BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960847-TP DOCKET NO. 960980-TP ORDER NO. PSC-97-0064-FOF-TP ISSUED: JANUARY 17, 1997

The following Commissioners participated in the disposition of this matter:

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On behalf of the Commission Staff

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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ACRONYMS

Act	Telecommunications Act of 1996
ADR	Alternative Dispute Resolution
ADSL	Asynchronous Digital Subscriber Line
ALEC	Alternative Local Exchange Carrier
AIN	Advanced Intelligent Network
ARMIS	Automated Report Management Information System
ASAC	Simplified Avoided Cost Study
AT&T	AT&T Communications of the Southern States, Inc.
BellSouth	BellSouth Telecommunications, Inc.
BOC	Bell Operating Company
CABS	Carrier Access Billing System
CALC	Customer Access Line Charge
CCL	Carrier Common Line
CFR	Code of Federal Regulations
CLASS	Custom Local Area Signaling Service
COCOT	Customer Owned Coin Operated Telephone
CPE	Customer Premises Equipment
CPNI	Customer Proprietary Network Information
CRIS	Customer Records Information System
DA	Directory Assistance
DCS	Digital Cross-Connect System
D-NIP	Designated Network Interconnection Point
DS-1	Digital Service-1

E-911	Enhanced 911
EAS	Extended Area Service
GTEFL	GTE Florida Incorporated
FCC	Federal Communications Commission
FDI	Feeder Distribution Interface
HDSL	High-Bit-Rate Digital Subscriber Line
IDLC	Integrated Digital Loop Concentrator/Carrier
ILEC	Incumbent Local Exchange Carrier
ISDN	Integrated Systems Digital Network
IXC	Interexchange Carrier
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
LIDB	Line Information Database
LRIC	Long Run Incremental Cost
LTR	Local Transport Restructure
MCI	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
MFS	Metropolitan Fiber Systems of Florida, Inc.
NDM	Network Datamover
NID	Network Interface Device
OSS	Operation (Operational) Support Systems
PIC	Preferred Interexchange Carrier
POP	Point of Presence
RIC	Residual Interconnection Charge
SCP	Service Control Point

SLC	Subscriber Line Charge
SS7	Signaling System 7
STP	Signaling Transfer Point
TELRIC	Total Element Long Run Incremental Cost
TSLRIC	Total Service Long Run Incremental Cost
USTA	United States Telephone Association
ZUM	Zone Usage Measurement

I. BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 U.S.C. §251 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 company (LEC), and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements reached through compulsory arbitration. Specifically, 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, if any, 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 (GTEFL) begin negotiations for an interconnection agreement pursuant to Section 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 GTEFL begin negotiations. On August 28, 1996, MCI filed its petition for arbitration with GTEFL, and also filed a motion to consolidate its arbitration proceeding with the AT&T/GTEFL arbitration proceeding. Docket No. 960980-TP was established for MCI's petition. On September 13, 1996, MCI's motion to consolidate was granted by Order No. PSC-96-1152-PCO-TP.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's rules and requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the

FCC's rules and Order, and requested a stay pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of those portions of the FCC's rules and Order implementing Section 252(i) and the pricing provisions of the Act.

On October 14-16, 1996, we conducted an evidentiary hearing for the consolidated dockets. At our December 2, 1996, Agenda Conference we made our decision on the issues addressed by the parties in four main subject areas: network elements; resale; transport and termination; and, implementation matters. Having considered the evidence presented at the hearing, the posthearing briefs of the parties, and the recommendations of our staff, our arbitration decision is set forth below.

II. NETWORK ELEMENTS

A. Introduction

Section 251(c)(3) of the Act obligates incumbent LECs to provide the following:

> UNBUNDLED ACCESS - The duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

In order to apply this section of the Act, two questions need to be answered for each of the specific items that AT&T and MCI have asked that GTEFL provide on an unbundled basis. Are the items considered to be network elements, and if so, is it technically feasible for GTEFL to provide them? The Act and the FCC's Rules provide some guidance for making these determinations by defining network element and technical feasibility.

The Act states that:

> The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. 47 U.S.C. §3 (29).

The FCC determined that certain elements are network elements and are technically feasible to unbundle. The FCC's rules state that the incumbent LEC must provide nondiscriminatory access to the following network elements on an unbundled basis: local loop, network interface device, switching capability, interoffice transmission facilities, signalling networks and call related databases, operations support systems functions, operator services, and directory assistance. 47 C.F.R. §51.319. The FCC rules define technical feasibility as:

> Interconnection, access to unbundled elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such a request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or

> methods would result in specific and significant adverse network reliability impacts. 47 C.F.R. §51.5.

We note that we are concerned with the FCC's definition of technical feasibility and its application to local conditions in the state of Florida. We question whether the FCC can effectively, or appropriately, dictate what is technically feasible in Florida. Nevertheless, since this portion of the FCC's rules has not been stayed, we shall apply the FCC's definition in this proceeding. Below is a discussion of each network element, with the exception of operations support systems. We address operations support systems in Part V of this order.

B. Specific Network Elements

Network Interface Device

The FCC rules define the network interface device (NID) as a cross-connect device used to connect loop facilities to inside wiring. These rules require incumbent LECs to connect the inside wiring of premises to requesting telecommunications carriers' loops through the incumbent LEC's NID. The FCC states that the requesting telecommunications carrier shall establish this connection through an adjoining NID deployed by the telecommunications carrier. The FCC recognizes, however, that competitors may benefit by connecting directly to the incumbent LEC's NID and avoiding the cost of deploying their own NIDs. The FCC has deferred to the states to determine whether direct connection to the incumbent LEC's NID can be achieved in a technically feasible manner.

MCI originally requested the ability to connect directly to GTEFL's NID, but has now agreed to a NID-to-NID arrangement, as set forth by the FCC. AT&T, however, is requesting the ability to directly connect to GTEFL's NID. GTEFL witness Hartshorn states that GTEFL will allow AT&T and MCI to connect their loops directly to GTEFL's NID, provided that such interconnection does not adversely affect the reliability and security of GTEFL's network, that GTEFL recovers all costs associated with unbundling its NID, and that GTEFL receives "just and reasonable" compensation from AT&T and MCI for the unbundled NID.

Upon consideration of the evidence, we find that GTEFL should allow AT&T and MCI to directly connect to its NID, where spare capacity is available. GTEFL's loop will still be connected to the NID and thus will be properly grounded and secure. We are concerned, however, over the lack of safety code guidelines for

NIDs that have no spare capacity. Therefore, in instances where spare capacity does not exist, we find that AT&T and MCI should adhere to the FCC rules concerning a NID-to-NID arrangement until such time as the appropriate guidelines are developed and incorporated within the National Electric Safety Code.

Loop Distribution, Loop Concentrator/Multiplexer, Loop Feeder

The local loop facility provides a transmission path from the local end user's premises to the local switch. In addition to requesting access to the local loop facility as a whole, AT&T also requests the subloop elements on a unbundled basis. The subloop elements consist of the loop distribution, the loop concentrator/multiplexer, and the loop feeder. MCI requests that GTEFL unbundle the loop distribution where there is an existing cross-connect in GTEFL's network.

AT&T witness Crafton and MCI witness Powers assert that the unbundling of loop distribution is required in instances where their companies deploy local fiber rings and their own switches, but do not own the facilities to span the "last mile" to the customers' premises. AT&T states that it could use fiber rings to transport traffic between its central office and GTEFL's loop distribution, along with a loop concentrator/multiplexer to transfer traffic from its central office to the customer's premises. AT&T witness Crafton also states that if the loop concentrator/multiplexer is located in the building in which the traffic is being transmitted (e.g., office buildings), the use of GTEFL's loop concentrator/multiplexer and loop distribution plant is generally the most efficient way for AT&T to reach individual customers. MCI witness Powers contends that the unbundling of loop distribution facilities would encourage more rapid development of facilities-based competition.

AT&T witness Crafton asserts that the unbundling of the loop concentrator/multiplexer will effectively allow AT&T to purchase only the specific functions required to provide local services to consumers. AT&T also asserts that GTEFL should unbundle the loop feeder to allow AT&T to gain access to its customers in situations where it has deployed its own distribution plant or has purchased that functionality from another vendor, but will continue to use GTEFL's feeder capabilities to transport traffic to and from GTEFL's central office.

GTEFL witness Hartshorn states that GTEFL agrees to provide loop distribution, loop feeder, and loop concentrator/multiplexer as unbundled elements on an individual case-by-case basis, provided

that AT&T notifies GTEFL when it intends to deploy any service-enhancing copper cable technology, and if so, certifies that such technology will not interfere with GTEFL's existing or future technology within a given cable sheath or other GTEFL facility. Witness Hartshorn states that AT&T must also pay all the costs associated with unbundling the loop from the switch, including the costs of testing AT&T's technology and the costs of any loop conditioning.

GTEFL states that a case-by-case approach is needed because there is no standard network configuration; therefore, the technical feasibility of such unbundling depends on the manner in which each particular loop is configured. GTEFL witness Hartshorn claims that in order to unbundle loops at central offices that use integrated digital loop concentrators (IDLCs), GTEFL would need to install channel boxes, which would cost millions of dollars. Although AT&T witness Crafton acknowledged this problem and noted various ways to unbundle IDLCs, AT&T asserts that the costs of unbundling IDLC loops are driven by the frequency with which these systems have been deployed and by how often new entrants find it cost effective to use unbundled loops. GTEFL states that while there may be more cost-effective methods of provisioning the unbundled loops, AT&T must notify GTEFL of the specific central offices or specific loops it wishes to unbundle, and the parties must discuss the feasibility of the request.

GTEFL also contends that the integrity of the network would be at risk if AT&T and other carriers were given unrestricted access to GTEFL's cross-connection locations in order to connect and disconnect their facilities. AT&T believes, however, that reasonable reporting procedures could be developed that would protect the network from harm and would not unfairly restrict the use of unbundled elements. MCI contends that its willingness to have all work at the cross-connection point performed for MCI by GTEFL personnel should alleviate GTEFL's security or reliability concerns.

While MCI and AT&T agree that a case-by-case approach would be appropriate in some circumstances, AT&T witness Crafton states that the parties have not come to an agreeable Bona Fide Request Process procedure that would require GTEFL to respond within a set time to good faith requests. In addition, MCI's witness asserts that there is no reason to require case-by-case analysis of unbundled loop distribution where MCI is only requesting interconnection at existing cross-connection points.

The FCC defines the local loop network element as a transmission facility between a distribution frame (or its

equivalent) in an incumbent LEC central office and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog voice-grade loops and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals. While GTEFL argues that it is not technically feasible to unbundle loops at central offices that use IDLCs, the FCC order specifically found that it is technically feasible to unbundle IDLC-delivered loops. The FCC concluded that:

> ... incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. IDLC technology allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. FCC Order No. 96-325, at ¶ 383.
>
> We find that it is technically feasible to unbundle IDLC-delivered loops. One way to unbundle an individual loop from an IDLC is to use a demultiplexer to separate the unbundled loop(s) prior to connecting the remaining loops to the switch. ... Again, the costs associated with these mechanisms will be recovered from requesting carriers. (FCC 96-325, ¶384)

We note that the FCC's definition of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such a request does not affect whether satisfying such a request is technically feasible. See 47 C.F.R. § 51.5.

The FCC also addressed subloop unbundling by stating that subloop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient. The FCC noted that several LECs and USTA had asserted that incumbent LECs would need to create

databases for identifying, provisioning, and billing for subloop elements and that there was insufficient space at certain possible subloop interconnection points. The FCC stated that these concerns were not, however, "technical" considerations under its interpretation of the term "technically feasible". FCC Order No. 96-325, at ¶ 390.

We note that the FCC declined to make a determination on subloop unbundling, because proponents did not address certain LEC concerns, such as access by competitors' personnel to incumbent LEC equipment, which raised network reliability issues. See FCC Order No. 96-325, at ¶ 391.

Upon consideration of the evidence, we find that MCI's proposal for unbundling loop distribution and AT&T's proposal for unbundling loop distribution, loop concentrator/multiplexer, and loop feeder are technically feasible. While GTEFL may incur additional costs in providing certain network configurations, such as unbundling with IDLCs, the FCC has determined that costs are not relevant to the issue of technical feasibility. Therefore, we hold that GTEFL shall unbundle loop distribution (including at the IDLC as requested by AT&T), loop concentrator/multiplexer (AT&T only), and loop feeder (AT&T only).

Local Switching

The FCC determined that incumbent LECs must provide local switching as an unbundled network element. Section 51.319(c)(1)(i) of the FCC rules defines the local switching network element to encompass:

> (A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;
>
> (B) trunk-side facilities which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a trunk card; and
>
> (C) all features, functions, and capabilities of the switch which include, but are not limited to:
>
> > (1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to

> trunks, as well as, the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and
>
> (2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signalling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

GTEFL states that it will unbundle the port, which does not include all the vertical features in the switch. GTEFL asserts that through the port, AT&T and MCI can obtain access to both the local switching capability of GTEFL's switch and the capability to route calls from the trunk side of the switch (e.g., switched access, toll, E-911, directory service). GTEFL believes this access is sufficient to allow the ALECs to effectively compete in the local market. In addition, GTEFL asserts that the local switching element includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized functions.

AT&T asserts that GTEFL has an incorrect understanding of local switching as an unbundled network element. AT&T argues in its brief that local switching is an independent network element, which is separate from the other elements that GTEFL claims must be attached to local switching. AT&T argues that the inclusion of other features and capabilities would require AT&T to purchase more services than it actually requires. AT&T states that GTEFL should also provide the port offering and not just local switching, because it is not technically feasible for GTEFL's local switch to route calls to AT&T operator systems, transport facilities, and other AT&T facilities.

GTEFL states that its switches cannot perform customized routing. More specifically, though, GTEFL witness Hartshorn states that GTEFL's switches lack the capacity to perform customized routing. He does not state that GTEFL's switches lack the capability to perform customized routing. We address this issue later in this order.

Upon consideration, we find that the FCC specifically required the unbundling of local switching. Therefore we find that GTEFL shall be required to provide local switching as an unbundled network element, as contemplated by the FCC.

Operator Systems, DA Service, 911 Service

The FCC determined that incumbent LECs must provide access to operator services and directory assistance facilities where technically feasible. See 47 C.F.R. § 51.319(g).

In its rules, the FCC defined operator services and directory assistance as follows:

> 'Operator services' are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Such services include, but are not limited to, busy line verification, emergency interrupt, and operator-assisted directory assistance services.
>
> 'Directory assistance service' includes, but is not limited to, making available to customers, upon request, information contained in directory listings. 47 C.F.R. § 51.5.

The FCC determined in its Order that the incumbent LEC must offer operator service and directory service as unbundled elements:

> We conclude that incumbent LECs are under the same duty to permit competing carriers nondiscriminatory access to operator services and directory assistance facilities as all LECs are under section 251(b)(3). We further conclude that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with nondiscriminatory access to such facilities and functionalities at any technically feasible point. We believe that these facilities and functionalities are important to facilitate competition in the local exchange market. Further, the 1996 Act imposes upon BOCs, as a condition of entry into in-region interLATA services the duty to

> provide nondiscriminatory access to directory assistance services and operator call completion services. We therefore conclude that unbundling facilities and functionalities providing operator services and directory assistance is consistent with the intent of Congress. FCC Order No. 96-325, at ¶ 534.

MCI and AT&T request that GTEFL provide operator services, directory assistance service, and 911 service as unbundled network elements. MCI's witness contends that access to operator systems and directory assistance are essential components of basic telephone service. AT&T's witness asserts that the unbundling of these elements will benefit consumers by allowing AT&T to create new services.

GTEFL claims that, because operator systems include many different components to which ALECs might request access, it is difficult to determine whether unbundling operator systems may be feasible. GTEFL believes that requests should be handled on a case-by-case basis. While GTEFL does not believe that directory assistance service is a network element, GTEFL's witness states that GTEFL will offer its tariffed operator and directory assistance services at the same rates as its corresponding retail offerings. GTEFL asserts that no wholesale discount is warranted because these activities require GTEFL to perform the same activities at both the wholesale and retail levels. While GTEFL also contends that 911 service is not a network element, GTEFL states there are no outstanding issues regarding 911 service and GTEFL will provide the service. GTEFL also states that MCI and GTEFL have agreed on language for 911 service in an interim contract.

In addition to a general obligation to provide unbundled access to directory assistance and operator facilities and functionalities stated above, the FCC went further to include additional obligations:

> We find that unbundling both the facilities and functionalities providing operator services and directory assistance as separate network elements will be beneficial to competition and will aid the ability of competing provider to differentiate their service from the incumbent LECs. We also note that the Illinois Commission has recently ordered such access. We therefore find that incumbent LECs must unbundle the facilities

> and functionalities providing operator services and directory assistance from resold services and to other unbundled network elements to the extent technically feasible. (FCC 96-325, ¶536)

Multiplexing/Digital Cross-Connect/Channelization

The FCC stated that incumbent LECs must provide requesting carriers with access to digital cross-connect system functionality. The FCC also required incumbent LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services. MCI requests that GTEFL provide digital cross-connection and multiplexing either in conjunction with transport facilities or separately, so that MCI can then provide its own transport facilities or use the facilities supplied by other parties. GTEFL states that it will provide ALECs digital cross-connection functionality as it does today for IXCs. Upon consideration, we approve GTE's agreement to provide access to digital cross-connect system functionality, and we require GTE to provide the access consistent with the FCC's rules and order.

Dedicated Transport and Common Transport

The FCC considers dedicated transport and common transport to be interoffice transmission facilities. The FCC has determined that they are to be offered as unbundled network elements. FCC rule 51.319 defines these elements as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

AT&T and MCI request that GTEFL provide dedicated transport and common transport as unbundled network elements. GTEFL states that it will provide dedicated transport and common transport to AT&T and MCI. We approve GTEFL's agreement to provide dedicated transport and common transport, and we require GTEFL to provide them as unbundled elements consistent with the FCC's rules and order.

Tandem Switching

The FCC determined that incumbent LECs must provide tandem switching as an unbundled element. The FCC's rules define the tandem switching network element as:

> (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;
>
> (ii) the basic switching function of connecting trunks to trunks; and
>
> (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signalling conversion features. 47 C.F.R. § 51.319(c)(2).

GTEFL's witness states that GTEFL only has one tandem switch in Florida. GTEFL and AT&T agree that tandem switching should not be an issue in this proceeding. GTEFL adds, however, that if tandem to tandem switching were required, GTEFL would have to resolve issues related to billing data prior to providing tandem switching.

AIN Capabilities, Signaling Link Transport, Signal Transfer Points and Service Control Points/Database

Signaling systems assist in routing telephone calls between switches. Most LECs employ signaling networks that are physically separate from their voice networks, and these "out-of-band" signaling networks simultaneously carry signaling messages for multiple calls. In general, most LECs' signaling networks adhere to a Bellcore standard Signaling System 7 (SS7) protocol.

SS7 networks use signaling links to transmit routing messages between switches, and between switches and call-related databases. A typical SS7 network includes a signaling link, which transmits signaling information in packets, from a local switch to a high capacity packet switch called the signaling transfer point (STP). The STP switches packets onto other links according to the address information contained in the packet. These additional links extend to other switches, databases, and STPs in the LEC's network. A switch routing a call to another switch will initiate a series of signaling messages via signaling links through an STP

to establish a call path on the voice network between the switches. (FCC 96-325, ¶456)

Interconnection with an SS7 network occurs at the signalling transfer point (STP), which was designed to be the entry point to an SS7 network and to provide access to all SS7 functions. GTEFL contends that the STP is the only physical point that interconnection is technically feasible. GTEFL witness Morris asserts that AT&T and MCI can gain access to the SCPs and associated databases by interconnecting at the STP. AT&T witness Crafton testified that AT&T realizes that access to either a switch or to a SCP database in the SS7 network can only occur through an STP.

AT&T requests that GTEFL unbundle its signaling network elements and provide unmediated, or unprotected, access to AIN triggers. While MCI requests access to GTEFL's SS7 network elements, MCI does not seek unmediated access. AT&T contends that GTEFL refuses to unbundle its access to its AIN triggers so that AT&T cannot achieve parity in the creation and offering of AIN-based services.

GTEFL's witness contends that providing unmediated access to AIN is not technically feasible until standards are developed permitting proper mediation. AT&T does not believe mediation is necessary, because safeguards are already built into the SS7 network. GTEFL's witness states as an alternative that GTEFL will work with AT&T to develop and test AIN services that will execute on GTEFL's platforms, thus permitting AT&T "virtual" access to AIN capabilities.

GTEFL states that the FCC expressly precluded direct access to AIN triggers in the switch. GTEFL refers to FCC Order No. 96-325 at ¶ 488:

> Although we conclude that access to incumbent AIN SCPs is technically feasible, we agree with BellSouth that such access may present the need for mediation mechanisms to, among other things, protect data in incumbent AIN SCPs and ensure against excessive traffic volumes. In addition, there may be mediation issues a competing carrier will need to address before requesting such access. Accordingly, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the

service. Witness Hartshorn maintains that GTEFL does not use dark fiber in its network. Dark fiber must be "lit" to be used; therefore GTEFL concludes that dark fiber does not meet the statutory definition of a network element.

AT&T asserts that dark fiber is a network element because it is a facility or equipment used in the provision of telecommunications service. AT&T maintains that because the dark fiber is not currently in use does not change its character, which is to provide telecommunications service. AT&T witness Crafton asserts that without the ability to lease dark fiber AT&T will face yet another capital investment barrier to developing its own network.

MCI acknowledges that dark fiber is not used to provide telecommunications service. MCI witness Powers echoes AT&T's concerns and states that, without the ability to purchase dark fiber, MCI's only choices will be to place its own facilities in the ground or purchase transport services from GTEFL. MCI witness Powers adds that having to purchase GTEFL's existing services forces MCI to be held captive to GTEFL's technology, rather than being allowed to deploy new, more efficient technologies that are consistent across geographic locations.

Upon consideration of the evidence, we find that dark fiber shall not be classified as a network element, as defined by the Act, because it is not used in the provision of a telecommunications service. Therefore, neither the unbundled access provisions in Section 251, nor the associated arbitration and pricing provisions in Section 252 of the Act apply. GTEFL shall not be required to provide dark fiber as an unbundled element, except under the limited circumstance we now describe.

AT&T argues that GTEFL has already agreed to provide dark fiber to Metropolitan Fiber Systems of Florida, Inc. (MFS). AT&T refers to the agreement between GTEFL and MFS that was filed August 27, 1996, and approved under Section 252(e) of the Act at our November 12, 1996, Agenda Conference. At the hearing, we took official recognition of this decision memorialized in Commission Order No. PSC-96-1401-FOF-TP, issued November 20, 1996. Specifically, AT&T cites to paragraph III.C. of the GTEFL/MFS order which reads:

> In extending network interconnection facilities to the D-NIP, MFS shall have the right to extend its own facilities or lease dark fiber facilities (if available) or digital transport facilities from GTEFL or

> from any 3rd-party, subject to the following terms:
>
> 1. Such leased facilities shall extend from any point designated by MFS on its own network (including a co-location facility maintained by MFS at a GTEFL wire center) to the D-NIP or associated manhole or other appropriate junction point.
>
> 2. Where MFS leases such facilities from GTEFL, MFS shall have the right to lease under non-discriminatory tariff or contract terms from GTEFL.

MFS uses the acronym "D-NIP" to mean a Designated Network Interconnection Point. The GTEFL-MFS agreement is very specific in that dark fiber facilities may be leased for interconnection at the D-NIP. This provision does not allow MFS to lease dark fiber for the purpose of creating its own network as proposed by AT&T and MCI; this is a narrower and specific use of dark fiber for the provision of interconnection. The FCC defines "interconnection" as "the linking of two networks for the mutual exchange of traffic". This term does not include the transport and termination of traffic. See 47 C.F.R. § 51.5.

Since GTEFL has negotiated an agreement with MFS for the use of dark fiber for this limited purpose, § 252(i) of the Act requires GTEFL to offer the same terms and conditions to AT&T and MCI. Section 252(i) states:

> AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS. - A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreements. 47 U.S.C. § 252(i).

We note that the Eighth Circuit stayed Section 51.809 of the FCC's rules regarding Section 252(i). The Court said:

> Here again, price becomes a key issue. When the FCC promulgated its rule, it expanded the statutory language of §252(i) to include

> rates, terms, and conditions." Id. 47 C.F.R. § 51.809 (emphasis added). The petitioner's objection is that the rule would permit the carriers seeking entry into a local market to "pick and choose" the lowest-priced individual elements and services they need from among all of the prior approved agreements between that LEC and other carrier, taking one element and its price from one agreement and another element and its price from a different approved agreement.
> Iowa Utilities Board v. FCC, Case Nos. 96-3321, *et seq.*, p. 12 (8th Cir., October 15, 1996).

We do not need to address whether 252(i) includes prices in this case. We only determine here that since GTEFL has agreed to allow MFS to lease dark fiber for the specific purpose in their agreement, we find that 47 U.S.C. § 252(i) requires GTEFL to also make dark fiber available to AT&T and MCI under the same terms and conditions. We further find that GTEFL shall be required to lease dark fiber to AT&T and MCI only for interconnection purposes, under the same terms and conditions as those in GTEFL's agreement with MFS, which is memorialized in Commission Order No. PSC-96-1401-FOF-TP.

D. Rates for Network Elements

Section 252(d), contains the pricing standards for unbundled network elements. Section 252(d)(1) states:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be-
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit.

In conformance with this section of the Act, we find that the appropriate cost methodology to determine the prices for unbundled elements is an approximation of TSLRIC. We note that we adopted TSLRIC as the appropriate cost methodology for unbundled elements in our state proceeding in Docket No. 950985-TP, by Order No. PSC-96-0811-FOF-TP, issued June 24, 1996.

We also find that the Act can be interpreted to allow geographic deaveraging of unbundled elements, but we do not believe it can be interpreted to require geographic deaveraging. We further find that the record in this proceeding does not support a decision to geographically deaverage the price for unbundled elements, because the record does not contain sufficient cost evidence.

TELRIC, TSLRIC, and LRIC

The FCC defines Total Element Long Run Incremental Cost (TELRIC) as:

> the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.

In addition, the Rules provide:

> (1) *Efficient network configuration*. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.
>
> (2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.
>
> (3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates. (FCC Rules, 47 C.F.R. 51.505(b)

The FCC states that prices should be based on the TSLRIC of the network element, which will be called the Total Element Long Run Incremental Cost (TELRIC), and will include a reasonable allocation of forward-looking joint and common costs. See FCC Order 96-325 at ¶ 672. Further, Rule 51.505(a) provides:

> In general. The forward-looking economic cost of an element equals the sum of: (1) the total element long run incremental cost of the element, as described in paragraph (b); and (2) a reasonable allocation of forward-looking common costs, as described in paragraph (c).

AT&T witness Kaserman states that the relevant cost to which prices should be equated is TSLRIC. Witness Kaserman explains that TSLRIC:

> measures the total incremental cost incurred in the long run that is caused by the addition (or deletion) of a service or element from an existing set of services or elements. Technically, the prices are set equal to the TSLRIC (which is a total dollar amount) divided by the number of units to be sold, so that prices are stated as dollars per unit.

Witness Kaserman further explains why TSLRIC is the theoretically correct basis for pricing unbundled network elements:

> First, TSLRIC is an incremental cost. As a result, socially optimal purchase and entry decisions will be fostered with prices set at this level. Second, TSLRIC is long-run in nature. Because the decision to enter a market is, by definition, a long-run decision, TSLRIC prices will send economically correct signals to potential entrants. Third, TSLRIC is an economic cost. As such, it includes a normal (competitive) profit on the capital that is invested to provide the relevant service or element. And fourth, the concept applies to total service costs, which means that all costs that can be causally attributed to production of the product in question are incorporated in these prices. Thus, TSLRIC prices for interconnection services and unbundled network elements are subsidy-free and economically efficient. Such prices will

promote efficient and sustainable competition in local exchange markets.

Upon consideration, we define TSLRIC as the costs to the firm, both volume sensitive and volume insensitive, that will be avoided by discontinuing, or incurred by offering, an entire product or service, holding all other products or services offered by the firm constant. This definition should not be construed as requiring or assuming that the firm would reoptimize its input mix and facilities when a service is added to (or removed from) the existing product mix. That is, TSLRIC, should not disregard the current network structure.

Theoretically, there should not be a substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element. In fact, the FCC states that, "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term "total element long run incremental cost" (TELRIC) to describe our version of this methodology." See FCC Order 96-325 at ¶ 678. It should be noted however that the methodology the FCC uses to implement TELRIC would not necessarily be used by this Commission in determining TSLRIC costs. For example, the FCC's TELRIC definition uses a scorched node approach, whereas we have used in our state proceedings a TSLRIC approach using efficient technology. The difference between these methodologies is that the scorched node only considers the current location of central offices, and not the existing technology or physical architecture deployed by the carrier in either the central office or outside plant. The TSLRIC based forward-looking approach considers the current architecture and the future replacement technology.

Cost Studies

The cost information presented by the parties consists of two types of cost studies. AT&T and MCI recommend that we use the results of the Hatfield Study. AT&T and MCI claim that the Hatfield Model provides results that are consistent with the FCC's TELRIC pricing standard. GTEFL provided TELRIC and TSLRIC cost studies for unbundled network elements.

