IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

961173-TP

GTE FLORIDA INCORPORATED,

Plaintiff,

v.

JULIA L. JOHNSON, Chairman;
J. TERRY DEASON, Commissioner;
SUSAN F. CLARK, Commissioner;
DIANE K. KIESLING, Commissioner; and
JOE GARCIA, Commissioner.
(in their official capacities as
Commissioners of the Florida Public Service
Commission),

and

SPRINT COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP D/B/A SPRINT

Defendants.

Civil Action No. 4:97cv334-WS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

GTE Florida Incorporated, by its attorneys, brings this action for declaratory and injunctive relief, alleging:

INTRODUCTION

1. Plaintiff GTE Florida Incorporated ("GTE") brings this action under section 252(e)(6) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Act" or "1996 Act"), to challenge the determination of the Florida Public Service Commission ("Commission") mandating GTE to enter into a commercial agreement containing prices and other terms under which GTE must agree to sell its local telephone services and make available elements of its local telephone network to Sprint Communications Company Limited Partnership d/b/a Sprint ("Sprint"), so that Sprint can sell competing local telephone service to GTE's existing customers. As alleged herein, the Commission's determination imposing the mandatory terms of such an agreement violates GTE's rights under the 1996 Act in numerous ways; if upheld, the Commission's determination will cause grievous and irreparable injury to GTE and the consumers of Florida.

NATURE OF THIS ACTION

2. Until recently, GTE was the sole provider of local telephone service within its Florida service areas. As a regulated entity, GTE enjoyed certain benefits in exchange for its assumption of several burdens. The State of Florida, acting through the Commission, required GTE to invest billions of dollars to construct and maintain local telephone networks throughout Florida to provide quality, universal service to all customers within its service areas. In order to keep rates affordable for all Florida customers, the Commission regulated GTE's rates and required GTE to charge "averaged" rates throughout the State, even though the actual costs of providing service vary widely in different geographical areas. In some areas, the Commission's averaged rates for services (such as residential services) were, and remain, below GTE's actual costs. In exchange for GTE's willingness to undertake these burdens, including the burden of providing service below costs in many areas, the

Commission conferred upon GTE an exclusive franchise. The exclusive franchise allowed GTE to recover higher margins on certain other services (such as business services) to compensate for below cost sales elsewhere, thereby guaranteeing GTE the opportunity to recover its costs and to earn a reasonable rate of return on its investments.

3. In the "Development of Competitive Markets" provisions of the 1996 Act, Congress decided to open up to full and effective competition, on a nationwide basis, the markets for both local and long-distance telephone service. See 47 U.S.C. §§ 251-261 (attached as Exhibit 1). This matter involves the implementation of those sections of the Development of Competitive Markets provisions that relate to competition in the markets for local telephone service -- specifically, sections 251 through 254 of the Act. In these local competition provisions, Congress effectively preempted all exclusive franchises for local telephone service -- which had been the central pillars of the prior regulatory regime -- and sought to promote the rapid development of rival local telephone networks in order to create what is commonly referred to as "facilities-based competition" with incumbent local telephone companies, known as "incumbent local exchange carriers" or "incumbent LECs." Plaintiff GTE is an incumbent LEC.

4. To promote the rapid development of facilities-based competition for local telephone service, Congress imposed several new duties on incumbent LECs in section 251 of the Act, including:

a. First, an incumbent LEC must allow a competing provider of local telephone service to "interconnect" with the LEC's network, so that the competitor can provide calls to and from the incumbent LEC's network. 47 U.S.C. § 251(c)(2).

b. Second, an incumbent LEC must sell "network elements" -- elements of the LEC's call routing and delivery network -- to a competing provider of local telephone

service "on an unbundled basis," so that the competitor can supplement its own incomplete facilities by purchasing pieces of the incumbent LEC's network. Id. § 251(c)(3).

c. Third, an incumbent LEC must sell to a competing provider of local telephone service the LEC's retail telephone services at wholesale prices, so that the competitor can resell those services in their entirety to its own customers. Id. § 251(c)(4).

These duties ensure that, instead of having to build a complete, ubiquitous telephone network from scratch before entering the local market, a competitor will be able to enter gradually by purchasing some LEC facilities and services to fill in the gaps in its own network.

5. Congress also placed important limits on these duties. Most notably: First, Congress limited an incumbent LEC's duty to sell its elements and services to a competitor to an obligation to sell at rates that fully compensate the LEC for the mandatory use of its elements and services and ensure it a reasonable profit. Second, Congress placed sensible limits on what parts of the incumbent LEC's business it must provide competitors access to and how it must do so. These critical limitations -- discussed more fully herein -- ensure that incumbent LECs are treated fairly and compensated fully for the mandatory use of their property by their competitors; that the duties imposed by section 251 are not applied so broadly as to have the perverse effect of undermining the very facilities-based competition that the Act was designed to promote; and that the provision of quality service to all persons who desire it at affordable prices is not unduly disrupted during the transition to competition. This action is all about enforcing the clear limits that Congress included in its carefully crafted scheme to promote facilities-based competition.

6. To implement the duties imposed by section 251 of the Act, Congress established a unique three-part mechanism in section 252.

a. First and foremost, Congress chose to rely on private negotiations to implement the duties imposed by section 251. Specifically, Congress imposed on incumbent LEC's "[t]he duty to negotiate in good faith . . . the particular terms and conditions of agreements" with competitors who request interconnection, network elements or services under section 251. 47 U.S.C. § 251(c)(1). Section 252, in turn, provides that a LEC and new entrant may "negotiate and enter into a binding agreement without regard" to any of the pricing, technical and quality standards set out in the Act. Id. § 252(a).

b. Second, in the event that no privately negotiated agreement is reached within 135 days of the competitor's request, either party may petition the appropriate State public utility commission "to arbitrate any open issues." 47 U.S.C. § 252(b)(1). The Act provides that, "[i]n resolving by arbitration . . . any open issues," the State commission shall ensure that such resolution "meet[s] the requirements of section 251" of the Act, and "establish any rates for interconnection, services or network elements according to [the standards set forth] in subsection [252](d)" of the Act. 47 U.S.C. § 252(c)(1), (2). Within 9 months of the competitor's request, the State commission must "resolve each issue set forth in the petition [for arbitration] and the [other party's] response . . . by imposing appropriate conditions . . . upon the parties[.]" Id. § 252(b)(4)(c).

c. Third, the Act specifically provides for federal district court review of a State commission's determinations under section 252. Specifically, section 252(e)(6) of the Act provides that

> [i]n any case in which a State commission makes a determination under this section, any party aggrieved by such determination may bring an action in an appropriate Federal district court to determine whether the agreement or statement meets the requirements of section 251 and this section [252].

