BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Sprint Communications Company Limited Partnership d/b/a Sprint for arbitration with GTE Florida Incorporated concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996.	DOCKET NO. 961173-TP ORDER NO. PSC-97-0230-FOF-TP ISSUED: February 26, 1997

The following Commissioners participated in the disposition of this matter:

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APPEARANCES:

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On behalf of Sprint Communications company Limited Partnership.

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On behalf of GTE Florida Incorporated.

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On behalf of the Commission Staff.

FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

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I. BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), P.L. 104-104, 104th Congress 1995, sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act addresses interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived 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 April 18, 1996, American Communications Services, Inc., American Communications Services of Jacksonville, Inc., and American Communications Services of Tampa, Inc. (collectively ACSI) requested that GTE Florida Incorporated (GTEFL) begin negotiations for an interconnection agreement pursuant to Section 252 of the Act. On September 26, 1996, ACSI filed its petition for arbitration with GTEFL. Docket No. 961169-TP was established for ACSI's petition.

On April 19, 1996, Sprint Communications Company Limited Partnership (Sprint) requested that GTEFL begin negotiations for an interconnection agreement pursuant to Section 252 of the Act. On September 26, 1996, Sprint filed a petition for arbitration of unresolved issues pursuant to Section 252 of the Act. Docket No. 961173-TP was established for Sprint's petition.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order 96-325 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 Eight 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.

Dockets Nos. 961169-TP and 961173-TP were consolidated and set for hearing by Order No. PSC-96-1283-PCO-TP, issued October 15, 1996. However, ACSI filed a Notice of Withdrawal of its Petition for Arbitration with GTEFL on October 30, 1996. Accordingly, Docket No. 961169 was closed.

On December 5-6, 1996, we conducted an evidentiary hearing for this docket. At our January 17, 1996, Agenda Conference we made our decision on the rates for specific network elements, bundling of network elements, services offered for resale, the wholesale discount for retail services, customer service records, and the rates for transport and termination of local traffic. Having considered the evidence presented at hearing, the posthearing briefs of the parties, and the recommendations of our staff, our arbitration decision is set forth below.

II. RATES FOR NETWORK ELEMENTS

Section 252(d) of the Act, contains the pricing standards for unbundled network elements. Section 252(d)(1), Interconnection and Network Element Charges, 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 Total Service Long Run Incremental Cost (TSLRIC). We note that we adopted TSLRIC as the appropriate cost methodology for unbundled elements in our state proceeding in Docket No. 950984-TP, by Order No. PSC-96-0811-FOF-TP, issued June 24, 1996.

TSLRIC and TELRIC

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

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 FCC provides in 47 C.F.R. § 51.505(a) that:

> 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).

Further, 47 C.F.R. § 51.505(b) states:

> (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.

Upon consideration, we do not believe there should 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 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 the Commission has used in the 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.

Based on the foregoing analysis, 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.

Sprint's Proposed Pricing Methodology

Sprint witness Stahly states that the prices for unbundled elements should be based on TELRIC plus the appropriate allocation of forward looking common costs. Specifically, witness Stahly states that Sprint's proposed pricing policy is as follows: 1) prices should be developed using the TELRIC-based pricing methodology established by the FCC; 2) the level of contribution to common costs should be a uniform loading that is limited to a level that reflects the common costs of an economically efficient local exchange carrier; 3) the reasonable profit level to be included in TELRIC should be the most recently authorized intrastate rate of return or prescribed interstate rate of return; and 4) prices for network elements should be geographically deaveraged.

Witness Stahly contends that TSLRIC and TELRIC are essentially the same. The differences between TSLRIC and TELRIC are related to the subject matter being analyzed, not the method of developing the costs. He states that TSLRIC represents the incremental cost of an entire product, whereas TELRIC represents the incremental cost of a network element.

Witness Stahly explains that TSLRIC:

> ....includes all of the service-specific fixed costs and volume sensitive costs. It represents the total burden that the service places upon the resources of the company. In more precise terms, TSLRIC is the difference between (1) the total cost of a company that provides the service and a number of others, and (2) the total cost of that same company if it provided all of its other services in the same quantities, but not the service in question.

Witness Stahly further explains why TELRIC/TSLRIC is appropriate for pricing unbundled network elements:

> TSLRIC is an appropriate basis for rates because it represents the economic cost of all of the resources the ILEC is using solely to provide the interconnections and network elements. Using TSLRIC ensures that the costs the interconnections and/or network elements cause are not being covered by other services. Most importantly, as a measure of forward-looking economic cost, TSLRIC best replicates the conditions of a competitive market and reduces the ability of an incumbent LEC to engage in anti-competitive behavior.

Witness Stahly argues that Incumbent Local Exchange Carriers (LECs) should geographically deaverage prices for network elements. He asserts that switching and transport costs are a function of traffic density and should be deaveraged to high, medium, and low cost exchanges based on traffic density, while loop costs should be deaveraged based on the loop length and the density of the end user location. Although Sprint believes that geographic deaveraging is a necessary step in establishing interconnection and unbundling rates, witness Stahly testified that Sprint has never officially requested geographical deaveraging of unbundled rates. Although witness Stahly agrees that the Act did not specifically require the states to geographically deaverage rates, he asserts that the FCC order does address the issue. Witness Stahly contends that it comes down to an interpretation of what you believe is cost-based. For example, if a state determines that cost-based should be averaged rates, then that could be construed to meet the requirements of the Act and the order.

GTEFL does not believe that geographically deaveraged rates for unbundled elements should be required. Witness Menard believes that negotiation is the most appropriate and effective way to attain terms and conditions that would produce a competitive marketplace.