Hatfield Model Study

The Hatfield Model was developed by Hatfield and Associates, Inc. at the request of AT&T and MCI. The model has been updated several times since its inception. The version used in this proceeding is version 2.2 release 2. The model was designed to

estimate the TELRIC costs of the unbundled network elements and to estimate the cost of basic local exchange telephone service. The Hatfield Model is a "scorched node" model, in that it assumes all network facilities would be designed and built from scratch, constrained only by the current location of central offices. The developers purport that the model develops forward-looking network investments and costs for unbundled network elements and basic local exchange service. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area.

According to MCI witness Wood, the Hatfield Model contains six functional modules that contain the information and methodology used to calculate estimated plant investment and expenses. They are the line converter, data, loop, wire center, convergence and expense modules.

A primary data source used by the Model is the BCM-PLUS input data file. The BCM-PLUS input data file is used within the Hatfield Model as the first step in developing the investment level associated with the feeder and distribution elements of the local loop. This file contains 1995 estimates of households per Census Block Group (CBG), data regarding the size of each CBG, and other CBG-specific data. The Hatfield Model adjusts the household data, converting it to access lines and accounting for multi-line residences, business, payphone and special access lines. BCM-PLUS was derived from part of the Benchmark Cost Model (the BCM1 version) which was developed by US WEST, NYNEX, MCI and Sprint.

GTEFL raises several criticisms of the results generated by the model. GTEFL witness Duncan co-authored a paper entitled the "Economic Evaluation of Version 2.2 of the Hatfield Model." He submitted a revised version of his evaluation at the hearing.

Witness Duncan claims that the Hatfield Model is fundamentally flawed, and its shortcomings fall into two areas: first, that the model has never been directly empirically validated; and second, that the model fails direct internal consistency checks of its validity. In addition, witness Duncan states that:

> the Hatfield Model does not provide reasonable estimates of the costs of local exchange company (LEC) network elements, either for LECs in general or any particular LEC, because the model (1) departs from fundamental economics in a number of significant ways, (2) contains a number of inaccuracies in execution that depart from reality, (3) produces results

> that are inconsistent with what can actually be observed, and (4) implies a fantasy version of both regulation and functioning markets.

Witness Duncan's criticisms from his paper include: 1) The model is based on static notions of cost rather than the dynamic notions that are relevant to regulations that seek to emulate the workings of dynamic competitive markets; 2) There is no attempt at empirical validation of the model or its predictions; 3) Its predictions fail explicit internal consistency requirements that are a necessary feature of structures capable of representing the minimum cost of producing telecommunications services using the most efficient forward-looking technology; 4) Its predictions do not agree with other industry models that are based on firm specific data; 5) The assumption that all volumes currently served by local exchange carriers will be served by a brand new entrant that instantly materializes is inconsistent with both reality and sound economics. Accordingly, costs based on such a model will not be representative of the costs incumbent LECs incur providing services and unbundled networks component; and 6) The inputs (e.g., central office equipment prices) are consistently lower than what local exchange companies actually pay.

GTEFL asserts in its brief that it would be a legal error for the Commission to rely on the Hatfield model to establish network element prices. GTEFL argues that the Hatfield model is based on unreliable and unverifiable assumptions, formulas, and calculations; that it has not been validated by its proponents; and that the model's inputs are not based on GTEFL's Florida market. GTEFL urges that we decline to consider the Hatfield model, all testimony related to it and all prices based upon it.

We note that GTEFL did not object during the hearing to the admission of any testimony and exhibits regarding the Hatfield model on reliability or any other grounds. GTEFL cannot argue now that the evidence should not be considered.

AT&T and MCI witness Wood states that the model is not intended to determine the costs of a LEC's embedded network. He testified that the Hatfield model uses least cost forward-looking technology currently available in the market place, which is also known as the scorched node model. The scorched node model builds a theoretically efficient network based solely on a LEC's existing switch locations. Witness Duncan criticizes the model's method of assigning CBGs to the closest wire centers. Witness Duncan explains that the BCM component assigns large percentages of households to the wrong wire center. Witness Duncan states that Hatfield proponents argue that the BCM component assigns households

more efficiently than the LEC has. Witness Duncan refutes this claim by stating that the BCM component ignores real world physical barriers such as hills, lakes, and rivers between a CBG and its closest central office. The result is that the Hatfield Model calculates shorter cable routes per CBG, and therefore underestimates the cost.

The record reflects that the Hatfield model does not use only GTEFL or Florida-specific input data. The model incorporates publicly available data from areas throughout the country. During cross-examination, witness Wood explained that economic depreciation lives used were determined in a Bell Atlantic Maryland proceeding, and an average drop wire investment amount was taken from a 1993 New Hampshire study.

There are two assumptions built into the model that had fairly significant impacts on the total cost of a loop. First, the Hatfield Model incorporates a default value of .700 for a "Forward-Looking Network Operations Factor." According to MCI witness Wood, this factor reduces network operations expense amounts initially computed in the model by 30%, assuming that over time an efficient firm would be able to achieve such a reduction relative to historic expense levels. During cross-examination, witness Wood acknowledged that Network Operations Expenses actually consists of five subaccounts. One of these subaccounts is Power, which relates to expenses associated with electricity required to power the telecommunications network; another subaccount pertains to testing expense. During cross examination witness Wood did not fully agree that the application of the forward-looking network operations factor effectively assumes that an efficient LEC will be able to reduce expenses for power and testing by 30%. However, he did agree that without this assumption of efficiency, the Hatfield model computes total loop costs $0.62 higher than those sponsored by MCI and AT&T.

Second, the Hatfield Model has built into it a "structure sharing factor." Structures include the costs of trenching, conduit, and telephone poles, which are associated with the installation of buried, underground, and aerial cable, respectively. The model assumes that supporting structures will be "shared" with other firms, typically a cable company and an electric utility. In order for the costs of trenching to be shared, a LEC would need to coordinate its efforts with such other utilities. During cross examination, witness Wood acknowledged that he did not know what percentage of GTEFL's conduits and telephone poles are shared by other kinds of providers. The default values for the structure sharing factors in the Hatfield model are set at .33; the effect of applying these .33 values is to

exclude two thirds of the investment in supporting structures initially computed from the final cost outputs. By setting these values to 1.0, which attributes 100% to the LEC, total loop costs derived by the model increased by $3.90.

We find the cumulative impact of the above two adjustments results in an increase to the Hatfield estimated total loop costs of $4.52 per line per month. These adjustments result in a total increase in costs of 40%. The Hatfield loop cost for all GTEFL loops as submitted by MCI and AT&T is $11.44.

Upon consideration of the evidence, we find that the Hatfield Model does not produce estimated costs which are representative of the costs of GTEFL's network in Florida. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area. The Hatfield model is extremely complex and our efforts in thoroughly evaluating the model were impeded by the presence of numerous locked cells in the spreadsheets. Moreover, as demonstrated above, our review leads us to conclude that the Hatfield Model appears to understate costs. Accordingly, we will not set permanent rates based on Hatfield results.

GTEFL's TELRIC and TSLRIC Cost Studies

GTEFL submitted TELRIC and TSLRIC cost studies for unbundled network elements in this proceeding. GTEFL's witness Sibley defines TSLRIC as a measure of the total incremental cost incurred in the long run that is caused by the addition or deletion of a service from an existing set of services. Witness Sibley notes ten problems that he claims exist when unbundled network elements are priced at TSLRIC. They are: 1) TSLRIC pricing does not reflect the firm's total direct costs; 2) TSLRIC pricing does not reflect the firm's economic costs; 3) TSLRIC pricing is not competitive pricing; 4) TSLRIC pricing promotes free riding by competitors; 5) TSLRIC pricing subsidizes entrants; 6) TSLRIC pricing does not take into account the shifts in costs from attributable costs to joint and common costs due to unbundling, thus creating incentives for excessive and economically inefficient unbundling; 7) TSLRIC pricing fails to include joint and common cost increases that are due to unbundling; 8 TSLRIC pricing creates incentives for the incumbent to reduce its joint and common or shared costs; 9) TSLRIC pricing lacks dynamic pricing flexibility and creates incumbent burdens; 10) TSLRIC pricing is discriminatory.

Witness Sibley argues that unbundled element rates should be based on GTEFL's proposed pricing methodology, the Market-Determined Efficient Component Pricing Rule (M-ECPR). He states

that a M-ECPR price is equal to the TELRIC of the network element plus the opportunity cost to the owner of that element of leasing it to someone else. Witness Sibley states that the M-ECPR is a method for determining the common costs to be allocated when pricing unbundled network elements. Witness Sibley further defines an M-ECPR price for an unbundled network element as being:

> equal to the sum of its TELRIC plus its opportunity cost, as constrained by market forces. Opportunity costs refers to the net return that an unbundled network element will bring GTEFL if it is not sold at wholesale to a competitor. [SIC]

AT&T witness Kaserman states that the M-ECPR is a modified version of the Efficient Component Pricing Rule (ECPR) that was rejected by the FCC, yet still contains many of the same flaws. Witness Kaserman states:

> Dr. Sibley's proposal modifies the previous version by capping the opportunity costs component by a market constraint representing alternative competitive supply prices or stand alone costs. This modification eliminates only the most egregious outcomes in the practical application of this rule. The basic flaws still remain.

Witness Kaserman states further:

> Although Dr. Sibley proposes a modified form of this rule, his suggestion does not represent any improvement over the previously rejected version when one takes account of the very large "common costs" he suggests apply in this case. Dr. Sibley argues for over three quarters of a billion dollars in common costs and further suggests that, due to competitive supply in switches, these costs will be assigned primarily to loops. This renders competitive entry nearly impossible. Using Dr. Sibley's methodology, the stand alone costs of loops and some UNEs will be prohibitive. Consequently, Dr. Sibley's application of the ECPR will amount to monopoly pricing. [SIC]

The record contains other evidence that the M-ECPR results in excessive contribution over costs. During cross examination witness Trimble acknowledged proposed markups of 42%, 1129%, and 3107% on 2-wire local loop costs, transport and facility per mile costs, and DS1 facility per airline mile costs, respectively. Witness Trimble also admitted that up to the price ceiling constrained by stand-alone costs, the M-ECPR would produce a rate where GTEFL would be indifferent to providing the service at retail itself, or selling the network elements to a competitor. Relative to this indifference produced by the ECPR, this Commission has already stated:

> A competitive market does not thrive on indifference. If a LEC is rendered indifferent by virtue of the pricing of its services as to whether it serves the customer or not, the reason for establishing competition is eliminated. There is no longer any incentive for the LEC to seek to attract customers, and the market is no longer driven by competition...Therefore, we do not agree with GTEFL that ECP is an appropriate approach to determining prices. Order No. PSC-96-0811-FOF-TP, p.17

GTEFL argues that the M-ECPR bases prices on forward-looking costs, promotes competition and, when combined with a competitively neutral end-user charge, satisfies the Act's requirement that the ILEC be allowed to earn a "reasonable profit."

Upon consideration, we view GTEFL's pricing methodology as a means of protecting its current revenue stream. We believe rates should be set to foster competition as opposed to guaranteeing monopoly revenues. Therefore, based on the excessively large markups on GTEFL's proposed rates shown in the record and this Commission's prior rejection of the ECPR, which we are not persuaded to change, we will reject GTEFL's proposed M-ECPR to generate rates for unbundled network elements in this proceeding.

As stated earlier, GTEFL provided cost studies that contain both TSLRIC and TELRIC costs for unbundled network elements. GTEFL witness Trimble proposes its TELRIC costs as the price floor and an "upper bound" loop price as the price ceiling for unbundled loops. GTEFL states that its cost model calculates both volume-sensitive and volume-insensitive costs as necessary to develop TSLRIC costs.

GTEFL used two types of cost models to develop costs. One is the COSTMOD model, which is GTEFL's own model, and the other is the

Switching Cost Information System (SCIS), which GTEFL received under license agreement with BellCore. Witness Steele claims that the COSTMOD model has been validated and is accurate within several points. He states that BellCore validated the SCIS model to be accurate within 2%. During cross examination, witness Steele stated that GTEFL used a return on equity of 12.2%, with a composite rate of return of 10.4% in its cost calculations.

Having reviewed GTEFL's cost studies and, based on the evidence in this record, we believe that GTEFL's cost studies are appropriate because they approximate TSLRIC cost studies and reflect GTEFL's efficient forward-looking costs. We believe the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the assumptions appear reasonable. For those elements not covered by the cost studies, GTEFL shall provide TSLRIC cost studies 60 days after the issuance of the Order. They are Operator Systems, Directory Assistance Service, 911 Service, AIN Capabilities, Operations Support Systems, Loop Feeder, Loop Distribution and 4-wire analog port. For Loop Distribution and Loop Feeder, we have set interim rates based on an increase to the Hatfield study results.

Notwithstanding the above, we are concerned with the level of costs provided in GTEFL's cost studies for 2-wire and 4-wire loops. While the parties in this proceeding did not produce sufficient evidence to refute GTEFL's cost studies, we believe that the 2-wire and 4-wire loop cost figures are inappropriate because they include costs associated with land and buildings. Therefore, we find it appropriate to remove those costs from the rates for the 2-wire and 4-wire loops. Our approved rates for these elements are lower than GTEFL's stated TSLRIC cost. For all other unbundled elements we have set recurring and nonrecurring rates which cover GTEFL's costs and provide some contribution towards joint and common costs. See "Attachment A" Commission Approved Recurring and Nonrecurring Rates for Unbundled Network Elements.

GTEFL's Takings Argument

GTEFL contends that adopting prices below GTEFL's actual costs would be an unlawful taking. GTEFL argues that the Supreme Court has established the rule that the Takings Clause of the U.S. Constitution forbids a regulator from forcing a utility to operate a segment of its business at a loss because the firm happens to be profitable in another segment of its business. Brooks-Scanlon Co. v. Railroad Comm'n of Louisiana, 251 U.S. 396, 399 (1920). GTEFL maintains that Brooks-Scanlon, and the dozens of subsequent cases that have construed the Takings Clause, stand for the proposition that we may not force a regulated entity such as GTEFL

to provide a regulated service below cost without due compensation. GTEFL contends that this rule applies even to temporary or interim rates.

GTEFL argues that application of these well-established constitutional principles requires that GTEFL recover all of its forward-looking costs and earn a fair rate of return on its historic costs. GTEFL also argues that it must recover the following types of costs to prevent an unlawful taking: 1) incremental costs; 2) all forward-looking joint and common costs; 3) GTEFL's costs of subsidizing other services; and 4) and GTEFL's costs of unbundling and resale. GTEFL asserts that the Takings Clause also prohibits the use of overstated avoided costs, such as those that AT&T and MCI propose. GTEFL argues that neither the FCC's proxy rates nor the prices proposed by AT&T and MCI would allow GTEFL to recover fully any of these costs.

In addition, GTEFL contends that any rates we may set must allow GTEFL a reasonable return on its historic costs. Under the AT&T and MCI proposals, GTEFL recovers none of its historic or embedded costs in building the very network with which AT&T and MCI now seek interconnection. Yet, the Takings Clause requires a fair rate of return for regulated utilities on their investments. See, e.g., Duquesne Light Co. v. Barasch, 488 U.S. 299. Thus, GTEFL argues that it is entitled to recover that portion of its historic costs not yet recovered and to earn a fair rate of return on those investments. To the extent that AT&T and MCI now seek access to GTEFL's network, GTEFL asserts that the companies should have to either pay for an appropriate share of, and return on, those historic costs or GTEFL should be allowed a rate rebalancing, an end user charge, or a one-time payment which would account for the monies prudently spent by GTEFL, but which are now stranded by the transition from regulation to competition.

GTEFL also argues that if the Commission were to implement rates even temporarily below GTEFL's actual costs, the harm to GTEFL would be irreparable. GTEFL contends that if this were to happen, there could be no real "truing-up" of rates to require the ALECs to reimburse GTEFL for its lost revenue and GTEFL would lose irretrievable market share by virtue of AT&T's and MCI's entry into the market at such low rates.

GTEFL states that if the Commission chooses to impose some form of interim rates pending further review, GTEFL's proposed rates would help to ameliorate the problems inherent in applying interim rates. GTEFL contends that the Commission will find that GTEFL's proposed rates are the most accurate for services and elements that are being provided so that little or no use of a

true-up mechanism will be required. GTEFL also contends that even if the Commission completes its review of cost and price studies to find future rates slightly below those proposed by GTEFL, GTEFL proposes to refund any excess portion of the final rate.

MCI did not address GTEFL's claim. AT&T, however, contends that the Commission has already considered and rejected this argument, which was raised by GTEFL in Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996. AT&T states that we correctly concluded that the arguments raised by GTEFL in that proceeding were invalid. Thus, AT&T asserts that we should again find GTEFL's arguments invalid.

AT&T asserts that a takings claim cannot arise from the mere use of the TELRIC approach. It is the result of the methodology, and not the methodology itself, which could be the possible basis for a takings claim. AT&T points out that the Supreme Court explained in FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944), "it is not the theory but the impact of the rate order which counts." Id. at 602. The "end result" must be just and reasonable. Id. at 603. AT&T further contends that no constitutional claim can be made unless the agency's chosen rate-making methodology produces rates as a whole which are so low that they "jeopardize the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital." Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989). AT&T adds that the Supreme Court also has stated that the end result is to be measured against the company's performance as a whole. The fact that a particular element of the company's business has become unprofitable does not establish a takings claim. See Baltimore & Ohio Railroad Co. v. United States, 345 U.S. 146 (1953); Fort Smith Light & Traction Co. v. Bourland, 267 U.S. 330, 332 (1925).

In trying to prove serious financial impact, AT&T asserts that GTEFL must establish that it is the Commission's order imposing a TELRIC methodology, and not other events, which causes the serious loss that could be remedied by a takings claim. In this context, it is established that economic losses resulting from the introduction of competition do not give rise to a takings claim. The takings clause "has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces." Market St. Ry. Co. v. Railroad Comm'n of State of California, 324 U.S. 548, 567 (1945).

AT&T claims that GTEFL must show a serious economic loss based on the current value of its facilities, and not some historical value of its facilities. "[T]he due process clause has never been

held . . . to require a commission to fix rates . . . on the historical valuation of property whose history and current financial statements showed the value no longer to exist. Market St, 324 U.S. at 567. AT&T asserts that this is true even if the new methodology results in substantial revenue losses and unprofitability, because a "regulated utility has no constitutional right to a profit . . . and a company that is unable to survive without charging exploitive rates has no entitlement to such rates." Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission, 810 F. 2d 1168, 1180-1181 (D.C. Cir. 1987).

Moreover, AT&T asserts that the Act compensates GTEFL to offset any reduction of revenues and allows GTEFL to compete in other markets. AT&T claims that this type of regulatory scheme can not effect a taking because it provides GTEFL the opportunity to earn a fair return on its business overall. See Hope, 320 U.S. at 602. See also, Ruckelshaus v. Monsanto, 467 U.S. 986 (1984) and Colorado Springs Production Credit Association v. Farm Credit Administration, 967 F. 2d 648 (D.C. Cir. 1992).

AT&T argues that the only constitutional question is whether a TELRIC approach jeopardizes GTEFL's financial integrity and ability to continue to attract capital. By definition, AT&T asserts that the TELRIC approach provides GTEFL the opportunity to recover all of its forward-looking costs, including the costs of attracting capital.

Furthermore, AT&T asserts that the TELRIC approach provides GTEFL the opportunity to recover all of its forward-looking costs, including the costs of attracting capital. AT&T also argues that even if revenues generated by a different methodology could be used to assess a possible takings claim, the revenue "shortfalls" of the types at issue here are wholly unobjectionable. AT&T points out that, in contrast to TELRIC, the FCC's Part 69 revenue requirement rules for rate-base regulation reflect a backward-looking, fully distributed cost, rate-of-return methodology. AT&T states that the FCC has recognized that rates based on such historical costs have "no claim to economic rationality," because "current or anticipated costs and revenues are generally the relevant factors influencing business decisions to enter markets and price products." Further Notice of Proposed Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers, 3 FCC Rcd. 3195, 3226-27 (1988).

Finally, AT&T argues that even if a TELRIC-based pricing requirement would cause GTEFL to suffer the deep financial hardship envisioned in Hope, the end result would not necessarily amount to a taking, because determining whether rates are just and reasonable, involves a balancing of the investor and consumer

interests. Hope, 320 U.S. at 603. AT&T contends that the adoption of TELRIC-based pricing would still not constitute a taking even if it causes GTEFL to fail, if the interests of consumers in breaking up the local exchange monopolies is deemed to outweigh GTEFL's interests in preserving its viability.

As mentioned by AT&T, we have already considered and rejected this takings argument in Order No. PSC-96-0811-FOF-TP, issued in Docket No. 950984-TP, on June 24, 1996. We believe that our rationale regarding the takings issue in that Order is applicable to this instance.

Sections 251 and 252 of the Act impose certain obligations on the incumbent LECs, including the duty to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. If the parties cannot negotiate an agreement, either party may petition this Commission to arbitrate any open issues. Our determinations for just and reasonable rates for network elements are to be based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network elements, must be nondiscriminatory, and may include a reasonable profit. Most significantly, we believe the unbundled rates we have approved for GTEFL meet our obligation to ensure that the rates are not below GTEFL's costs.

We are not persuaded by GTEFL's arguments. First, Section 252(c)(1)(A) of the Act provides that just and reasonable rates shall be based on the cost of providing the network element. As discussed, basing rates on TSLRIC meets Section 252(c)(1)(A) of the Act, because TSLRIC is the cost of providing the service. Second, Section 252(c)(1)(B) provides that just and reasonable rates may, not must, include a reasonable profit. As discussed previously, TSLRIC includes recovery of the cost of capital or a reasonable profit. Finally, we note that should GTEFL experience revenue losses, there are specific procedures for relief set forth in Chapter 364, Florida Statutes.

E. Bundling of Network Elements

Section 251 (c)(3) states that the incumbent LEC has the duty to:

> provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled

> basis at any technically feasible point on rates, terms, and conditions that are just reasonable, and nondiscriminatory . . . .

This same section in the Act also states:

> An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

We interpret this to permit the rebundling of network elements in any manner AT&T or MCI chooses, including the recreation of an existing GTEFL service. Purchasing an existing retail service at wholesale rates is not the same as recreating the same type of service by combining unbundled elements. The FCC's rules are clear that a requesting telecommunications carrier can provide any telecommunications service that can be offered by means of network elements. Specifically, Section 51.307(c) provides that

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

Also, Section 51.309(a) provides that

> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner that the requesting telecommunications carrier intends.

In addition, Section 51.315(a) states that "an incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service." Finally, Section 51.315(c) specifically provides that upon request,

> an incumbent LEC shall perform the functions necessary to combine unbundled elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
>
> (1) technically feasible; and
>
> (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

In ¶333 of the Order, the FCC states:

> Additionally, carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under section 251 (c)(4) of the 1996 Act.

While the service may appear the same to an end-user, the service is clearly different to the carrier, based on how it is provisioned.

The FCC's Order, ¶ 334, states:

> If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks... It thus faces the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. (Many network elements can be used to provide a number of different services.) A carrier that resells an incumbent LEC's services does not face the same risk. This distinction in the risk borne by carriers entering local markets through resale as opposed to unbundled elements is

likely to influence the entry strategies of various potential competitors.

AT&T states that the Commission should not allow GTEFL to restrict AT&T's ability to combine unbundled network elements. AT&T witness Gillan asserts that in order for consumers to benefit from competition, carriers must be able to easily obtain and configure the unbundled elements that they will use to provide services. AT&T states that this can be done through what is typically called the "platform configuration." AT&T states that the platform configuration is the combined purchase of unbundled switching and an unbundled loop.

Witness Gillan states that the platform configuration promotes competition and benefits the consumers in a number of ways. First, the platform configuration efficiently uses the existing network to obtain switching and call termination. Second, customers can easily shift between local providers using the platform configuration because the existing exchange line does not need to be reconfigured to provide service. Third, the platform configuration solves, at least temporarily, the entry barrier presented by the absence of number portability, because the new entrant's customers continue to be served by the incumbent's switch. Finally, the platform configuration allows the new entrant to offer new and different services or combinations of services.

MCI does not address this issue directly in its testimony filed in this proceeding. It does argue the legal implications of this issue in its post-hearing brief. MCI states that Section 251(c)(3) of the Act obligates GTEFL to provide network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services. MCI points out that GTEFL only opposes the combination of an unbundled loop and unbundled local switching.

GTEFL witness McLeod asserts that AT&T and MCI should not be permitted to avoid the mandated resale pricing standards by recombining unbundled elements into a service equivalent to a wholesale offering. According to GTEFL, allowing the combination of unbundled elements into an equivalent service would render the Act's distinction between unbundled elements and wholesale services meaningless. GTEFL witness Wellemeyer states that neither Congress nor the FCC intended to encourage this sort of tariff arbitrage.

As previously stated, we believe that purchasing an existing retail service at wholesale rates is not the same as recreating the same type of service by combining unbundled elements and is supported by paragraph 334 of the FCC's Order.

We concur with the FCC's Order that purchasing a retail service at wholesale does not contain the same element of risk that recombining unbundled elements to recreate a service does. AT&T witness Gillan agrees when he says, "I'm going to distinguish resale from buying network elements. Because I think buying network elements, even when you buy all of them, is fundamentally a different environment." He also states that there is a difference in becoming a reseller and a network-based competitor. AT&T states that if you simply resell the LEC's service you do not have to develop detailed product management skills or other skills that it takes to create and offer services. Witness Gillan further states that if a new entrant becomes a network element-based company, it has to design local exchange services, price the service, and carry the risk associated with those services.

Based on the clear direction of section 251(c)(3) of the Act and the FCC's Order and rules, we find it appropriate for AT&T and MCI to combine unbundled network elements in any manner they choose, including recreating existing GTEFL services.

III. RESALE

A. Introduction

Section 251(c)(4) of the Act requires LECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This is further clarified in the FCC's Order 96-325 at ¶871. The dispute before us concerns which services are retail services.

GTEFL states that it will offer for resale all of the services currently available at retail, except those services the resale of which would undermine the competitive objectives of the Act. Thus, GTEFL agrees to offer for resale new contract service arrangements, currently tariffed AIN services, grandfathered services and discount calling plans. GTEFL's witness Wellemeyer states that GTEFL will not offer for resale below-cost services, promotional services, new AIN services, operator services and directory assistance, non-recurring charge services, public and semi-public payphone lines, and COCOT coin and coinless lines. GTEFL argues that these exceptions are permissible under the FCC Order because GTEFL has proven that they are reasonable and nondiscriminatory as required in 47 C.F.R. § 51.613(b).

AT&T argues that we should require GTEFL to offer for resale all of its retail telecommunications services at wholesale rates

without resale restrictions. AT&T's witness Sather contends that if we allow GTEFL to restrict the types of services available for resale we will stifle competition. Witness Sather states that GTEFL has a financial incentive to maintain its monopoly and limit competition by imposing restrictions on the resale of local services. Witness Sather asserts that unlike BellSouth, GTEFL does not have to satisfy the Act's fourteen point checklist in order to enter the interLATA market. He states that in fact GTEFL is already selling both local and long distance services within its regions, and has begun the joint marketing of these services in several areas. Witness Sather also asserts that because GTEFL is the sole provider of both local and long distance service, it already has a competitive advantage. Therefore, he argues, GTEFL has nothing to lose and everything to gain by denying or delaying competition in the local exchange market.

AT&T's witness Sather also contends that under the FCC Order, GTEFL may deny AT&T the right to purchase retail services for resale only if it can prove to us that the withheld services are narrowly tailored, reasonable, and non-discriminatory. See FCC Order 96-325 at ¶939. AT&T argues that GTEFL has failed to meet this burden.

AT&T's witness Kaserman states that competitive retail services will benefit consumers immediately and directly, because retail competition will reduce costs and expand service offerings. AT&T asserts that unlike a facilities-based entry, which requires substantial investment, retail-stage entry into the local market will enable competitive market forces to surface rapidly and on a widespread basis. Witness Kaserman contends that successful promotion of retail competition will provide additional benefits by paving the way for a more rapid growth of facilities-based competition, just as it did in the long distance industry.

MCI's witness Price asserts that the Act recognizes that simply removing legal barriers to entry is insufficient to allow competition to evolve. Economic barriers to entry into local telephone markets will be reduced substantially with an effective resale policy. Thus, MCI's witness Price argues, the FCC emphasized the need for resale competition in its Order. Specifically, the FCC stated:

> Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further in some areas and for some new entrants, we expect that the resale option will remain an important entry strategy

> over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks. In light of the strategic importance of resale to the development of competition, we conclude that it is especially important to promulgate national rules for use by state commissions in setting wholesale rates. . . . FCC Order 96-325 at ¶ 907.

MCI agrees with AT&T that all of the telecommunication services offered to end users must be made available to resellers at a wholesale discount. Witness Price contends that this includes Centrex, optional plans, grandfathered services, promotions and contract services.

In addition, MCI's witness Price argues that ancillary services must be made available for resale. This includes custom calling services, CLASS features, and all Centrex features. The witness acknowledges that while some of these features may not be regulated, they are telecommunications services. MCI states that if some features are not discounted, the ILECs' reseller competitors effectively will be denied the opportunity to market to a significant group of customers because the lack of a discount on these features will reduce resellers' margins to inadequate levels.

Witness Price also contends that GTEFL's position regarding the exceptions to resale do not comply with the Act. MCI argues that the Act does not permit "prohibitions" on the resale of retail telecommunications services. The "conditions or limitations" that can be imposed on a reasonable and nondiscriminatory basis, refer to limitations that constitute something less than a total prohibition on resale. MCI contends that GTEFL ignores this statutory distinction, and treats complete prohibitions on resale as simply another type of condition or limitation.