47 U.S.C. § 252(e)(6). A federal district court action is a critical component of the scheme established by Congress, for it ensures that there is a federal guarantor of the new federal duties and protections that are contained in the Act but enforced by the State public utility commissions. This action is thus the critical third stage of the process established by Congress.

7. On February 26, 1997, the Commission entered an order purporting to resolve, after arbitration hearings conducted pursuant to section 252 of the Act, open issues contained in the petition for arbitration brought by Sprint against GTE. See Order No. PSC-97-0230-FOF-TP, In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for Arbitration with GTE Florida Incorporated Concerning Interconnection Rates, Terms, and Conditions Pursuant to the Federal Telecommunications Act of 1996 ("Arbitration Order") (attached as Exhibit 2). The Commission directed GTE to file an interconnection agreement with Sprint implementing the Commission's Arbitration Order within 30 days -- that is, by March 28, 1997. Arbitration Order, at 65.

8. In accordance with the Commission's Arbitration Order, GTE filed with the Commission a proposed agreement reflecting the Commission's determinations on all arbitrated issues as well as non-arbitrated terms and conditions previously agreed to with Sprint. In contrast, Sprint filed an agreement purporting to incorporate the terms and conditions set forth in a previously filed, but not yet effective, arbitrated agreement with AT&T Communications of the Southern States, Inc. ("AT&T"). Relying on subsection 252(i) of the Act, Sprint moved the Commission to adopt the AT&T arbitrated agreement in lieu of the determinations made by the Commission in its Arbitration Order. On April 8, 1997, Sprint moved the Commission to stay the Sprint arbitration proceedings until the AT&T arbitrated agreement became effective.

9. On May 13, 1997, the Commission entered a subsequent order on the agreements proposed by the parties and Sprint's post-hearing motions. See Order No. PSC-97-0555-FOF ("Agreement Order") (attached as Exhibit 3). In this order, the Commission denied Sprint's motions to allow Sprint to adopt the AT&T arbitrated agreement and to stay the proceedings; instead, the Commission approved GTE's proposed agreement with modifications. In its Agreement Order, the Commission also required the parties to execute and file an interconnection agreement consistent with the Commission's orders within two weeks (by May 27, 1997) or be subjected to fines up to $25,000 per day. Pursuant to the Commission's mandate, GTE executed an agreement with Sprint incorporating the Commission's improper and unlawful determinations. This agreement was filed on May 27, 1997, and the Commission granted final approval of this agreement on June 4, 1997. See Order No. PSC-97-0641-FOF-TP ("Final Order") (attached as Exhibit 4). The agreement became effective on that date.

10. As alleged more fully herein, the Commission's orders and the resulting interconnection agreement which the Commission required GTE to execute an interconnection agreement that violates sections 251 and 252 of the 1996 Act in numerous ways. For example:

a. First, the Commission set prices for unbundled loops at levels which do not cover GTE's costs for these loops and do not provide any contribution to joint and common costs as required by the Act.

b. Second, the Commission set prices for completing calls on behalf of Sprint which do not cover GTE's costs in completing such calls and do not provide any contribution to GTE's joint and common costs, as required by the Act.

c. Third, the Commission refused to allow GTE to charge what is known as an "end-user" surcharge to recover that portion of GTE's investment -- previously approved by the Commission as prudently incurred -- that has become stranded by reason of the sudden termination of GTE's exclusive franchise. By misinterpreting the 1996 Act to deprive GTE of the opportunity fully to recover its past investment, made under a different regulatory regime, the Commission's orders and the mandated agreement resulting therefrom apply and interpret the Act in a manner that would effect an unconstitutional taking of GTE's property, in violation of the well-established principle that a statute should be interpreted, where possible, to avoid serious constitutional questions.

d. Fourth, with respect to certain non-price operational issues, the Commission concluded that it was bound by rules issued by the FCC, which are currently being reviewed in consolidated and expedited proceedings before the United States Court of Appeals for the Eighth Circuit. Relying on those rules (which are plainly invalid), the Commission permitted Sprint to combine unbundled network elements to recreate existing GTE services that are otherwise offered for resale at wholesale. The Commission also required GTE to resell all of its services, even those which are provided below their cost, even those which are not sold at retail, and even those in which GTE will not avoid any costs if sold at wholesale rather than retail. By following the FCC rules and erroneously interpreting the Act, the Commission makes it impossible for GTE, or any other incumbent LEC, to distinguish itself in the competitive marketplace, and promotes entry by so-called "telephone companies" who need not even hire operators. The Commission's determinations in this regard will squelch the very development of rival telephone networks that the Act was designed to foster.

e. Fifth, the Commission required GTE to provide its customer account information to Sprint without the customer's prior written authorization for pre-ordering purposes.

11. In addition, the Commission's determinations are unlawful because they are arbitrary and capricious and not supported by the evidentiary record presented before the Commission during the hearings held in this matter.

12. If the unlawful terms set by the Commission are allowed to take effect as part of the interconnection agreement that the Commission ordered the parties to execute, GTE will suffer immediate and grievous harm, in several different ways -- including lost revenues, lost customers, lost goodwill, and lost opportunity to engage in meaningful negotiations with Sprint and other carriers. The Commission will also misshape the burgeoning market for local competition by discouraging new entrants like Sprint and incumbent LECs like GTE from investing in local exchange facilities, all of which ultimately will harm consumers by undermining GTE's ability to maintain and upgrade its high-quality telecommunications network.

13. For each of the reasons alleged herein, GTE is entitled to a declaration that the Commission's orders and the mandated agreement resulting therefrom do not comply with the 1996 Act and are otherwise unlawful in their entirety. GTE is also entitled to a permanent injunction preventing enforcement of the interconnection agreement embodying any of the terms set forth in the Commission's unlawful orders.

PARTIES

14. GTE Florida Incorporated is a Florida corporation, and is a wholly owned subsidiary of GTE Corporation. GTE conducts telephone operations in central Florida, and serves the Tampa Bay area, including all or parts of Hillsborough, Pinellas, Polk, Pasco,

Manatee, Sarasota and Charlotte Counties. Major concentrations of GTE's customers are in the Tampa Bay area, and its principal place of business is located at 201 North Franklin Street in Tampa, Florida.