Upon review, we find that the Act can be read to allow geographic deaveraging of unbundled elements; however, we do not interpret the Act to require geographic deaveraging. We further find that the record in this proceeding does not support a decision to geographically deaverage because there is insufficient cost evidence.

GTEFL's Proposed Pricing Methodology

GTEFL submitted TELRIC and TSLRIC cost studies for unbundled network elements in this proceeding. GTEFL witness Sibley defines TELRIC as a measure of the total incremental cost attributable to a particular network element, while TSLRIC refers to the long-run incremental cost of a particular service. Witness Sibley testified that TSLRIC pricing: 1) does not reflect the firm's total direct costs; 2) does not reflect the firm's economic costs; 3) is not competitive pricing; 4) promotes free riding by competitors; 5) subsidizes entrants; 6) 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) fails to include joint and common cost increases that are due to unbundling; 8) creates incentives for the incumbent to reduce its joint and common or shared costs; 9) lacks dynamic pricing flexibility and creates incumbent burdens and 10) is discriminatory.

GTEFL presented two price proposals for unbundled network elements. Witness Trimble states that the Market-Determined Efficient Component Pricing Rule (M-ECPR) was used for the loop and port in proposal A; however, M-ECPR was used for the loop, port, and local switching in proposal B. Witness Trimble explained that the remaining unbundled network elements in both proposals were priced based on current FCC interstate tariff rates or current state tariff rates. Witness Trimble contends that the main difference between the two scenarios is the company's proposed structure for purchasing local switching, local minutes of use and switch features. When a competitive local exchange carrier (CLEC) purchases unbundled local switching or an unbundled port under proposal A, the CLEC has access to all local switching elements through the CLEC's purchase of GTEFL's unbundled "line-side" port element. The minutes of use and vertical services are then resold to the CLEC based on GTEFL's discounted resale tariff. GTEFL argues that while this pricing structure may be sufficient for some, a second pricing scenario which ALECs can elect for unbundled local switching would also be available.

Similar to GTEFL's port and resale switching proposal, proposal A, proposal B includes monthly and any non-recurring charges for the unbundled port and unbundled switch features, and a per-minute-of-use local switching charge. Thus, under proposal B, GTEFL's discounted resale tariff is not applicable for minutes of use and vertical services. GTEFL contends that the monthly recurring port rate, and the usage rate per minute are based on TELRIC plus a 47% contribution to common cost. Similarly, the available switch features, e.g., directed call pick up, queuing, etc., are priced at GTEFL's TELRIC plus a 47% contribution, with a minimum twenty-five cent ($.25) rate. In addition, for minutes of use which traverse an unbundled local switching element, i.e. port, that was purchased by the ALEC, GTEFL asserts it will apply the applicable carrier common line charges and 100% of the applicable residual interconnection charges, which is similar to the procedure discussed by the FCC in Part 51.515 (b) and (c).

Part 51.515 (b) of the FCC order states:

> ...an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in 51.319(c)(1) of this part, for interstate minutes of use traversing such unbundled local switching elements, the carrier common line charge described in 69.105 of this chapter, and a charge equal to 75% of the interconnection charge described in 69.124 of this chapter...

The FCC instituted this charge in the belief that local exchange carriers (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. 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. By adding support for a period of time, the FCC sought to mitigate the potential revenue impact on the LECs. GTEFL asserts that these charges should not be referred to as "access charges," rather they are local switching charges that provide continued contributions in lieu of access charges.

We note that the Eighth Circuit Court stayed 47 C.F.R. § 51.515. Therefore, since assessment of the CCL and 75% of the RIC is not mandated by the Order at this time, we do not believe that additional charges should be assessed for unbundled local switching over and above the local switching rates we are setting in this proceeding.

GTEFL witness Sibley argues that unbundled network element rates should be based on GTEFL's proposed pricing methodology, the M-ECPR. 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 defines a 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 refer to the net return that an unbundled network element will bring GTEFL if it is not sold at wholesale to a competitor. [Sic]

GTEFL argues that it should be given a reasonable opportunity to recover both its forward-looking and historical costs to promote efficient competition under the Act. GTEFL asserts 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.

Sprint's witness Stahly states that the M-ECPR allows unbundled network elements to be priced at existing retail rates. For example, witness Stahly asserts that GTEFL proposes that loop prices be set based on existing interstate 2-wire special access rates, which removes the cost-basis for the rates. Sprint contends that by charging the tariff rate,it makes no difference what the incremental cost is since the TELRIC of the unbundled loop would have no effect on the final rate charged to the CLEC. In addition, witness Stahly believes that GTEFL's M-ECPR pricing proposal ignores the FCC's direction that, in keeping with the cost-based pricing standard of the Act, rates for unbundled elements must be deaveraged.

Sprint witness Hunsucker agrees that ILECs have a great deal of joint and common costs in their networks. According to Sprint witness Stahly, Sprint believes that prices for unbundled elements should be based on the TELRIC of providing the element plus a reasonable allocation of common costs. Witness Stahly contends that an appropriately developed TELRIC cost study identifies all direct costs caused by Sprint's use of GTEFL's network elements. Moreover, Sprint asserts it intends to pay for all costs which it directly causes on GTEFL's network. Sprint proposes that GTEFL utilize a uniform markup of up to fifteen percent for allocating common costs. Witness Stahly contends that a uniform markup is appropriate because it treats the non-competitive markets as if they were competitive and uniform markups are nondiscriminatory.

GTEFL disagrees with Sprint's pricing proposal. GTEFL witness Sibley argues that competitive markets do not have equal markups; rather, the markups chosen by competitive firms differ considerably across products and markets. Further, witness Sibley asserts that uniform markups are more likely to be discriminatory since they create subsidies for some services and result in selling below cost for other services. Therefore, GTEFL argues, Sprint's pricing methodology should be rejected.