B. Services Required to be Offered for Resale

We address those services that GTEFL has refused to offer AT&T and MCI on a retail basis as set forth below.

Below-Cost Services

GTEFL's witness Wellemeyer contends that at this time GTEFL's only below cost service is local residential service, including its flat, measured, and Lifeline options. GTEFL's witness McLeod

asserts that these services receive contributions from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are priced above incremental cost. Witness McLeod argues that if GTEFL were required to offer its below cost services on a wholesale basis, then other carriers would obtain avoided cost discounts for both below-cost and above-cost services. Other carriers would be able to pocket the contributions from the above cost services that had been used to price the other services below cost. Accordingly, Witness McLeod states that it could not cover its total costs unless these services are excluded from GTEFL's wholesale offerings or are repriced to cover their costs.

GTEFL's witness Wellemeyer states that resellers do not generally want to sell only basic local service. They want to sell the entire bundle of services currently offered by GTEFL. Witness Wellemeyer stated that this fact is considered when developing the resale rates for basic exchange service. Witness Wellemeyer argues that under these circumstances GTEFL loses considerable contributions associated with any complementary services, notably intraLATA toll, and therefore these lost contributions are properly included as an opportunity cost in developing the proposed resale rates.

In its brief, GTEFL disagrees with AT&T's witness Sather and MCI's witness Price's analogies comparing resale in the local market with the development of resale in the interLATA market. GTEFL asserts that interLATA carriers were not compelled to price any of their services below cost. GTEFL's witness McLeod contends that offering below-cost services for resale would be contrary to the Act's emphasis on the ILECs' entitlement to recover their costs of providing services to the ALECs. GTEFL further argues that Section 364.161(2), Florida Statutes, requires that, in no circumstances, should flat-rate local service be resold before July 1, 1997.

GTEFL also states that it will agree to offer new contract services for resale. Witness Wellemeyer indicates, however, that pricing for these services will be established on a nondiscriminatory, individual case basis and will reflect the avoidance of any costs that would only be associated with the retail provision of the same service.

AT&T argues that the Act and its implementing regulations do not exempt services that are provided below cost from GTEFL's duty to offer any retail telecommunications service for resale at wholesale rates. In its brief, AT&T contends that the Act preempts any restrictions placed by the Florida statutes on the resale of

below-cost services because such restrictions are in direct conflict with the requirements of the Act.

AT&T's witness Sather suggests that there should be no financial impact on GTEFL as a result of reselling services, whether they are below cost or not, since the rate for wholesale is the retail rate minus avoided costs. AT&T argues that GTEFL's below-cost services are not actually below cost because they receive contributions from other services, such as intraLATA toll, access, and from vertical and discretionary services, all of which are priced above incremental cost. Thus, witness Sather concludes that GTEFL should be financially indifferent as to whether it makes a wholesale or retail transaction.

MCI also argues that GTEFL's rationale for refusing to provide residential service is based on a misreading of the FCC Order. In its brief, MCI points out that GTEFL's witness Wellemeyer stated that ". . . it is noteworthy that the FCC 'declined to limit' resale offerings to exclude below-cost services but did not prohibit a resale restriction." MCI contends that the Order from which witness Wellemeyer quoted, out of context, actually provides that below cost services must be resold. MCI argues that it is debatable whether the FCC, by rulemaking, could have limited the incumbent LECs' resale obligations where the Act did not specifically do so. MCI further contends that it is clear that we cannot order a limit on that obligation.

MCI also disagrees with GTEFL that resale should be limited because of GTEFL would be prevented from recovering its total costs if it were required to resell services that are provided below costs. MCI argues that GTEFL's inability to recover its total costs does not have any validity in light of the avoided cost pricing standard for resold services. MCI contends that as long as MCI is permitted to resell residential service only to residential customers, a cross-class selling restriction that MCI's witness Price agrees that MCI would accept, GTEFL is in neither a better nor a worse situation than it is today.

The FCC Order provides that below cost services are subject to the wholesale rate obligation under Section 251(c)(4). Specifically, the Order states:

> First, the 1996 Act applies to a "telecommunications service" and thus, by its terms, does not exclude these types of services. Given the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain

> services where the Act does not specifically do so. Second, simply because a service may be priced at below cost levels does not justify denying customers of such service the benefits of resale competition. We note that, unlike the pricing standard for unbundled elements, the resale pricing standard is not based on cost plus a reasonable profit. The resale pricing standard gives the end user the benefit of an implicit subsidy in the case of below cost service, whether the end user is served by the incumbent or by a reseller, just as it continues to take the contribution if the service is priced above cost. So long as resale of the service is generally restricted to those customers eligible to receive such service from the incumbent LEC...(FCC 96-325, ¶956)

Based on the requirements set forth in the FCC Order, which clearly provide that below cost services are subject to the wholesale rate obligation, we find that below-cost services are subject to resale, so long as resale of the service is restricted to those customers eligible to receive the service. We note that the Act may preempt Section 365.161(2), Florida Statutes, because Florida's prohibition on resale of flat-rate local service before July 1, 1996, does not appear in the Act.

Promotions and Contract Service Arrangement

GTEFL states that it will be denied the opportunity to respond to competition unless promotions and contract service arrangements are excluded from GTEFL's services offered for resale. Witness Wellemeyer contends that GTEFL should not be required to offer services such as promotions on a wholesale basis, since this would prevent GTEFL from differentiating its retail services between those of competing carriers. GTEFL argues that a competitor will be able to offer any service it wants, on any terms and conditions it wants, to attract new customers, and GTEFL needs this same flexibility to respond to competition and give its customers more choices.

Witness Wellemeyer states that GTEFL would have no incentive to develop additional promotions and other new services that would benefit customers, because AT&T would take and use them for its own marketing and economic advantage. GTEFL contends that this result is contrary to the purpose of the Act because it limits customers' choices. Witness Wellemeyer also states that GTEFL should not be

required to offer at wholesale rates those services that have no avoided retail costs. Witness Wellemeyer asserts that if all avoided costs are properly reflected in the wholesale price for the underlying service, then promotional offerings have no anti-competitive implications, regardless of the duration of the offering. Witness Wellemeyer states that GTEFL has agreed to resell future contracts at a price that reflects the costs avoided by selling at wholesale. Existing contract services however, should not be offered for resale, because the rates reflect specific terms and conditions that are unique to that contract service arrangement.

AT&T's witness Sather disputes GTEFL's contention that resale services do not include promotions and contract service arrangements because such services are sold at rates discounted from the regular retail price. Witness Sather contends that the Act requires GTEFL to offer for resale all services it "provides at retail" whether or not the services are provided at a discounted price.

MCI's and AT&T's witnesses Sather and Price state that the FCC Order requires that all promotions must be offered for resale. They point out that the wholesale discount can be applied to the ordinary retail rate, rather than the promotional rate, if the promotion is for less than 90 days and the LEC does not use successive promotions to avoid the wholesale rate obligation. MCI's witness Price further states that granting exceptions to the requirement that all services be made available at wholesale discounts may lead to abuse. MCI contends that the state commissions should be alert to this possibility and be prepared to take corrective action against ILECs that abuse the exception.

Upon consideration, we find that the FCC's Order and rules require that promotional or discounted offerings, including contract and other customer-specific offerings, shall not be excluded from resale. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if the promotions involve rates that will be in effect for no more than 90 days, and the incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

AIN Services ("In Contact" Services)

GTEFL's witness Wellemeyer states that GTEFL has agreed to resell its currently tariffed advanced intelligent network (AIN) services at a wholesale discount. Witness Wellemeyer asserts that

any manipulation of the current means of providing AIN service must consider network security and integrity concerns. Witness Wellemeyer also states that issues involving trigger access to a competing carrier's network platform and services must be resolved before GTEFL can offer access to any AIN service that might yet be developed.

AT&T contends that "in contact" services are retail services that utilize AIN triggers within GTEFL's switch to allow customized call handling, such as calls delivered to one location at specified times and to another location at a different time. AT&T's witness Sather argues that these services are required to be resold under the Act. MCI does not address AIN services.

Based on the arguments presented, we agree with AT&T that both current and future AIN services are subject to resale. These services are sold to customers who are not telecommunications carriers. Section 251(c)(4) of the Act requires incumbent LECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. There are no exceptions that would apply to the resale of AIN services.

Public and Semi-Public Pay Telephone Lines

GTEFL's witness Wellemeyer argues that public lines are not retail service offerings, and therefore are not required to be resold under the Act. Witness Wellemeyer contends that on a public pay phone the offering is the capability to make a phone call. The line itself is not what is offered as public phone service today. Witness Wellemeyer testifies that there is no way to offer the call at resale. Witness Wellemeyer also contends that for semi-public pay phones the coin station apparatus should not be offered for resale because it is essential to the service offering as it is currently defined. Witness Wellemeyer states that if GTEFL cannot be required to sell equipment, it cannot be required to resell the entire service. Witness Wellemeyer argues that semi-public pay telephone lines are not currently priced to support maintenance and collection activities, without substantial support from toll collections.

AT&T contends, however, that GTEFL's rationale for refusing to resell public pay telephone lines and semi-public pay telephone lines is as inconsistent with the Act as is its refusal to offer other services for resale. AT&T and MCI both argue that these are telecommunications services offered at retail to persons who are not telecommunications carriers. Therefore, these services fall within the resale requirement of the Act.

Based upon the evidence and arguments presented, we agree with AT&T and MCI that public and semi-public pay telephone lines are subject to resale based on the Act and the FCC Order. The coin access line is a service that GTEFL offers to customers other than telecommunications carriers and therefore it is subject to the resale requirement of the Act. The FCC Order states that independent public payphone providers are not telecommunications carriers. FCC Order 96-325 at ¶ 876. Thus, we shall require public and semi-public pay telephone lines to be resold.

Other Services

GTEFL contends that it will offer for resale, but not at wholesale rates, any service already priced at wholesale rates. GTEFL's witness Wellemeyer states that such services include special access, private line services tariffed under the special access tariff, COCOT coin and coinless lines. Operator and directory assistance services will also not be offered at wholesale rates.

In its brief, GTEFL argues that special access and private line services offered under the special access tariff, and COCOT coin and coinless line services, are already priced at wholesale. GTEFL argues that the FCC Order states that even though incumbent LECs' access tariffs do not prevent end users from purchasing the service, the language and intent of section 251 of the Act clearly demonstrate that these exchange access services should not be considered services that an ILEC "provides at retail to subscribers who are not telecommunications carriers" under section 251(c)(4). GTEFL also contends that it similarly considers independent pay telephone providers to be wholesale providers, and GTEFL has priced its offerings accordingly.

GTEFL also contends that operator services and directory assistance (DA) should be resold, but not at wholesale rates. Witness Wellemeyer testifies that because providing these services requires the performance of the same activities, whether the service is offered on a retail or a resale basis, there are no avoided costs for these services. Witness Wellemeyer further states that except for the DA call allowance bundled with the basic local service offering, the costs for these services are recovered through separate rates, and are not included in the rates for other services offered for resale.

Witness Wellemeyer also asserts that non-recurring charges should not be sold at wholesale rates. Witness Wellemeyer states that there are no associated costs that can reasonably be expected to be avoided for these offerings, so no discount is warranted.

The rates for primary service should not be based on the application of an avoided cost discount to the associated retail rate, but rather on an appropriate study reflecting the costs of the wholesale provisioning process.

AT&T's witness Sather, however, contends that whether GTEFL avoids costs by reselling these services is not a justification for refusing to resell these services at wholesale rates. Witness Sather argues that the Act requires GTEFL to offer for resale at wholesale prices any telecommunication service provided at retail to subscribers who are not telecommunications carriers.

From the evidence and arguments presented, we do not believe GTEFL provided sufficient evidence to determine whether these services are priced at wholesale or not. We are, however, persuaded by AT&T's argument regarding GTEFL's refusal to resell these services at wholesale rates. Based on Section 251(c)(4) of the Act, the ILEC is required to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Therefore, we find that GTEFL shall be required to resell such services as special access, including private line services tariffed under the special access tariff, COCOT coin and coinless lines, and operator and directory assistance services.

Notice Requirements

Neither the Act nor the FCC Rules and order explicitly require ILECs to provide notice to wholesale customers of changes to ILEC services. Since the parties could not agree on the procedure for providing notice of these changes, we will determine the appropriate requirements.

AT&T's witness Shurter states that, for price changes to existing services, or for the introduction of new services, GTEFL should notify resellers 45 days prior to the effective date of a change, or concurrent with GTEFL's internal notification process, whichever is earlier. Witness Shurter also states that changes in technology should warrant an even longer notification period. Witness Shurter asserts that the advance notice period will provide AT&T with the time to prepare its systems for the changes. AT&T argues that it cannot make the necessary changes to its systems without sufficient advance notice, which would give GTEFL an unfair competitive advantage, since GTEFL would be the first local telecommunications provider to make the offerings available.

In its brief, MCI states that it has asked GTEFL to provide notice of changes to its retail services at least 45 days prior to

the effective date of the change, or concurrently with GTEFL's internal notification process for service changes, whichever is earlier. MCI also states that "[s]o long as MCI is protected against the possibility of GTEFL providing intentional misinformation, it would appear appropriate for the Commission to protect GTEFL from liability for normal changes in business plans which occur after it has provided a reseller with notice of an upcoming retail service change."

GTEFL argues that when it files a tariff with this Commission, the filing is itself a public notice. GTEFL's witness McLeod testifies that GTEFL may consider notifying new entrants concurrently with its internal notification procedures. We note that for ALECs the tariff notice period is 15 days. In addition, GTEFL's witness McLeod states that GTEFL has a liability concern with providing an advance notice, in the event that GTEFL notified AT&T and MCI of an upcoming change and subsequently made a business decision to abandon that change.

Based on the evidence and arguments presented, we shall require the parties to enter into agreements whereby GTEFL will not be held liable if, after announcement of a new or modified service, GTEFL modifies or withdraws that service before it goes into effect. It would not be appropriate to restrict GTEFL's ability to reconsider its decision to offer a service or to change a service. GTEFL, however, shall notify the resellers of such changes at the earliest possible time. We also find that notice to AT&T and MCI would be inadequate under GTEFL's plan to provide notice to resellers at the same time it files public notice. We do not believe that 15 days is adequate time to allow the resellers to examine new services or changes to services. Therefore, GTEFL shall provide 45 days notice to its wholesale customers. If GTEFL provides such notice less than 45 days in advance of the change, wholesale customers shall receive notice concurrently with GTEFL's internal notification process.

Additional Concerns

We are concerned with the effect of the FCC Order on grandfathered services, CSAs, and Lifeline/Linkup services. We believe a distinction should be made between the application of the resale provisions to existing grandfathered services and services that may be grandfathered in the future. We do not believe existing grandfathered services should be resold. On the other hand, we do not think it is appropriate to restrict the resale of services that are grandfathered in the future. To do so might give LECs an incentive to grandfather services in an attempt to retain customers, to the detriment of competition.

Nevertheless, we determine that withdrawn services, such as grandfathered services, are subject to resale. Our determination that these services are subject to resale is supported by the FCC's Order, which states that when an ILEC grandfathers its own customers of a withdrawn service, such grandfathering should also extend to reseller end users. The Order requires the ILEC to offer wholesale rates for such grandfathered services to resellers for the purpose of serving the grandfathered customers. FCC Order 96-325 at ¶ 968.

We are also concerned that by requiring the resale of CSAs we will eliminate any incentive to ever enter into CSAs. We note, however, that the FCC Order specifically states "contract and other customer-specific offerings should not be excluded from resale." FCC Order at 96-325 at ¶ 948. Thus, since the FCC's Order requires that contracts not be excluded from resale, contract service arrangements must be resold.

In addition, we have concerns regarding the resale of LinkUp and Lifeline services. It appears to us that LinkUp and Lifeline are not services that should be resold. They are subsidy programs offered to eligible low income residential customers. Lifeline and LinkUp are merely the means by which a company recoups the cost of the subsidy it offers to those customers. Competitors who wish to offer Lifeline and LinkUp should have to apply for the subsidy on behalf of the customers and determine the customer's eligibility for the service themselves.

According to the FCC Order, however, LinkUp and Lifeline services must be resold. The FCC order states that there is general agreement that residential services should not be resold to non-residential end users and that restrictions prohibiting such cross-class reselling of residential services are reasonable. The Order further states that Section 251(c)(4)(B) of the Act allows states to make similar prohibitions on the resale of Lifeline, or any other means-tested service offering, to end users not eligible to subscribe to such service offerings. See FCC Order 96-325 at ¶ 962.

C. Restrictions

GTEFL states that to the extent that this issue overlaps the issue regarding resale exclusions, it reiterates its position on that point. In addition, GTEFL contends that 47 C.F.R. § 51.613 states that an ILEC shall not impose restrictions on resale, except as explicitly allowed. Specifically, the FCC Rules allow restrictions on cross-class selling and withdrawn services. Witness Wellemeyer contends that the FCC Rules also provide that

ILECs may impose a use and user restriction if the ILEC proves to the state commission that the restriction is reasonable and nondiscriminatory.

In its brief, GTEFL also states that some of its current tariffs restrict the entities that can buy the tariffed service or the uses to which the service may be put. GTEFL contends that these restrictions were created to curb increases to basic local rates by generating contributions from other classes of customers. GTEFL states that if non-cost factors are entirely removed from rates, there would be no need for use or user restrictions. GTEFL asserts that when it elected price regulation, its rates were not rebalanced to reflect their true costs. Instead, GTEFL argues, a rate structure was imposed that freezes or strictly limits rate changes for particular services for years to come. GTEFL contends that even MCI's witness Price agrees that the use and user restrictions that were necessary under the prior regulatory regime will remain appropriate until rates are rebalanced. Furthermore, GTEFL contends that we may impose use and user restrictions under the Act because GTEFL has made the requisite showing that they are reasonable and nondiscriminatory.

AT&T's witness Sather asserts that the FCC Order provides that all resale restrictions are presumptively unreasonable and that GTEFL has the burden of proving to this Commission that a particular resale restriction is reasonable and non-discriminatory. MCI argues in its brief that GTEFL has not attempted to rebut the presumption that any limitations on resale in its tariffs are unreasonable.

Witness Sather and MCI's witness Price both argue that the only use and user restrictions that GTEFL should be permitted to maintain are certain cross-class restrictions, in particular those that would limit resale of residential services to end users who are not eligible to purchase these services from the ILEC. Such services would include residential service, grandfathered services and Lifeline/LinkUp services.

Witness Sather contends that GTEFL's pricing scheme for use and user regulation is obsolete, because GTEFL is no longer subject to rate of return regulation. AT&T also argues that the relationship between costs and revenues to pricing local exchange service has changed from what it was under rate of return regulation due to declining costs and capped local exchange rates. AT&T's witness Sather asserts that these restrictions serve no legitimate purpose and limit competition.

MCI's witness Price states that to avoid future controversy, we should find that existing tariff restrictions do not apply to limit the resale of GTEFL's services. MCI argues, in particular, that GTEFL has agreed to resell discounted calling plans. It should be clarified, however, that any minimum usage requirements in those tariffs do not apply to individual end users who obtain service from a reseller. The minimum usage requirements apply only to the reseller on an aggregate basis. MCI contends that this is consistent with the FCC Order:

> ...it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in the aggregate, under the relevant tariff meets the minimal level of demand. FCC Order 96-325 at ¶ 953.

We emphasize that section 251(c)(4)(A) of the Act states that it is the duty of the incumbent local exchange carrier to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Section 251(c)(4)(B) also states that it is the duty of the incumbent LEC:

> not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Section 51.613 of the FCC's rules state that restrictions may be imposed on cross-class selling and short term promotions. Regarding cross-class selling, Section 51.613(a)(1) provides that we may allow GTEFL to prohibit a reseller from reselling GTEFL services to classes of customers that are not eligible to subscribe to such services from GTEFL.

The FCC has established that resale restrictions are presumptively unreasonable. Specifically, Paragraph 939 of the Order provides:

> We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC's underlying tariff. . . . Given the probability that restrictions and conditions may have anti-competitive results, we conclude that it is consistent with the pro-competitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4). . .

We agree with AT&T and MCI that certain cross-class selling restrictions are appropriate, particularly those that would limit resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from GTEFL. Accordingly, we find that no restrictions shall be allowed, except for those applicable to the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase the service directly from GTEFL. We do not believe that GTEFL has sufficiently rebutted the FCC's presumption against tariff limitations in general, other than the ones specified.

D. Wholesale Rates of Retail Services Offered for Resale

The Act directs state commissions to determine the appropriate methodology for LECs to set wholesale discount rates for retail services. Section 252(d)(3) of the Act requires:

> For the purpose of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

The parties disagree on two key points regarding the issue of wholesale rates. First, they differ as to how the phrase "will be avoided" should be construed. AT&T and MCI both agree with the FCC's conclusion that the wholesale discount should be calculated on the basis of "costs that reasonably can be avoided when an ILEC provides a service for resale. . . ." 47 C.F.R. § 51.609(b). Under this interpretation, the avoided costs are those that an ILEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers.

GTEFL, however, disagrees with the FCC's, AT&T's and MCI's interpretation of the Act. GTEFL's witness Wellemeyer believes that it is unreasonable to assume that GTEFL will cease retail operations and function only as a wholesale provider. Witness Wellemeyer contends this is a misrepresentation of the intent of the Act. Witness Wellemeyer argues that the Act requires it to consider as avoided costs those costs that actually "will be avoided," not costs that "could be avoided" if the company were a wholesale-only provider.

The second area of disagreement concerns what expense accounts are avoidable and how much will be avoided. The FCC Order identifies six accounts that presumably should be avoided: Product Management (account 6611), Sales (account 6612), Product Advertising (account 6613), Call Completion (account 6621), Number Services (account 6622), and Customer Services (account 6623). In accordance with the FCC Order, AT&T and MCI have treated these accounts at 90% to 100% avoided. The FCC Order, however, provides that its criteria are intended to leave state commissions broad latitude in selecting costing methodologies. It further states that the rules for identifying avoided costs by Uniform System of Accounts (USOA) expense accounts are cast as rebuttable presumptions. The FCC did not adopt as presumptively correct any avoided cost model.

GTEFL's avoided cost study analyzes avoided costs separately for each of the five major service categories. GTEFL asserts that the avoided costs for residential services are $0.83 per line per month, while avoided costs for business services are $1.06 per line per month. Since the amount of the avoided costs per line is the same for all rate groups, the effective discount rate varies by rate group. For example, if the monthly residential rate in a given rate group is $10.00, the avoided cost discount is $0.83, or 8.3%. GTEFL asserts that the avoided cost discount rate is 7.1% for usage services. For vertical services, GTEFL asserts that the avoided discount rates are 5.5% for business, 6.6% for residential, 6.2% for combined. In addition, the discount rate is 15.3% for advanced services.

We note, however, that AT&T and MCI have proposed that we set one wholesale rate for both residential and business services. AT&T's proposed wholesale discount rate is 36.15% and MCI's is 17.68%.

AT&T's Avoided Cost Study

AT&T's witness Lerma initially proposed a 30.9% discount as a result of AT&T's Avoided Retail Cost Model. Witness Lerma stated that in response to the avoided cost studies submitted by GTEFL, AT&T provided its simplified avoided cost ("ASAC") study which complies with both the Act and the FCC Order. Witness Lerma stated during cross-examination that the ASAC study was the study AT&T was using as the basis of its recommendation. AT&T proposes that the Commission adopt a permanent wholesale discount of 36.15%, applicable to all of GTEFL's retail service rates. AT&T's witness Lerma contends that its simplified cost study identifies all retail costs that will be avoided by GTEFL.

AT&T's witness Lerma further contends that the ASAC study identifies costs and revenues associated with retail activities in the combined local, toll, and private line services market. He states that the end result is a percentage that should be used to uniformly reduce GTEFL's local, toll, and private line service retail rates in order to reflect relevant retail costs avoided.

Witness Lerma states that the ASAC study relies on ARMIS reports that GTEFL filed with the FCC for 1995. AT&T states the specific data that it uses are primarily obtained from the ARMIS 43-03 (Joint Cost Report). AT&T contends that this report provides the regulated, annual operating results of GTEFL for every account identified in the FCC's rules. Witness Lerma asserts that data from ARMIS is used in the calculation of avoided depreciation expense and provides regulated financial and operating data separated in accordance with the FCC's rules.

AT&T identifies in its ASAC study the accounts that are presumed avoided based on the FCC's Order. Witness Lerma states that an amount of avoided costs pertaining to return and related income taxes are included in this study, consistent with the FCC Order. AT&T argues that in paragraph 913 of the Order, the FCC states that "in AT&T's model, the portion of return on investment (profits) that was attributable to assets used in avoided retail activities was treated as an avoided cost." AT&T states that it believes these approaches are consistent with the Act.

In addition, certain costs are reflected in the ASAC study that are not presumed avoided in the FCC Order, but which are left

for state consideration. Witness Lerma contends that AT&T has included costs for USOA accounts 6610 (Marketing), 6620 (Service expense), 6220 (operator systems), 6533 (operations testing), 6534 (operations plant administration), and 6560 (the portions of depreciation expense pertaining to operator systems and general support assets). AT&T argues that the ASAC studies reflect those costs based on direction provided in 47 C.F.R. § 51.609(d). That rule states that:

> [c]osts included in accounts 6110-6116 and 6210-6565 . . . may be treated as avoided retail costs and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

AT&T states that accounts 6621 (call completion services) and 6622 (number services) are costs that are avoided because these are operator service-related. According to Lerma the FCC states that these costs are avoided "because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties." AT&T argues that when resellers perform their own operator services, the LEC's wholesale business would not require the use of any operator systems, and likewise, GTEFL would incur no operator systems equipment costs in the provision of its wholesale business. Witness Lerma asserts that there is a component of depreciation expense included in account 6560 that is related to operator systems. AT&T states that this can also reasonably be avoided.

AT&T also states that GTEFL proposes to treat many of these costs as not avoided. For example, GTEFL's cost study treats the following as avoided costs: 95.10% of GTEFL's product advertising costs; 64.24% of its sales costs; 41.45% of its customer service expenses; 1.76% of product management costs; and none of the call completion costs. AT&T states that, in addition, GTEFL will avoid operator services costs to the extent that AT&T provides its own operator services. AT&T argues that all of these costs are retail-related, since the costs were incurred in a nearly 100% retail context.

Although GTEFL's witness Wellemeyer argues that operator services costs are not avoided because operator services provide their own revenue stream, separate from wholesale services, AT&T argues that this argument is irrelevant. AT&T asserts that GTEFL operator services are, by GTEFL's own admission, solely retail

functions and not related to the provision of wholesale services to AT&T.

AT&T's witness Lerma also asserts that accounts 6533 (testing) and 6534 (plant administration) include costs incurred in testing facilities and costs incurred in the general administration of plant operations. In its study, AT&T deducted 20% of the costs in these accounts as directly avoided; however, AT&T estimates that 50% of its own overall Testing and Plant Administration costs involve end-user testing and trouble-shooting. AT&T argues that GTEFL has provided no evidence to support the assertion that AT&T's estimates are unreasonable. AT&T further argues that GTEFL has identified 0.0% of its testing and plant administration costs as avoidable in a wholesale environment.

In its study, AT&T indicates that GTEFL will avoid 24.7% of its indirect costs. AT&T Witness Lerma asserts that these indirect costs include costs associated with executive, planning, accounting, finance, human resources, legal, uncollectibles, furniture, and other similar items and functions. AT&T argues that although its factor and GTEFL's are not dissimilar, the application of GTEFL's factor to GTEFL's concept of the directly avoided cost pool results in dramatically different avoided indirect costs. In its brief, AT&T contends that this result emphasizes the need to eliminate all reasonably avoided direct costs, because failure to do so is magnified in the avoided indirect cost calculation and will result in wholesale rates incapable of sustaining competition and benefiting Florida consumers.

Finally, AT&T states that its study deducts all uncollectible costs (account 5301) as indirectly avoided costs. AT&T argues that in a resale environment, the liability for all end user uncollectibles transfers in total to the reseller. GTEFL's avoided cost study does not treat uncollectibles as 100% avoided. AT&T contends that if this is allowed, resellers would absorb not only the costs of their own uncollectibles, but also a portion of the uncollectibles incurred by GTEFL in connection with its retail customers.

In response, GTEFL contends that neither AT&T nor MCI produced any studies analyzing the specific costs that GTEFL would avoid. Instead, GTEFL argues that they relied solely on the FCC's methodology. GTEFL's witness Wellemeyer asserts that the FCC did not provide support for its presumptions. GTEFL states that the FCC methodology is incorrect in its substitution of an avoidable cost standard for the avoided cost standard stated in the Act. In addition, because the Eighth Circuit's stay has rendered the FCC's rules on this subject inoperative pending appeal, GTEFL argues

there is no justification for accepting AT&T's avoided cost arguments.

GTEFL's witness Wellemeyer asserts that AT&T and MCI do not have sufficient data to conduct a meaningful analysis of costs that GTEFL can reasonably avoid. GTEFL's witness Wellemeyer states that it would be necessary to analyze more detailed data than that which is reported in the ARMIS reporting system in order to make a reasonable judgment about specific work functions that will or will not be avoided in a wholesale environment. Witness Wellemeyer further contends that, in failing to attempt the necessary analysis, AT&T and MCI have failed to identify significant amounts of cost which even AT&T and MCI agree are not avoided. Witness Wellemeyer argues that GTEFL's studies are based on a more detailed analysis.