15. GTE has approximately 6,200 employees domiciled in Florida, with approximately 76 central offices and 94 switches located in the state, as well as 237 remote serving units. GTE has approximately 1,654,026 customers in Florida and serves approximately 2,179,412 total access lines.

16. The Florida Public Service Commission is an agency of the State of Florida, charged under Florida law with, inter alia, regulating intrastate (including local) telecommunications services. Fla. Stat. § 364.01 (1996). The Florida Public Service Commission is a "State commission" within the meaning of 47 U.S.C. §§ 153(41), 251 and 252. Its official place of business is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

17. Defendants Julia L. Johnson, Susan F. Clark, J. Terry Deason, Diane K. Kiesling, and Joe Garcia are each a Commissioner of the Florida Public Service Commission with official offices at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399.

18. Defendant Sprint Communications Company Limited Partnership is, on information and belief, a Delaware limited partnership and is authorized to transact business within the State of Florida as a certificated interexchange carrier. Sprint's principal place of business for its operations in Florida are maintained at 3100 Cumberland Circle, Atlanta, Georgia.

JURISDICTION AND VENUE

19. This Court has jurisdiction over this Complaint pursuant to 47 U.S.C. § 252(e)(6) and 28 U.S.C. §§ 1331, 1337 and 1342.

20. Venue is proper in the Northern District of Florida pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2). Defendant Sprint is a Delaware limited partnership and resides in this District. Four of the defendant Commissioners of the Florida Public Service Commission (Mr. Deason, Ms. Kiesling, Ms. Clark, and Ms. Johnson) also reside in this District. Moreover, venue is proper in the Northern District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in that district.

BACKGROUND

A. The Regulatory Framework Prior to 1996

21. Under the traditional division of authority between the States and the federal government, and as codified by the Communications Act of 1934 ("1934 Act"), the States have historically had the exclusive jurisdiction to regulate intrastate -- including local -- telephone services. Consistent with this traditional division of authority, the State of Florida has historically regulated the provision of local telephone services within Florida.

22. For decades prior to 1996, Florida arranged for the provision of local telephone service for its residents by entering into, and operating under, regulatory compacts with local exchange carriers, including GTE. The essential terms of the regulatory compact between Florida and GTE are as follows:

a. GTE and its predecessors agreed to invest huge sums of money -- in the billions of dollars -- to construct, maintain, operate, expand and upgrade a local telephone exchange network and to provide high-quality telephone service.

b. Under Florida law, GTE has been, and still is, required to provide "universal service" -- that is, to provide local telephone service on demand to all residents in GTE's franchise area.

c. In exchange for GTE's enormous investment in the construction, maintenance and upgrading of its telephone network and the provision of universal high-quality service, Florida granted GTE an exclusive franchise to provide service within GTE's designated service areas and allowed GTE to charge rates for its services that afforded GTE shareholders the opportunity to earn a fair rate of return on their investment.

23. Pursuant to Florida law, the Commission has traditionally prescribed, and continues to prescribe, the maximum rates that GTE may charge for local telephone services. In fact, GTE is prohibited under Florida law from increasing its rates for basic local telephone service until January 1, 1999. Fla. Stat. §364.051(2)(a). Those caps shall remain in effect for an additional two years unless the legislature or Commission determines that the level of competition justifies removal of such caps. Id. at §364.051(3)(b). Florida law limits increases to non-basic services as well. Fla. Stat. §364.051 (1995).

24. The Commission has historically sought to ensure that local telephone service would be available to all residents of Florida on an affordable basis, regardless of the actual cost of providing service to any particular resident. The Commission has accomplished this objective in part through two longstanding ratemaking policies.

a. First, as part of regulating GTE's rates, over the years the Commission has established and maintained an extensive system of interservice and intercustomer cross-subsidies. The Commission has required GTE to charge "averaged" statewide rates to all customers in specified categories. In many instances, those averaged statewide rates have been, and continue to be, below GTE's actual costs of providing service to customers. For example, the statewide averaged rate that GTE is required to charge its residential customers for local telephone service has been and remains substantially below GTE's actual costs of providing service to many residential homes -- particularly in more rural areas. However,

because, prior to 1996, the Commission insulated GTE from competition in its service areas, GTE was able to offset its losses on providing universal service to residential (and particularly rural residential) customers by charging Commission-approved rates on higher-margin services such as toll calling, long-distance access, custom-calling services, yellow pages advertising, and certain high-margin business customer services. Through this extensive system of subsidies, the Commission ensured that all residents of Florida had affordable local telephone service, while at the same time providing GTE the opportunity, over time, to recover and earn a fair return on its investment. The Commission continues to maintain this extensive system of interservice and intercustomer cross-subsidies.

b. Second, as part of regulating GTE's rates, the Commission has approved rates resulting in GTE artificially deferring recovery, through depreciation, of its investments over a period of time significantly in excess of the economic and technological lives of the assets comprising GTE's telephone network. Under the regulatory regime that existed prior to 1996, GTE was nevertheless assured that it would be afforded the opportunity to recover and earn a fair return on its full investment in facilities used to provide local telephone service, albeit over a longer period of time, as a result of the protection provided by GTE's exclusive franchise in its service areas. There remains today a substantial portion of GTE's investment in its existing facilities in Florida that has not been recovered because of the Florida Commission's past depreciation policies. A portion of GTE's investment thus was stranded when GTE's exclusive franchise was terminated.

B. The Telecommunications Act of 1996

25. As the technology by which local telephone service is provided advanced rapidly over the last decade, the assumptions behind the traditional understanding of local telephone service as a natural monopoly eroded. In the 1996 Act, Congress rejected the view

that local telephone service continues to be a natural monopoly, and decided to open up, on a nationwide basis, the markets for local telephone service to full, effective and fair competition. The 1996 Act amends the 1934 Act to create what the 104th Congress characterized as a "pro-competitive, de-regulatory" framework for promoting the development of advanced telecommunications services. H.R. Conf. Rep. No. 104-458, at 113 (1996) ("Conference Report").

1. The Substantive Duties and Prohibitions In The Act

26. To promote full, effective and fair competition in the provision of local telephone service, Congress: (i) preempted all State and local barriers to entry; (ii) imposed a duty on States to assure that all new competing providers of local telephone service share equitably in the burden of providing universal service at reasonable rates; and (iii) imposed certain affirmative duties on incumbent LEC's -- the duties in section 251 of the Act -- to help promote the rapid development of facilities-based competition.