Witness Trimble contends that GTEFL's forward-looking common costs exceed $455 million, or about 41-47% of its total costs. GTEFL presented two different methods of estimating its forward-looking common costs. The first approach, the top-down or economic method, illustrates common costs to be 47% of total costs. The second approach utilizes an accounting approach which examines specific uniform system of accounts (USOA) categories for costs the company expects to incur in the future and that are not included in the TSLRIC/TELRIC studies. Utilizing this approach, common costs total 41%.

Decision on Proposed Pricing Methodologies

Upon consideration, we find that the record demonstrates that charging existing tariff rates for unbundled network elements is inappropriate and would not enhance competition. If the TELRIC of an unbundled network element were lower than the existing tariff rate, the opportunity cost would simply be increased to reach the price equal to the tariffed rate resulting in excessive contribution over costs. For example, according to GTEFL's proposal for unbundled elements based on current tariff rates, GTEFL has proposed markups of 231%, 864%, and 987%, on DS1 link costs, transport facility per mile costs, and DS1 facility per airline mile costs, respectively.

The record also reveals that the M-ECPR results in excessive contribution over costs. According to GTEFL's proposal for unbundled elements, GTEFL has proposed markups of 42%, 56%, and 88%, on 2-wire local loop costs, terminating local switching costs, and 4-wire local loop costs, respectively. Relative to this indifference between offering at retail or wholesale produced by the M-ECPR, we have 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 M-ECPR is an appropriate approach to determining prices. (Order No. PSC-96-0811-FOF-TP, p.17)

We note that the Act permits but does not require an ILEC to earn a reasonable profit. Section 252(d)(1) provides that determinations by state commissions

> (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) <u>may</u> include a reasonable profit. (emphasis added)

We consider GTEFL's pricing methodology as a means of protecting its current revenue stream. Accordingly, based on the excessively large markups in the pricing proposals submitted by GTEFL and our prior rejection of the ECPR, we reject GTEFL's proposed M-ECPR to generate rates for unbundled network elements.

GTEFL's Cost Studies

GTEFL provided cost studies which contain both TSLRIC and TELRIC costs for unbundled network elements. GTEFL witness Trimble proffers GTEFL's TELRIC costs as the price floor and an "upper bound" loop price as the price ceiling for unbundled loops. GTEFL asserts that the "upper bound" loop price can be considered an assumed price level that would preserve GTEFL's overall levels of contribution to common costs. GTEFL contends that if it were to propose an unbundled loop price above the "upper bound," it would potentially be making more contribution than it does without the introduction of unbundled loops. GTEFL states that its cost model calculates both volume-sensitive and volume-insensitive costs as necessary to develop TSLRIC costs.

Witness Steele states that GTEFL used two 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 states that depreciation rates should be adjusted for declining technology costs, sunk investments and rapid technology change. Witness Steele also states, however, that due to time constraints, GTEFL was unable to adjust its depreciation rates. According to witness Steele, the current Commission-prescribed depreciation rates are used in GTEFL's loop study. In addition, GTEFL used a return on equity of 12.2%, with a composite rate of return of 10.13% in its cost calculations.

Sprint's Proposal

Although witness Stahly has concerns regarding GTEFL's derivation of common costs and the appropriateness of GTEFL's carrying charges, he states that Sprint did not have adequate time to fully review GTEFL's cost studies. Moreover, witness Stahly testified that Sprint has not conducted any cost studies of its own. Sprint has petitioned the Commission to initiate a generic cost proceeding to review the rates for BellSouth Telecommunications, Inc. for interconnection, unbundled elements, transport and termination, and resale. Sprint also proposes opening a generic cost docket to review GTEFL's TELRIC, shared and common cost studies. Sprint asserts, however, an effort to utilize the Commission's resources efficiently, such a proceeding should be open to all parties rather than be conducted as separate investigations of GTEFL's cost studies.

Sprint asserts that GTEFL has failed to show that GTEFL's proposed prices are just and reasonable; therefore, Sprint believes that GTEFL's cost studies and prices should be rejected and other prices used in their place. In the absence of cost-based prices, Sprint recommends that the default prices established in the FCC Order be applied until permanent rates are developed under the TELRIC-based pricing methodology. Sprint states however, that it will accept, on an interim basis, all rates, terms, and conditions that resulted from the arbitration between AT&T and GTEFL in Docket No. 960847-TP. Sprint states that the Act supports Sprint's proposal to utilize the rates established in Docket No. 960847-TP. Sprint refers to Section 252(i) which states that:

> 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 agreement.

Sprint argues that the Act clearly requires GTEFL to offer Sprint or any other telecommunications provider the same terms and conditions for any interconnection, service or network element that it offers any other company. Further, Sprint contends that Section 251 (c) of the Act requires that rates for interconnection and resale be nondiscriminatory. Therefore, since the Commission has set GTEFL's rates for interconnection and wholesale rates in Dockets 960847-TP and 960980-TP, it would be discriminatory to allow GTEFL to charge Sprint different rates for the exact same service.

Decision of Costing Methodologies

Upon consideration of the evidence in the record and in conformance with the Act's requirements, we find it appropriate to set permanent rates based on GTEFL's cost studies. We note that the rates we are establishing in this arbitration are based on the evidence in this record. It is inappropriate to establish rates in this proceeding based on the evidence provided in another proceeding, as suggested by Sprint. With the exception of the land and building factor used for 2-wire and 4-wire loops, as discussed further below, we find that GTEFL's studies are appropriate because they approximate TSLRIC cost studies and reflect GTEFL's efficient forward-looking costs. Accordingly, we find that the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the assumptions appear reasonable.

Witness Steele asserts that GTEFL incorporated land and building costs in determining costs for 2-wire and 4-wire loops. Witness Steele asserts that the company believes this is appropriate since the longer loops used in Florida contain pair-gain devices, as well as electronics that are located in the central office to communicate a digital signal.