GTEFL contends that AT&T has excluded 100% of all product management expenses (account 6611), assuming that GTEFL will not have any costs relating to product development. GTEFL states that during cross-examination, AT&T's witness Lerma admitted that wholesales providers incur product development costs; however, he offered no evidence as to why GTEFL would not incur these same costs in reselling local services to AT&T. In its brief, GTEFL argues that not only does AT&T assume that GTEFL will exit the retail business, but it apparently assumes GTEFL will exit the wholesale business as well.

GTEFL also argues that AT&T's assumption that GTEFL will avoid 100% of the sales function (account 5512) is unrealistic. GTEFL contends that it is illogical to assume GTEFL will no longer incur sales expenses in a wholesale environment. GTEFL also disagrees with AT&T's witness Lerma's assumption that GTEFL will avoid 100% of call completion services (account 6621) and number services (account 6622). Witness Wellemeyer asserts that just because a reseller may provide its own operator or directory assistance service does not mean that GTEFL will avoid these costs. GTEFL argues that operator services expenses are not avoided, since they are separate tariffed rates for operator services, and the associated expenses are not included in the rates for other retail services offered for resale. GTEFL asserts that the same holds true for directory assistance. GTEFL will still have to provide directory assistance to ALECs and end users. GTEFL, therefore, will not avoid these costs.

Furthermore, GTEFL disagrees with AT&T's avoidance of 100% of customer services (account 6623). GTEFL contends that AT&T's adjustment to carrier access expenses has no evidentiary value, since it was based upon Bell Atlantic data from Pennsylvania.

GTEFL states that it is undisputed that the ordering activities will still be required to provide services to ALECs on a wholesale basis.

We find that costs associated with operator and directory assistance services should not be 100% avoided because AT&T will be providing these services to its own customers. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail services offered to customers be made available for resale. If AT&T wants to purchase pieces of services, it should buy unbundled elements instead and package these elements in a way that meets its needs.

Upon consideration, we find it is reasonable to believe that GTEFL will incur expenses associated with product management (account 6611), sales functions (account 5512), and customer services (6623) as a wholesale provider. It is also reasonable to assume that GTEFL will incur some costs in these accounts. We do not believe however, that all uncollectible costs (account 5301) should be allocated as indirectly avoided costs. In addition, we do not believe it is reasonable to assume that GTEFL will operate as only a wholesale provider, when the record reflects that it will still be operating as a retailer. Since AT&T made this assumption, we find that AT&T's cost study does not accurately reflect avoided costs.

Based on the foregoing, AT&T's cost study is rejected. AT&T's cost study is not in compliance with the Act since it has removed all retail related costs. We note that the Act requires that portions attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier should be excluded. The Act does not require all retail costs to be avoided.

MCI's Avoided Cost Study

MCI proposes a wholesale discount rate of 17.68%. MCI contends that its approach to calculating GTEFL's avoided costs is conservative and tends to understate the amount of the appropriate discount. MCI's witness Price states that the FCC's Order establishes minimum criteria for the avoided cost methodology based broadly on the MCI study. The witness indicates that the costs in certain USOA accounts are identified as directly avoided, while costs in other accounts are treated as indirectly avoided. The avoided indirect costs are calculated by determining the ratio of directly avoided costs to total costs and then applying that proportion to the total indirect costs for the accounts.

Witness Price also contends that ARMIS data provides a sufficient basis for an aggregate discount across all services. MCI states that these data are broadly consistent across ILECs and are reported in a familiar format. Witness Price argues that service-by-service data is much harder to come by. MCI asserts that even if more detailed information were publicly available, on a product-by-product basis, the consistency of the information would be questionable due to the numerous allocations and assumptions the ILEC would have to make to develop the product-specific information. MCI argues, however, that Section 252(d)(3) of the Act provides the methodology for determining the wholesale price for resold telecommunications. Witness Price contends that the purpose of calculating wholesale rates this way is to quantify and deduct GTEFL's costs that are not incurred in the provision of service at wholesale.

Witness Price states that MCI made a conservative assumption that indirect costs are avoided in proportion to the ratio of avoided direct costs to total direct and indirect costs, rather than the ratio of avoided direct costs to total direct costs. Witness Price also indicates that MCI's study did not consider some additional categories of cost which MCI's original filing at the FCC had demonstrated would in fact be avoided.

In its brief, GTEFL argues that because the FCC Order has been stayed, there is no longer any justification for accepting MCI's avoided cost arguments. GTEFL's witness Wellemeyer contends that the continued use of the FCC's presumptive factors is inappropriate given that analysis of GTEFL's active avoided costs is available. GTEFL asserts that MCI has improperly calculated the avoided cost discount rate based on total expenses rather than total revenues for retail services that are to be offered on a wholesale basis for resale. GTEFL argues that this approach is in conflict with the Act.

GTEFL contends that MCI does not have sufficient data available to it to conduct a reliable analysis of costs that can reasonably be avoided. Witness Wellemeyer states that analysis of more detailed data than that which is available from ARMIS is needed to make reliable judgments about specific work functions that will or will not be avoided.

As GTEFL argued regarding AT&T's cost analysis, GTEFL disagrees that operator services and directory assistance should be avoided at 100 percent.

We note that MCI's study only included those accounts that the FCC established as presumed avoided. Since MCI assumed, as did

AT&T, that GTEFL would operate only as a wholesale provider, we do not believe that MCI's cost study accurately reflects the appropriate avoided costs. Other than referring to the criteria identified in the FCC Order, MCI has not provided any evidence to substantiate the costs it claims will be avoided.

Based on the foregoing, we reject MCI's cost study. As stated earlier, we disagree that costs associated with operator and directory assistance services should be 100% avoided because resellers may be providing these services to their own customers. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail service offered to customers be made available for resale. Thus, if MCI wants to purchase pieces of services, it should buy unbundled elements, instead, and package these elements in a way that meets its needs.

GTEFL's Avoided Cost Study

GTEFL defines avoided retail costs as the difference in total costs with and without the offering of services for resale. GTEFL states that setting wholesale prices too high could result in undercutting the ability of resellers to recover a sufficient retail markup to allow for a viable resale market. GTEFL argues, on the other hand, that if the adjustment for avoided retail costs is too large, the ILEC will not be compensated for its true costs. Witness Wellemeyer states that facilities-based ALECs could be placed at a competitive disadvantage in pricing their retail services if ALEC resellers are able to purchase wholesale local exchange services below cost. GTEFL also contends that appropriately set wholesale prices will encourage facilities-based competition.

Witness Wellemeyer further states that GTEFL's definition of avoided costs recognizes the fact that while some retail costs are avoided for certain activities, a similar activity is often required to offer the same service on a wholesale basis for resale. GTEFL asserts that when a service is offered at wholesale instead of at retail, the resulting avoided costs can be separated into two components. First, GTEFL suggests that total costs are decreased because it is no longer necessary to provide some incremental retailing functions in support of the service. Second, Witness Wellemeyer contends that total costs are increased, to the extent that it becomes necessary to provide substitute wholesaling functions in support of resale services. Therefore, GTEFL states that avoided retail costs are equal to costs associated with displaced retail activities (affected retail costs) minus added

costs associated with replacement wholesale activities (substitute resale costs).

Witness Wellemeyer states that the first component of avoided cost was calculated by examining all activities involved in the provision of retail services. Then the costs of performing those activities are identified that are affected when services are provided on a wholesale, rather than a retail, basis (affected costs). GTEFL asserts that some activities are required regardless of whether the service is offered on a retail or a wholesale basis, so the associated costs would be unaffected (unaffected costs). GTEFL states that these activities were ignored in the Avoided Cost Study since none of the associated costs will be avoided.

GTEFL states that the second component was calculated by first identifying the existing wholesale services similar in nature to those in each of the retail service categories. Witness Wellemeyer states that by then using these services as a proxy for the new wholesale distribution channel, the cost of substitute wholesale activities required when services are offered on a wholesale, rather than a retail, basis was analyzed. GTEFL contends that the cost of substitute activities for the residential services category was assumed to be the same as the cost of the same activities currently performed in providing wholesale special access service to interexchange carrier customers. In the study, GTEFL states the total cost of affected activities required to provide special access services was calculated to be $0.53 per line per month. GTEFL states that $0.53 represents the additional costs GTEFL will incur as a result of becoming a wholesaler of these services instead of a retailer. GTEFL asserts that the amount for this component represents the increase in total costs when a residential basic service is offered on a wholesale basis. GTEFL contends that the avoided costs were calculated as the first component, affected retail costs, less the second component, substitute resale costs. Witness Wellemeyer states that the costs avoided, when residential service was provided on a wholesale basis, were calculated as $1.36 minus $0.53, or $0.83 per line per month.

Witness Wellemeyer states that GTEFL's Avoided Cost Study was based on actual annual results for GTEFL's total domestic telephone operations for 1995. GTEFL contends that the data is reported in a managerial accounting framework reflecting the results of the business as it is managed, rather than according to traditional financial accounting rules. Witness Wellemeyer contends that this necessary data is not recorded on a state specific basis, so data that are specific to operations in this state are not available from GTEFL's records. GTEFL asserts that this is because the vast majority of the affected activities are performed on a centralized

basis from regional and national service centers located throughout the country. GTEFL adds that each of these workcenters handles one or more specific retailing functions for a number of different states.

GTEFL states that in order to identify the retail cost affected by offering services through wholesale rather than retail distribution channels, all of GTEFL's workcenters were examined to determine which activities would be affected. Witness Wellemeyer states that the resale of existing retail services is defined as the sale of services to a reseller for sale to its end user customers, without any change in the nature of the product by the reseller. He contends that the changes in workcenter costs that result from offering services on a wholesale, rather than a retail, basis arise solely from activities associated with the distribution of services, and not from production activities.

Witness Wellemeyer defines a workcenter as a collection of activities that exhibit common functions, a common unit measure of demand, a common unit measure of resource consumption, a common geographic uniqueness, and a common management structure. GTEFL argues that most of the workcenters are defined based on common functions or work activities.

GTEFL states that the affected workcenters are uniquely associated with one of the three lines of business organizations within GTEFL Telephone Operations: Consumer, Business and Carrier. The Consumer line serves the residential and small business markets; the Business line serves the balance of the business market, including national accounts; and the Carrier line is responsible for the wholesale relationship with other telecommunications providers. This wholesale relationship currently consists primarily of switched access services, special access services, billing and collection, and operator service agreements.

GTEFL states that workcenters are identified for all network operations, corporate general and administrative functions. Witness Wellemeyer contends that these workcenters were reviewed, but are generally not included in the analysis of affected costs, because the functions are required for wholesale and retail service provision alike. GTEFL asserts that "uncollectibles" was defined as a workcenter for the purpose of this analysis, and included as such in the Avoided Cost study.

Witness Wellemeyer also explains that once the affected workcenters were identified for study, the total annual costs were determined from the books and records for each affected workcenter.

GTEFL contends that the workcenter costs include labor costs, support and supervision, data processing, training and other employee-related expenses. In addition, GTEFL states that the data processing costs were included, minus the system development and enhancement costs. The development and enhancement costs are "one-time" costs associated with the design and implementation of systems, and were, therefore, excluded from the Avoided Cost Study. GTEFL asserts that projected development and enhancement costs for systems to support the wholesale distribution channel have also been excluded from the study because these costs should be recovered from the ALEC that causes them.

GTEFL states that some of the identified workcenter costs were adjusted to include certain payroll overheads not accounted for by the workcenter, such as health insurance, payroll taxes and management incentives. Witness Wellemeyer contends that these costs are managed separately from the workcenter costs, but are properly included in the study, because they would be affected by the offering of resale services in the same way as the related direct labor costs. In addition, GTEFL states that an adjustment was made to workcenter costs to remove any non-recurring costs associated with service ordering activities. GTEFL contends this was done because GTEFL prepared an independent analysis of service ordering and service connection charges.

Witness Wellemeyer states that once the non-recurring costs were separately identified, the next step was to assign the remaining workcenter costs to the service categories. GTEFL contends that the target retail service categories are Residential, Business, Usage, Vertical, Advanced and "Other". The "Other" category was further divided into Directory, Customer premises Equipment (CPE), CALC and Other.

GTEFL contends that Residential (including both flat rate and measured rate services) and Business (including flat and measured rate services, CentraNet and PBX) are simply local residential and business services. Witness Wellemeyer states that the Usage category includes intraLATA toll, discount calling plans, local measured usage, Zone Usage Measurement (ZUM), and extended area service (EAS). GTEFL asserts that Vertical includes such features as call waiting and last number redial (offered to both business and residential customers). GTEFL states that the Advanced services category includes such services as ISDN PRI, Frame Relay, Digital Channel Service, DS-1, and various other dedicated channel services, including private line.

GTEFL states that for residential, business and advanced services, avoided costs were divided by the number of lines. GTEFL

contends that for usage avoided costs were divided by the number of minutes. GTEFL notes that per unit affected costs for vertical services were not calculated, because data for the second component of avoided costs, substitute resale costs, were not available. Witness Wellemeyer contends that the best alternative cost available for vertical services was basic exchange service. Consequently, the avoided cost discount rate for residential vertical features was set equal to the avoided cost discount of local residential service, or 6.6 percent. Also, the avoided cost discount rate for business vertical features was set equal to the avoided cost discount of local business service, or 5.5 percent. In addition, the avoided cost discount rate for vertical features not segregated in the tariff as either residential or business was set equal to the composite avoided cost discount of local residential and business services, or 6.2 percent.

Witness Wellemeyer contends that in the case of basic exchange access services, an adjustment to costs should be made to acknowledge the foregone contribution associated with complementary services, such as intraLATA toll service. GTEFL contends that the ALEC reseller is more likely to package and self-provision than purchase intraLATA toll from GTEFL for resale. Therefore, GTEFL states that the "bundle" of services resold includes not only basic exchange access, but also profitable intraLATA toll.

GTEFL argues that for all basic local exchange services the proposed wholesale rates should be determined, using the pricing rules and the contribution analysis as follows:

(1) the retail price, less
(2) the avoided costs per line from the Avoided Cost Study, plus
(3) toll opportunity cost (toll contribution), less
(4) access opportunity gain (access contribution).

GTEFL acknowledges that there are two exceptions that may affect the assessment of foregone toll contribution under this resale scenario. First, GTEFL states that it is possible that an ALEC reseller has provided toll service to the end user itself prior to the time resale was initiated. In this case, GTEFL argues it would not experience any further foregone toll contribution. Second, GTEFL states that the ALEC reseller may not actually provision toll service itself. In this case, GTEFL would continue to provide intraLATA toll and, again, there would be no opportunity loss.

GTEFL contends that since the analysis assumes that the ALEC reseller will self-provide intraLATA toll 100% of the time, it is proper to establish a credit rate equal to the opportunity cost it included in the calculation of the resale price for each basic

exchange access service. GTEFL argues that the toll provider credit should vary over time with changes in the levels of the underlying toll and access contributions. Witness Wellemeyer states that as local, toll and access rates rebalance over time, the toll provider credit should be adjusted whenever toll and access rates are adjusted. GTEFL asserts that ultimately the toll provider credit will be replaced entirely by rebalanced rates for both retail and resale services.

Based on the Avoided Cost Study, GTEFL argues that the discount rate for the Usage service category is 7.1%. Witness Wellemeyer states that since there are no additional opportunity costs associated with offering these usage services for resale, the proposed rates are based on the retail price less avoided costs.

GTEFL contends that since retail services have not been offered for resale for any length of time, their substitute costs cannot be measured directly. Instead, GTEFL used costs associated with current wholesale offerings as proxies. Witness Wellemeyer states that the offering of residential, business, and advanced services for resale was assumed to be analogous to the current wholesale provision of special access service. In addition, the wholesale offering of retail usage services was assumed to be analogous to the current provision of originating and terminating switched access. These services constitute GTEFL's most accurate information on the cost of the wholesale provision of line-based and usage-based services.

Witness Wellemeyer states that the per unit affected retail cost for each retail service category is $1.36 per month per line for Residential, $1.60 per month per line for Business, $.01006 per minute for Usage, and $4.30 per month per line for Advanced.

GTEFL proposes that the results of the study for the vertical features category be expressed as a set of discount rates. These rates would then be applied to the respective retail prices resulting in discounts of 6.6% for Residential vertical features, 5.5% for Business vertical features, and 6.2% for Composite.

GTEFL states that the composite discount rate is applied to vertical feature offerings that are not specified in the tariff as either residential or business features. GTEFL states that since there are no additional opportunity costs associated with offering vertical features for resale, the proposed rates are based on the retail price less avoided costs.

GTEFL also submitted a modification to the MCI avoided cost study based on the criteria described in the FCC Order. GTEFL

states that it developed allocators for direct expenses in the model, based on an analysis of actual costs. GTEFL's witness Wellemeyer contends that revenues for services, to which the avoided cost discount rate will not be applied, were identified and subtracted from operating revenues in order to determine the appropriate revenue base for calculating the resale discount rate. In its modified avoided cost study, GTEFL used the same workcenter cost detail used in its Avoided Cost Study. As such, the study is not state-specific. GTEFL states it did not avoid carrier access expenses (account 6623), since these services are not offered for resale, and the associated expenses are not included in the retail rates for services that are offered for resale. GTEFL contends that public telephone expenses (account 6623) are not avoided costs because they are unrelated to the retail services being discounted. Service ordering costs (account 6623) were not avoided because Witness Wellemeyer contends that GTEFL will still be required to provide ordering activities when providing retail services. In addition, GTEFL did not avoid Operator Services because it contends that the associated expenses are not included in the rates for other retail services offered for resale. GTEFL asserts that it did not avoid Product Management expenses since product planning is required, regardless of whether the products are offered at retail. GTEFL also identified plant-related expenses, return and taxes as attributable to avoidable land and support assets, and included these expenses as an avoidable cost.

GTEFL contends that its modification to certain inputs to the ARMIS-based model used in preparing this study properly identifies avoided costs, in accordance with the FCC's proposed avoided cost criteria. GTEFL also asserts that its Avoided Cost Study best reflects the intent of the Act, and offers this modified study as an alternative to be used only if the FCC rules on avoided costs are upheld. GTEFL's modified avoided cost study produces one discount factor of 11.25%.

GTEFL contends that AT&T had few, if any, specific criticisms of the manner in which GTEFL's Avoided Cost Study was conducted. GTEFL contends that the opposition to the study was due primarily to the fact that it did not comply with the FCC's rules. GTEFL asserts that while MCI's witness Price advanced certain broad criticisms, the comments were not based on a review of the study. GTEFL asserts that Witness Price's criticism was that the study was too precise.

In its brief, AT&T, however, argues that GTEFL's version of competition under the Act requires that a reseller, such as AT&T, reimburse GTEFL for revenues it might lose due to competition. AT&T contends that GTEFL's witness Wellemeyer testified that in the

case of basic local exchange services GTEFL seeks to add to, not deduct from, retail rates what he termed "toll opportunity cost[s]." AT&T argues that, as witness Wellemeyer stated on cross examination, these "toll opportunity costs" are not costs at all, but are simply revenues that might be lost to competition for basic local service. AT&T asserts that the Act, however, requires that wholesale prices reflect the retail price for a service, reduced by retail costs that will be avoided. Thus, AT&T contends that GTEFL's methodology violates the Act.

AT&T's witness Lerma contends that GTEFL's Avoided Cost Study produces unreasonably low percentage discounts applicable to retail rates. AT&T states that it has several concerns including the fact that the study uses national retail cost data and units, as the basis for determining avoided costs per line. The avoided cost per line are, subsequently, applied to GTEFL's residential and business local retail rates. AT&T argues that the average national avoided costs, calculated in the study for each service category, may not be representative of the state specific costs that underlie GTEFL's retail telephone rates in Florida. Witness Lerma contends that the study is based on data from national work centers that GTEFL has determined are involved in retail functions that would not be present in a resale transaction.

AT&T argues that for some of the marketing and customer service categories that the FCC presumed are completely avoided, only small or unreasonably low percentages are treated as avoided. Witness Lerma states that this is true for accounts 6611 (product management), 6612 (sales), 6622 (number services) and 6623 (customer services). AT&T also contends that for 6621 (call completion), which the FCC has presumed completely avoided, GTEFL's study produces zero avoided costs.

AT&T's witness Lerma further indicates that there are no indirect costs, such as general and administrative costs, corporate operations costs, or general support costs, included in this study. As such, AT&T argues this study is contrary to the FCC Order. AT&T also contends that GTEFL's treatment and adjustment of "foregone contributions" is not contemplated by the FCC Order. AT&T emphasizes that the Order specifically states, in paragraph 914, that ". . . an avoided cost study may not calculate avoided costs based on non-cost factors or policy arguments, nor may it make disallowances for reasons not provided for in Section 252(d)(3)."

AT&T contends that GTEFL's methodology of substitute costs is flawed. AT&T's witness Lerma states that since retail services have not yet been offered for resale for any length of time, the substitute costs cannot be measured directly. Witness Lerma states

that GTEFL's substitute costs associated with offering service on a wholesale, rather than retail basis, were calculated by determining the affected costs of an existing wholesale service similar in nature to the service to be offered at resale. AT&T contends that GTEFL indicated that the proxies it used were based on the current wholesale provision of access services. AT&T also states that for vertical services, GTEFL was unable to identify an existing service with costs that would approximate the wholesale cost of providing vertical features. Instead, AT&T states, GTEFL applied avoided cost relationships associated with basic exchange services. Therefore, AT&T argues, GTEFL's methodology to identify new recurring wholesale costs is flawed because of a lack of direct cost measurements.

Witness Lerma also argues that the percentages of substitute costs that result from GTEFL's methodology are unreasonable. AT&T contends that, based on the avoided cost results, these offset substitute costs represent as much as 41% of the current retail costs that are being avoided. Accordingly, the substitute costs are poor proxies for this exercise. Witness Lerma also states that where access costs are used as a proxy for substitute retail costs, it is difficult to accept that any retail functions performed in the provision of access service involve such a high level of cost.

AT&T also contends that the same concerns AT&T had with GTEFL's original Avoided Cost Study are applicable to the Modified Study. Witness Lerma states that the modified study was based on the same workcenter cost detail used in the Avoided Cost Study. He asserts that GTEFL did not consider any costs avoided for the entire public service category, which includes services that are not excluded from resale per the Act. AT&T also states that there are no avoided costs included in this study for operator services expenses or for product management expense. AT&T argues these are accounts that are presumed avoided in the FCC Order and will be avoided in a wholesale environment. In its brief, AT&T acknowledges that GTEFL will avoid operator systems and depreciation of operator systems (accounts 6220 and 6560), to the extent that AT&T provides its own operator systems when reselling services. AT&T disagrees however with Witness Wellemeyer's argument that operator services costs are not avoided because operator services provide their own revenue stream, separate and apart from wholesale services.

AT&T contends that GTEFL's Avoided Cost Study does not treat uncollectibles as 100% avoided. AT&T argues that if the permanent wholesale rate includes a portion of these uncollectible costs, resellers would absorb not only the costs of their own

uncollectibles, but also a portion of the uncollectible costs incurred by GTEFL in connection with its retail customers.

AT&T adds that GTEFL has provided no rationale for, no validation of, and no support for GTEFL's alleged workcenter analysis. AT&T states that all GTEFL has done in this analysis is look at a subset of the USOA cost accounts, and make unverifiable assertions as to whether or not GTEFL will avoid such costs.

AT&T suggests that GTEFL's "lost revenues" would subsidize other services which GTEFL purportedly prices below cost. AT&T states that resale is the quickest means to obtain local service competition. AT&T's witness Gillan argues that in the absence of any competition, GTEFL is poised to achieve in less than twenty months what it took MCI twenty years to achieve, a 20% share of the long distance market. Witness Gillan asserts that given GTEFL's unique position, and its aggressively anti-competitive factors, this Commission should not adopt wholesale rates that place market entrants at an even greater competitive disadvantage.

AT&T further argues that GTEFL is attempting to increase its wholesale rates by including costs that GTEFL states that it is not currently incurring, but which it would incur as a wholesaler. AT&T contends that the Act makes no provisions for the inclusion of additional costs, let alone speculative and subjective costs. AT&T states that GTEFL has articulated no basis, and provides no documentation, for the inclusion of the proposed costs. AT&T suggests that without any legitimate reference point from which to calculate the "additional" wholesale cost of basic services, GTEFL simply substitutes unexplained proxy costs based on its provision of special access service. AT&T argues that neither the companies, nor we can demonstrate the validity of these proposed costs. Thus, AT&T suggests that we should reject GTEFL's proposed inclusion of these amounts. AT&T argues that we stated, in our state proceeding to establish rates for unbundled network elements that ". . . the mere possibility [of revenue loss] would not give rise to an immediate rate increase." MCI agrees. MCI argues that we have previously rejected a make-whole approach to pricing unbundled elements, and that we should reject it again. See Order No. PSC-96-0811-FOF-TP.

AT&T's witness Lerma also asserts that GTEFL's Modified Study used an inappropriate formula to determine the percentage of indirect costs that are attributable to avoided direct retail costs. AT&T contends that the formula is based on a ratio of directly avoided costs to total costs. AT&T states that the FCC's criteria for cost studies provide that indirect costs "are presumed to be avoided in proportion to the avoided direct expenses." See

FCC Order 96-325 at ¶ 918. Witness Lerma suggests that the ratio should be based on directly avoided costs divided by total direct costs. The witness believes this is appropriate because it is not reasonable to include in the denominator the same expenses to which the ratio will be applied. AT&T further argues that because of low amounts of directly avoided costs calculated by GTEFL in its study, the inclusion of indirect costs in the denominator results in an even smaller amount of indirect costs being avoided.

MCI contends that GTEFL's Avoided Cost Study significantly understates the appropriate discount. Witness Price states that there is no argument that GTEFL will continue to be a retail provider of telecommunications services or that it will incur retailing costs. MCI's witness Price argues that by only looking at the costs that GTEFL will no longer incur, as GTEFL suggests, the resulting discount would overstate the wholesale rates, place GTEFL in an unfair competitive position in the retail market, and deny end users the benefits that resale competition could otherwise bring.

Furthermore, Witness Price asserts that GTEFL's study excludes only a portion of GTEFL's retailing costs, based on the theory that GTEFL will continue to be a retail service provider and will continue to incur those retailing costs. Witness Price argues that GTEFL's approach ignores the fact that these retailing costs can, and will, be recovered through its retail rates, and under the Act should not be recovered through its wholesale rates. MCI asserts that in preparing its avoided cost study, GTEFL left in entire categories of costs that have nothing to do with the provision of wholesale services, including such things as advertising, aircraft costs, development costs for new ventures, and advanced product planning for GTEFL's video services product line. MCI states that GTEFL's study even assumes that none of GTEFL's general and administrative costs will be avoided by offering services at wholesale rather than retail. Witness Price argues that this approach to identifying avoided costs ignores the clear intent of the Act to deduct the costs associated with retailing when setting the wholesale price for a service.

In addition, Witness Price argues that GTEFL's witness Wellemeyer's approach does not even attempt to calculate a Florida-specific discount. Instead, MCI contends that GTEFL bases its analysis on nationwide figures, and thereby, produces the same residential discount ($0.83/line/month) and business discount ($1.06/line/month) for each of GTEFL's 28 states. MCI states that GTEFL's methodology produces a residential discount of only 6.6% and a business discount of only 5.5 percent. MCI contends that these discounts are well below the 11.25% discount that witness

Wellemeyer calculated when he purported to use the FCC's avoided cost methodology. Witness Price adds that the discounts are even further below the 17.68% discount produced by MCI.

MCI contends that GTEFL recognizes that when it loses a local customer to competition, GTEFL likely will lose the opportunity to profit from the sale of intraLATA toll service to that customer as well. MCI argues that GTEFL labels this loss of toll contribution (net of access charge contribution) an "opportunity cost." GTEFL, therefore, proposes to adjust the discount downward so that it can retain the same contribution that it would have received if it had not lost the customer. MCI asserts this somewhat convoluted approach produces a business discount of only $0.30 per line per month. MCI states that this is less than a 1% discount when compared to an average business line rate in the range of $33 per month. MCI's witness Price argues that this "make whole" approach advocated by witness Wellemeyer is not only inconsistent with the Act, but it is inconsistent with sound public policy. MCI asserts that this approach would ensure that competition puts no downward pressure on GTEFL's rates. Witness Price argues that GTEFL would remain indifferent to whether it loses a customer or not, because its contribution would be protected in either event.

We find persuasive GTEFL's argument that all other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that GTEFL will operate only as a wholesale provider of services. We also agree that, since GTEFL will provide both retail and wholesale services, it should not be assumed that GTEFL only performs wholesale functions. While we acknowledge AT&T and MCI's concerns regarding GTEFL's treatment of the product management, advertising, number services (directory assistance), call completion (operator services), and customer services accounts, we do not find that AT&T and MCI provided convincing evidence that these costs should be 100% avoided.

We disagree with AT&T and MCI that call completion and number services accounts should be treated as 100% avoided by GTEFL, even if AT&T and MCI do provide their own operator services. Even in a resale environment, we believe that GTEFL will continue to perform these functions; therefore, these costs will not be avoided as a result of an ALEC reselling a LEC's retail service.

Since the analysis in GTEFL's recommended cost study was based on data for total GTEFL domestic telephone operations, it is impossible to identify state-specific costs. GTEFL stated that the workcenters often handle one or more specific retailing functions for a number of different states. GTEFL states that the vast

majority of such functions are being performed on a centralized basis from regional and national service centers located throughout the country. While we do not endorse GTEFL's total telephone operations analysis for purposes of this proceeding, we recognize that it may not be meaningful to break out some of the workcenters to a state-specific level.