27. In section 253 of the Act, Congress provided that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a). Among other things, this section renders unlawful the exclusive franchises that were a central component of both Florida's regulatory compact with GTE and its extensive system of interservice and intercustomer subsidies.

28. Congress also imposed on the States the obligation to ensure that all new providers of local service share equitably in the burden of maintaining the provision of affordable universal service to State residents. Specifically, in section 254, Congress mandated that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined

by the State to the preservation and advancement of universal service in that State." 47 U.S.C. § 254(f).

29. As noted, Congress' primary goal in the 1996 Act was to promote the rapid development of rival local telephone networks to compete with the incumbent LEC's networks -- i.e., to promote facilities-based competition. The Act was intended to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies," with the goal of encouraging new carriers to deploy advanced networks to compete with incumbent LEC's. Conference Report, at 1. Congress "recognize[d, however,] that it is unlikely that competitors will have a fully redundant network in place when they initially offer local service," and that competitors may need initially to obtain "[s]ome facilities and capabilities (e.g., central office switching)" from the incumbent LEC. Id. at 148.

30. To advance the transition toward full, facilities-based competition, and to allow new competitors to enter the market before their own facilities are completed, Congress imposed a number of affirmative duties on incumbent LEC's in section 251 of the Act. In particular, as noted, section 251 requires an incumbent LEC to: (i) allow a competitor to "interconnect" with the LEC's network so that the competitor can provide calls to and from that network, 47 U.S.C. § 251(c)(2); (ii) sell a competitor access to the LEC's "network elements on an unbundled basis" to allow a competitor to supplement its own facilities by purchasing, at unbundled prices, pieces of the incumbent LEC's call routing and delivery network, id. § 251(c)(3) and (iii) sell a competitor the LEC's retail telephone services at wholesale prices so that the competitor can resell to its own customers services that it does not have the facilities to provide, id. § 251(c)(4).

2. The Act's Important Limitations

31. While section 251 imposes new affirmative duties on LEC's to help promote the development of rapid, facilities-based competition, Congress also placed several important limitations on those duties to ensure (i) that incumbent LEC's are treated fairly and compensated fully for the use of their private property, (ii) that the duties imposed by section 251 are not applied so broadly as to undermine Congress' goal of promoting facilities-based competition, and (iii) that the States can protect universal service during the transition to facilities-based competition.

32. With respect to the prices at which incumbent LEC's must sell interconnection, unbundled network elements, transport and termination, and retail services available for resale, the Act expressly assigns to State commissions the task of determining the rates that incumbent LEC's may charge competitors. 47 U.S.C. § 252(e)(2). But while preserving the States' traditional jurisdiction to set rates regarding intrastate telephone service, the Act imposes federal standards that the States must follow in determining those rates. Id. § 252(d) Specifically:

a. With respect to resale of an incumbent LEC's retail services at wholesale prices, Congress required that the incumbent LEC's wholesale rates be calculated "on the basis of the [LEC's] retail rates" minus only those "costs that will be avoided by the [LEC]" by selling the services at wholesale rather than retail. Id. § 252(d)(3) (emphasis added). Congress required resale rates to be based on the incumbent LEC's existing retail rates, because any pricing standard

not based on an incumbent LEC's existing retail rates would unfairly allow competitors to skim off only those services and customers that have been priced above cost by regulators to compensate for keeping basic residential service low, and would thereby immediately

undermine the continued provision of universal service.

b. With respect to interconnection and network elements, Congress required that an incumbent LEC be compensated fully for "the cost . . . of providing the interconnection or network element," which may include a "reasonable profit." Id. § 252(d)(1). This pricing standard ensures that an incumbent LEC will be fully compensated for the mandatory use of its property, and thereby carefully avoids an unconstitutional taking of LEC property. It also ensures that more efficient competitors who can provide service at a lower cost by deploying their own facilities will retain the incentive to do so.

33. The fundamental premise of the Act's pricing provisions is that rates must be based on the particular incumbent LEC's own costs. Thus, where the incumbent LEC acts in good faith to present the Commission with evidence of its own costs (i.e. company-specific cost studies), and the requesting carrier does not present evidence of the incumbent LEC's actual, company-specific cost, the Commission must set rates based on the incumbent LEC's costs studies. The Commission may decline to apply the incumbent LEC's cost studies only if the LEC "refuses or fails unreasonably to respond on a timely basis to any reasonable request from the State commission" for company-specific information, in which case the Commission may then "proceed on the basis of the best information available to it from whatever source derived." 47 U.S.C. § 252(b)(4)(B).

34. Congress also limited in important ways the scope of an incumbent LEC's duty to provide interconnection and unbundled network elements. With respect to an incumbent LEC's duty to provide a competitor with access to "unbundled" parts of its network, Congress imposed at least two critical limitations:

a. First, Congress required a LEC only to unbundle "network elements," which are expressly defined by the Act to be limited to the "facility[ies] or equipment" that are

part of the LEC's network used to transmit and route telephone calls, together with any "features, functions, and capabilities" provided by those physical elements of the network. 47 U.S.C. § 153(29).

b. Second, with respect to whether particular network elements must be unbundled, Congress required consideration of whether "the failure to provide access to such network elements [on an unbundled basis] would impair the ability" of a competitor to provide telephone service, or, in the case of "network elements [that are] proprietary in nature," whether unbundled access by a competitor is "necessary" for the competitor to provide service. Id. § 251(d)(2) (emphasis added).

35. These limitations on an incumbent LEC's duty to sell access to its "unbundled" "network elements" are critical to Congress' goal of promoting effective facilities-based competition. Without these limitations, a new entrant would have no incentive to construct its own competing network because it could purchase everything that it needed to provide local telephone service from the incumbent LEC at cost-based prices. Moreover, without these limitations, the incumbent LEC would have no incentive to invest in any improvement to its network or other new technology because it would have to provide any such improvement to its competitors on an unbundled basis at cost and therefore could never differentiate itself in the competitive marketplace.

3. The Act's Method For Implementing The Duties It Imposes

36. To introduce competition while at the same time preserving the Act's stated goal of "reduc[ing] regulation," Pub. L. No. 104-104 Preamble (1996), Congress crafted the Act's unique three-part mechanism of private negotiation, state commission arbitration, and federal district court actions. See supra, at ¶ 6.