We agree that longer loops may contain pair-gain devices, as well as electronics that are located in the central office, and we acknowledge that in such cases it is appropriate to include land and building costs in determining 2-wire and 4-wire loop costs. We do not believe however, that the use of GTEFL's land and building factor is appropriate in this circumstance. First, it is unclear what proportion of loops requires equipment located in the central office. By applying its land and building factor to the cost of loops, GTEFL assumes that land and building costs are attributed to 100% of GTEFL's loops. We do not believe that this is appropriate in determining GTEFL's 2-wire and 4-wire loop costs. Second, in determining its land and building factor, GTEFL utilizes investments for land (Acct 2111), building (Acct 2121), central office switching (Acct 2212), and circuit equipment (Acct 2232). The Code of Federal Regulations (C.F.R.), Account 32.2111, Land, provides:

> (a) The account shall include the original cost of all land held in fee and of easements, and similar rights in land having a term of more than one year used for purposes other than the location of outside plant or externally mounted central office equipment.
>
> (b) When land, together with buildings thereon, is acquired, the original cost shall be fairly apportioned between the land and the buildings and accounted for accordingly.

Account 32.2121, Buildings, provides:

> (a) This account shall include the original cost of buildings, and the cost of all permanent fixtures, machinery, appurtenances and appliances installed as a part thereof. It shall include costs incident to the construction or purchase of a building and to securing possession and title.
>
> (b) When land, together with buildings thereon, is acquired, the original cost shall be fairly apportioned between the land and the buildings, and the amount applicable to the buildings shall be included in this account.

It appears from the descriptions of accounts 32.2111 (land) and 32.2121 (buildings), that these accounts include all land and all buildings. They do not differentiate between what is required for central office purposes and what is required for business office purposes. We find that if a distinction were made between the investment in central office buildings and other buildings, then it may be appropriate to use such a factor. A factor that includes all land and all buildings, over states GTEFL's 2-wire and 4-wire loop costs. Therefore, we find that it is not appropriate to include the land and building costs when determining 2-wire and 4-wire loop cost. Accordingly, we find it appropriate to remove those costs from the rates for the 2-wire and 4-wire loops. We note that our rates for these elements are lower than GTEFL's stated TSLRIC cost. We also note, however, that the rates for the 2-wire and 4-wire loops are greater than the 2-wire and 4-wire loop costs provided in Docket No. 950984-TL, which include both volume sensitive and volume insensitive costs. 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. <u>See</u> "Attachment A" Commission Approved Recurring and Nonrecurring Rates for Unbundled Network Elements.

<u>Takings Argument</u>

GTEFL argues that the Commission must set prices in this proceeding that will encourage efficient entry into local exchange markets, leading eventually to facilities-based competition. GTEFL further asserts that the Commission must do this without taking GTEFL's property. GTEFL urges that the Commission must set prices for interconnection and unbundled elements based on its TELRIC cost studies, plus joint and common costs, in order to avoid violations of the Fifth Amendment of the U.S. Constitution and Article 10, Section 6 and Article 1, Section 9 of the Florida Constitution. GTEFL contends that the Commission must permit it to recover all of its historic and forward-looking costs of unbundled elements or resold services plus a reasonable profit.

GTEFL notes that in <u>Brooks-Scanlon Co. v. Railroad Comm'n of Louisiana</u>, 251 U.S. 396, 399 (1920), the U.S. Supreme Court established the principle that under the Takings Clause a regulated entity may not be compelled to operate even a segment of its business at a loss, even though it operates its business as a whole profitably. Furthermore, GTEFL notes that, in <u>Federal Power Comm'n v. Hope Natural Gas. Co</u>., 320 U.S. 591 (1944), the Court established the additional principle that the return to the equity owner should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and attract capital. GTEFL also notes that the Court has required that just compensation for a taking is the compensation that would result from a voluntary disposition. See, e.g., Olson v. United States, 292 U.S. 246 (1934).

Consistent with these principles, GTEFL asserts that the Commission must set prices in this proceeding that permit it to recover its incremental costs, its forward-looking joint and common costs, its costs of subsidizing other services, and its costs of unbundling and resale. GTEFL asserts that the Commission must permit it to offer services for resale at wholesale prices free of overstated avoided costs. Moreover, GTEFL asserts that it must be permitted a reasonable return on its historic or embedded costs prudently incurred. Were the Commission to set prices otherwise, GTEFL argues that its ability to attract capital would be jeopardized, that the return to its investors would not be commensurate with investments of similar risk, and that it would not be left indifferent between the taking and the retention of its property.

Sprint rejects GTEFL's claim that TELRIC pricing as advocated by Sprint, TELRIC plus a uniform markup of up to 15%, would be a taking of GTEFL's property. According to Sprint, GTEFL has failed to show, as it must, that in any event TELRIC would force GTEFL to operate a portion of its business at a loss. Sprint argues that the appropriate legal standard is the profitability of its discrete services, not of the enterprise. Sprint argues that GTEFL makes what is a facial challenge to Sprint's proposed pricing methodology.

Upon review, we find that Section 252(d)(1)(A) of the Act provides that just and reasonable rates shall be based on the cost of providing the network element. Rates based on TSLRIC meet that requirement. Section 252(d)(1)(B) provides that such rates may include a reasonable profit. TSLRIC provides for the recovery of the cost of capital or a reasonable profit. Under Hope, supra, a constitutional question only arises when GTEFL's financial integrity and ability to continue to attract capital are jeopardized. The TSLRIC methodology we adopt in this proceeding does not jeopardize GTEFL's financial integrity. It provides GTEFL with the opportunity to recover all of its forward-looking costs, including the costs of capital. Accordingly, the rates we are setting based on a TSLRIC methodology, do not amount to a constitutional taking.