Other areas of GTEFL's recommended cost study concern us. GTEFL has not considered indirect costs, such as general and administrative costs. GTEFL has used substitute costs for services it cannot directly measure (such as resale). Furthermore, GTEFL has included opportunity costs. We find that in order to determine an appropriate wholesale discount, indirect costs must be considered, because it is reasonable to believe that there will be some reduction in overhead costs in a wholesale environment.

In light of the evidence and arguments presented, we are persuaded that GTEFL will incur costs associated with certain wholesale functions, and, as such, it is appropriate to net such costs with GTEFL's avoided retail costs. However, we question the reasonableness of the proxies used by GTEFL. As noted above, GTEFL's substitute costs were calculated based on special and switched access, existing wholesale services assumed to be similar in nature to the services to be offered at resale. In addition to our doubts regarding the reasonableness of the procedures used to derive the proxy costs, we also do not believe there is an adequate basis upon which to conclude that the proposed proxies will represent the costs associated with the services to be resold.

Finally, we find that GTEFL's inclusion of "opportunity costs" is unacceptable. In actuality, these "opportunity costs" are not really costs, but contribution that may be foregone if toll revenues decline due to resale. Previously, we indicated that a LEC has no entitlement to such revenues and that a "make whole" provision is inappropriate. Thus, based on the arguments and the evidence presented, GTEFL's recommended avoided cost model is rejected.

Based on the record before us, we do, however, find that GTEFL's modified avoided cost study is, essentially, in compliance with the Act. Unlike the study sponsored by AT&T and MCI, GTEFL's modified study attempts to estimate those costs which GTEFL actually will forego due to offering a service at wholesale instead of at retail. The FCC's Order considers accounts 6621 (Call Completion) and 6622 (Number Services) as presumptively avoidable; however, the Order also indicates that this is a rebuttable presumption. We find that GTEFL has adequately supported its claim

that it will continue to incur some of these costs. Accordingly, these costs shall not be treated as avoidable.

On the whole, we believe that GTEFL's modified avoided cost study is the most reasonable option. We believe that GTEFL's treatment of key accounts has been adequately supported and is appropriate. We do, however, believe that two adjustments are warranted.

First, it is GTEFL's position that public telephone services should not be available for resale at a discount. The Company excluded the associated revenues from the revenue base for computing the resale discount. As previously stated, we find that these services must be made available for resale. Accordingly, public telephone revenues shall be included.

Second, in GTEFL's analysis, only 9.0834% of account 5301 (Uncollectibles - Telecommunications) was considered avoidable. Based on data contained in the company's supporting work papers to its avoided cost studies, we estimated what portion of account 5301 was attributable to retail services (versus carrier services) and included the resulting, higher uncollectibles amount.

Applying these adjustments to GTEFL's modified avoided cost study yields a wholesale discount percentage of 13.04. Although we believe that separate wholesale discounts should be set for residential and business services to more accurately reflect the costs associated with the service, we did not have sufficient data in this record to determine different rates. Consequently, GTEFL shall be required to offer retail services at a wholesale discount rate of 13.04%.

We believe that the 13.04% wholesale discount rate complies with the intent of the Act to establish rates that exclude those portions of retail costs "that will be avoided" by GTEFL. Our determination of avoided costs in this proceeding strikes a balance between the parties' different interpretations of avoided costs.

E. Branding of Resold Operator and Directory Assistance Services

In general

The issue of branding is specific to MCI and GTEFL. The issue is whether or not GTEFL should rebrand or unbrand operator services and directory assistance calls initiated from a GTEFL resold service. Section 51.613(c) of the FCC's rules, pertaining to the branding of resold services, states that:

> Branding. Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.
>
> (1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.
>
> (2) For the purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

GTEFL states that it cannot provide branding for operator and directory assistance services, because customized routing is not possible. GTEFL's witness Johnson explains that even if the issue of customized routing were resolved, branding raises its own set of technical issues. GTEFL identifies two types of potential branding: prebranding and post branding. Witness Johnson explains

that prebranding begins at the inception of a directory assistance call. Postbranding occurs anytime during a recorded directory assistance announcement.

Witness Johnson further explains that prebranding requires identification and branding capabilities at the operator switch, a dedicated trunk group to identify calls, and storage capacity for unique recorded branding phrases. Witness Johnson asserts that GTEFL database management personnel will have to spend an extensive amount of time within each GTEFL operator service switch setting up the branding process.

GTEFL argues that in practical terms operator services branding is not technically feasible, because MCI would have to designate all of its customers to unique NPA/NXX groups. Witness Johnson points out that for resold services ALECs will share many numbers within a single NPA/NXX.

We discuss our decision to require GTEFL to provide customized routing in Section VI of this Order.

MCI states that it is important that operator and directory assistance services be properly branded. Witness Price believes that customers that obtain MCI's operator and directory assistance services via GTEFL's platform should be provided services in conjunction with MCI's brand name. Witness Price notes that the FCC states that brand identification is likely to play a major role in markets where resellers compete with incumbent LECs for the provision of local and toll service. The FCC also stated that where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. MCI's witness Price echoes the FCC's reasoning, and adds that customers may conclude that they were "slammed" if they are greeted with the name of their old telephone company when making an operator service or directory assistance call.

Based on the evidence and arguments presented, GTEFL shall be required to provide branding or unbranding for MCI customers of GTEFL's resold service. GTEFL has not proved to us that it "lacks the capability" to brand or unbrand its operator service or directory assistance service.

Specific Branding Requirements

MCI states that resellers require carrier-specific branding for all customer contacts. Witness Price explains that customers expect services to be provisioned, serviced and maintained by their carrier of choice. Witness Price asserts that "customer confusion will be significantly diminished if the customer does not perceive that resold services are actually provided by another carrier."

In its brief, MCI asks that GTEFL employees who interact with an MCI customer concerning a resold service should be required to: 1) identify themselves as providing service on behalf of MCI, and 2) use branded "leave-behind cards" and other written materials. Since this request was first presented in MCI's post-hearing brief, there is no record support for this approach.

GTEFL asserts that its employees should continue to work under GTEFL's brand. GTEFL service personnel providing repair service for MCI customers are still GTEFL employees. However, GTEFL's witness Drew states that GTEFL is willing to use an unbranded, no-access door hanger when providing repair service to MCI and other ALECs.

Based on the evidence in this record, and the arguments presented, we find GTEFL's proposal of leaving unbranded materials when providing repair service to MCI's customers is reasonable, and therefore approved.

IV. TRANSPORT AND TERMINATION:

Compensation for Exchange of Local Traffic Between AT&T and GTEFL

Section 251(b)(5) of the Act requires the ILECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The portions of the FCC rules and Order addressing transport and termination are stayed.

AT&T states that the Act specifies that each LEC has an obligation to establish reciprocal compensation arrangements for the transport and termination of such traffic. Witness Guedel contends that more specifically the Act requires that such arrangements provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carriers' network of calls that originate on the network of the other carrier.

AT&T proposes that we order that interconnection be priced at TELRIC. Witness Guedel acknowledges that he initially recommended the use of TSLRIC, but that was before the FCC Order was issued. He explains that the TSLRIC methodology is essentially identical to the TELRIC methodology. AT&T contends that we should order GTEFL to produce valid TELRIC cost studies prior to establishing a specific price for call termination and transport service.

AT&T acknowledges that in the beginning the best solution may be a bill-and-keep arrangement. Witness Guedel asserts that the arrangement is simple and can be implemented without the development of cost studies that would be required to establish and justify specific prices. AT&T states that under this arrangement, no dollars change hands. AT&T argues that the Act permits arrangements that provide "mutual recovery of costs through offsetting of reciprocal obligations," to the extent that such arrangements permit the recovery of the related costs. Further, AT&T contends that section 252(d)(2)(B) of the Act specifically identifies bill-and-keep arrangements as acceptable to the extent that each carrier covers the cost of transport and termination. AT&T also states that in Order No. PSC-96-0668-FOF-TP, issued May 20, 1996, and Order No. PSC-96-1148-FOF-TP, issued September 12, 1996, we recognized bill-and-keep arrangements.

AT&T's witness Guedel contends that GTEFL's assertion that it may have older, less efficient plant and equipment, which would tend to increase its costs, is without merit. AT&T argues that embedded technologies have no place in a TSLRIC or TELRIC analysis. Witness Guedel states that the fact that GTEFL may or may not have some obsolete technologies in place is irrelevant, because on a going forward basis the estimated cost incurred by GTEFL should be based upon the most efficient technology.

AT&T disagrees with GTEFL that because the total capacity of an ALEC's network tends to be more fully utilized than the capacity of the ILEC's network, the ALEC's per unit cost will be lower than the ILEC's. Witness Guedel contends that since GTEFL begins the competitive phase with a market share of nearly 100% and the ALEC begins with nothing, it is not likely that an ALEC could deploy a network and immediately utilize it as efficiently as GTEFL can utilize its network. AT&T argues that economies of scale would tend to favor the ILEC, and the larger networks would still tend to be more efficient at full utilization than smaller networks.

GTEFL disagrees with AT&T's proposed studies. GTEFL's witness Sibley argues that AT&T's pricing formulas would deny GTEFL recovery of its total costs, require GTEFL's shareholders to subsidize AT&T's entry into local exchange telephony, and

confiscate the private property of GTEFL's shareholders. Therefore, GTEFL contends AT&T's pricing methodology should be rejected.

MCI states that it interprets the FCC Order to permit mutual traffic exchange only for the physical interconnection between two networks, and to require reciprocal, symmetrical compensation for transport and termination of traffic delivered over that interconnection facility. MCI proposes that the Hatfield Model produces prices calculated in accordance with such principles for tandem switching, local switching and transport.

MCI states that GTEFL appears to disagree with MCI's interpretation of the FCC Order, and believes that mutual traffic exchange is a permitted method of compensation for interconnection, transport and termination under the FCC Rules. MCI contends that, while GTEFL maintains that we cannot order bill-and-keep, GTEFL is willing, in the spirit of compromise, to accept bill-and-keep under certain terms and conditions.

MCI states that if we determine that the FCC's rules permit bill-and-keep, or if we choose to apply a bill-and-keep methodology in light of the stay of the pricing provisions of the FCC rules, it would not object to a reaffirmation of our prior order, which requires mutual traffic exchange, unless and until a carrier proves that traffic is sufficiently out of balance to justify the cost of measurement and billing.

GTEFL contends that it should be allowed to charge rates for interconnection, transport, and termination that are just, reasonable, and nondiscriminatory, and that allow GTEFL full recovery of its costs and a reasonable profit. GTEFL proposes that rates for termination should be cost-based as the Act provides.

GTEFL witness Munsell asserts that rates for interconnection and for transport and termination should be determined according to the M-ECPR. GTEFL's witness Sibley states that the M-ECPR is a market-based method for determining, as the FCC directed, the reasonable share of forward-looking common costs that would be allocated to the prices for the ILEC's various unbundled network elements. Witness Sibley states that the M-ECPR takes full account of the competitive entry when setting prices for unbundled network elements. He contends that the M-ECPR price for an unbundled network element is equal to the sum of its TELRIC plus its opportunity cost, as constrained by market forces. He states that if GTEFL is to be required to sell its services and products to AT&T and others, GTEFL should be reimbursed for all its costs and be allowed the opportunity to earn a reasonable rate of return.

GTEFL also contends that it should be allowed a true-up of its costs should it be eventually allowed to recover its cost under the ECPR.

GTEFL states that the costs associated with transport and termination may differ depending on the extent to which completion of calls from the point of interconnection involves tandem switching and transport. Witness Munsell states that since an ALEC's point of interconnection with an ILEC will vary, the functions of tandem switching, transport and termination generally are priced separately.

Witness Munsell also argues that the cost of transport and termination will generally be higher for an ILEC than an ALEC because ILEC equipment is older than ALEC equipment. GTEFL explains that ALECs are just now entering the local exchange business and are installing currently available switches and transmission plant. GTEFL states that this new equipment is often less expensive per unit of traffic than older equipment already deployed by the ILECS. Witness Munsell contends that GTEFL's traffic is usually dispersed throughout a large network of end offices and tandem switches, which serves a relatively large number of low volume residential or rural customers. GTEFL argues that by contrast, an ALEC will have relatively few end office switches, which can be expected to serve a relatively large number of high volume business customers. According to witness Munsell, this results in a lower per unit cost for ALECs.

GTEFL states that if a transport and termination agreement accurately reflects the true relative costs incurred by an ALEC and an ILEC for terminating each other's traffic, the agreement will most likely provide that the ILEC recover its costs at a higher rate than the ALEC. Witness Munsell argues that if a transport and termination agreement provides for symmetrical rates, the agreement does not necessarily reflect the actual costs of interconnection for each party.

GTEFL contends that sections 252(d)(1)(A) and (B) of the Act require that rates set by state commissions shall be "based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and ... nondiscriminatory, and ... may include a reasonable profit." Witness Munsell states that sections 252(d)(2(A)(i) and (ii) of the Act provide that a state commission may not consider the terms and conditions of reciprocal compensation to be just and reasonable unless such terms and conditions "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on

each carrier's network facilities of calls that originate on the network facilities of the other carrier" and unless it determines costs "on the basis of a reasonable approximation of the additional costs of terminating such calls." GTEFL concedes that section 252(d)(2)(B)(i) states that such pricing standards shall not be construed to prevent parties from arranging for "the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)."

GTEFL states that symmetrical pricing between AT&T and GTEFL will not afford GTEFL recovery of its costs. Witness Munsell contends that AT&T's costs for terminating calls will, most likely, be less than GTEFL's cost for terminating calls. GTEFL argues that by using symmetrical pricing, AT&T will receive a subsidy from GTEFL, because it will be receiving far more than the costs it incurs to complete a call. Therefore, GTEFL asserts that GTEFL's costs are not a suitable proxy for determining the actual costs of interconnection in a symmetrical arrangement. Witness Munsell contends that we should adhere to the intent of the Act and allow the parties to recover their respective true costs of transport and termination. However, GTEFL states that if the Commission decides symmetrical pricing is justified, pending judicial review of the FCC Order, GTEFL must be allowed a true-up of its costs in the event the FCC's requirement of symmetrical pricing is eventually overturned.

While GTEFL contends that its preferred position is asymmetrical rates, GTEFL is willing to enter into bill-and-keep arrangements only where traffic is approximately equal, and transport and termination would be of local traffic only. GTEFL also states that interLATA access must be carried over separate trunk groups and not intermingled with local and toll traffic. GTEFL asserts that in the spirit of promoting the competitive process, it proposes a broad definition of "roughly balanced" as equalling plus or minus ten percent. Witness Munsell proposes that either party may request studies not more frequently than quarterly, if traffic is suspected to fall outside this range. Further, GTEFL proposes that either party could terminate the bill-and-keep arrangement with twelve months' notice.

AT&T contends that GTEFL has not provided TELRIC data for exchange of local traffic. AT&T states that instead GTEFL has requested a compensation methodology based on the ECPR. AT&T argues that in Order No. PSC-96-0811-FOF-TP, Docket No. 950985-TP, issued June 24, 1996, we rejected the ECPR as a pricing methodology for unbundled network element rates on the grounds that it eliminates the incentive for competition. AT&T states that the FCC

in paragraphs 707 through 710 of the Order also rejects the use of the ECPR. AT&T notes that the FCC in paragraph 709 states that "ECPR does not provide any mechanism for moving prices toward competitive levels."

We find that, while Section 252(d)(2)(B)(i) does not require a state commission to adopt mutual traffic exchange, it permits it to do so. The Act recognizes that the offsetting of reciprocal obligations, whether through bill-and-keep or mutual traffic exchange, is a permissible method of cost recovery. We conclude that under the Act we are authorized to establish bill-and-keep arbitrated arrangements. We find no provision in the Act that would limit bill-and-keep to negotiated agreements. We conclude that we have the authority to order mutual traffic exchange, on either a temporary or a permanent basis. We find that reciprocal rates shall be set, since there is sufficient evidence in the record upon which to establish rates for tandem and end office switching.

We have stated that we do not consider the Hatfield Model suitable for use in this proceeding to establish permanent rates. Moreover, we have, in Order No. PSC-96-0811-FOF-TP at 17, rejected GTEFL's ECPR as a pricing methodology for unbundled network element rates on the grounds that it eliminates the incentive for competition. In addition, we concur with the FCC's analysis of the ECPR, and its conclusion in paragraph 709 that "the ECPR does not provide any mechanism for moving prices toward competitive levels; it simply takes prices as given." Even though GTEFL contends it has modified the ECPR model to promote competition by capping prices for each unbundled network element at the price of its market alternative, the M-ECPR, we find that the M-ECPR may still discourage competition. We determine that the pricing for termination should be symmetrical between AT&T, MCI and GTEFL, and, further, that GTEFL's costs are appropriate for determining symmetrical rates.

To determine the validity of GTEFL's TSLRIC cost study provided in this docket, we have compared these costs to the costs provided in the interconnection proceeding, Docket No. 950985-TP. In Order No. PSC-96-0668-FOF-TP, at page 6, we state that:

> Based on GTEFL's cost study, GTEFL's witness Menard agreed that GTEFL's cost for terminating a local call was less than two-tenths of a cent per minute of use. This cost includes the LRIC for tandem switching and transport and an estimate of the TSLRIC for the end office switching. Although witness

> Menard testified that no contribution to shared or joint and common costs is included in GTEFL's cost study, she agreed that a return on capital for the investment is included in performing GTEFL's cost study.

Although the end office cost was estimated TSLRIC in Docket No. 950985-TP, the TSLRIC cost for end office switching in this docket is significantly greater than the $.002 for the combination of tandem switching, transport, and end office switching established in Docket No. 950985-TP.

The supporting cost papers in this docket indicate that GTEFL employed two factors that may not have been used in the prior study. The first is that associated land and buildings costs are estimated, and the second is that volume insensitive costs are attributed. GTEFL provided support for the land and buildings factor. There is no support in the record, however, for the volume insensitive costs factor. It is appropriate to include volume insensitive costs in a TSLRIC study. We have misgivings about accepting GTEFL's factor, however, because it is without support, and application of the factor is a key part of GTEFL's reported costs. To accept the company's costs proposal would require us to endorse its volume insensitive costs factor. We are unwilling to do this without qualification.

We find it appropriate to establish separate rates for tandem and end office switching, because the ALECs may use one or both ILEC switches to terminate a call. This is appropriate since a call terminated at an access tandem may require more switching and transport than a call terminated at an end office. The tandem switching rate only includes the costs to terminate at the tandem. If an ALEC terminates a call through both a tandem and end office switch, GTEFL will charge both a tandem and end office rate.

We note that the costs considered here are those for termination only. The costs that are considered earlier for unbundled switching elements include all the features, functions and capabilities pursuant to the definition of local switching in the FCC's Rules and Order.

Upon consideration, we find that a rate of $.00125 for tandem switching per minute and a rate of $.0025 for end office switching per minute are appropriate. While they are under GTEFL's proposed costs, we find that these rates are sufficient to cover TSLRIC costs and provide some contribution to common costs.

V. IMPLEMENTATION MATTERS

A. Resold Local Exchange Service and Unbundled Local Switching Customized Routing

Section 251(b)(3) of the Act obligates all local exchange providers to provide the following:

> DIALING PARITY. - The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

The FCC interprets "nondiscriminatory access to operator services" to mean that a telephone service customer, regardless of the identity of his or her local service provider, must be able to connect to a local operator by dialing "0" or "0 plus" the desired telephone number. FCC Order 96-333 at ¶ 114. The FCC interprets "nondiscriminatory access to directory assistance services" to mean that customers of all telecommunications service providers should be able to access each LEC's directory assistance services without regard to the requesting customer's local service provider. FCC Order 96-333 at ¶ 133. In addition, the FCC states that nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible. FCC Order 96-333 at ¶ 151.

AT&T and MCI request that their customers' operator service, directory assistance and repair calls be routed to AT&T and MCI, respectively, using the same dialing arrangements that GTEFL provides for its customers. AT&T's and MCI's witnesses assert that this can be accomplished through customized routing. The FCC addressed customized routing this way:

> [C]ustomized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services,

> and directory assistance. FCC Order 96-325 at ¶ 418.

AT&T's witness Caplan and MCI's witness Price both testify that customized routing can be provided through the use of line class codes. Witness Caplan maintains that it is technically feasible for GTEFL to provide customized routing functions. Witness Caplan further asserts that most switches in the LEC's network under utilize the number of line class codes available.

GTEFL's witness Hartshorn testifies that in order to provide customized routing, a unique line class code must be determined for every permutation of required options. Witness Hartshorn explains that the line class codes are then placed on each customer's switch entry. Witness Hartshorn further maintains that a manual search would have to be performed to find the required line class codes.

In addition to the technical difficulty involved, Witness Hartshorn testifies that substantial costs will be incurred in order to provide existing switches with the requested customized routing capabilities. Witness Hartshorn explains that it is difficult to estimate the costs of increasing capacity within the various switches. He estimates, however, that costs could run in the millions of dollars just to meet AT&T's demand for separate routing to operator services and directory assistance trunks. As such, Witness Hartshorn asserts that a long term solution involving the development of industry standards would be more appropriate. Otherwise, Witness Hartshorn maintains that AT&T's and MCI's request will require GTEFL to alter its existing switches and then "undo" the alteration when a permanent solution is found.

Regarding repair calls, GTEFL states that it does not use 611 for repair calls. Instead GTEFL asserts that it uses a 1-800 number for repair calls. In its brief, MCI indicates that 611 dialing is no longer an issue since competing carriers can use similar 1-800 numbers to reach their repair centers.

The FCC recognized that customized routing may not be possible in all switches deployed by the incumbent LEC. In recognizing this, the FCC considered evidence that the 1AESS may have problems accommodating customized routing requests from competitive carriers. Therefore, the FCC concluded the following:

> We recognize that the ability of an incumbent LEC to provide customized routing to a

> requesting carrier will depend on the capability of the particular switch in question. Thus, our requirement that incumbent LECs provide customized routing as part of the "functionality" of the local switching element applies, by definition, only to those switches that are capable of performing customized routing. An incumbent LEC must prove to the state commission that customized routing in a particular switch is not technically feasible. FCC Order 96-325 at ¶ 418.

Based on the evidence and the arguments presented, we find that it is technically feasible for GTEFL to provide customized routing to AT&T and MCI. In making this determination, we recognize that the FCC has already determined that customized routing is technically feasible. We also emphasize that the burden is on GTEFL to prove that customized routing in a particular switch is not technically feasible, as the FCC defines technical feasibility. Thus, we shall require GTEFL to provide customized routing using line class codes. We do, however, recognize that line class codes are a finite resource and, therefore, customized routing shall be provided on a first-come, first-served basis. While we find it appropriate that GTE reserve to itself a number of Line Class Codes, we do not find record support to set that number.

We have also considered the implementation schedule for any new capabilities that need to be developed for customized routing. GTEFL's witness Hartshorn testifies that substantial work will be necessary before customized routing can be implemented. In addition, witness Hartshorn points out that any long term solution would likely involve industry standards. In its brief, GTEFL further asserts that there is no evidence in the record upon which we can set an implementation schedule.

In its brief, MCI takes the opposite stance, stating that there is no evidence that GTEFL cannot immediately begin implementing customized routing using line class codes. Similarly, AT&T asserts in its brief that it believes GTEFL already has the capability to perform customized routing through the use of line class codes. AT&T adds that, to the extent GTEFL intends to provide customized routing through alternative methods, GTEFL should develop any additional processes and procedures as soon as possible.

Based on the foregoing arguments, we shall require GTEFL to file an implementation schedule by which customized routing, using line class codes, will be made available to AT&T and MCI. The schedule shall include deadlines for any network modifications that need to be made, along with the description and purpose of each modification. This information shall be provided 60 days from the issuance date of this Order.

We have also considered the matter of cost recovery for developing and implementing customized routing. GTEFL states in its brief that it cannot calculate the costs for customized routing at this time. GTEFL asserts that it needs information on which switches AT&T and MCI will request customized routing capability, the number of line class codes needed, and the capacity requirements. Witness Hartshorn testifies that costs will vary depending on the switch.

AT&T argues in its brief that costs should be based on TSLRIC or TELRIC studies. In the absence of TSLRIC or TELRIC studies, AT&T asserts that rates should be determined using the Hatfield model, where appropriate data is available. AT&T further asserts that any interim rates should reflect the FCC default prices. MCI states that where GTEFL must incur costs to provide a network capability, GTEFL should recover only the TELRIC costs of implementing such capability. Since GTEFL has not demonstrated that there will be any costs for employing line class codes for customized routing, MCI argues that no cost recovery should be permitted at this time.

We note that Section 51.319(c)(1)(i) of the FCC rules defines the local switching network element to encompass:

> (C) all features, functions, and capabilities of the switch which include, but are not limited to:
>
> > (2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signalling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch. (emphasis added)

We interpret the above passage to mean that the actual capability and function of the switch to provide customized routing is included in the local switching element. Thus, we shall require GTEFL to file a TSLRIC cost study for implementing the switch's customized routing capabilities. The study shall only include costs for providing customized routing that are beyond those capabilities that currently reside in the switch. Furthermore, the cost study shall be filed within 90 days from the issuance date of this Order.

B. *Resold Services and Network Elements Service Standards*

AT&T, in its brief, and MCI's witnesses Shurter, deCamp, and Inkellis contend that GTEFL has an incentive not to provide service at a level of quality comparable to that which it provides itself. The witnesses testify that in order to be able to compete with GTEFL, AT&T and MCI must be able to offer service at the same level of quality that GTEFL provides to its customers. To that end, the witnesses assert that MCI and AT&T have proposed that Direct Measures of Quality (DMOQs) and other standards and procedures be established, and periodic reports be submitted on the level of service provided.

MCI's witness deCamp argues that GTEFL's proposal to simply use the existing quality of service standards applicable to end users is insufficient. Witness deCamp testifies that it will either reduce the quality of MCI's service or force MCI to incur unnecessary costs in order to provide a competitive product. Thus, Witness deCamp asserts, GTEFL's proposal would hinder competition. Witness deCamp further testifies that implementing the FCC concept of "parity" will require detailed technical standards, interfaces, and performance measures, such as installation intervals, and maintenance and repair times.

As to the specific DMOQs and other standards that should be set, MCI witness deCamp asserts that while these are best left to negotiations outside of contested proceedings, the issue, nevertheless, must be resolved in this proceeding. In its brief, MCI asks that we order that these measures and standards be incorporated into the arbitrated agreement and submitted for our approval to ensure that GTEFL recognizes its obligation to negotiate these matters. MCI also asks that we find as a matter of policy that adherence to these standards can be enforced through a system of credits for failure to meet the applicable standards.

AT&T's witness Shurter testifies that AT&T and GTEFL have agreed to jointly develop and deploy standards and procedures that would verify that AT&T is, in fact, receiving services, unbundled network elements, and interconnection at least at parity with GTEFL. Witness Shurter asserts however that GTEFL and AT&T have not agreed on a definition of "parity." Witness Shurter testifies that parity must exist between the ILEC and new entrants. The witness states that GTEFL believes parity need exist only between new entrants. AT&T requests that we require GTEFL to provide AT&T with services, unbundled network elements, and interconnection at least equal in quality to those that GTEFL provides itself. In addition, AT&T also asks that we require GTEFL to implement reasonable standards and procedures to ensure that this occurs.

AT&T has proposed performance standards throughout its proposed interconnection agreement with GTEFL. For example, Section 9 of Attachment 4 of AT&T's proposed interconnection agreement is titled, "Performance Requirements." That section states, in pertinent part:

> AT&T will specify on each order its Desired Due Date (DDD) for completion of that particular order. Standard intervals do not apply to orders under this Agreement. GTEFL will not complete the order prior to DDD or later than DDD unless authorized by AT&T. If the DDD is less than the following element intervals, the order will be considered an expedited order. [chart follows in original text]
>
> Within two (2) business hours after a request from AT&T for an expedited order, GTEFL shall notify AT&T of GTEFL's confirmation to complete, or not complete, the order within the expedited interval. A Business Hour is any hour occurring on a business day between 8 a.m. and 8 p.m. within each respective continental U.S. time zone.

> GTEFL shall satisfy the following Direct Measures of Quality: (i) at least 90% of all orders must be completed by DDD; (ii) at least 98% of all orders must be completed by Committed Due Date; and (iii) at least 99% of all orders will be completed without error.

Neither AT&T nor MCI proposed credits for specific performance failures in this proceeding. AT&T has suggested in its brief that the use of DMOQs with third party arbitration clauses would keep us from having to handle disputes about the quality of resold services, interconnection or unbundled network elements provided by GTEFL. Both AT&T and MCI have proposed general liability, indemnification, and liquidated damages provisions in the interconnection agreements to remedy GTEFL performance failures. GTEFL's witness McLeod states that GTEFL's current tariff provisions on credit for service interruptions are adequate.

GTEFL's witness McLeod testifies that GTEFL already plans to provide service quality that is non-discriminatory and equal to that which GTEFL provides to itself and its affiliates. Witness McLeod's concern is that GTEFL is being asked to adhere to different metrics and to different standards of performance for different ALECs. He further states that this would be onerous and that it would not benefit the ALECs, for GTEFL already is committed to providing them non-discriminatory treatment with respect to the quality standards set in the public interest in each state. In its brief, GTEFL states that it believes that quality standards should no longer be considered an issue for resolution in this arbitration. GTEFL also states that it would establish processes to ensure non-discriminatory treatment of ALECs.