37. In sharp contrast to the broad reliance placed by Congress on private negotiations, State-supervised arbitrations and federal district court actions, Congress gave the FCC only a limited, narrowly circumscribed role in implementing the 1996 Act's local competition provisions. For example, Congress gave the FCC "exclusive jurisdiction" over the administration of "telecommunications numbering," 47 U.S.C. § 251(e), and gave it a role in defining an incumbent LEC's duty to provide "number portability," id. § 251(b)(2).

C. The FCC's First Report and Order

38. Shortly after the Act was enacted on February 8, 1996, the FCC initiated an abbreviated rulemaking proceeding. Rather than confine itself to issuing regulations concerning the limited and enumerated tasks that it had been assigned under the Act, the FCC solicited comments from interested parties on all aspects of local competition provisions of the Act -- including matters (such as the pricing of interconnection, network elements, transport and termination, and services) over which the Act assigned exclusive responsibility to the States.

39. On August 8, 1996, the FCC released its 700-page First Report and Order, purporting to regulate in the finest detail every conceivable aspect of competition in the provision of local telephone service. First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 (August 8, 1996) ("First Report and Order").

40. Notwithstanding the 1996 Act's primary reliance on privately-negotiated agreements to implement the duties in section 251, backed up by arbitrations in front of the State public utility commission, the FCC determined in the First Report and Order that it had the authority to promulgate "minimum requirements that arbitrated agreements must satisfy." First Report and Order, ¶ 57. Accordingly, in the First Report and Order, the FCC purported

to promulgate uniform national rules that are "binding on the states," id. ¶ 101, and that the States must "follow . . . in arbitrating and approving arbitrated agreements" under section 252 of the Act, id. ¶ 85.

41. Under the Act, the FCC had no jurisdiction to promulgate any prices or pricing standards for interconnection, network elements, and services. Rather, the Act expressly assigns to "State commission[s]" the task of determining "just and reasonable" rates in accordance with the standards contained in section 252(d). Notwithstanding this clear assignment of jurisdiction to the States, the FCC erroneously concluded that it nonetheless has the authority to adopt "national pricing rules" that the States must apply to set individual rates. First Report and Order, ¶ 111.

42. In addition to being beyond the FCC's jurisdiction, the pricing methodology contained in the First Report and Order for interconnection, network elements, and retail services available for resale was flatly inconsistent with the standards of the Act.

43. The FCC also set specific so-called "proxy" prices to be used in State arbitrations. These proxy prices were not based on any individualized review of cost studies, but rather on two theoretical, national cost "models" -- models that even the FCC recognized lead to inaccurate cost estimates, First Report and Order, ¶ 794-795 -- and on data that was plucked from a small sample of previous State rate orders that used standards substantially different from the FCC's own. Id. ¶¶ 792-94, 925-32. In no event does the data used to set the FCC proxy prices bear, or even purport to bear, any resemblance to GTE's actual costs in Florida. Rather, the FCC's proxy prices grossly underestimate GTE's true costs in Florida, as well as in other States.

44. In the First Report and Order, the FCC purported to require every State to use its proxy prices unless a State commission first sets prices according to completely new cost

studies based on the FCC's newly-minted TELRIC pricing methodology. First Report and Order, ¶ 619. In addition, the FCC purported to establish in its First Report and Order that any State that de parted from its proxy prices must justify that departure based upon a detailed factual record. Id.

45. In the First Report and Order, the FCC also prescribed a comprehensive set of uniform national rules, purportedly binding on the States, that erroneously expand in myriad ways an incumbent LEC's duties to provide interconnection and access to unbundled network elements under section 251 of the Act. For example:

a. The FCC's First Report and Order requires LECs to "unbundle" business systems, services and personnel that are not "network elements" within the meaning of the Act, e.g., First Report and Order, ¶¶ 516, 534, and without regard to the standards in section 251(d)(2) of the Act that limit which "network elements" a LEC should be required to unbundle. Id. ¶¶ 202, 283.

b. The First Report and Order also allows competitors to engage in "sham unbundling" -- to purchase from a LEC on an unbundled basis (at cost-based prices) all elements of the LEC's network necessary to provide completed local telephone service, add nothing, and resell the "rebundled" service. This "sham unbundling" allows a competitor to completely evade the retail-rate-based prices (and other limitations) in the Act's resale provisions.

c. The First Report and Order also purports to require LECs to modify and upgrade their existing telephone networks to provide interconnection and network elements to competitors of a quality that is superior to that provided by the existing network and superior to what the incumbent LEC provides to itself. Id. ¶¶ 225, 382.

D. Proceedings in the United States Court of Appeals and the Partial Stay of the FCC's First Report and Order

46. Shortly after the FCC issued the First Report and Order, a number of telecommunications entities, including GTE, the Florida Commission and several other state public utility commissions filed petitions for review in various Circuits of the United States Court of Appeals challenging the FCC's First Report and Order. Those actions were consolidated in the United States Court of Appeals for the Eighth Circuit pursuant to the mechanism prescribed in 28 U.S.C. § 2112(a)(3). Several parties, including GTE and the Florida Commission, also sought to stay the effectiveness of the First Report and Order pending plenary judicial review by the Eighth Circuit.

47. On September 27, 1996, only days before the First Report and Order was to become effective by its terms, the Eighth Circuit issued a temporary administrative stay of the entire First Report and Order. On October 15, 1996, after considering voluminous briefing by the parties and conducting a special oral argument, the Eighth Circuit granted a partial stay pending judicial review of the First Report and Order -- staying all provisions of the First Report and Order relating to prices for interconnection, unbundled elements, transport and termination, services, and collocation -- including the FCC's so-called proxy prices. See Order Granting Stay Pending Judicial Review, Iowa Utilities Board v. FCC, No. 96-3321 ("Stay Order") (attached as Exhibit 5).

48. In staying the FCC's pricing rules, the Eighth Circuit concluded that the stay petitioners had demonstrated a strong likelihood that the FCC had no jurisdiction under the Act to determine the prices for interconnection, network elements, transport and termination, and services. Stay Order, at 13-16. The Eighth Circuit also concluded that incumbent LECs would be irreparably injured by the FCC's pricing rules.

49. The FCC filed an application with Justice Clarence Thomas, the Circuit Justice for the Eighth Circuit, to vacate the Eighth Circuit's partial stay of the First Report and Order. On October 31, 1996, Justice Thomas denied the application. The FCC then immediately reapplied to Justice Ruth Bader Ginsburg. The renewed application was referred to the full Supreme Court, which denied all applications to vacate the Eighth Circuit stay on November 12, 1996.