We note that we have previously considered and rejected GTEFL's takings argument. In Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996, we found:

> Implicit in GTEFL's arguments is the notion that this Commission owes GTEFL an increase in local rates to replace the company's potential losses of expected contribution and profit. GTEFL is asking that we look at potential revenue losses, albeit under the disguise of alleged constitutional violations. Even if it could be predicted with certainty that there would be major losses, GTEFL does not have a per se statutory right that it must recover profit and contribution as a result of unbundling and reselling services. Even under the rate-base regulation regime in Chapter 364, GTEFL was merely afforded the opportunity to earn a fair return on its investment, not a guarantee of a return. Further, under the new, price-regulated regime in Chapter 364 that GTEFL has elected, GTEFL is not guaranteed a specific return in this competitive environment. Moreover, even if the losses come to fruition, such losses, if necessary, can be addressed through appropriate Commission proceedings.

Based on the evidence in this record, we believe our rationale in Order No. PSC-96-0811-FOF-TP is applicable in this proceeding. Sections 364.161 and 364.162, Florida Statutes, require that we set prices for unbundled services, network features, functions or capabilities, unbundled loops, interconnection and resold services and facilities that are not below costs. Incumbent LECs have no statutory right to contribution above costs.

If GTEFL believes it is experiencing revenue losses, it may proceed under Section 364.051(5), Florida Statutes, which provides that a price-regulated LEC may petition the Commission for a rate increase for basic local telecommunication services upon a compelling showing of changed circumstances. Moreover, under Section 364.025(3), Florida Statutes, a LEC may petition the Commission for a change in the interim mechanism for maintaining universal service objectives, again, upon a compelling showing of changed circumstances. See Order No. PSC-95-1592-FOF-TP.

Based on the foregoing, we find that GTEFL's takings claim in this proceeding must be rejected upon an analysis of the pricing requirements of the Act, as well as upon an analysis of the pricing requirements of Section 364, Florida Statutes.

III. BUNDLING OF NETWORK ELEMENTS

Section 251 (c)(3) of the Act states that the ILEC 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 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 section of the Act to permit the rebundling of network elements in any manner Sprint 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 <u>allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element</u>. (emphasis added)

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 carrier 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 <u>in any manner</u>, 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 provided.

¶334 provides that:

> 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.

Sprint witness Hunsucker argues that the Commission should not allow GTEFL to restrict Sprint's ability to combine unbundled network elements. Witness Hunsucker 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.

GTEFL witness Trimble argues that Sprint should not be permitted to avoid the mandated resale pricing standards by recombining unbundled elements into a service equivalent to a wholesale offering. He also asserts that 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. Witness Trimble could not point to any section of the Act or the FCC's Order however, that said the costs to the ALECs should be the same whether they buy a service at wholesale or combine unbundled elements to recreate the same service. In addition, witness Trimble agreed that the FCC's Order at Section 51.315(c), states that ALECs can combine unbundled elements in any manner they so desire. Further, GTEFL witness Menard was asked on cross examination if Section 251(c)(3) contained, "a prohibition against recombining elements." Witness Menard answered, "It doesn't contain a prohibition, but it also... doesn't mandate it either." According to Sprint witness Hunsucker, Section 251(c)(3) of the Act, "placed no restrictions on a CLEC's or ALEC's ability to combine unbundled elements."

Upon review, we concur with the FCC's Order that purchasing a retail service at wholesale does not contain the same element of risk as recombining unbundled elements to recreate a service. Sprint witness Hunsucker states, "...if we seek to combine elements and purchase unbundled network elements, we incur different risks and different costs in having to put those back together to put a fully integrated service back out to the end user." He asserts that if Sprint buys unbundled elements it has to put them back together, develop other systems, and manage the services differently than if Sprint bought a resold service. According to witness Hunsucker, there is a difference in becoming a reseller and a network-based competitor. He states that if you simply resell the LEC's service you are "restricted to using the incumbent LEC's network and the services they have developed." Hunsucker further stated:

> If I go unbundled network elements and I deploy my own switch, then I have the ability to generate new services, and even if I'm buying unbundled switching from GTE, if there [are] AIN trigger in the switch, I can go off line and develop my own vertical features that GTE may not have put in the market. So it could offer the consumers more choice.

We find that purchasing an existing retail service at wholesale rates is not the same as recreating the same type of service by combining unbundled elements. Our finding is supported by paragraph 334 of the FCC's Order. Therefore, based on section 251(c)(3) of the Act, the FCC's Order and Rules, and the record, we find that Sprint shall be allowed to combine unbundled network elements in any manner it chooses, including recreating existing GTEFL services.

IV. SERVICES OFFERED FOR RESALE

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 at ¶871. The primary dispute concerns what services are retail services.

Section 251(c)(4) of the Act states that ILECs have a duty:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) 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.

Paragraph 871 of the FCC's Order states:

> ...We conclude that an incumbent LEC must establish a wholesale rate for each retail service that: (1) meets that statutory definition of a 'telecommunications service'; and (2) is provided at retail to subscribers who are not 'telecommunications carriers'. We thus find no statutory basis for limiting the resale duty to basic telephone services, as some suggest.

The FCC, in its Order, addressed the importance of resale:

> 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... <u>See</u> Order at ¶907.

GTEFL witness Wellemeyer contends that GTEFL will offer all the services it currently offers on a retail basis except for below-cost services, promotional services, new advanced intelligent network (AIN) services, and public and semi-public payphone lines. Witness Wellemeyer states that GTEFL will offer the following services for resale, but not at wholesale rates: operator services and directory assistance, non-recurring charge services, special access and private line services and COCOT (Customer-Owned Coin-Operated Telephone) coin and coinless lines.

