we approve MCI's proposed language, modified, however, to read as follows:

> In the event GTE fails to provide performance and service quality at parity, GTE shall correct said failure as soon as possible, at its own expense.

F. Language Pertaining to Rights of Way

The parties have not been able to agree on language for several sections of Article X, Rights of Way.

1. Section 1. Rights of Access

MCI proposes the following language:

> GTE shall allow MCI to select the space MCI will occupy on poles, or in conduits and right-of-way owned or controlled by GTE, at parity with GTE, based upon the same criteria GTE applies to itself. GTE agrees to permit MCI to occupy, place and maintain communications facilities within GTE's Poles, ducts, conduits and ROW as GTE may allow pursuant to the Pole Attachment Act and the terms of this Agreement.

MCI argues that Order PSC-97-0064-FOF-TP, at page 141, provides it with a right to access GTE's poles, conduits, and rights-of-way at parity with GTE. Since GTE has the right to select the space that it will occupy on poles and in conduits, MCI argues that parity requires that MCI have the same right, as is reflected in MCI's proposed language for Sections 1 and 3.3 in Article X. MCI argues that GTE's alternative language, which does not give MCI the right to select specific space on poles or in conduits, is contrary to the concept of parity established by the Act, as well as contrary to our Order in this proceeding.

GTE proposes to replace the phrase in MCI's suggested language "to select the space MCI will occupy on" with "access to."

MCI's proposed language in Section 1 provides, in part, that "GTE shall allow MCI to select the space MCI will occupy." GTE states that Section 3.3 requires GTE to provide certain information to facilitate non-discrimination in MCI's selection of space. GTE argues that neither of these sections accurately reflects GTE's obligation under the Act or the way in which space on poles and in ducts, conduits and rights-of-way is apportioned. GTE asserts that although MCI can provide GTE with its route, and ask for certain facilities along that route, GTE retains the discretion to select the space MCI's facilities will actually occupy along that route. GTE argues that this discretion is absolutely necessary if GTE is to maintain any sort of order and efficiency in the use of space in poles, ducts, conduits and rights-of-way. GTE further asserts that it will use that discretion in a non-discriminatory manner. Accordingly, GTE insists that its proposed language for Sections 1 and 3.3 is appropriate.

We agree that GTE should maintain order and efficiency in the use of space in poles, ducts, conduits and rights of way. The party that owns or controls the structures must have the discretion to select the space for another carrier to occupy. If other carriers have the right to select specific space, problems will arise if two or more carriers select the same space. Of course, GTE shall be required to act in a non-discriminatory manner in assigning space. We, therefore, approve GTE's proposed language.

2. Section 3.3 Selection of Space

As it pertains to Section 3.3, Selection of Space, MCI proposes the following language:

> To facilitate non-discrimination in MCI's selection of space, GTE must provide information to MCI about the network guidelines and engineering protocols used by GTE in determining the placement of facilities on poles and in ducts and conduits.

MCI advanced the same argument in support of this language as it did for its proposed language for Section 1.

GTE proposes to eliminate the phrase, "To facilitate non-discrimination in MCI's selection of space," in MCI's proposed language. It also advanced the same argument as it did in respect to MCI's proposed language for Section 1.

We approve GTE's proposed language for the same reasons that we approved GTE's language in Section 1.

3. Subsections 8.1.1 and 9.1.1 Cost Allocation

As it pertains to subsection 8.1.1, MCI proposes the following language:

> With respect to allocation of costs for modifying attachments, to the extent the cost of such modification is incurred for the sole benefit of MCI, MCI will be obligated to bear all of the cost.

As it pertains to subsection 9.1.1, MCI proposes the following language:

> With respect to allocation of costs for modifying occupancy, to the extent the cost of such modification is incurred for the sole benefit of MCI, MCI will be obligated to bear all of the cost.

The parties differ on whether MCI would be required to bear the full cost for modifying a pole attachment under subsection 8.1.1 or for modifying occupancy arrangements under subsection 9.1.1, whenever MCI is the only party requesting a modification, or only when the modification is made for the sole benefit of MCI.

In Order No. 97-0064-FOF-TP, at page 142, we adopted the FCC's methodology for allocating pole attachment costs. MCI believes that its versions of subsections 8.1.1 and 9.1.1 are supported by and consistent with the language in the FCC Order, cited in our Order, which states that "to the extent the cost of modification is incurred for the specific benefit of any particular party, the benefiting party will be obligated to assume the cost of modification." MCI claims that GTE's proposal goes further, and would require MCI to bear the entire cost of a modification, whenever the modification was made solely at MCI's request, even though the modification was not for MCI's sole benefit. MCI believes that GTE's position is based on a misreading of the FCC Order, and would hold MCI responsible for unwarranted costs in situations where multiple parties benefit from a modification.

GTE proposes substitution of the phrase, "that a modification is undertaken solely at MCI's request," for the phrase, "the cost of such modification is incurred for the sole benefit of MCI" in both subsections 8.1.1 and 9.1.1.

In Order No. PSC-97-0064-FOF-TP, at page 162, we cited with approval the provision of ¶1211 of the FCC Order that if a user's modification affects the attachments of others who do not initiate or request the modification, the cost will be covered by the initiating party. This is the case in the modifications covered by these two subsections. If the modification is initiated by multiple parties, the cost allocation is covered by subsections 8.1.2 and 9.1.2. Therefore, we approve GTE's proposed language for subsections 8.1.1 and 9.1.1.

G. Language Pertaining to Numbering Resources and Portability

The parties have not agreed on language for Section 4.4, Installation Intervals, in Article XI, Numbering Resources and Portability.