50. The Eighth Circuit expedited review and heard oral argument on the merits of the consolidated challenges to the FCC's First Report and Order on January 17, 1997. The various challenges to the First Report and Order include: (i) the FCC's jurisdiction to impose pricing rules to be applied by the States in section 252 arbitrations; (ii) the substantive validity of the FCC's pricing methodologies; and (iii) all aspects of the First Report and Order's myriad rules concerning the operational and other non-price obligations of sections 251 and 252.

ARBITRATION PROCEEDINGS AND DECISION IN THIS CASE

A. Summary of Proceedings and the Parties' Positions

51. On or about April 19, 1996, Sprint made a request to GTE for interconnection, network elements and services, and negotiations commenced soon thereafter. During the negotiations, the parties became aware that the FCC intended to release what turned out to be the First Report and Order. When Sprint learned that the First Report and Order was likely to contain provisions highly advantageous to the business interests of long-distance carriers and other potential new entrants into the markets for local telephone service, Sprint effectively stonewalled GTE and refused to complete meaningful negotiations.

52. On September 26, 1996, Sprint filed a petition with the Commission initiating the arbitration of numerous open issues between Sprint and GTE. Those open issues included

all issues relating to the pricing of interconnection, network elements, transport and termination, and services, as well as a number of important non-price operational issues.

53. On October 21, 1996, GTE filed with the Commission a response to Sprint's petition for arbitration. As part of that response, GTE provided the Commission with detailed cost studies demonstrating GTE's avoided costs where its services were purchased at wholesale, and studies reflecting the actual costs of GTE's network elements to establish the rates for interconnection and network elements.

54. In its submissions before the Commission, GTE demonstrated that the 1996 Act entitled it to recover all of its actual costs of network elements. Specifically, GTE showed that it was entitled to recover (i) the directly attributable costs of each element or service, (ii) its joint and common costs, and (iii) its unrecovered historical costs -- i.e., its actual, undepreciated investments in its existing infrastructure that will be used in providing the interconnection or element at issue.

55. GTE presented the Commission with forward-looking cost studies that measured the TELRIC of its network elements and its joint and common costs. GTE also showed that, with respect to its stranded costs (those forward-looking and historical costs which are not recovered as part of the price for interconnection and unbundled elements), the Commission must impose a competitively neutral, non-bypassable end-user surcharge on all sales of local service by all carriers to allow GTE the opportunity to recover its stranded costs.

56. Sprint introduced no evidence of costs which would be incurred by GTE. In fact, Sprint did not submit a cost study of any kind refuting the evidence presented by GTE. Instead, Sprint took the position that the Commission was bound to establish the same rates approved in another arbitration against GTE brought by AT&T Communications of the

Southern States, Inc. and MCImetro Access Transmission.

57. With respect to non-price operational issues, Sprint argued that it be permitted to combine unbundled network elements in any fashion, even to replicate services which GTE must resell to Sprint. Sprint also claimed that GTE must provide customer service records for pre-ordering purposes without the customer's prior written authorization.

58. Hearings on Sprint's petition were held before the Commission on December 5-6, 1996.

B. The Florida Commission's Orders

59. The Commission issued its Arbitration Order resolving all open arbitration issues on February 26, 1997. In that order, the Commission also required the parties to file an interconnection agreement within 30 days implementing and incorporating the determinations made in that order. In accordance with the Commission's directive, GTE filed a proposed agreement reflecting the Commission's determinations on all arbitrated issues as well as non-arbitrated terms and conditions previously agreed to with Sprint. In contrast, Sprint filed an agreement purporting to incorporate the terms and conditions set forth in a previously filed, but not yet effective, arbitrated agreement with AT&T. Sprint also filed a subsequent motion to stay the arbitration proceedings until the AT&T arbitrated agreement became effective.

60. On May 13, 1997, the Commission issued another order (Agreement Order) denying Sprint's motions and approving GTE's proposed agreement with modifications. Two weeks later, on May 27, 1997, the parties executed and filed an agreement incorporating the Commission's improper and unlawful determinations. This agreement became effective on June 4, 1997, the date on which the Commission issued its Final Order granting approval of the agreement.

61. The Commission's Arbitration Order, Agreement Order, Final Order and the interconnection agreement executed pursuant to those orders violate the Act with respect to a number of pricing and operational issues. For example:

1. **Pricing Issues Relating to Network Elements and Interconnection**

62. The Commission refused to establish prices in accordance with GTE's cost studies. Instead, the Commission established the following inadequate and unlawful prices for network elements and interconnection:

a. Unbundled Loop Rates. The "loop" is that part of GTE's network that connects the customer's home to GTE's central office. Based on its cost studies, GTE showed that it was entitled to a loop rate of $33.08 per month in Florida. The Commission ordered a statewide loop rate of only $20.00, which does not fully recover GTE's actual direct costs let alone a reasonable allocation of common costs. Arbitration Order, Attachment A.

b. End Office Switching. End office, or local switching is the use of the switch located in the end office to route traffic to an end user or from an end user to the rest of the telephone network. The Commission determined that the usage rates for local switching should be set at $0.004 for originating local switching and $0.00375 for terminating local switching and that the charge for an unbundled port should be set at $4.75. Arbitration Order, Attachment A. In establishing those rates, the Commission improperly refused to consider additional costs to provide call waiting and other vertical services and thereby precluded GTE from recovering the costs to provide such services.

c. Local Interconnection. The charge for local interconnection should cover the cost GTE incurs when it completes a call to one of its customers placed by a customer of a competing local carrier such as Sprint. The Commission determined that the rates for local interconnection should be set at $0.0025 per minute for end office switching, a

price which does not cover GTE's cost in providing such interconnection. Based upon its cost studies, the appropriate rate for such interconnection should have been set at $0.0107432 per minute. The Commission also approved the same interconnection rate for Sprint when it completes a GTE originated call, without being presented any evidence of Sprint's costs of interconnection. Arbitration Order, at 57.

63. The Commission also refused to permit GTE to recover all of its stranded costs, including its stranded historical costs -- those prudently-made, Commission-approved, but unrecovered investments made by GTE in its actual network while it operated under an exclusive franchise model of regulation. Any system of regulation that deprives GTE of the opportunity to recover and earn a fair rate of return on this stranded investment would violate the Act and raise serious takings concerns.