Sprint witness Hunsucker argues that all regulated telecommunications services offered to end users of GTEFL must be available, on terms and conditions that are not discriminatory, for resale. He states these services include volume discounted products, grandfathered products, individual case basis products, operator services, directory assistance, vertical services and promotions. Sprint argues that GTEFL has failed to demonstrate that any restrictions other than the cross-class restriction provided in Section 251(c)(4) of the Act and the short-term promotion restriction in Section 51.613 (b) of the FCC's rules are reasonable and non-discriminatory. Witness Hunsucker states that Sprint fully supports the Commission's decision in Dockets Nos. 960847-TP and 960980-TP, and requests that the Commission apply to Sprint the same restrictions on resale contained in that decision. We note that Sprint did not provide testimony on every service we discuss below.

Below-Cost Services

GTEFL witness Wellemeyer asserts that certain unidentified services receive contribution from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are priced above incremental cost. Witness Wellemeyer 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 and be able to pocket the contributions from the above-cost services that had been used to price the other services below-cost. Accordingly, GTEFL states that it cannot cover its total costs unless these services are excluded from GTEFL's wholesale offerings or are repriced to cover their costs.

Witness Wellemeyer also states that resellers do not generally endeavor to sell only the basic local service, but rather the entire bundle of services currently offered by GTEFL. GTEFL argues it loses considerable contribution associated with any complementary services, notably intraLATA toll, and this lost contribution is properly included as an opportunity cost in developing the proposed resale rates.

GTEFL argues that offering basic service at wholesale will violate the Florida Legislature's determination that flat-rate local service should not be required to be resold before July 1, 1997. Section 364.151(2), Florida Statutes, requires that in no event should flat-rate local service be required to be resold before July 1, 1997.

Sprint 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. Sprint's witness Stahly states that wholesale rates will fairly compensate ILECs for wholesale services just as fully as retail rates compensate them for retail services, since the rate for wholesale is the retail rate minus avoided costs. Witness Hunsucker states that, Sprint also disagrees with GTEFL that resale should be limited because GTEFL would be prevented from recovering its total costs if it were required to resell services that are provided below cost. Sprint 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. Witness Hunsucker asserts that costs avoided in offering the service on a wholesale basis are costs that will no longer be incurred by GTEFL. Therefore, he argues, GTEFL should experience no price squeeze in this regard. Sprint further argues that GTEFL will still receive virtually all of the contributions that it did as a resale provider, since Sprint will also purchase high margin vertical services at wholesale from GTEFL. In addition to the contribution from vertical services, witness Hunsucker asserts that GTEFL will still retain the access contributions, just as it always has.

GTEFL witness Wellemeyer states it is noteworthy that the FCC declined to limit resale offerings by excluding below-cost services, but did not prohibit a resale restriction. The FCC's Order, however, states that:

> Subject to the cross-class restrictions discussed below, we believe that below-cost services are subject to the wholesale rate obligation under section 251(c)(4). First, the 1996 Act applies to any 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 1996 Act does not specifically do so. (Order at ¶956)

Upon consideration, we are unpersuaded by GTEFL's argument that the FCC did not prohibit a resale restriction. The FCC declined to limit resale obligations beyond that provided in the Act, because to do so would undermine the goal of the Act to foster competition. 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, . . . , demand is unlikely to be significantly increased by resale competition. Thus, differences in incumbent LEC revenue resulting from the resale of below-cost services should be accompanied by proportionate decreases in expenditures that are avoided because the service is being offered at wholesale. Order at ¶956.

Therefore, based on the requirements of the FCC Order, 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 also find that the Act preempts Section 364.161 (2), Florida Statutes, because Florida's prohibition on requiring resale of flat-rate local service before July 1, 1997 directly conflicts with the Act.

<u>Promotions and Contract Service Arrangements</u>

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 from those of competing carriers. GTEFL argues that a competitor will be able to offer any service it wants on any terms and conditions it desires to attract new customers, and GTEFL needs this same flexibility to respond to competition on a retail basis and give its customers more choices. Witness Wellemeyer states that GTEFL would have absolutely no incentive to develop additional promotions and other new services that would benefit customers because Sprint 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 choices to customers. Witness Wellemeyer states that it is noteworthy 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.

According to witness Wellemeyer, GTEFL has agreed to resell future contracts at a price that reflects the costs avoided by selling at wholesale. He states that existing contract services are offered under terms and conditions of a standing contract between a retail customer and GTEFL. He also states that if a customer presently under contract with GTEFL chooses to change to Sprint, or any other carrier, then termination liabilities would apply.

Sprint argues that all promotions should be available for resale. Sprint witness Hunsucker points out, however, that according to the FCC's Order, promotions greater than 90 days must carry a wholesale discount as a resale offering.

Upon consideration, although we have concerns about this requirement, we find that the FCC's Order provides that promotional or discounted offerings, including contract and other customer-specific offerings, should not be excluded from resale. GTEFL has not made an adequate showing that it is appropriate to restrict promotions. The FCC Rules require ILECs to apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if (a) such promotions involve rates that will be in effect for no more than 90 days; and (b) the ILEC 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.

<u>AIN Services</u>

GTEFL has agreed to resell its currently tariffed AIN services at a wholesale discount. Witness Wellemeyer states that issues involving trigger access to a competing carrier's network platform and services must be resolved before GTEFL can offer access to other AIN services.
Sprint did not provide testimony on AIN services.

Upon review, we find that both current and future AIN services are subject to resale. These services are sold to customers who are not telecommunications providers. Section 251(c)(4) of the Act requires incumbent local exchange companies 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 argues that public payphone lines are not retail service offerings, and therefore, are not required under the Act to be resold. Sprint does not address public and semi-public pay telephone lines. However, as stated earlier, Sprint requests that the Commission apply to Sprint the same restrictions on resale contained in our decision in Dockets 960847-TP and 960980-TP.