MCI has not proposed language for Section 4.4. GTE proposes to add the phrase, "or its," so that Section 4.4 reads as follows:

> GTE shall install RCF INP within an installation interval mutually agreed upon by GTE and MCI, but in no event shall such interval be greater than that GTE provides itself, its Affiliates, or its customers.

GTE provides no rationale. There does not, however, appear to be a dispute associated with the addition of the phrase. Rather, it appears only to correct a scrivener's error. Therefore, we approve GTE's proposed language for Section 4.4.

H. Language Pertaining to Appendix C, Pricing

The disputed language between the parties concerns prices and pricing principles stated throughout the agreement, which may or may not be stated with reference to Appendix C. Appendix C contains a table of elements, capabilities, and functions, and corresponding prices. MCI and GTE have provided similar language that clarifies when pricing references will be considered "To Be Determined" (TBD). As it pertains to Section 1.8, To Be Determined Rates, MCI proposes the following language:

> Numerous provisions in this Agreement and its Appendices refer to prices or pricing principles set forth in Appendix C. If a provision references prices in Appendix C or if a provision specifically refers to a price or prices or to provision at cost, but does not reference Appendix C, and there are not corresponding prices already set forth in Appendix C for such item, such price shall be considered "To Be Determined" (TBD).

MCI argues that GTE proposes language for TBD rates that goes beyond the intentions of the parties in drafting the specific articles of the agreement and beyond the scope of the arbitration.

GTE proposes the following language:

> In the following situations, Appendix C may not provide prices for an item, service or technical upgrade provided by either party under this Agreement: (i) a provision references prices in Appendix C and there are no corresponding prices already set forth in Appendix C; (ii) a provision specifically refers to a price or prices, but does not reference Appendix C and there are no corresponding prices already set forth in Appendix C; (iii) a provision requires either party to provide an item, service or technical

> upgrade but does not explicitly mention cost recovery, and there are no corresponding prices already set forth in Appendix C. In any of these situations, such price shall be considered "To Be Determined" (TBD).

GTE argues that there are two pricing situations where MCI's proposed language may not be sufficient to cover areas in the agreement where unspecified costs exist. First, GTE contends that there are numerous technical references that the parties agree GTE will not meet as of the effective date of the agreement. GTE states that it understands that MCI would pay for the cost of upgrades to meet the requested standards. Second, numerous sections in the proposed agreement require GTE to provide a service, but no cost recovery mechanism is cited. GTE believes that MCI's suggested language may not provide cost recovery for unspecified costs and GTE asserts that it is not obliged to provide services for free.

No issue in this proceeding addressed the disputed language for Section 1.8. Therefore, we do not approve either the language proposed by MCI or the language proposed by GTE. The remainder of Section 1.8, however, includes a process for determining interim rates for the TBD elements. This language, which is undisputed, shall remain in the agreement for two reasons. First, it applies to both those elements for which we will set rates and any other elements for which the parties may agree. Second, the process for setting interim rates for these elements is in the best interest of promoting competition. Interim rates for elements to which the parties agree will allow those elements to be used in providing services. The parties have agreed to true-up any interim rate that differs from a permanent rate that we determine. Therefore, we approve only the undisputed language in Section 1.8 of Appendix C.

I. Language Pertaining to Appendix E, Reciprocal Compensation

Appendix E addresses how calls are charged for purposes of reciprocal compensation. The parties agree on most of the language. They differ, however, with respect to the application of the Residual Interconnection Charge (RIC) and the Carrier Common Line Charge (CCL) for intrastate and interstate calls where MCI has purchased GTE's unbundled local switching. GTE believes that Order No. PSC-97-0064-FOF-TP authorizes it to charge these switched

access rates for most types of calls. It proposes that the phrase, "and applicable RIC and CCL charges," be inserted into the following subsections in Appendix E of the agreement:

2.3.1.1	2.3.6.1
2.3.2.1	2.3.7.1
2.3.3.1	2.4.1.1
2.3.4.1	2.4.2.1
2.3.4.3	2.5.1.1
2.3.5.1	2.5.2.1

MCI believes that the Order does not authorize GTE to charge the RIC and CCL. It objects to GTE's proposed language in the agreement that would allow it to charge the RIC and CCL for intraLATA toll calls, and for intrastate and interstate switched access calls. MCI argues that GTE's language would allow it to recover those switched access charges anytime MCI originates a toll call, regardless of the carrier terminating the call. According to MCI, this is equivalent to an additional charge for unbundled local switching, and is contrary to the FCC Order, particularly where GTE is not the terminating carrier. GTE did not provide a rationale for its proposal.

At the present time, the relevant language in the FCC order has been stayed. Therefore, we apply Florida law. Section 364.16(3)(a), Florida Statutes, requires that:

> No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

We note that the applicability of this requirement is somewhat unclear because appropriate access charges have never been determined in this situation on an intrastate basis. The FCC Order, which is more specific on this point, has been stayed. We, therefore, will require that the following language be inserted into the agreement in those subsections identified above: "and applicable RIC and CCL charges where such charges are required by the Commission." Particular questions and disputes will have to be

resolved on a case by case basis, either by the parties themselves, or through this Commission's complaint process.

The parties shall file a signed agreement incorporating our decisons herein within two weeks of the date this Order is issued, to become effective upon filing.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the agreement submitted by MCI Telecommuniations Corporation, Inc., and MCI Metro Access Transmission Services, Inc., and GTE Florida Incorporated is approved to the extent set forth in the body of this Order. It is further

ORDERED that the parties shall include in their arbitrated agreement the approved language set forth herein. It is further

ORDERED that the parties shall file a signed agreement incorporating our decisions herein within two weeks of the issuance of this Order, to become effective upon filing. It is further

ORDERED that this docket shall remain open until the parties have filed their signed agreement.

By ORDER of the Florida Public Service Commission, this 15th day of May, 1997.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).