In Order 96-325 at ¶ 224, the FCC states that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection with its network at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, and affiliate, or any other party. The FCC further states that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks. Thus, the FCC concludes that the obligation imposed

by section 251(c)(2) is not limited to the quality perceived by end users and the statutory language contains no such limitation.

The FCC also states that incumbent LECS will be required to provide access and unbundled elements that are at least equal in quality to what the incumbent LECs provide themselves. The FCC allows for an exception to this requirement only where it is technically infeasible to meet. Incumbent LECS will be expected to fulfill this requirement in nearly all instances where they provision unbundled elements, because the FCC believes the technical infeasibility problem will arise rarely.

On services offered for resale, the FCC also states that service made available for resale must be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Any contrary practices would violate the Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale. FCC Order 96-325 at ¶ 970. The FCC states that this requirement includes differences imperceptible to end users, because such differences may still provide incumbent LECs with advantages in the marketplace. The FCC concludes that incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to the incumbent LEC's subsidiaries, affiliates, or other parties to whom the carrier directly provides the service, such as end users.

We do not interpret the Act and related provisions of the Order and Rules to only require that GTEFL achieve parity for standards and processes among the ALECs. Based upon this interpretation, and the arguments and the evidence presented, we 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 GTEFL 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.

C. Loop Testing Information

AT&T and MCI have asked that GTEFL provide loop testing information to verify that the end-to-end service meets certain quality standards. AT&T's witness Shurter asserts that if GTEFL tests its loops and documents the test results, GTEFL should provide the results to AT&T. Witness Shurter states that GTEFL does not need to provide the results if it does not document them.

GTEFL's witness Hartshorn maintains that GTEFL does not routinely test every loop on a new installation. Witness Hartshorn states that GTEFL will provide the same quality of service to ALEC customers that it provides to itself. Witness Hartshorn believes that GTEFL should not be required to satisfy unique, different or higher standards for each ALEC.

Upon consideration, we find that, pursuant to Section 251(c) of the Act, GTEFL is required to provide interconnection, unbundled elements and resold services to all carriers at the same quality that GTEFL provides to itself. Furthermore, we find that, to the extent GTEFL tests loops and documents the results, GTEFL must provide those results to AT&T and MCI.

D. General Contractual Terms

AT&T and MCI request that the Commission establish appropriate contract language for liability and indemnification in the event that services are not provided according to the terms of the arbitrated agreements.

MCI proposes that the following liability and indemnification provisions be inserted into its interconnection contracts with GTEFL:

LIMITATION OF LIABILITY

> Neither Party shall be liable to the other for any lost profits, or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited in the event of its willful or intentional misconduct, including gross negligence, its

> repeated breach of any one or more of its material obligations under this Agreement, or its acts or omissions causing bodily injury, death or damage to tangible property, or with respect to the Indemnifying Party's indemnification obligations under the Agreement.

INDEMNITY

> Each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage, expense (including reasonable attorney's fees) to third parties, relating to or arising out of negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement, or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

MCI states that GTEFL opposes the language that is underlined. MCI argues that GTEFL has substantial incentives to be negligent in providing interconnection services to MCI, and that in order to ensure MCI's effective entry into the local exchange market, it is necessary to subject GTEFL to substantial financial obligations in the event of its failure to perform under the agreement. MCI believes that repeated breaches of material terms are tantamount to a standard of willful or intentional misconduct or gross negligence, which is a standard GTEFL accepts. MCI states that willful or reckless breaches are difficult to prove. Therefore MCI seeks to establish an equivalent standard whereby a pattern of negligent failures in the competitive environment can be cast as intentional misconduct. Further, MCI observes that its proposal, which would not impose liability for a single breach or from breach of a minor provision, would afford GTEFL protection unavailable under common law, which would hold GTEFL liable for any reasonably foreseeable consequential damages resulting from a breach of contract.

MCI witness Inkellis acknowledges that the Commission need not arbitrate breach of contract provisions. MCI also concedes that if the Commission decides not to arbitrate those provisions, and MCI is unable to reach agreement with GTEFL, it would still have a common law remedy. MCI envisions its claims to be resolved in some, but not all, instances through alternative dispute resolution.

AT&T proposes similar language that addresses the same issues with respect to liability and indemnification. AT&T witness Shurter states that GTEFL should accept liability for unbillable or uncollectible revenues that result from GTEFL's actions or inactions, such as work errors, alterations of software, or unauthorized physical attachment to loop facilities. AT&T argues that GTEFL should be liable in damages for its actions and inactions, because GTEFL is responsible for the personnel provisioning the service and the equipment providing the service. AT&T further states that GTEFL should incur liability only for those actions or inactions not reasonably undertaken that result in lost revenues to AT&T. AT&T proposes that instances of controversy concerning liability or damages should be resolved through ADR, rather than through invocation of the Commission's complaint process. AT&T acknowledges that it must work with GTEFL as "partners in an industry on a customer-supplier model," and suggests that, through negotiations, the two companies could arrive at an agreement limiting GTEFL's liability.

GTEFL witness Langley asserts that the ALECs will have access to GTEFL's operation support systems in parity, and that, therefore, provisions for liquidated damages for performance failures resulting in a degradation of the ALEC's service are inappropriate. GTEFL suggests that were it to fail to adhere to the standards under the Act or to Commission quality of service standards, the ALECs may seek relief under existing mechanisms of the Act or under the same procedures by which violations of Commission rules or standards are addressed.

GTEFL states that it has provided AT&T and MCI with access services for years under tariff provisions appropriately limiting GTEFL's liability to pro rata credit for service outages and interruptions. Furthermore, GTEFL asserts that nothing in the Act requires any revision to GTEFL's limitations of liability. GTEFL envisions that its liability under AT&T's proposal would be limitless, bringing an exposure to damages greatly disproportionate to its conduct. GTEFL asserts that AT&T's proposal is fatally

flawed, because GTEFL's potential costs under strict liability are incalculable and, hence, unrecoverable in violation of Section 252(d)(1)(A)(i) of the Act.

GTEFL is similarly critical of MCI's proposed language. GTEFL states that reciprocity of indemnification obligations is of minimal benefit to GTEFL. GTEFL takes issue with the MCI language that would impose liability for "repeated breach of any one or more of its material obligations" because of uncertainty about the way in which the words "repeated" and "material" would be construed. Moreover, under MCI's proposed indemnification provision, GTEFL asserts that MCI will have an "unbeatable" competitive advantage, because it will be unnecessary for MCI to include indemnification provisions in contracts with its customers. Finally, GTEFL observes that the Commission, even in the competitive environment promoted by the Act, should continue to be concerned about the rates consumers pay for telecommunications services and should not, therefore, permit GTEFL's limitations of liability "to be negotiated away."

GTEFL is correct that the Act does not require revisions to GTEFL's tariffed limitations of liability. We will limit our consideration to the items enumerated in Sections 251 and 252 to be arbitrated, and matters necessary to implement those items. Neither liability, indemnification nor liquidated damages provisions fall within that limitation. While we should not be insensitive to the concerns raised by AT&T and MCI relating to the consequences of GTEFL performance failures, the companies should not require the assistance of the Commission to establish contract provisions affording to each of them protections that will not cause unreasonable exposure to liability, direct or third-party, or hinder competitive entry. We note that we declined to arbitrate liquidated damages provisions in Docket No. 950757-TL.

Therefore, upon consideration we decline to arbitrate liability and indemnification provisions. AT&T, MCI and GTEFL can and should establish remedies for performance failures through negotiation.

E. Operation Support Systems for Resold Services and Network Elements

The FCC Order addresses operation support systems in Paragraph 516. It states:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry."

Further, in Paragraph 523, the FCC states:

> We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.

The FCC concluded that operations support systems are subject to the nondiscriminatory access duty imposed by Section 251(c)(3), and the duty imposed by Section 251(c)(4) to provide resale

services under just, reasonable, and nondiscriminatory terms and conditions. The FCC believes that if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. See FCC Order 96-325 at ¶s 517 and 518.

In its brief, AT&T states that it has agreed with GTEFL in principle that GTEFL will provide AT&T with direct access to GTEFL's electronic interfaces with respect to both total service resale and unbundled network elements. AT&T states that the remaining issue is when and in what form GTEFL will provide real-time and interactive access via electronic interfaces. AT&T states that it has agreed with GTEFL on an interim solution for resold services, whereby interfaces will be both manual and electronic and then transition to full electronic bonding. AT&T states, however, that it has not been able to reach an interim agreement with GTEFL with respect to interfaces for unbundled network elements.

AT&T also states that it has requested real-time, interactive access through electronic interfaces to GTEFL's operational support systems for pre-ordering and ordering, provisioning, maintenance and repair, and billing. AT&T defines these systems as follows:

> Pre-ordering and ordering includes the exchange of information between telecommunications carriers about current and proposed customer products and services or unbundled network elements or some combination.
>
> Provisioning involves the exchange of information between carriers where one executes a request for a set of products and services or unbundled network elements or some combination from the other with attendant acknowledgements and status reports.
>
> Maintenance and Repair involves the exchange of information between carriers where one initiates a request for maintenance or repair of existing products and service or unbundled network elements or some combination from the other with attendant acknowledgements and status reports.

> Billing involves the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgements and status reports. It also involves the exchange of information between carriers to process claims and adjustments.

AT&T states that interactive electronic interface arrangements are essential to new entrants' successful entry into the local market. AT&T states that "[t]he law appears to recognize the business reality that you can not have competition without, at a minimum, a parity experience in the pre-ordering, ordering, provisioning, billing and maintenance functions."

AT&T states that GTEFL has mischaracterized AT&T's position and asserted that AT&T wants real-time electronic interfaces immediately. AT&T claims that it has only requested that GTEFL provide the electronic interfaces required by the Act at the earliest practicable date in 1997. AT&T also states that the development of additional capabilities to make these interfaces real-time and interactive should be complete by January 1, 1997, as the Act requires. AT&T states, however that if we determine that it is impossible to provide such access by January 1, 1997, an interim solution should be employed and the Commission should require GTEFL to move to implementation of a committed plan.

AT&T asserts that GTEFL refuses to proceed with the development of interfaces until it can agree with AT&T on the cost issues. AT&T's witness Shurter did state at the hearing, however, that AT&T and GTEFL have begun to work together even without agreement on cost recovery. AT&T states that it is time to get the AT&T and GTEFL implementation teams assigned and working on a definite schedule for the development of these interfaces. AT&T states that we should require GTEFL to follow a three-phase plan in implementing electronic interfaces.

In Phase I, AT&T states that GTEFL should be required by the December, 1996 - January, 1997 time frame to provide:

1) telephone number and due date assignment via "800" number;
2) street address guide via magnetic tape;
3) ordering firm order confirmation through network datamover (NDM) transport;

4) jeopardies and service activation by facsimile or E-mail;
5) maintenance via "800" number; and
6) billing and usage data via "800" number.

In Phase II, AT&T states that GTEFL should be required by April, 1997 to create functioning interfaces for the following:

1) telephone and due date assignment;
2) street address guide;
3) jeopardies and service activation; and
4) features and services recap.

In Phase III, AT&T states that GTEFL should have operational by the earliest practicable date in 1997 real-time interactive interfaces that will provide the following:

1) access through a nationally standardized gateway to GTEFL systems for pre-ordering and provisioning and maintenance;
2) input through a nationally standardized gateway to GTEFL systems for ordering, provisioning and maintenance;
3) automated notification by GTEFL to AT&T for ordering, provisioning and maintenance;
4) billing usage data via electronic data interfaces; and
5) wholesale billing in Carrier Access Billing System (CABS) format.

MCI witness deCamp states that, in Paragraph 516 of the FCC's Order, the FCC concluded that operational support systems and the information they contain fall squarely within the definition of network element and must therefore be unbundled upon request. MCI states that in order to provide service that is equal in quality to that provided by GTEFL, it is essential that MCI have real-time, interactive access to the various operational support systems.

GTEFL witness Drew states that GTEFL refuses to provide real-time, interactive access to its provisioning or repair and maintenance systems. He asserts that GTEFL will achieve parity so long as GTEFL personnel process an order received from MCI using the same systems used to process an order from an end user. MCI asserts that it will not achieve parity with GTEFL until an MCI customer service representative can access the same operations

support systems and make the same electronic entries into those systems as GTEFL.

MCI points out that GTEFL proposals for access to operational support systems all involve a manual element. For example, if MCI wants to obtain access to information about a customer's existing service, it must call GTEFL to obtain that information. MCI states that this is neither efficient nor inexpensive. MCI states that GTEFL witness Wellemeyer showed that such an inquiry will take a significant amount of time, and under GTEFL's proposal, MCI would incur a substantial per occurrence charge for making such inquiries.

MCI states that manual processes introduce costs, delays, and potential inaccuracies that would be avoided if MCI had direct access to GTEFL's pre-ordering, provisioning, and maintenance and repair systems. MCI asserts that, based on its experience in the access arena, the availability of real-time interactive interfaces is a key driver of the timeliness of repairs, and the absence of such interfaces puts MCI at a significant competitive disadvantage.

MCI witness deCamp states that, in addition to access to these support systems, MCI needs an administratively simple "transfer-as-is" mechanism to transfer customers from GTEFL to MCI in cases where the customer wants to keep the same services. MCI states that GTEFL appears to be determined to frustrate this process by: (1) only allowing transfer if the written order for conversion includes the information relating to all existing, new and disconnected services, including the customer's name, type of service desired, location of service, and features and options the customer desires; and (2) denying MCI access to information about the customer's existing service unless it has previously provided a written letter of authorization (clear and unmistaken consent) from the customer.

MCI states that electronic interfaces are MCI's choice for all operational support systems, but it recognizes that such interfaces for all systems may not be realistic in the near-term. MCI proposes that, in order to comply with the Act and the Order, the Commission should direct GTEFL to file a schedule detailing its plans for developing real-time, interactive electronic interfaces by January 1, 1997.

GTEFL states that AT&T and GTEFL have agreed to an interim solution for first-stage access to GTEFL's operational support

systems to enable AT&T to get into the local market. GTEFL states that in the first stage of the interim process, GTEFL has staffed a National Open Market Center just to process ALEC's orders, and access to systems will be automated to the extent feasible. GTEFL states that service orders will be transferred directly from and to ALECs via GTEFL's network data mover. The service order will then be entered into the ordering system and completed via current GTEFL processes. GTEFL states that during this stage MCI's and AT&T's customers will typically receive their telephone numbers and installation dates in real time while they are on the phone with the MCI or AT&T service representative.

GTEFL states that, for the second interim stage, it has committed to removing some of the human intervention required in the first stages. GTEFL states that the negotiations on these measures are progressing quite well, as AT&T witness Shurter acknowledged, and agreement is expected. GTEFL states that even without definitive agreement on cost recovery, it is working hard on the second stage process.

GTEFL states that the third stage of the process is the final stage of the development of the operational support systems and will permit ALECs real-time, interactive access. GTEFL states that this stage is what AT&T and MCI ultimately want, and what GTEFL has agreed to do, as AT&T has acknowledged. GTEFL asserts that direct access to these interfaces cannot occur without significant development and also protection to the system. GTEFL states that all parties agree that such interfaces should be based on standards developed by the entire industry. GTEFL states that it cannot give AT&T and MCI a specific committed plan with a date certain, until they tell GTEFL exactly what type of access they require for each specific system.

GTEFL states that while it is committed to providing the access to OSS that AT&T and MCI want, the Act does not require GTEFL to build new systems that might be helpful to the other carriers. GTEFL asserts that the FCC Order at Paragraph 523 only requires access to the functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing.

GTEFL states that the issue of whether it should provide real-time, interactive access to its operational support systems has been resolved. GTEFL and AT&T have agreed on interim solutions and these solutions should satisfy MCI, which is requesting basically

the same things as AT&T. GTEFL states that the only issues remaining are timing and cost recovery.

GTEFL states that the implementation of electronic interfaces will be very complex and should conform to industry standards. GTEFL further states that deployment of such interfaces cannot be done without knowing exactly when the industry standards will be determined, what these standards will entail, what specific types of access AT&T and MCI will want to which systems, and what GTEFL needs to provide that access.

GTEFL asserts that both AT&T and MCI recognize that it is difficult to achieve electronic bonding immediately, and that they have not proposed exact implementation dates. In fact, GTEFL states that AT&T had proposed a two-year period for the development of real-time interactive interfaces. GTEFL states that there is not enough evidence in this proceeding for us to set a date for completion of electronic interfaces. GTEFL suggests that the parties be permitted to continue the productive efforts they have already started toward establishing this capability. GTEFL also states that MCI and AT&T should provide GTEFL with the specifications for the development of these systems.

AT&T states that the cost of providing real time electronic interfaces should be based on TELRIC studies in accordance with the rates set for network elements, capabilities or functions, and shared by all local service providers, including GTEFL, who benefit from such services in a competitively neutral fashion. AT&T states that it is willing to pay its fair share of the cost of creating electronic interfaces. AT&T asserts that, because numerous upgrades and enhancements to GTEFL's systems are needed to achieve electronic bonding, we should require GTEFL to pay its fair share. AT&T states, if AT&T wants a unique interface, AT&T will pay for all of the costs.

MCI witness Wellemeyer states that the costs of implementing electronic interfaces have not been identified. MCI states that GTEFL will be able to eliminate manual intervention with an electronic order entry interface and will experience a reduction in its costs. MCI states that GTEFL should experience similar savings once electronic interfaces are available for the other support functions, and that each party should bear its own costs of implementing the necessary interfaces.

MCI states that Section 251(c)(3) of the Act requires access to operational support systems to be provided on terms and conditions that are just, reasonable, and nondiscriminatory. MCI further states that standard will not be met if MCI and the other new entrants are required to pay more than their own share of the costs. MCI asserts that all carriers have the obligation to develop a competitive local market, and requiring new entrants to pay all of the costs would not be competitively neutral. According to MCI, establishing a system in which each party bears its share of the costs would provide an incentive to keep the development costs reasonable.

GTEFL states that the most important issue on operational support systems is how the development and operating costs will be recovered. GTEFL states that it is entitled to recover all of its costs of electronic interface development. GTEFL states that, while GTEFL would expect to share the cost of particular OSS enhancements that benefit GTEFL's retail operations, AT&T would have GTEFL share the costs for even AT&T's access to GTEFL's OSS. GTEFL states that it will derive no benefit from establishing gateways to allow third-party access to its systems.

GTEFL argues that AT&T has no right to determine GTEFL's wholesale strategy and no right to make GTEFL pay for something it would not develop or use for its own operations. GTEFL states that AT&T or MCI cannot point to anything in the Act that contemplates that cost recovery for third-parties access to ILECs' OSS will come from the ILECs themselves. GTEFL points out that in the intraLATA presubscription docket, AT&T argued that ILECs should pick up part of their costs of implementing intraLATA presubscription because they would somehow benefit from competitive entry into the toll market. GTEFL states that the Commission rejected this argument and ordered, "Those that stand to benefit, the IXCs, should pay for the opportunity; those that will lose, the LECs, should not." FPSC Order No. PSC-95-0203-FOF-TP, issued February 13, 1995. GTEFL states that exactly the same logic should apply here.

GTEFL states that this Commission should order AT&T and MCI to pay GTEFL all of its costs associated with the design, testing, deployment, implementation, and ongoing support for their requested access to GTEFL's OSS.

Section 51.319(f)(2) of the FCC's rules and the FCC Order No. 96-325, ¶ 525, are clear that these functions must be provided by the incumbent LECs by January 1, 1997. The parties have agreed, in

principle, that GTEFL will provide access to its operational support systems via real-time interactive access.

GTEFL has testified that some of the interfaces cannot be modified or developed to be real-time and interactive until it obtains the specifics from MCI and AT&T, and industry standards are developed. GTEFL appears to be attempting to comply with the FCC's Order and Rules. Therefore, to be sure that these operational interfaces are completed, we find that GTEFL is required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

In addition, we find that processes that require the development of additional capabilities should be developed by GTEFL by January 1, 1997. If GTEFL cannot meet that deadline, it should file a report with us by December 31, 1996, that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process that will be used in the interim. GTEFL, AT&T and MCI shall also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. We find that these electronic interfaces shall conform to industry standards where such standards exist or are developed.

We believe that a "transfer-as-is" mechanism should be developed, since such a mechanism would be beneficial to MCI, AT&T, and GTEFL when establishing service to their customers. It is unnecessary to go through the administrative burden of processing a disconnect and reconnect order and then having to request the features the customers wants, when all that needs to be changed is the provider of the service. This type of process will allow all LECs to process service in a more efficient manner.

We recognize that the costs of implementing these electronic interfaces have not been completely identified. These operational support systems are necessary for competition in the local market to be successful. Both the new entrants and the incumbent LECs will benefit from having electronic interfaces with the operational support systems; and therefore, all parties should be responsible for their share of costs to develop and implement such systems. Where a carrier negotiates for the development of a system or process that is exclusively for it own use however, other carriers

should not be responsible for the recovery of such costs. The difficulty is determining what is the fair share. AT&T is willing to pay direct charges based on TELRIC; but no costs for access to these systems are known. Therefore, we find GTEFL shall provide TSLRIC cost studies for each interface as it is developed. The cost study shall be filed, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

F. PIC Change Requests

The Act, as well as the FCC's orders, do not specifically address PIC change requests. The intent of the Act, the FCC's First Report and Order (FCC Order No. 96-325), and the FCC's Second Report and Order (FCC Order No. 96-333), however, stress the need for parity between the incumbent LECs and new entrants.

AT&T and MCI believe GTEFL should not directly accept a PIC change for AT&T or MCI local customers. AT&T witness Shurter believes only AT&T will have the most current customer account information for its Florida customers that have selected AT&T as their local service provider, which could include restrictions on PIC changes. Further, Witness Shurter believes this is not a change in the current process, but a change in the electronic interfaces by which PIC changes are made. AT&T witness Shurter states the more control GTEFL can assert between AT&T and other new entrants and their customers, the better for GTEFL. AT&T states it is its right and responsibility to care for its local customers, and it is neither necessary nor appropriate for GTEFL to come between AT&T and its customers.

GTEFL declines to refer requests for PIC changes to AT&T and MCI. Instead, GTEFL plans to require changes for AT&T and MCI local exchange customers to be made directly through GTEFL. GTEFL witness Drew indicates that GTEFL intends to handle PIC change requests for the customers of all resellers. GTEFL believes it should not be prohibited from making PIC changes upon request of other IXCs or their customers. GTEFL witness Drew believes approval of AT&T's and MCI's request would change a simple and efficient process into a cumbersome and inefficient one. GTEFL states that it would be affected if the existing automated PIC process is dismantled. GTEFL claims that costly modifications will be necessary to allow the system to detect and reject changes that come from another local carrier.

Although there would be some modifications necessary to handle the PIC changes in a different manner, GTEFL's claim that cost modifications or adverse impact will result from a change in the PIC process is not supported by the evidence in this proceeding. We believe that GTEFL's proposal to continue to handle the PIC changes as it does today, without regard to the provider of local exchange service to the end user, is inappropriate. The manner in which GTEFL proposes to handle PIC changes fails to consider the move toward a competitive local exchange market, but instead continues the processes that were developed when GTEFL was the only local exchange carrier. The process being proposed by AT&T and MCI will provide parity in the handling of PIC change requests. It represents a more appropriate procedure than to have a local exchange company that has no relationship with an end user affect the overall service provided by another local exchange company. Under AT&T and MCI's proposal, all PIC changes (including AT&T and MCI long distance companies) will be required to be sent to the provider of local exchange service, just as it is today.

Upon consideration of the evidence, we find that GTEFL shall be prohibited from processing any PIC change request for a customer that receives its local exchange service from a local exchange carrier other than GTEFL. GTEFL shall direct the request of the customer to the customer's local exchange carrier and provide the customer with a contact number for that local carrier.

G. Billing System and Format for Unbundled Elements and Resold Services

Billing System

Billing and usage recording services are elements of OSS. We considered access to OSS elements earlier. Here, we consider what billing and usage recording system GTEFL should use to provide bills to AT&T and MCI. Under the Act, ILECs must provide such elements.

As previously stated, Section 3(45) of the Act defines "network element" as "a facility or equipment used in the provision of a telecommunications service," including "features, functions, and capabilities that are provided by means of such facility or equipment. . . ." We interpret this definition to include all operations support systems and interfaces to them. Our interpretation is consistent with the FCC's interpretation.

The Act states that each incumbent local exchange carrier has the duty to provide, to any requesting telecommunications carrier for the provision of telecommunications services, nondiscriminatory access to network elements on an unbundled basis. It further states that each incumbent local exchange carrier has the duty to offer for resale any service that the carrier provides at retail, without imposing any discriminatory limitations or conditions on the offering.

The FCC's Order addresses this issue this way:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry." FCC Order 96-325 at ¶ 516.

In paragraph 517, the FCC states that "we conclude that ... operations support systems are subject to the nondiscriminatory access duty imposed by Section 251(c)(3), and the duty imposed by Section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory terms and conditions." Further, in paragraph 518, the FCC states that if the competing carriers are not able to perform normal ordering and service functions for

network elements and resold services that the incumbent LEC can for itself, the competitors will be severely disadvantaged.

In paragraph 523, the FCC concludes "that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself."

47 C.F.R. § 51.319(f) provides that:

> (1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.
>
> (2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997.

The CABS is an access billing system currently used by ILECs, including GTEFL, on a national basis. The CABS is used by ILECs to provide intercompany billing with IXCs. The capability to provide CABS billing for trunk-side interconnection is available today. GTEFL claims, however, that CABS billing for line-side interconnection or end-user billing is not available. GTEFL states that it is working toward the development of this capability.

AT&T requests the CABS for local carrier resale and access billing. AT&T specifically requests that GTEFL record and bill all charges that AT&T incurs for purchasing wholesale local services for resale and unbundled network elements and combinations of elements. AT&T states that it must have a separate and unique billing code for each local service and unbundled network element purchased. AT&T asserts that GTEFL must provide a monthly local service bill and monthly unbundled network element bill that includes all charges incurred and any adjustments or credits due to AT&T.

MCI states that GTEFL must provide accurate billing information in a timely manner in order for MCI to accurately bill its end-user customers. MCI witness deCamp states that there are two billing categories: billing between ILECs and ALECs and billing of end user customers. Witness deCamp states that a CABS or CABS-

like billing should be used for charges related to interconnection, unbundled elements, and resale. MCI asserts that a CABS-like billing would be cost-effective, because a standardized format would be used for all carriers. MCI states that its concern is not over which billing system GTEFL uses to collect billing information, but that GTEFL produce a bill in CABS billing data format.

GTEFL states that it has agreed to provide CABS billing for trunk-side interconnection, because this capability is available today. Until line-side billing is available, GTEFL states that it will generate bills using its customer billing services system (CBSS), the system it uses to bill its end users.

The record shows that GTEFL appears willing to provide full CABS billing. Further, the record shows that MCI requests bills provided in a CABS-like billing format, and that AT&T requests that GTEFL implement CABS for developing and providing bills. Thus, we find that the standard billing format being developed by the Ordering and Billing Forum (OBF), a billing standards group, is appropriate. A standard billing format will allow an ALEC to obtain bills in the same format from all ILECs. It would not be efficient to require AT&T and MCI to adapt their own billing systems to accommodate the unique billing systems of each ILEC in Florida. Therefore, we order that GTEFL provide CABS or CABS-like billing based on the local service billing standards adopted by the OBF.

Additional Capabilities Development

We are unable to determine from the record in this proceeding what, if any, additional capabilities are necessary to provide the billing and usage recording services requested by AT&T and MCI. AT&T only states that GTEFL should be required to develop the capabilities necessary to provide the billing services it has requested within one year of the initiation of an agreement, or when local service billing standards are adopted by the OBF, whichever is earlier. MCI states that there is no evidence in the record that additional capabilities are necessary for GTEFL to provide MCI with the billing information it requests. GTEFL merely states that CABS billing for line-side interconnection, or end-user billing, is not available today. GTEFL proposes no development program.

Accordingly, we require that any additional capabilities for billing and recording usage services shall be developed when local service billing standards are adopted by the OBF. We do not find it appropriate to require GTEFL to provide CABS billing within one year from the initiation of an agreement, as AT&T requests. Neither do we find it appropriate to require something that could differ from the eventual OBF standards.

Cost Recovery

GTEFL requests that we order AT&T and MCI to pay GTEFL all of its costs associated with the development of any new features or systems they request, as well as for ongoing support and use. We recognize that the costs of implementing the billing and usage recording services have not been completely identified. We have found that a standard billing system is necessary for competition in the local market to be successful. Furthermore, we find that both the new entrants and the incumbent LECs will benefit from the efficiency of a single standard billing system.

Therefore, we conclude that all parties shall be responsible for their share of costs to develop and implement a CABS billing system. Where a carrier negotiates for the development of a system or process that is for use by that carrier alone, however, we find that it would not be appropriate for other carriers to be in any measure responsible for the recovery of the costs incurred in developing and supporting that system or process. Where there is sharing, the difficulty we see is how to determine what is a fair share. AT&T is willing to pay direct charges based on TELRIC, but costs for implementing a CABS billing system are not known. Therefore, we require GTEFL to provide cost studies for the billing and usage recording services requested by AT&T and MCI. The cost studies shall be filed, along with a proposed recovery mechanism, 60 days before the implementation of the billing and usage recording service.