Witness Wellemeyer contends that for semi-public pay phones GTEFL does not agree to offer for resale the coin station apparatus because it is essential to the service offering as it is currently defined. GTEFL states that if it 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.

Upon review, we find that public and semi-public pay telephone lines are subject to resale based on the Act and the FCC Order. We recognize GTEFL's dispute that a semi-public pay telephone requires a coin access line and a coin station, and that Sprint will be required to provide its own coin station. We agree that GTEFL may resell its equipment if it is inclined to do so; however, the coin access line is a service which GTEFL offers to customers other than telecommunications carriers.

Section 251(c)(4) of the Act requires ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The FCC Order states that independent public payphone providers are not telecommunications carriers. Accordingly, we find that public and semi-public pay telephone lines shall be resold.

Other Services

GTEFL contends that it will offer for resale, but not at wholesale rates, any service already priced at wholesale rates. Such services include special access, private line services tariffed under the special access tariff, COCOT coin and coinless lines. In addition, GTEFL states that operator and directory assistance services and charges for non-recurring services, i.e.

primary service ordering and installation, will also not be offered at wholesale rates.

GTEFL witness Wellemeyer states 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 notes that the FCC Order states that even though ILECs' access tariffs do not prevent end users from purchasing the service, the language and intent of section 251 of the Act clearly demonstrates that these exchange access services should not be considered services an ILEC "provides at retail to subscribers who are not telecommunications carriers" under section 251(c)(4). GTEFL states that it similarly considers non-LEC pay telephone providers to be wholesale providers, and GTEFL has priced its offerings accordingly.

GTEFL contends that operator services and directory assistance should be resold but not at wholesale rates. Witness Wellemeyer argues that because the provision of these services requires the same activities to be performed whether offered on a retail or a resale basis, GTEFL does not believe there are avoided costs for these services. GTEFL states that except for the directory assistance (DA) call allowance bundled with basic local service, 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. GTEFL 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 ordering and installation 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.

Sprint did not provide testimony regarding nonrecurring charges for services.

Based on Section 251(c)(4) of the Act, we find that 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. End users can purchase special access. Therefore, special access is a service provided at retail to subscribers who are not telecommunications providers. In addition, we note that independent public payphone providers are not considered telecommunications carriers. In conclusion, we find that GTEFL shall resell such services as special access, private line services tariffed under the special access tariff, COCOT coin and coinless lines, and operator and directory assistance services.

Summary of Decision

Based on the foregoing, we find that, based on the Act and the FCC's Order, GTEFL shall offer for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers. This includes all grandfathered services, both current and future, promotions that exceed 90 days, AIN Services, both current and future, Public Pay Telephone lines, Semi-Public Pay Telephone lines, Lifeline and LinkUp services, 911/E911 and N11 services, operator services, directory assistance, nonrecurring charges, contract service arrangements, both current and future, special access, private line services tariffed under the special access tariff, and COCOT coin and coinless lines.

V. WHOLESALE RATES FOR RETAIL SERVICES OFFERED FOR RESALE

The Act directs state commissions to determine the appropriate methodology by which the local exchange companies must set wholesale discount rates for retail services. Section 252(d)(3) of the Act requires:

> In accordance with Section 251(c)(4), a State commission shall determine wholesale rates based on the retail rates charged to subscribers for the telecommunications service requested, excluding any portion attributable to marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

On this issue, the parties differ on two key points. First, they disagree on the meaning of the phrase "will be avoided." In its brief, Sprint agrees 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. . . ." See 47 C.F.R. § 51.609(b). The FCC's Order at paragraph 911 provides that 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 and Sprint's interpretation of the Act. GTEFL believes that it is unreasonable to assume that it will cease retail operations and function only as a wholesale provider. GTEFL contends this is a misrepresentation of the intent of the Act. In its brief, GTEFL argues that the Act requires it to consider as avoided costs those costs that actually "will be avoided." Wholesale rates must, therefore, be based on "avoided," not "avoidable" costs.

The second area of disagreement concerns which expense accounts are avoidable and how much will be avoided. The FCC Order identifies six accounts that 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). The FCC Order 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 USOA expense accounts are cast as rebuttable presumptions, and the FCC did not adopt as presumptively correct any avoided cost model. See FCC Order 96-325 at ¶ 909.

GTEFL provided us with two cost studies: The Avoided Cost Study, which GTEFL recommends we use, and the Modified Avoided Cost Study. GTEFL's witness Wellemeyer states that GTEFL strongly believes that its Avoided Cost Study best reflects the intent of the Act. Witness Wellemeyer further states that GTEFL only offers the Modified Avoided Cost Study as an alternative to be used if the FCC rules on avoided costs are upheld.

GTEFL's Avoided Cost Study analyzes avoided costs separately for each of five major service categories. The avoided costs for residential services are $0.83 per line per month and $1.06 per line per month for business services. 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%. For the remaining service categories, the avoided cost discount rates are as follows: 1) Usage Services - 7.1%; 2) Vertical Services: Business - 5.5%, Residential - 6.6%, Combined - 6.2%; and 3) Advanced Services - 15.3%. GTEFL's Modified Avoided Cost Study using the ARMIS-based model results in a single discount factor of 11.25%.

Sprint's witness Stahly states that GTEFL's avoided cost studies do not satisfy the requirements of the Act and the FCC Order. Sprint asserts that wholesale rates should be based on retail rates excluding avoidable costs. Witness Stahly also states that avoidable costs include the direct marketing, billing, collection, and other costs that are not incurred when an ILEC sells a service at wholesale, plus an allocation of the general support expenses, corporate operations expenses, and uncollectibles.