64. The Commission also refused to permit GTE to recover existing subsidies required to support GTE's universal service and carrier of last resort obligations. Prior to 1996, these obligations were funded through rates for certain services, which were set by the Commission at artificially high levels, well in excess of the cost to provide such services. This system of subsidization, established by the Commission under rate of return regulation, is not sustainable in a competitive environment. As competition is increasingly introduced for these services, the rates will be driven closer to cost and the excess contribution formerly used to subsidize universal service and carrier of last resort obligations will be lost. The Commission refused to establish any kind of mechanism to replace this subsidy system.

65. GTE must be afforded the opportunity to recover and earn a fair rate of return on its stranded costs, including those investments for which GTE cannot obtain recovery through its rates for interconnection and network elements. Because there is already competition for GTE's services, allowing GTE to include such costs in its rates for

interconnection will not afford GTE the opportunity to fully recover and earn a fair rate of return on those costs. Therefore, in order to afford GTE the opportunity to recover its stranded costs (forward-looking or historical) and to replace existing subsidies, a competitively neutral, non-bypassable end-user surcharge must be imposed on all sales of local telephone service.

66. During the arbitration, GTE argued that the Commission must establish an end-user surcharge, particularly if it was going to set the rates for interconnection and network elements on a forward-looking basis so as to exclude the recovery of stranded historical costs through such rates. The Commission refused to even acknowledge GTE's request for this surcharge in its discussion of the pricing issues in any of its orders. See e.g., Arbitration Order, at 4-18, 48-57.

2. Nonprice Operational Issues

67. With respect to a number of important nonprice operational issues, the Commission's orders and agreement resulting therefrom also violate the Act. For example:

(a) "Rebundling" Network Elements to Evade Resale Restrictions and Switched Access Charges

68. The Act draws an important division between "network elements" and "services" available for resale. Most importantly, the Act requires that the price for network elements be based on an incumbent LEC's costs, whereas the price for services must be based on an incumbent LEC's existing retail rates (minus avoided costs).

69. Over GTE's objection, the Commission held that Sprint could purchase on an unbundled basis from GTE all of the network elements necessary to provide completed local telephone service, "recombine" them, and provide the completed service. Arbitration Order, at 19. By allowing Sprint to engage in such "sham unbundling," the Commission's orders

enable Sprint to evade the retail-based rates Congress specified in section 252(d)(3) and obtain such services at much cheaper rates and to bypass switched access charges.

(b) Access to GTE's Customer Service Records for Pre-Ordering Purposes

70. Sprint argued that it should be allowed to access customer service records for pre-ordering services without written authorization from the customer. The Commission adopted Sprint's position despite the fact that section 222(c)(2) of the Act permits disclosure of customer proprietary network information only upon the "affirmative written request" by such customer and in contradiction to existing Commission policy. Arbitration Order, at 41-48.

(c) Resale of Below-Cost and Wholesale Services

71. The Commission also required GTE to resell all of its services, including those which are provided below their cost, those which are not sold at retail, and those in which GTE will not avoid any costs if sold at wholesale rather than retail. The Commission required GTE to resell below-cost services even though Florida law specifically prohibits the resale of such services. Fla. Stat. §364.161(2). The Commission found that this section was preempted by the Act without making any effort to reconcile the two statutes in order to avoid such a finding. Arbitration Order, at 26. The Commission also ordered GTE to resell, at wholesale rates, services such as operator and directory assistance services even though GTE would not avoid any costs in providing such services on a wholesale basis. Arbitration Order, at 29-30. The Commission also ordered GTE to resell, at wholesale rates, other services such as public and semi-public pay telephone services even though such services are not provided to customers other than telecommunications carriers. Arbitration Order, at 28-30.

C. Harm to GTE from the Commission's Determination

72. As a result of each and every action and omission of the Commission described in this Complaint, GTE and its shareholders are "aggrieved" within the meaning of section 252(e)(6) of the Act, and will suffer immediate, severe, and, in numerous instances, irreparable harm. Those harms include: harm to GTE's revenues, harm to GTE's customer base, harm to GTE's goodwill and reputation, harm to GTE's telecommunications network, and harm to GTE in negotiations with Sprint and other telecommunications carriers pursuant to section 252 of the Act. The Commission's actions and omissions described herein have also resulted in a commercial agreement that will severely harm consumers of local telephone service, the market for local telephone service and the public interest.

CLAIMS FOR RELIEF

COUNT I

(Declaration Of Violation Of Sections 251 and 252 Regarding Pricing Issues)

73. With respect to various pricing issues, the Commission's orders and the interconnection agreement required to be executed under those orders violate sections 251 and 252 of the 1996 Act in numerous ways:

COUNT I(A)

(Price Of Unbundled Network Elements And Interconnection)

74. Paragraphs 1 through 73 are incorporated by reference as if set forth fully herein.

75. In determining the prices for network elements and interconnection described above, the Commission violated section 252(d)(1) for at least (but not limited to) the following reasons:

a. The rates established by the Commission do not provide for the recovery of all of GTE's direct and joint and common costs on a forward-looking basis.

b. The Commission's determination of the rates for unbundled network elements and interconnection failed to take into account the loss of existing subsidies previously mandated by the Commission to provide support to GTE's universal service and carrier of last resort obligations.

c. Section 254(f) of the Act requires that "[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." The prices set by the Commission for interconnection and unbundled network elements do not require Sprint to contribute on an equitable and nondiscriminatory basis to the preservation and advancement of universal service, and therefore are not "just and reasonable" as required by section 252(d)(1).

d. The Commission's determination of the rates for network elements and interconnection failed to take account of GTE's costs in having to modify its network in order to make available its unbundled network elements and provide interconnection.

e. The Commission unlawfully ordered the rates for termination to be the same for both Sprint and GTE regardless of the actual costs incurred by Sprint to terminate calls originated by GTE customers.

f. The Commission unlawfully required GTE to provide vertical services as part of its local switching element, yet refused to permit GTE to charge its proposed rates for such vertical services.

g. The prices determined by the Commission for network elements and interconnection are, for additional reasons, not just and reasonable as required by section 252(d)(1) and are arbitrary and capricious and not supported by the record.

76. In establishing the contractual rates for unbundled elements and interconnection as set forth in its orders, the Commission interprets the Act in a manner that would violate the prohibition in the Fifth and Fourteenth Amendments to the U.S. Constitution against the taking of private property without just compensation, in violation of the principle that a statute should be construed so as to avoid serious constitutional questions.