Deadline for Modifications to Billing Format

MCI acknowledges that a CABS may require some modifications to be able to bill charges related to interconnection, resale, and unbundled elements. MCI recognizes that GTEFL may use its CBSS to collect billing information relevant to MCI. MCI requests, however, that GTEFL provide bills in a CABS billing data format.

MCI states that in August 1996, the OBF established specifications for CABS formatted billing data for resold local service. In addition, MCI observes that NYNEX and Pacific Bell are already moving towards implementation of a CABS billing data format for the billing of resold services.

As already noted, GTEFL is working to enhance its CABS to handle both trunk and line side billing. GTEFL states that for now it will create a bill for resold services and unbundled elements, along with a summary bill master, using GTEFL's CBSS.

MCI requests that GTEFL provide CABS formatted billing no later than January 1, 1997. This is the same date contained in section 51.319(f) of the FCC's rules for access to OSS elements. GTEFL does not offer an implementation date for CABS formatted billing. We find that the billing between GTEFL and MCI must evolve into a CABS formatted billing for resold services and unbundled elements. MCI requests only that GTEFL provide bills in a CABS data format, without regard to what system GTEFL uses to do it. Requiring GTEFL to provide CABS formatted bills is appropriate because it will allow MCI to receive its bills in a familiar format for unbundled elements and resold services. GTEFL will be able to translate its CBSS output into a CABS billing data format as evidenced by the actions of NYNEX and Pacific Bell.

We construe the January 1, 1997, date in Section 51.319(f) of the FCC rules as the date by which ILECs are to provide access to current OSS elements, and not the date by which an ILEC must make modifications to its current billing system as argued by MCI.

Therefore, we find that GTEFL shall provide CABS-like formatted billing for both resale and unbundled elements to MCI within 120 days of the issuance of our order in this proceeding. We believe this is a reasonable time since GTEFL has already begun an investigation into CABS billing. In the interim, GTEFL shall generate bills using its CBSS, which is the system it uses to bill its end users. Further, we require that the billing format be consistent with industry guidelines to the extent they exist or are developed.

H. Call Guide Pages, Directory Distribution, White and Yellow Page Directory Cover Appearance

Call Guide Pages, Directory Distribution

GTEFL proposes to provide AT&T and MCI with initial directory distribution associated with its annual delivery at no charge, secondary distribution of directories, outside the annual delivery, for $2.49, and limited space in the call guide pages for customer contact information (business office, billing inquiries, repair) at no charge. Witness Peters states that no product information will be allowed in the call guide pages.

AT&T agrees to pay GTEFL $2.49 for secondary directory distribution, if GTEFL incurs that cost today and if the $2.49 is not covered as a wholesale cost. GTEFL states that it pays $2.49 for secondary distribution, which is not included in GTEFL's calculation of costs in wholesaling local service, so there is no double charging.

AT&T and GTEFL also agree to a single page in the call guide pages, but have not agreed to a price. AT&T proposes to pay the same rate that GTEFL pays for customer call guide information. GTEFL offers a discount off the full page rate to other purchasers of directory space.

MCI and GTEFL have not reached an agreement on directories. MCI requests that GTEFL be required to charge for secondary distribution of directories only to the extent it imposes such a charge on its own customers. GTEFL states that whether GTEFL directly imposes this charge on its own customers is irrelevant to whether GTEFL should be allowed to charge MCI. Witness Peters asserts that MCI can charge its own customers as it chooses.

MCI requests that its pertinent business information be included in the call guide pages. Witness Price asserts that information such as rates, calling areas, sales, service, and repair information should be included at no charge. MCI takes issue with GTEFL's position that no product information will be allowed in the call guide pages. MCI believes that unless GTEFL agrees to remove its product information, MCI and other new entrants will be at a competitive disadvantage. In addition, this restriction would deny customers easily accessible information about competitive alternatives that are available to them.

Upon consideration, we find that AT&T and MCI shall pay $2.49 for the secondary distribution of directories, since the rate is reasonable. In addition, we find that GTEFL shall include limited space for AT&T and MCI customer information in its directory, at no charge. We also find that GTEFL shall permit AT&T and MCI to display their respective product information in GTEFL's directory. AT&T and MCI shall pay for this service at the same rate GTEFL pays for it. GTEFL shall permit AT&T and MCI to purchase a single page for their respective product information, at the same rate GTEFL pays to list its products.

We do not agree with GTEFL's assertion that it has a First Amendment right to exclude the ALECs' product information from the call guide pages of its directories. In this arbitration proceeding, we are carrying out the Act's intent to require telephone companies to open their networks to competition. For us to require GTEFL to include AT&T and MCI product advertising in the call guide pages of its directories is to do nothing more than to encourage by reasonable means the development of competitive markets, a purpose unrelated to the content of expression. In Turner Broadcasting System, Inc. v. F.C.C., 819 F.Supp 32 (D.D.C. 1993), the court held that the "must-carry" provisions of the 1992 Cable Act did not violate cable television system operators' First Amendment rights. Those provisions required the operators to carry the video signals of certain commercial and noncommercial educational television broadcast stations. The court found that Congress' primary intention in enacting the must-carry provisions was to restore competitive balance and assure a functional market in the distribution of video signals.

Directory Cover Logos

In its brief, MCI requests that its logo appear on GTEFL's directory cover. We do not, however, find support in the record of this proceeding for MCI's request. AT&T does not request that its logo appear on GTEFL's directory cover. GTEFL states that it will not include ALEC logos on its directory covers.

We note that the FCC does not expressly address allowing ALECs to have an appearance on the cover of white and yellow page directories. In addition, neither the Act nor the FCC Rules contain provisions, express or implied, that the incumbent LECs provide ALEC logo appearances on their directory covers. Section 222(f)(3) of the Act, defining "subscriber list information," contains no reference to ALEC logos on directory covers. Section

251(c)(2) of the Act, relating to interconnection, also does not address directory publishing. Furthermore, neither Section 251(c)(3), regarding unbundled network elements, nor Section 251(c)(4) of the Act, pertaining to resale, contemplate the unbundling or resale of directory services.

Accordingly, we conclude that neither the Act nor the FCC contemplate that the incumbent LECs should provide ALEC logo appearances on their directory covers. Moreover, there is insufficient evidence in this record to justify that decision. Therefore, we find it appropriate that GTEFL shall not be required to include MCI's logo on its directory cover.

I. Interim Number Portability Solutions and Cost Recovery

Interim Number Portability Solutions

Section 251(b)(2) of the Act requires all LECs to provide, to the extent technically feasible, number portability in accordance with FCC requirements. Section 3(30) of the Act defines the term "number portability" to mean "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."

On July 2, 1996, in its First Report and Order on Telephone Number Portability, FCC 96-833, the FCC interpreted the Act to require all LECs to offer currently available and technically feasible methods of number portability, such as remote call forwarding (RCF) and direct inward dialing (DID). We have labeled these methods of providing number portability as "temporary" number portability methods. The FCC did not provide a definition of "technically feasible" in its number portability order. As we discussed earlier, it did define this term in its interconnection rules at section 47 C.F.R. § 51.5. There the FCC stated that a determination of technical feasibility does not include economic account, billing, space or site concerns where there is any possibility of expanding the space available.

In paragraphs 199 and 200 of its Order, the FCC states that in the Act, Congress distinguished "technical" and "operational" considerations from "economic" concerns. GTEFL does not believe this definition applies to number portability. AT&T witness Crafton believes GTEFL confuses technical feasibility with

commercial availability. We are troubled by the potential economic impact of requiring any carrier to provide costly interim solutions for any purpose. We conclude, however, that the FCC definition of technical feasibility applies to the entire Act, and, therefore, to a determination of whether a specific interim number portability mechanism is technically feasible.

AT&T requests that we require GTEFL to provide the following interim number portability solutions:

1) Remote Call Forwarding (RCF)
2) Directory Number Route Index (DNRI)
3) Route Index Portability Hub (RIPH)
4) Local Exchange Routing Guide (LERG) Reassignment

MCI requests that we require GTEFL to provide RCF and Flex-DID.

GTEFL does not identify any of the interim number portability solutions requested as ones that are not technically feasible, except for LERG Reassignment at the NPA-NXX-X level. However, witness Menard states that GTEFL is still evaluating the technical feasibility of DNRI and RIPH. GTEFL's main concern is that it is going to cost a great amount of money for it to upgrade its network and billing system to handle these interim number portability solutions.

Remote Call Forwarding

RCF provides interim number portability by assigning a second 10-digit number to a customer and forwarding calls to that customer's new serving end office. When a customer has changed service providers, but retains the current telephone number, calls placed to that number are first routed to the old providers's end office. At the old provider's end office, the telephone number is forwarded to the second number, which is located at the new provider's end office. The call is then routed to the customer's location. This method is intended primarily for single-line applications, and is best applied to residential use. RCF has several drawbacks, which make it appropriate for use on an interim basis only.

There does not appear to be a dispute as to the technical feasibility of RCF. RCF is currently tariffed and available. GTEFL is willing to provide RCF as an interim number portability

solution. We approve the provision of RCF as an interim number portability solution.

Flex-DID

Flex-DID provides interim number portability by sending calls to a ported number through a specific, dedicated trunk group between the old service provider's end office and the new service provider's end office. Calls to a ported number are routed to the old service provider's end office where they are routed directly to the appropriate Flex-DID trunk group.

Flex-DID is easily provisioned by service providers today without costly network modifications. Unlike RCF, Flex-DID does not require a second telephone number. Although calls are still routed to the old service provider's end office, calls are not routed a second time over the switched network to reach the new service provider's end office. However, again like RCF, Flex-DID has drawbacks which confine it to an interim solution.

There does not appear to be a dispute as to the technical feasibility of Flex-DID. GTEFL considers Flex-DID an acceptable interim number portability solution. We approve the provision of flex-DID as an interim number portability solution.

Directory Number Route Index

DNRI provides interim number portability by sending calls to a ported number via the new service provider's end office through an interconnection trunk. This trunk is established directly between end offices.

DNRI is favored by some carriers because it allows the telephone number to be ported over interconnection trunks, rather than the dedicated facility required by Flex-DID. The interconnection trunk can support other signaling messages and related voice/data transmissions and can be bi-directional. DNRI does not require a second number, and thus uses numbering resources efficiently. As do the other methods, there are drawbacks with DNRI. First, DNRI does not allow all service features, such as certain CLASS features, to operate on ported telephone numbers. Second, under DNRI the end office continues to route all calls to the old service provider's end office before routing the call to the new service provider. Third, it is not an existing service for many of these service providers and is, therefore, not supported by

existing ordering, provisioning and billing processes. (Menard TR 2101)

There does not appear to be a dispute as to the technical feasibility of DNRI. GTEFL indicates, however, that service providers would have to modify their network systems supporting these processes, in addition to any network changes they might have to make. We realize that there will be costs associated with this solution, but, based on the FCC's definition of technical feasibility, we conclude that it is technically feasible to provide DNRI as an interim number portability solution. Hence, we require that GTEFL provide DNRI as an interim number portability solution in Florida. We address recovery of the costs of upgrading below.

Route Index Portability Hub

RIPH, referred to as DNRI Tandem Hubbing by GTEFL, operates much like DNRI, but routes ported calls differently. The old service provider's end office routes the call to the end office's tandem switch, which then routes the call to the new service provider's end office over direct interconnection trunks. This is accomplished by adding a pseudo NPA code to the NXX which identifies the new service provider at the old service provider's end office. The tandem switch recognizes the pseudo NPA-NXX combination, routing the call to the direct interconnection trunk group of the new service provider. Each service provider using RIPH thus requires a unique NPA pseudo code to identify its interconnection trunk group.

RIPH has all of the advantages and drawbacks of DNRI. An additional advantage is that RIPH only requires one interconnection trunk group from the tandem switch to each of the end offices subtending the tandem switch. There are several additional drawbacks, however. First, the pseudo NPA codes are part of the 1XX series of codes, which are currently used by local service providers for internal or local purposes and are not part of the administration of the NANP. Accordingly, there is no mechanism among companies for assigning or managing these codes and no way to assure standardization. Thus, different service providers would use the same codes to accomplish different functions in their networks. Second, the number of available 1XX codes may be insufficient to meet the demand for such codes. Third, due to the use of the tandem switch, RIPH would require further modifications to ordering systems and impose additional costs to provide the services. Fourth, RIPH reintroduces network inefficiency where the

calls are routed to the old provider's end office, and are then routed out again, as with RCF.

There does not appear to be a dispute as to the technical feasibility of RIPH. GTEFL identifies a limitation of available pseudo 1XX codes that could affect the technical feasibility, depending on the number of carriers requesting this solution. We do not find evidence in this record, however, that would suggest that there would be enough carriers requesting this interim solution to exhaust these codes. We conclude that RIPH is a technically feasible solution. Hence, we require that GTEFL provide RIPH as an interim number portability solution in Florida. Again, we address recovery of the costs of upgrading as identified by GTEFL below.

LERG Reassignment

LERG Reassignment uses the network table entitled Local Exchange Routing Guide to determine routing of geographic numbers. The LERG is managed by BellCore, and is used by all carriers for routing instructions. LERG Reassignment enables an NXX or a portion of an NXX to be routed to a specific switch other than that of the carrier to which the NXX is originally assigned.

The originating switch would, through a change in its routing translations, effectively recognize the new entrant central office as the owner, for example, of the 512-458-4000 through 4999 number range. This same type of reassignment could, for instance, transfer the whole 512-458 NPA-NXX from the old service provider to the new entrant central office.

This method of interim number portability would be directed at customers with either a 1,000 or 10,000 block of numbers. GTEFL points out several drawbacks associated with LERG Reassignment at the NXX-X number level. First, all end office, tandem and other switches would have to be modified and reprogrammed to screen on the NPA-NXX-X instead of NPA-NXX. Second, each end office and tandem switch that connects to one end office via trunk lines under the current system would have to connect via ten trunks to cover the same series of numbers, entailing additional routing and capital costs. Third, because billing and other operational support systems depend on vertical and horizontal coordinates for end offices that are based on NPA-NXX codes, these systems would have to be changed to an NPA-NXX-X format.

AT&T witness Crafton acknowledges many of the same concerns raised by GTEFL in the use of LERG Reassignment to the NPA-NXX-X number level as an interim number portability solution. In addition to identifying similar concerns, AT&T notes that the current numbering guidelines do not support LERG Reassignment at the NPA-NXX-X level, and removing this concern would require considerable time. AT&T states that it would be satisfied with LERG Reassignment at the NPA-NXX level.

We conclude that LERG Reassignment at the NPA-NXX-X level is not technically feasible, since there is no industry standard to specify the reassignment requirements at this level. Approval of this reassignment method would create some operational problems associated with the routing of the calls to the reassigned numbers. Hence, we do not require that GTEFL provide LERG Reassignment at the NPA-NXX-X level.

GTEFL does not provide any argument that LERG Reassignment at the NPA-NXX is not technically feasible, other than that it has no customers with an entire NXX. In fact, GTEFL witness Menard states that GTEFL can provide LERG Reassignment at the NPA-NXX level. She indicates that type of reassignment is available in the BellCore guidelines for number assignment. Hence, we require that GTEFL provide LERG Reassignment at the NPA-NXX level.

Cost Recovery

Section 251(e)(2) of the Act requires that all carriers bear the costs of establishing number portability on a competitively neutral basis. The FCC established criteria to determine an appropriate cost recovery mechanism. First, paragraph 132 of the number portability order, FCC 96-286, provides that the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. The FCC interprets this to mean that the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer. Second, paragraph 135 provides that an acceptable cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.

The FCC identifies various methods of cost recovery that meet these two criteria. The first method is to allocate number

portability costs based on a carrier's number of active telephone numbers relative to the total number of active telephone numbers in a service area. A second method is to allocate the costs of currently available measures between all telecommunications carriers and incumbent LECs based on each carrier's gross telecommunications revenues net of charges to other carriers. A third competitively neutral cost recovery mechanism is to assess a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers. We find that all three of these methods produce essentially the same result relative to the distribution of costs between carriers. The final method, discussed in paragraph 136, that the FCC believes would meet its criteria is to require each carrier to pay for its own costs of currently available number portability measures.

Our existing policy on cost recovery of temporary number portability requires only the new entrants to pay for temporary number portability solutions. The FCC's Order prohibits this method of cost recovery. Hence, our policy is inconsistent. In Docket No. 950737-TP, we will address what changes to our generic cost recovery policy are necessary as it relates to the provision of temporary number portability. The parties recognize that all carriers are not represented in this proceeding, and the handling of the cost recovery issue would best be resolved in the generic investigation. We will establish an interim cost recovery method for the parties in this proceeding until the proceeding in Docket No. 950737-TP is complete. Since the parties in this proceeding have not provided cost information for the temporary number portability methods addressed above, we find it appropriate to require each carrier to pay its own costs in the provision of the temporary number portability solutions. Further, we order all the parties in this proceeding to track their respective costs of providing the temporary number portability solutions with sufficient detail to verify the costs, in order to facilitate our consideration of recovery of these costs in Docket No. 950737-TP.

J. Intrastate Access Charges

Section 51.515 of the FCC rules holds that carriers who purchase unbundled local switching will, for a finite period, also be required to pay the CCL charge plus 75% of the RIC. The FCC instituted this charge in the belief that LECs would experience a substantial revenue impact when carriers are able to purchase and use the unbundled local switching element to switch all their traffic, both local and toll. This is allowed under the Order, and

would presumably occur because the switched access local switching rate would be so much higher than the unbundled local switching rate.

The Eighth Circuit, however, stayed that provision of the FCC rules. Therefore, we find that assessment of the CCL and 75% of the RIC is not mandated at this time, and we will apply Florida law. Section 364.16(3)(a), Florida Statutes, unlike the FCC Order, does not allow carriers to transport or terminate toll traffic over local interconnection facilities. Thus, GTEFL and MCI must separately identify local and toll traffic and assess the appropriate charges to each.

We conclude that no additional charges shall be assessed for unbundled local switching over and above those approved herein for that element. With respect to toll traffic, however, existing Florida law does not allow carriers to bypass switched access charges. Therefore, under this Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in Docket No. 950985-TP, the company terminating a toll call shall receive terminating switched access from the originating company unless the originating company can prove that the call is local.

K. Points of Interconnection

In their briefs, AT&T and MCI both request that GTEFL be required to interconnect with their respective networks at any technically feasible point on GTEFL's network. Section 251(c)(2)(B) of the Act states that interconnection must be provided at any technically feasible point within the incumbent LEC's network. MCI's witness Powers points out that the FCC's rules identify a minimum set of places where interconnection is technically feasible. Pursuant to Section 51.305(a) of the FCC's rules, interconnection is technically feasible at the line-side of a local switch, the trunk-side of a local switch, the trunk interconnection points for a tandem switch, the central office cross-connect points, the out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases, and the points of access to unbundled network elements as described in §51.319 of the FCC's Rules.

AT&T asserts that if the points at which it requests interconnection are the same points at which GTEFL is already providing access, then interconnection at those points is

technically feasible. AT&T relies on paragraph 198 of the FCC's Order, which provides:

> We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible.

GTEFL agrees that interconnection can only take place where it is technically feasible. Witness Munsell states, however, that a number of factors may frustrate or even prevent interconnection, such as incompatibility between ALEC and GTEFL's equipment, too many ALECs requiring interconnection at a given point, the inability of GTEFL switching and transport facilities to handle additional traffic, and the unavailability of collocation space. Witness Munsell asserts that it should not be presumed that interconnection is technically feasible because GTEFL has previously provided such interconnection. Witness Munsell adds that the FCC's order at paragraph 204, states that:

> We conclude that successful interconnection or access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point, or at substantially similar points in networks employing substantially similar facilities. In comparing networks for this purpose, the substantial similarity of network facilities may be evidenced, for example, by their adherence to the same interface or protocol standards. We also conclude that previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality. Although most parties agree with this conclusion, some

> LECs contend that such comparisons are all but impossible because of alleged variability in network technologies, even where the ultimate services offered by separate networks are the same. We believe that, if the facilities are substantially similar, the LECs' contention is adequately addressed.

Witness Munsell interprets this statement to mean that interconnection at a requested point must be substantially similar and employ substantially similar facilities. Witness Munsell contends and that even interconnection is only substantial evidence of technical feasibility. In other words, technical feasibility is not presumed. Witness Munsell acknowledges that interconnection at end offices, tandem switches, and mutually acceptable meet points are most often used because they present the fewest technical problems.

Upon consideration, we conclude that GTEFL shall provide interconnection to AT&T and MCI at any technically feasible point within its network. We concur with the FCC's view that this includes preexisting interconnection or access at a particular point or access at substantially similar points. We realize that the term "substantially similar" is subjective, but we also recognize that it is the LEC's burden to prove that an interconnection or access point is not technically feasible.

L. Rates, Terms and Conditions for Physical and Virtual Collocation

Collocation Limitations

The Act requires LECs to provide collocation to ALECs. Section 251(c)(6) requires LECs to provide physical collocation rather than virtual collocation, unless it is technically infeasible to do so, or because space is limited.

AT&T's witness Crafton states that, through physical collocation, an interconnecting carrier obtains dedicated space in GTEFL's premises, and places equipment in that space to interconnect with GTEFL's and other LEC's networks. Witness Crafton states that AT&T seeks the ability to interconnect with non-GTEFL collocated carriers on GTEFL's premises. We do not interpret the Act, however to require a LEC to provide collocation

to a carrier that will not interconnect with the LEC. Section 51.323(h) of the FCC's rules states:

> An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.
>
> (1) An incumbent LEC shall provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers, unless the incumbent LEC permits one or more of the collocating parties to provide this connection for themselves .... (emphasis supplied)

In addition, the Order at paragraph 594 states that permitting two or more collocators to interconnect their networks is consistent with the policy goals of Section 251 of the Act.

AT&T claims that it seeks to collocate only the equipment necessary to interconnect with GTEFL and other carriers, and to provide high quality service to its customers. GTEFL witness Hartshorn disagrees, however, stating that AT&T seeks to collocate more than equipment necessary for interconnection and access to unbundled elements. Witness Hartshorn states that AT&T believes that Section 251(c)(6) of the Act permits it to collocate any type of equipment on GTEFL's premises, including switches, enhanced services equipment and customer premises equipment. Section 51.323(b) of the FCC's rules does provide that:

> An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements ... Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

> (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and
>
> (2) equipment being collocated to terminate basic transmission facilities....

Section 51.323(c) states, however, that:

> Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services.

MCI has requested approval to place a digital line concentrator (DLC) in collocated space. The purpose of a DLC is to concentrate large numbers of unbundled loops into large capacity lines for transport to a switch. We find that the DLC is transmission equipment and is, therefore, appropriate equipment to collocate on GTEFL's premises.

Based on the Act and the rules, we conclude that only equipment necessary for interconnection and access to unbundled network elements are required to be collocated on GTEFL's premises. Therefore, no switching equipment or equipment used to provide enhanced services is required to be collocated.

AT&T and MCI are concerned that GTEFL will not provide sufficient space to house the necessary collocation equipment for interconnection and access to unbundled network elements. MCI proposes that GTEFL adopt the policies of NYNEX and Pacific Bell, which have established a general policy of leasing up to 400 square feet in a central office. GTEFL Witness Cantrell states that a misconception may have arisen with respect to limitation of space for collocation. GTEFL believes it should be permitted to reserve space for future use based on a five-year planning horizon. Witness Cantrell states that GTEFL's physical collocation tariff does not limit the amount of space an individual ALEC can request.

AT&T and MCI assert that GTEFL should allow them to collocate at all GTEFL structures that house GTEFL's network facilities. AT&T witness Crafton states that GTEFL should be required to make a showing to this Commission where GTEFL claims that it is not technically feasible for AT&T to collocate.

GTEFL states that AT&T believes it should be permitted to collocate equipment at any GTEFL location that AT&T chooses. GTEFL contends, however, that there is little benefit for AT&T to collocate at GTEFL facilities that do not perform routing or rating functions. GTEFL witness Cantrell states that it would be more appropriate for AT&T to collocate at certain locations, such as central offices, where calls are routed to and from customers, a serving wire center, the office closest to an IXC's point of presence which serves as a rating point, but provides no switching, or a tandem switch, which routes calls from one central office to another.

The FCC's Order at paragraph 573 requires collocation to be provided at all structures that house LEC network facilities including "any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures."

MCI requests the ability to purchase unbundled dedicated transport from MCI's network to GTEFL's central office. The FCC's Order at paragraph 590 states that a competitive entrant should not be required to bring its own transmission facilities to a LEC's premises. Therefore, we find that GTEFL shall allow AT&T or MCI the ability to purchase dedicated transport from their facilities to GTEFL's premises.

We find that the Act and the FCC's rules and Order are clear concerning the requirements and standards for physical collocation and virtual collocation, and we require the parties in this proceeding to comply with them.

Cost Recovery

AT&T states that collocation elements should be priced at TSLRIC. AT&T witness Guedel states that the cost data provided by GTEFL is in a summary format, is not verifiable, and generally does not appear to represent forward-looking costs. AT&T recommends that we order GTEFL to provide cost studies that are consistent with forward-looking cost parameters and provide sufficient backup to validate the cost studies. AT&T states that, in the interim, we should adopt the FCC proxy rates for collocation, which are GTEFL's current tariff rates for collocation.

In its brief, GTEFL argues that collocation is a taking of its property and it should receive just compensation for its property.

However, GTEFL states that it will permit collocation if the costs to do so are fully recovered from AT&T or MCI.

Based on the arguments and the evidence presented, we conclude that the entity requesting collocation should bear the costs for the establishment of collocated facilities. We find that the rates for collocation shall be based on GTEFL's TSLRIC cost studies. Table 1 sets forth the recurring rates we approve, which cover GTEFL's TSLRIC costs and include contribution toward joint and common costs.

Table 1: Commission-Approved Recurring Rates for Collocation

Collocation Element	Commission-Approved Recurring Rate
Collocation	
DS0	$1.60
DS1	$4.00
DS3	$31.00
Partitioned space/sq. ft.	$1.85
DC power	$405.00
Cable Space	$14.00

Table 2 sets forth the nonrecurring rates we approve, which cover GTEFL's TSLRIC costs. We note that GTEFL did not propose any additional contribution towards joint and common costs in its proposed nonrecurring charges. Therefore, we adopt GTEFL's proposed rates for nonrecurring charges.

Table 2: Commission-Approved Nonrecurring Charges for Collocation

Collocation Element	Commission-Approved Nonrecurring Charges
Physical Engineering Fee	$6,946.00
Building Modification costs:	
Simple	$13,484.00
Moderate	$18,448.00
Complex	$23,514.00
DC Power	$2,900.00
Cable Pull	$1,213.00
Cage Enclosure	$4,559.00

M. Rates, Terms and Conditions for Code Assignments and Numbering Resources

The parties are in essential agreement on rates, terms and conditions for code assignments and numbering resources. MCI believes that NXX code assignments should be made on a nondiscriminatory basis. GTEFL indicates that for the regions where it is the Central Office Code Administrator, GTEFL will process MCI's requests for numbering code assignments and related matters in a timely and effective manner. In addition, MCI states that there should be no significant cost associated with the management of these resources. GTEFL states there will be no charge for this service.

Thus, we conclude that GTEFL is required to furnish NXX codes in a nondiscriminatory manner at no charge as required by industry guidelines.

N. Access to Customer Account Information

AT&T's witness Shurter and MCI's witness deCamp request that GTEFL provide access to current OSSs on the basis of a blanket letter of authorization. GTEFL's witness Drew contends, however, that, under the Act, GTEFL may disclose customer account information to designated providers only upon "affirmative written request by the customer."

While GTEFL initially took the position that it would provide OSS access to ALECs only upon written authorization from the customers and would transfer customers only with a written letter of authorization, GTEFL presently states that a blanket letter of authorization would suffice for customer transfers. GTEFL's witness Drew states that it might be possible to work out a disclosure arrangement based on oral authorization.

Witness Drew states that GTEFL's OSSs were designed for a single-ILEC environment and not one with multiple-providers. GTEFL argues that it is not technically feasible to provide direct access to these systems and data bases to providers other than itself at this time. If direct access were provided, network security and customer privacy would be compromised. GTEFL asserts it is willing to provide nondiscriminatory access to its OSS functions as required by the Act; however, such access will require the creation of certain electronic interfaces. GTEFL states that these interfaces can be created, but ALECs must pay for them. GTEFL notes that sufficient time must be allowed for this development depending on the amount of work that will be required.

GTEFL contends that the Act is unambiguous with respect to disclosure of customer proprietary network information (CPNI), which includes customer account information the ILEC acquired through provision of telecommunications services to a customer. GTEFL argues that AT&T and MCI have ignored the directive of Section 222(c)(2) of the Act, which states:

> A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to a person designated by the customer.

GTEFL argues that AT&T and MCI would require GTEFL to disclose a customer's CPNI with no written customer authorization even before a customer commits to a transfer. GTEFL notes that AT&T and

MCI have proposed a "blanket letter of authorization process," which would allow them to authorize transfer of all of a customer's services from GTEFL to AT&T or MCI. GTEFL asserts this is misleading because no one would be required to get a letter from the customer authorizing the release of CPNI necessary to identify the services to be transferred. GTEFL states that customer consent should be clearly and unmistakably obtained.

GTEFL further states that the process proposed by AT&T and MCI would allow them to access CPNI even for those customers who eventually decide not to transfer their services to them. GTEFL contends that AT&T and MCI seem to believe that their recommendation is permissible under Section 222(c)(1), the Act's initiation of service exception to the written authorization rule. GTEFL argues that the more plausible reading of the section is that CPNI would be released only after the customer's verifiable commitment to transfer service to another carrier.

