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Tracy Hatch  
Attorney

Suite 700  
101 N. Monroe St.  
Tallahassee, FL 32301  
904 425-6364  
FAX: 904 425-6361

October 2, 1996

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

Docket No. 960847-TP and 960980-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Response to GTE Florida Incorporated's Motion to Dismiss AT&T's and MCI's Request to Establish the FCC's Default Proxy Rates and to Strike Testimony.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,  
*Tracy Hatch*  
Tracy Hatch

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CML *Chase* Attachments
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1
- LIN 5
- GPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

cc: Parties of Record

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*[Signature]*  
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DOCUMENT NUMBER-DATE  
**10563** OCT-2 1996  
FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions by AT&T	)	
Communications of the southern	)	
States, Inc., MCI	)	Docket No. 960847-TP
Telecommunications Corporation	)	Docket No. 960980-TP
MCI Metro Access Transmission	)	
Services, Inc.,	)	
for arbitration of certain terms	)	
and conditions of a proposed	)	
agreement with GTE Florida	)	Filed: October 2, 1996
Incorporated	)	
concerning interconnection and	)	
resale under the	)	
Telecommunications Act of 1996.	)	

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**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S RESPONSE TO GTE FLORIDA INCORPORATED'S MOTION TO DISMISS AT&T'S AND MCI'S REQUEST TO ESTABLISH THE FCC'S DEFAULT PROXY RATES AND TO STRIKE TESTIMONY**

AT&T Communications of the Southern States, Inc. (AT&T) hereby files its response in opposition to GTE Florida Incorporated's (GTEFL's) Motion to Dismiss Request of AT&T and MCI to Establish the FCC's Default Proxy Rates and to Strike Testimony (the Motion). GTEFL's motion is without merit and should be denied.

1. GTEFL's Motion was filed on September 20, 1996 and served on AT&T by overnight mail.

2. In its Motion, GTEFL asks that the Commission strike various portions of AT&T's Petition and portions of the Direct testimony of Mike Guedel as well as various portions of MCI's Petition and portions of the testimony of Don Price. In support of its Motion, GTEFL makes four

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arguments: 1) the FCC's proxy rates are unlawfully promulgated because the FCC does not have the authority to preempt states on intrastate costing and pricing issues and to set default proxy rates; 2) the default and proxy rates are constitutionally and statutorily defective since they do not reflect GTEFL's joint and common costs; 3) imposing the default proxy rates would constitute an unconstitutional taking; and 4) imposition of the default proxy rates would undermine the Commission's efforts in seeking a stay of the FCC's First Report and Order.

3. Generally, it must be noted that the arguments raised by GTEFL are simply its notion, based on no factual record at all, as to the appropriate resolution of one issue before the Commission. Mere allegations do not form a sufficient basis for striking either portions of the petitions or the testimony of AT&T or MCI, respectively. In essence, GTEFL has asked the Prehearing Officer to accept its positions on an issue as true and to then strike other parties' differing positions; all without any taking any evidence to support GTEFL's contentions.

4. GTEFL concedes, as it must, that the Commission has the authority pursuant to Section 252 of the Telecommunications Act of 1996. GTEFL even acknowledges that the Commission may set interim rates. GTEFL simply

wishes to preclude the Commission from considering any interim rates other than those it proposes.

5. AT&T agrees with GTEFL to the extent that the issues raised here can only be resolved through an evidentiary proceeding before the Commission in which it can assess the information before it and reach a reasoned determination. However, GTEFL' Motion simply seeks to skip this step. To do so would constitute a denial of due process to AT&T.

6. AT&T disputes GTEFL's claim that the FCC does not have the authority to establish default proxy rates. However, regardless of the merits of the arguments regarding the FCC's jurisdiction, the Commission does not itself have the authority to decide this issue. This issue will be decided in the course of the appellate review of the FCC's Order in the Eighth Circuit Court of Appeals.

7. GTEFL's arguments that the FCC's default rates are either statutorily or constitutionally defective suffer from an inherent presumption that the record to be established in this proceeding cannot possibly demonstrate that the appropriate rates established pursuant the Act, either permanent or interim, cannot be less than the rates GTEFL proposes. Such belief is misplaced. It is premature, to say the least, to make such a claim.

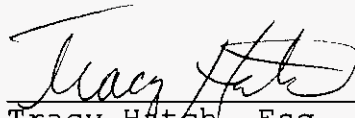
8. AT&T obviously disagrees with GTEFL's taking arguments. Notwithstanding, this argument, like GTEFL's other arguments made in the absence of a record establishing a factual basis for the argument, is likewise premature. GTEFL would simply have the Commission accept all of the facts that it alleges as true, reject all the facts alleged by the other parties as untrue, and decide a major portion of this case without a hearing. However, the Commission cannot make such findings of fact without evidence addressed at a hearing - a hearing that GTEFL would have this Commission deny to AT&T. GTEFL's argument is more appropriately raised in its Posthearing Brief.

9. GTEFL's argument that the Commission's quest for a stay of the FCC's Order will be undermined by consideration of the interim default rates is specious. If a stay is imposed, the Commission will not be bound by the default rates in the Commission's Order. However, it does not appear that the Commission would be precluded from imposing interim rates based on the record in this proceeding that are equal to the rates set forth in the FCC's Order. If a stay is not imposed, the Commission will be bound to follow the FCC Rules during the pendency of the appeal. Regardless of the status of the FCC's Order and the associated rules, the issue of the appropriate rates pursuant to Section 252 of the Act, including any interim rates deemed desired, is

appropriately before the Commission in the instant arbitration proceeding. The effect that consideration of this issue has on the Commission's effort to obtain a stay is not a permissible basis upon which to preclude consideration of an issue.

10. As shown above, GTEFL's Motion is an inappropriate attempt to have the Commission preclude consideration of the positions of AT&T and MCI on an appropriate issue in the instant proceeding and to prejudge an issue in this proceeding in GTEFL's favor without an appropriate opportunity to present evidence and be heard on the issue. Accordingly, the Motion should be denied.

**RESPECTFULLY SUBMITTED this 2nd day of October, 1996.**



Tracy Hatch, Esq.  
101 N. Monroe St.  
Suite 700  
Tallahassee, FL 32301  
(904) 425-6364

**ATTORNEY FOR AT&T  
COMMUNICATIONS OF THE  
SOUTHERN STATES, INC.**

**CERTIFICATE OF SERVICE**

**DOCKET NOS. 960847-TP and 960980-TP**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 2d day of October, 1996:

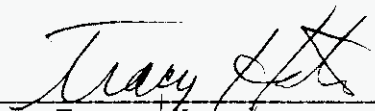
Beverly Menard, Director  
c/o Ken Waters  
GTE Florida Incorporated  
106 E. College Ave., Suite 1440  
Tallahassee, FL 32301-7704

Donna Canzano, Esq.  
Division of Legal Services  
Florida Public Service Comm.  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

Richard D. Melson, Esq.  
Hopping Green Sams & Smith  
123 S. Calhoun Street  
Tallahassee, FL 32301

Martha P. McMillin, Esq.  
MCI Telecommunications  
780 Johnson Ferry Road  
Suite 700  
Atlanta, GA 30342

Mark A. Logan, Esq.  
Brian D. Ballard, Esq.  
Bryant, Miller & Olive, P.A.  
201 S. Monroe Street  
Tallahassee, FL 32301

  
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Tracy Hatch