COUNT I(B)

(Wholesale Price of Services for Resale)

77. Paragraphs 1 through 76 are incorporated by reference as if set forth fully herein.

78. In determining wholesale prices for LEC services, the Commission violated the pricing standard in 47 U.S.C. § 252(d)(3). The Commission's decision on this issue violates section 252(d)(3) by requiring GTE to resell services such as operator services and directory services at a discount even though GTE presented evidence that it will not avoid any expenses in providing these services on a wholesale basis. The Commission ignored the same evidence presented by GTE with respect to special access services, private line services tariffed under the special access tariff, coin-operated customer-owned telephone ("COCOT") lines and coinless lines.

79. The Commission's determination that GTE must make available at wholesale rates services which are presently below GTE's costs of providing such services violates section 364.161(2) of the Florida Statutes.

80. Further, the Commission's determination that GTE must make available at wholesale rates all of its retail services, including those services that are provided to its customers at rates that do not allow GTE to recover its costs of providing service or to which there are no avoided costs, violates sections 251(c)(4) and 252(d)(3) by impermissibly expanding the scope of an incumbent LEC's obligation to sell services at wholesale prices beyond that provided by that section.

COUNT I(C)

(End-User Surcharge)

81. Paragraphs 1 through 80 are incorporated by reference as if set forth fully herein.

82. The Commission declined to allow GTE the ability to assess a competitively neutral end-user surcharge to recover those costs that the Commission excluded from the rates for interconnection and unbundled network elements -- including GTE's stranded historical costs and lost universal service subsidies. By doing so, the Commission violated section 252(d)(1).

83. The Commission's decision denying GTE a competitively neutral end-user surcharge is not "just and reasonable" as required by the Act, and is arbitrary and capricious and not supported by the record.

84. The Commission's decision denying GTE a competitively neutral end-user surcharge applies and interprets the Act in a manner that would violate the prohibition of the Fifth and Fourteenth Amendments to the U.S. Constitution against the taking of private property without just compensation, in violation of the principle that a statute should be construed so as to avoid serious constitutional questions.

COUNT II

(Declaration Of Violation Of Sections 251 and 252 Regarding Operational Issues)

85. With respect to various nonprice operational issues, the Commission's orders and interconnection agreement required to be executed under those orders violate sections 251 and 252 of the 1996 Act in numerous ways.

COUNT II(A)

(Allowing "Sham Unbundling" of Network Elements to Evade Resale Provisions and Switched Access Charges)

86. Paragraphs 1 through 85 are incorporated by reference as if set forth fully herein.

87. The Commission's orders allow Sprint to purchase all network elements necessary to provide completed telephone service on an unbundled basis and to "rebundle" them to provide completed local telephone service.

88. The effect of this "sham unbundling" authorized by the Commission is to allow Sprint to purchase local telephone service by combining all necessary network elements at prices substantially below the wholesale prices set by the Act and by the Commission. In this way, the Commission permits Sprint to evade the pricing standards and other restrictions in the Act's provisions governing the purchase of retail services for resale and to bypass switched access charges.

89. The Commission's decision allowing Sprint to engage in "sham unbundling" violates sections 251(c)(4) and 252(d)(3) of the Act, is arbitrary and capricious and is not supported by the record.

COUNT II(B)

(Ordering GTE to Sell Services at Wholesale Prices Beyond that Required by Section 251(c)(4)

90. Paragraphs 1 through 89 are incorporated by reference as if set forth fully herein.

91. Section 251(c)(4) of the Act requires that an incumbent LEC offer for resale at wholesale prices only those telecommunications services that the LEC "provides at retail to subscribers who are not telecommunications carriers," — i.e., to retail end-user customers.

92. The Commission's determinations unlawfully expand the scope of GTE's duty to offer services at wholesale prices. For example, GTE is required to offer at wholesale certain services that it does not currently offer to retail subscribers who are not telecommunications carriers and are beyond the legitimate scope of section 251(c)(4)'s duty to resell. These include public pay telephone lines, semi-public pay telephone lines, coin-operated customer owned telephone lines and coinless lines.

93. The Commission's determinations are further unlawful because they require GTE to resell services such as operator services and directory services at a discount even though GTE presented evidence that it will not avoid any expenses in providing these services on a wholesale basis. Similarly, the Commission also ordered GTE to resell at a discount special access services, private line services in GTE's special access tariffs and non-recurring charges even though no expenses would be avoided.

94. The Commission's determinations are also unlawful because they require GTE to resell at a discount services which were already priced below GTE's costs, promotional services offered for more than 90 days, grandfathered services, services provided pursuant to existing and future customer-specific contracts, Lifeline and Link-Up, and AIN services.

95. The Commission's expansion of GTE's duty to offer services at wholesale in each of the ways referenced above is inconsistent with section 251(c)(4) of the Act.

COUNT II(C)

(Requiring GTE to Provide Sprint with Customer Account Information Without the Customer's Prior Written Consent)

96. Paragraphs 1 through 95 are incorporated by reference as if set forth fully herein.

97. The Act requires an incumbent LEC to disclose customer proprietary network information upon an "affirmative written request by the customer." 47 U.S.C. § 222(c)(2). In violation of that section of the Act, the Commission requires GTE to disclose such information to Sprint without the written consent of the customer.

98. The Commission's determination on this issue violates section 251 and/or other provisions of the Act, is arbitrary and capricious, and is not supported by the record.

RELIEF REQUESTED

WHEREFORE, as relief for the harms alleged herein, GTE requests that this Court:

a. declare that the Florida Public Service Commission's Order Nos. PSC-97-0230-FOF-TP, PSC-97-0550-FOF-TP and PSC-97-0641-FOF-TP, and the interconnection agreement required to be executed by GTE pursuant to these orders violate the Telecommunications Act of 1996;

b. permanently enjoin each and every defendant in this case from taking any action to enforce or implement the interconnection agreement executed by GTE under duress of Commission fines that include the terms decided in the Florida Public Service Commission's Order Nos. PSC-97-0230-FOF-TP, PSC-97-0550-FOF-TP and PSC-97-0641-FOF-TP;

c. declare that the prices for unbundled network elements, interconnection, and end-office switching be based on GTE's cost;

d. declare that GTE is entitled to a competitively neutral, non-bypassable end-user surcharge to cover GTE's stranded costs;

e. declare that Sprint shall be prohibited from engaging in "sham unbundling" by purchasing on an unbundled basis all network elements necessary to provide completed local telephone service;

f. declare that GTE need not resell at a discount below-cost services, services which are not provided at retail, and services in which GTE does not avoid any costs; and

g. grant such other relief as may be sought by GTE in further pleadings and as may be appropriate in this case.

Respectfully submitted,

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