GTEFL contends that access to such "on-line" services allows AT&T to track GTEFL customers and, based on the level of service with GTEFL, target them for marketing of its own local or toll services. GTEFL argues since it will not have comparable access to AT&T's customer account information, this would give AT&T a competitive marketing advantage.

AT&T argues that GTEFL's insistence on a written authorization from the individual customer introduces a very real, substantial and unnecessary barrier to local competition. AT&T contends that the blanket letter of authorization should be adequate to address any legitimate concerns for customer privacy and approval. AT&T states that GTEFL acknowledged in the course of negotiations that the blanket letter process proposed by AT&T is consistent with the practice employed in the interexchange PIC area.

AT&T contends that new entrants in the local exchange market cannot operate without access to operations support systems and services. AT&T states that GTEFL has sought to limit and "define down" the nature of the interface requirements of AT&T and then to "trickle down" those system support services. AT&T argues that GTEFL has complained when AT&T has sought more definition of the interface, and more definite scheduling for the required movement to full interactive electronic interfaces.

AT&T and MCI argue that until ALECs have real-time interactive interfaces to GTEFL OSSs there will be no parity with GTEFL. AT&T

and MCI contend this is not an issue of requiring GTEFL to cede unrestricted control of its network or operations systems to AT&T or anyone else; instead, it is a matter of enabling AT&T and MCI to provide a customer experience comparable to that which GTEFL provides to its own customers.

AT&T argues that it has never stated that it would not pay for OSSs provided by GTEFL, as GTEFL suggested. AT&T argues that it has not asked for any more than the law provides, and that it remains willing to pay the appropriate price for what it is requesting.

MCI states that it is not seeking blanket access to CPNI. MCI offers to provide to GTEFL a blanket letter of authorization that will represent that MCI has a customer's authorization whenever it accesses information or takes action on behalf of a customer. MCI contends that the blanket letter of authorization is consistent with the requirements of both state and federal law. MCI points out that Section 222(c)(1) of the Act prohibits disclosure of CPNI "[e]xcept ... with the approval of the customer." MCI states that Section 364.24(2), Florida Statutes, similarly prohibits such disclosure "except as authorized by the customer." MCI argues it is important to note that neither federal nor state law requires that such approval or authorization be in writing.

MCI contends that there is no way that MCI will be able to serve customers as efficiently or effectively as GTEFL, let alone have an opportunity to become a provider of better quality service, if it is discriminated against in access to OSS functions. MCI asserts that residential and small business customers are often not aware of all the services to which they subscribe, and, therefore, it will be impossible to establish a complete and correct customer record without access to CPNI.

The FCC's Order discusses the issue of access to CPNI at ¶ 492. There the FCC states that access to call-related databases and access to the service management system must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. The FCC further states that Section 222(a) provides that all telecommunications carriers have a duty to protect the confidentiality of proprietary information of other carriers, including resellers, equipment manufacturers, and customers. In addition, the FCC states that Section 222(b) requires that telecommunications carriers that use proprietary information obtained from another telecommunications carrier in

providing any telecommunications service "shall use that information only for such purpose, and shall not use such information for its own marketing purposes." Furthermore, the use of customer proprietary network information (CPNI) is protected and limited by Sections 222(c) and (d).

The FCC has also initiated a proceeding to clarify the obligations of carriers with regard to section 222(c) and (d). See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rule making, CC Docket No. 96-115, FCC 96-221, released May 17, 1996. The FCC is not expected to issue a final order in that docket until mid-1997.

We conclude that Section 222 of the Act and Section 364.24(2), Florida Statutes operate to protect customer proprietary network information. We find that requiring the ALECs to obtain prior written authorization from customers before being permitted CPNI access would be unworkable. Section 222(b) imposes on all carriers the obligation to use customer account information responsibly; that is, only for providing telecommunications services from which the CPNI is derived. The ILECs need not consider themselves sole guardians of the customers' privacy interests, because the ALECs have that duty as well. Section 222(d)(1) permits access to CPNI for purposes of initiating telecommunication services without mention of customer approval. We find acceptable AT&T's and MCI's proposed method of issuing a blanket letter of authorization to GTEFL, which will state that AT&T or MCI will obtain the customer's permission before accessing the customer's CPNI. In addition, we require GTEFL, AT&T and MCI to develop a real-time interface that discourages "roaming" through customer information, permitting access only for the information necessary to immediately provide telecommunications service.

Finally, we find it appropriate for each party to bear its own share of the cost of developing and implementing OSS access systems and processes, because these systems benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs shall be recovered fully from the carrier that is requesting the customized system.

O. Access to Directory Assistance Database

Access

AT&T's witness Shurter and MCI's witness Price state that AT&T and MCI request access to GTEFL's directory assistance (DA) database for the purpose of providing their own DA service. AT&T's witness Shurter believes that consumers will view carriers that are unable to provide DA services as inferior to carriers that can provide DA services.

Witnesses Shurter and Price both state that the FCC's order requires GTEFL to provide access to its DA database as an unbundled element, as follows:

> In particular, the directory assistance database must be unbundled for access by requesting carriers. Such access must include both entry of the requesting carrier's customer information into the database, and the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance concerning incumbent LEC customer information. We clarify, however, that the entry of a competitor's customer information into an incumbent LEC's directory assistance database can be mediated by the incumbent LEC to prevent unauthorized use of the database. We find that the arrangement ordered by the California Commission concerning the shared use of such a database by Pacific Bell and GTEFL is one possible method of providing such access. FCC Order 96-325 at ¶ 538.

GTEFL states that it is technically feasible to provide DA listings electronically, but the Act does not require DA listings to be unbundled from DA service. GTEFL cites section 222(e) of the Act, which states that:

> a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under

> nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

GTEFL believes that while it is required to provide subscriber list information for directory publishing, there is no such requirement for DA purposes. In addition, GTEFL maintains that presently it is not technically feasible for it to provide multiple-user access to its DA database and that vendor-endorsed solutions will have to be available before any system modifications are made.

The FCC concluded at paragraph 137 of its Order, that directory listing is synonymous with subscriber list information. The FCC requires at paragraph 141 that incumbent LECs share subscriber listing information with their competitors, in readily accessible tape or electronic formats, and such data must be provided in a timely fashion upon request. At paragraph 143, the FCC found that an effective way to accomplish nondiscriminatory access to DA is to allow competitors to obtain read-only access to the incumbent LECs' DA databases. In addition, the FCC determined that:

> It is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases. Consistent with our definition of nondiscriminatory access, the providing LEC must offer its competitors access of at least equal quality to that it receives itself. Competitors who access such LEC databases will be held to the same standards as the database owner, in terms of the types of information that they can legally release to directory assistance callers. The LEC that owns the database can take the necessary safeguards to protect the integrity of its database and any proprietary information, or carriers can agree that such databases will be administered by a third party. FCC Order 96-325 at ¶ 144.

Upon consideration, we find that GTEFL shall provide AT&T and MCI with access to its DA database. Access shall initially be provided by magnetic tape by January 1, 1997. GTEFL indicates that

it cannot presently provide multiple user access to its DA database. Therefore, we require GTEFL to file with this Commission, within 60 days of the issuance of this order, a date by which access to its DA database will be provided by a real-time electronic interface.

Cost Recovery

AT&T and MCI believe that cost recovery of DA access should be based on TELRIC studies. MCI asserts that any cost for providing DA information by magnetic tape is very small or nonexistent.

GTEFL states that it is impossible to know the specific costs for DA database access because part of the solution will be driven by vendors. GTEFL believes these costs will be significant because of mechanisms needed to protect the security and integrity of the customer data.

There is insufficient information in the record of this proceeding to decide the appropriate cost recovery. Therefore, we require that GTEFL file a TSLRIC cost study with this Commission regarding access to its DA database 120 days before access is in fact provided.

P. Poles, Ducts, Conduits and Rights of Way

Access

Section 251(b)(4) of the Act places the following duty on all LECs:

> The duty to afford access to poles, ducts, conduits, and rights-of way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

Section 224 is entitled Regulation of Pole Attachments, and addresses the regulation of poles, ducts, conduit and rights-of-way.

AT&T's witness Crafton and MCI's witness Price state that Section 224(f)(1) of the Act imposes a specific duty on GTEFL to provide nondiscriminatory access to its poles, ducts, conduit and rights-of-way. Section 224(f)(1) of the Act states that:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.

Witness Crafton states that "nondiscriminatory access" means that GTEFL must take reasonable steps to ensure that AT&T has access to, and the ability to use poles, ducts, conduit and rights-of-way on the same terms and conditions as GTEFL affords itself. Witness Crafton further asserts that GTEFL should not be permitted to first satisfy all of its existing and projected five year spare capacity needs before allowing others to share the pathways.

GTEFL's witness Jernigan maintains that the Act did not divest GTEFL of its property rights and that AT&T's and MCI's rights to GTEFL's poles and conduit must be subject to certain limitations. GTEFL states that GTEFL must be able to first satisfy both its current needs and future space requirements. Witness Jernigan forecasts GTEFL's future requirements based on a five year horizon. Witness Jernigan points out that the capital investment associated with the placement of poles and conduits is paid for by GTEFL. Once these facilities are installed, GTEFL is responsible for using and maintaining them in a safe manner.

In addition to reserving capacity, Witness Jernigan believes GTEFL should be able to deny access to poles and conduits based on safety, reliability and generally applicable engineering standards. GTEFL asserts that it defies logic that the FCC would allow only electric utilities to deny access on these grounds. GTEFL states that such "denial should not turn on the type of service provided by the owner of the facility". GTEFL appears to rely on paragraph 1172 of the Order, which states:

> While the express language of sections 224(f)(1) and (f)(2) suggests that only utilities providing electric service can take into consideration concerns relating to safety and reliability, we are reluctant to ignore these concerns simply because the power pole

> owner is not an electric utility ... [I]n some circumstances, a LEC will have legitimate safety or engineering concerns that may need to be accommodated ... [W]e conclude that any utility may take into account issues of capacity, safety, reliability and engineering when considering attachment requests, provided the assessment of such factors is done in a nondiscriminatory manner.

GTEFL disagrees with the FCC's interpretation that the Act does not permit non-electric utilities to reserve space on their own facilities. GTEFL believes that the states, not the FCC, are in the best position to determine how best to accommodate carrier of last resort obligations as they may exist in state statutes. Further, GTEFL contends that a prohibition on GTEFL's reservation of space, coupled with the access rate requirements of section 224 and the FCC's implementing regulations, effects a taking of GTEFL's property in violation of the U.S. and Florida Constitutions. GTEFL maintains that the U.S. Supreme Court, in Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, made it clear that property rights include the rights to "possess, use, and dispose" of property. GTEFL argues that by its interpretation of section 224, the FCC would strip GTEFL, as a property owner, of its right not only to exclude others, but to make use of its own property in the future.

GTEFL's witness Jernigan states that we considered the takings issue in the collocation context in Order No. PSC-94-0285-FOF-TP, issued March 10, 1994. There, witness Jernigan points out, we determined that we had no authority to take the LECs' property, stating that "we observe that the Commission lacks the power of eminent domain which is required to take property. We agree that the authority to determine the appropriate compensation for a taking rests with the judiciary." GTEFL argues that the same conclusion applies in the instant proceeding. We note, however, that in reaching that conclusion, we were persuaded by the argument that property dedicated for the public purpose is subject to a different standard when, pursuant to statutory authorization, a regulatory body mandates certain uses of that property in the furtherance of its dedicated use. We were not persuaded by the LECs' argument that a mandatory physical occupation is a per se taking.

In the instant case, the access authorization is provided by the Act and the FCC's Order and Rules. We find that access to poles, ducts, and rights-of-way provided by GTEFL is consistent with the Act and does not constitute a compensable taking.

We conclude that Section 224(f)(1) of the Act requires without qualification that competitive telecommunications carriers shall have nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by incumbent LECs. Nondiscriminatory access means access for all on the same terms and conditions as the incumbent LEC holds for itself.

We are concerned that an incumbent LECs' ability to provide wholesale and retail services will be diminished, without the ability to reserve capacity in excess of that provided to ALECs. Nevertheless, our decision must be consistent with the FCC's Order. Accordingly, we find it appropriate for GTEFL to reserve capacity in order to meet future needs, but to the extent that it does, it must permit AT&T and MCI to do the same. Furthermore, GTEFL may not reserve space for local exchange service to an extent that would favor GTEFL's future needs over the present needs of AT&T or MCI. Thus, we require GTEFL to allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself. Access must be competitively neutral.

Cost Recovery

AT&T states that it will reimburse GTEFL for its proportionate share of the costs incurred to expand space to accommodate AT&T's attachment requests based on TELRIC. AT&T further states it will pay an attachment fee determined by the FCC's methodology. MCI states that compensation for shared use of ILEC-owned or ILEC-controlled poles, ducts, and conduits should be based on TELRIC. MCI further states if a facility expansion is required to accommodate its attachment requests, it will bear the cost of that expansion subject to reimbursement by others who subsequently share the expanded facility.

GTEFL states that ALECs using GTEFL's facilities should pay fully, as they are the cost causers and recipients of the benefits. Rates should be based on direct costs with appropriate contribution to common costs. Provisioning charges should be based on actual cost pass-throughs. Charges for rights-of way should be shared by all that use them. Furthermore, GTEFL argues that Section 224 of

the Act notwithstanding, it must recover the fair market value of any property taken.

We find that attachment compensation is to be determined in accordance with the provisions of Sections 224(d) and (e). We note that the FCC will undertake rulemaking with respect to the methodology for pole attachment rates. The FCC states that:

> With respect to the allocation of modification costs, we conclude 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, or to bear its proportionate share of the cost with all other attaching entities participating in the modification. If a user's modification affects the attachments of others who do not initiate or request the modification, ... the modification cost will be covered by the initiating or requesting party. Where multiple parties join in the modification, each party's proportionate share of the total cost shall be based on the ratio of new space occupied by that party to the total amount of new space occupied by all the parties joining in the modification. FCC Order 96-325 at ¶ 1211.

See also, 47 C.F.R. §1.1416.

Thus, we find that GTEFL may charge AT&T and MCI a pro rata share of the TSLRIC for supplying the attachments requested in conformance with the FCC's allocation requirements.

Rights-of-way

AT&T's witness Crafton states that "[a] right of way is the right to place poles, conduits, cables, or other equipment on the property of another, as well as to obtain physical access to that equipment." Witness Crafton adds that a right of way may run to, on or above public or private property, including air space, and may include discrete spaces in buildings. Witness Crafton asserts that GTEFL has accumulated access to public and private pathways

for decades in order to construct network facilities, and these pathways are a finite resource.

MCI's witness Price states that poles, ducts, conduits, and rights-of-way consist of all the physical facilities and legal rights needed for access to pathways across public and private property to reach customers. MCI's witness Price states that MCI would include poles, pole attachments, ducts, conduits, entrance facilities, equipment rooms, remote terminals, cable vaults, telephone closets, rights-of-way, or any other inputs needed to create pathways to complete telephone local exchange and toll traffic. Witness Price acknowledges that MCI's use of the term "pathway" is more expansive than poles, ducts, conduit and rights-of-way.

GTEFL's witness Jernigan asserts that there is no evidence that Congress intended to expand the term "rights-of-way," as it is used in Section 224 of the Act, to include all possible pathways to the customer such as entrance facilities, cable vaults, equipment rooms and telephone closets. Although "rights-of-way," as used in Section 224 of the Act, has never been formally defined, witness Jernigan states that the term "has always referred to the legal right of a utility to place poles or conduits across public or private property." As support, witness Jernigan cites the FCC's Order:

> We note that some commenters favor a broad interpretation of "pole, duct, conduit, or right-of-way" because that approach would minimize the risk that a "pathway" vital to competition could be shut off to new competitors. Others argue for a narrow construction of this statutory phrase, contending that Congress addressed access to other LEC facilities elsewhere in the 1996 Act. We recognize that an overly broad interpretation of this phrase could impact the owners and managers of small buildings, as well as small incumbent LECs, by requiring additional resources to effectively control and monitor such rights-of-way located on their properties. We do not believe that section 224(f)(1) mandates that a utility make space available on the roof of its corporate offices for the installation of a

> telecommunications carrier's transmission tower, although access of this nature might be mandated pursuant to a request for interconnection or for access to unbundled elements under section 251(c)(6). The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility. FCC Order 96-325 at ¶ 1185.

We conclude that the term "rights-of-way" in Section 224 of the Act does not include all possible pathways for communicating with the end user. We concur with the FCC that such a broad interpretation could affect many more individuals than just incumbent LECs. We find that access to entrance facilities, cable vaults, equipment rooms and the like shall be handled by the company on a case-by-case basis.

VI. MISCELLANEOUS

A. Term of Agreement

While Section 252(b)(4)(c) of the Act provides that a state commission shall resolve outstanding issues by imposing conditions required to implement the arbitration standards of Section 252(c), and Section 252(c)(3) requires the state commission to provide a schedule for implementation of the terms and conditions of the arbitration agreement, there is no specific provision in the Act or the FCC's Order and rules that governs the appropriate term of an agreement.

MCI's witness Price and AT&T's witness Shurter have indicated that the Commission should set the term of this arbitrated agreement to be five years. GTEFL's witness McLeod believes the term of the arbitrated agreement should be no more than two years.

It is not possible to determine at this point how long it will take to develop local competition in the marketplace. The record indicates that the transition could last several years. During this transition period, new entrants should have some stability in the prices GTEFL charges for wholesale services and elements. Yet,

we do not want to establish a term for this arbitrated agreement that is too long. A change in the industry, either regulatory or technical, could create a situation where some aspect of the agreement would impede competition.

We will allow the parties another opportunity to negotiate the term of this agreement. If they are able to reach an agreement, they shall file it with their final arbitrated agreement. If an agreement on the term cannot be reached, we will make a determination on the issue when we consider the parties' final arbitrated agreement.

B. Agreement Modification

AT&T's witness Shurter and MCI in its brief state that GTEFL should not be allowed to modify the agreement by subsequent tariff filings. AT&T argues in its brief that otherwise GTEFL, pursuant to Section 364.051(6), Florida Statutes, could file a tariff modifying or eliminating essential services or elements on which competitive carriers have relied, and competitive carriers would have no recourse other than to challenge the tariff through the complaint process. MCI argues that as a matter of policy and of contract law, GTEFL cannot be allowed to unilaterally modify the agreement in this proceeding.

GTEFL believes it should be allowed to modify the agreement with subsequent tariff filings. GTEFL's witness McLeod recognizes that the final agreement in this proceeding will address matters the parties have negotiated. He believes the negotiation process is the most appropriate way to attain terms and conditions that will best produce a competitive marketplace. He points out however, that tariffs will continue to be filed from time to time pursuant to the Commission's rules and requirements. He believes the Commission should have full authority to review and approve those tariffs at the time they are filed, based upon all the considerations pertinent at that time. Witness McLeod states that it does not make good business sense or good public policy to suggest that the Commission should restrain the authority it has for the future.

We believe that GTEFL should not be permitted to unilaterally modify an agreement reached pursuant to the Act by subsequent tariff filings. One party to a contract cannot alter the contract's terms without the assent of the other parties. United Contractors, Inc. v. United Construction Corp., 187 So.2d 695 (Fla.

2d DCA 1966); 17A C.J.S §375. We find, however, that interconnection agreements between GTEFL and AT&T and MCI may be modified by subsequent tariff filings if the agreements contain express language permitting modification by subsequent tariff filing, such as a clause establishing a contractual requirement with specific reference to a tariff provision.

C. Arbitrated Approval Standard

Section 252 sets forth the procedures for negotiation, arbitration and approval of agreements. Sections 252(a)(1)and 252(a)(2) concern the procedures for agreements arrived at through negotiation. Section 252(b) concerns the procedure for agreements arrived at through compulsory arbitration.

Under Section 252(e)(1), any agreement adopted by negotiation or arbitration shall be submitted for approval by this Commission. Section 252(e)(2) states that a state Commission may only reject:

> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -
>
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
>
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
>
> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

According to GTEFL, this language contemplates that portions of an agreement may be reviewed under subsection 252(e)(2)(A), governing negotiations, while other portions may be reviewed under subsection 252(e)(2)(B). GTEFL states that it has agreed with AT&T and MCI to provisions that have not been arbitrated. GTEFL asserts that although these provisions must still be approved by this Commission, they must be considered under the nondiscrimination and public interest standards of 252(e)(2)(A), rather than the

252(e)(2)(B) standard. GTEFL applies the different standards to the issues rather than to the agreement itself.

MCI, however, expects that this proceeding will result in the submission of an arbitrated agreement, which should then be approved or rejected applying the standards contained in Section 252(e)(2)(B). AT&T states that the agreement should be filed under Section 252(e) of the Act. AT&T does not specify whether the agreement should be approved pursuant to Section 252(e)(2)(A) or Section 252(e)(2)(B).

The Act contemplates different mechanisms under which the parties can submit agreements. Under Section 252(a)(1), the parties may negotiate and enter into a binding agreement which shall be submitted to the State for approval. Under Section 252(b), the parties may petition the State commission to arbitrate any open issues. Section 252(b) contemplates that there will be resolved issues as well as unresolved issues. In fact, this section requires the petitioner to provide all relevant documentation concerning any other issue discussed and resolved by the parties.

Although GTEFL asserts that the standards in subsections 252(e)(2)(A) and (B) apply not only to complete agreements but also to "any portion thereof" adopted through negotiation or arbitration, we believe that phrase allows us to reject a portion of a submitted agreement rather than rejecting the entire agreement itself. In addition, GTEFL's interpretation is inconsistent with the schedule for state action in Section 252(e)(4). That section states that if the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. Under GTEFL's interpretation, the negotiated provisions would have to be approved within 90 days and the arbitrated provisions within 30 days.

We find that since the agreements will result from an arbitration proceeding pursuant to Section 252(b), the agreements should be approved under the standards in Section 252(e)(2)(B). The arbitrated agreements should consist of our decision regarding the unresolved issues and the issues resolved by the parties.

D. Post-Decision Procedures

Section 252(c) provides that the State commission shall provide a schedule for implementation of the terms and conditions by the parties to the agreement.

GTEFL states that the Commission has been asked to resolve numerous complex issues. To avoid future disputes, the Commission must allow sufficient time to incorporate its findings into a comprehensive and integrated agreement. GTEFL states that the two weeks proposed by AT&T and MCI is not enough. GTEFL contends that this proposal would unfairly burden GTEFL, which would have to negotiate and finalize two of the most complex commercial contracts it will ever write within an unduly compressed time frame, while MCI and AT&T, respectively, need only concern themselves with one agreement each. GTEFL proposes that 30 days is a reasonable period for contract finalization. GTEFL states that this properly accounts for the fact that GTEFL will be negotiating separate contracts with each party.

AT&T proposes that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order reflecting the Commission's decisions on the issues in this proceeding. If no agreement is reached, AT&T proposes that the parties should file their respective proposed contractual language for each issue that remains unresolved within 20 days after the issuance of the Order. The Commission should then adopt on an issue-by-issue basis the proposed contractual language that best reflects the Commission's determinations in its Order.

MCI's proposal is very similar to AT&T's except that if the parties are unable to reach an agreement in 14 days, each party would submit its own version of a proposed agreement in 20 days. MCI adds that the Commission should retain the flexibility to accept the entire proposed agreement submitted by either party or to accept, on an issue-by-issue basis, parts of the proposed agreements offered by either party. MCI points out that this is consistent with the discretion that the FCC would vest in its arbitrators to use either "entire package" final offer arbitration or "issue-by-issue" final offer arbitration in cases where the FCC has assumed jurisdiction over an arbitration. 47 C.F.R. 51.807(d)

We believe that the appropriate reading of the Act gives this Commission the role under the provisions of Sections 252(b),(c),(d) and (e) both to arbitrate the unresolved issues and to approve the

"agreement" that results. The Act gives state commissions considerable flexibility to fashion arbitration procedures that will be compatible with the commissions' processes and accomplish the policy purposes of the Act.

Accordingly, we find it appropriate to require the parties to submit a written agreement memorializing and implementing our decision here within 30 days of issuance of the arbitration order. We will review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after the agreements are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the arbitration order. We will decide on the language that best incorporates the substance of our decision.

VII. CONCLUSION

We have conducted the arbitration of the unresolved issues in this proceeding pursuant to the directives and criteria of 47 U.S.C. §§ 251 and 252. We believe that our decision is consistent with the terms of section 251, the provisions of the FCC's implementing Rules that have not been stayed pending appeal, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the issues submitted for arbitration by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Transmission Services, Inc. are resolved as set forth in the body of this order. It is further

ORDERED that if GTEFL must develop additional capabilities to provide real-time and interactive access via electronic interfaces, those additional capabilities should be developed by January 1, 1997. If GTEFL cannot meet that deadline, it shall file a report with the Commission by December 31, 1996 that outlines why it cannot meet the deadline, its plans for developing the electronic interface, the date by which such system will be implemented, and

a description of the system or process that will be used in the interim. GTEFL, AT&T and MCI shall also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. These electronic interfaces should conform to industry standards where such standards exist or are developed. It is further

ORDERED that GTEFL shall provide TSLRIC cost studies for each electronic interface as it is developed. The cost study shall be filed with the Commission, along with a proposed recovery mechanism, 60 days before implementation of the interface. It is further

ORDERED that GTEFL shall file an implementation schedule by which customized routing, using line class codes, will be available to AT&T and MCI. The schedule shall include deadlines for any network modifications that need to be made, along with the description and the purpose of each modification. This information shall be filed within 60 days of the date this order is issued. It is further

ORDERED that GTEFL shall file a TSLRIC cost study for implementing customized routing capabilities. The study shall only include costs for providing customized routing that are beyond those capabilities that currently reside in the switch. The cost study shall be filed within 90 days of the date this order is issued. It is further

ORDERED that GTEFL shall file TSLRIC cost studies for billing and usage recording services requested by AT&T and MCI. The cost study shall be filed, along with a proposed recovery mechanism, 60 days before implementation of the billing and usage service. It is further

ORDERED that GTEFL shall provide directory assistance database information via magnetic tape by January 1, 1997. GTEFL shall file with this Commission a date by which access to its DA database will be provided via a real-time electronic interface. This information shall be provided within 60 days of the date this order is issued. It is further

ORDERED that GTEFL shall file a cost study dealing with access to its DA database 120 days before access is provided. It is further

ORDERED that GTEFL shall file TSLRIC cost studies, for all rates designated as interim rates for each of the items designated in the body of this order as a network element, capability, or function, within 60 days of the date this order is issued. It is further

ORDERED that the Commission will address the cost recovery for interim number portability in Docket No. 950737-TP. Until completion of that proceeding, each carrier, on an interim basis, shall pay for its own costs in the provision of the interim number portability solutions identified in the body of this order. Each carrier shall track its cost of providing the interim number portability solutions with sufficient detail to verify the costs in order that the Commission may consider recovery of the costs in Docket No. 950737-TP. It is further

ORDERED that GTEFL shall provide CABS-formatted billing for both resale and unbundled elements within 120 days of the date this order is issued. It is further

ORDERED that the parties shall submit a written agreement memorializing and implementing our decision in this proceeding within 30 days of the date this order is issued as set forth in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 17th day of January, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MCB/MMB/BC/CJP/WPC

Dissent

Commissioner Deason dissents, without comment, from the decision contained herein on the issue identified in the Prehearing Order as Issue 2, for the same reasons expressed in his dissent in the Final Order issued in Docket No. 960833-TP.

Commissioners Clark and Kiesling dissent, without comment, from the decision contained herein on the issue identified in the Prehearing Order as Issue 25.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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 by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

Table 1: Commission Approved Recurring Rates for Unbundled Network Elements

Network Element	Commission Approved Recurring Rates
Network Interface Device	
basic	$1.45
12x	$2.10
Loops	
2-wire analog	$20.00
4-wire analog	$25.00
Loop Distribution	*$7.50
Loop Feeder	*$3.00
Digital Cross Connect	
DS0	$1.60
DS1	$4.00
DS3	$31.00
Local Switching:	
Ports	
2-wire analog	$4.75
DS1	$72.25
Usage	
originating/min.	$0.004
terminating/min.	$0.00375
Signaling	
56 kbps link	$80.00
DS1 link	$125.00
Signal Transfer Point	
port termination	$350.00
Channelization System	
DS3 to DS1 multiplexing	$305.00
DS1 to DS0 multiplexing	$205.00

Network Element	Commission Approved Recurring Rates
Common Transport	
transport termination	$0.0001
transport facility/mile	$.0000017
Dedicated Transport	
Entrance Facility:	
2-wire voice	$29.00
4 wire voice	$35.00
DS1 system first	$135.00
DS1 system add'l	$125.00
DS3 protected	$960.00
voice facility	$2.60
DS1 facility per mile	$0.50
DS1 per termination	$30.00
DS3 facility per mile	$13.00
DS3 per term.	$285.00
Tandem Switching	$0.0009512
Databases	
LIDB (ABS)	$.04
Toll-Free calling (800)	$.011

* interim rate

Table 2: Commission Approved Nonrecurring Rates for Unbundled Network Elements

Network Element	Commission Approved Nonrecurring Rates
Unbundled Loop or Port	
Service Ordering:	
Initial Service Order	$47.25
Transfer of Service Charge	$16.00
Subsequent Service Order	$24.00
Customer Service Record	$5.25
Research	
Installation:	$10.50
Unbundled loop, per loop	$10.50
Unbundled port, per port	$62.50
Loop Facility Charge	