Witness Stahly states that the FCC identified 20 USOA cost accounts in Paragraphs 909 and 928 of its Order that contain avoidable costs. Witness Stahly asserts that all costs recorded in accounts 6611 - Product Management; 6612-Sales; 6613 - Product Advertisement; 6623 - Customer Services are direct costs of serving customers and are presumed to be avoidable. Witness Stahly also asserts that accounts 6621 - Call Completion services and 6622 - Number services are avoidable costs because resellers will provide these services themselves or contract for them separately from the LEC or from third parties. Witness Stahly argues that the costs contained in accounts 6121-6124 - General Support Expenses; 6711, 6612, 6721-6728 - Corporate operations expenses and 5301 - Telecommunications Uncollectibles are avoidable in proportion to the avoided direct expenses identified in accounts 6611-6613 and 6621-6623, because wholesale operations will reduce general overhead activities such as customer inquires, billing and collection, etc.

Sprint argues that we should set a specific wholesale discount rate for a minimum of five separate categories of service. The purpose of multiple discount rates, asserts Witness Stahly, is to reflect the different costs inherent in the services associated with those categories. The five categories of service Sprint identifies are: 1) Simple Access (R1, B1, and local usage); 2) Complex Access (Centrex, Key, and PBX); 3) Features (CCF, CLASS, and Centrex features); 4) Operator/DA; and 5) Other (Private Line, intraLATA toll, etc.).

Sprint did not provide an avoided cost study for us to consider, nor did it provide information to refute GTEFL's avoided cost study. In its calculation of the wholesale discount, Sprint relies on the method set forth in the FCC Order to determine avoided costs. Furthermore, Sprint states that it is willing to accept the same rates, terms and conditions that were established in the GTEFL/AT&T/MCI proceeding in Dockets Nos. 960847-TP and 960980-TP. Sprint's witness Hunsucker states that Sprint is willing to accept our decision to require a 13.04% wholesale discount rate in the earlier proceeding because Sprint believes that doing so will ensure a nondiscriminatory market.

GTEFL defines avoided retail costs as the difference in total costs with and without the offering of service for resale; i.e., the costs avoided when a service is offered through wholesale, rather than retail, distribution channels. GTEFL's witness Wellemeyer contends that this definition is consistent with the

Act, and properly positions wholesale prices for competitive markets. Witness Wellemeyer argues that if wholesale prices are set too high, resellers will not be able to recover a sufficient markup to establish a viable competitive resale market. On the other hand, Witness Wellemeyer states, if wholesale prices are set too low, the ILEC will not be compensated for its true costs. Facilities based ALECs also could be placed at a competitive disadvantage in pricing their retail services if ALEC resellers can purchase wholesale local exchange services below cost. Witness Wellemeyer contends that if wholesale prices are set appropriately, facilities-based competition will be encouraged.

Witness Wellemeyer also asserts 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 in order to offer the same service on a wholesale basis for resale. For example, Witness Wellemeyer states that some incremental retail customer billing activities may be avoided when the service is offered for resale; however, a wholesale billing function will still be necessary. Witness Wellemeyer contends that the avoided billing cost is only the difference between the costs of these two activities.

Witness Wellemeyer further asserts that when a service is offered at wholesale instead of at retail, the resulting avoided costs can be separated into two components. First, witness Wellemeyer suggests that total costs are reduced because it is no longer necessary to provide some incremental retailing functions in support of the service. Second, Witness Wellemeyer contends that the total costs increase to the extent that it becomes necessary to provide substitute, wholesaling functions in support of resale services. Therefore, Witness Wellemeyer states that avoided retail costs are equal to: (1) costs associated with displaced retail activities (affected retail costs) minus (2) costs associated with replacement wholesale activities (substitute resale costs).

Witness Wellemeyer contends that GTEFL calculated the first component of avoided cost by examining all activities involved in the provision of retail service and identifying the costs of performing those activities that are affected when services are provided on a wholesale, rather than a retail, basis (affected costs). Witness Wellemeyer further asserts that some activities are required regardless of whether the service is offered on a retail or a wholesale basis, so that the associated costs are unaffected (unaffected costs). GTEFL states that these activities were ignored in the Avoided Cost Study because none of the associated costs will be avoided. In the study, GTEFL states the total cost of affected activities required to provide residential services was calculated to be $1.36 per line per month. This is the total cost that is avoided when a basic residential retail service is offered at wholesale.

Witness Wellemeyer 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 GTEFL then used these existing services as a proxy for the new wholesale distribution channel. Using this proxy, GTEFL then analyzed the cost of the substitute wholesale activities required when services are offered on a wholesale, rather than retail, basis. Witness Wellemeyer states that GTEFL assumed that the cost of substitute activities for the residential services category would be the same as the cost of the same activities necessary to provide wholesale special access service to interexchange carrier customers. In its study, GTEFL states that the total cost of affected activities was determined to be $0.53 per line per month. Witness Wellemeyer states that the $0.53 amount represents the additional costs GTEFL will incur as a result of becoming a wholesaler of these services instead of a retailer. Witness Wellemeyer asserts that the amount for this component represents the increase in total costs when a residential basic service is offered on a wholesale basis.

After determining the first and second components, Witness Wellemeyer states that GTEFL then determined the avoided costs by subtracting the second component from the first component. Thus, Witness Wellemeyer states that the costs avoided when residential service is provided on a wholesale basis were calculated as $1.36 minus $0.53, or $0.83 per line per month.

GTEFL states that its Avoided Cost Study was based on actual, annual results for GTEFL's total domestic telephone operations for 1995. Witness Wellemeyer states that the data is reported in a managerial accounting framework which reflects 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; thus, GTEFL does not have data specific to its operations in Florida available. GTEFL asserts that it does not record this data on a state-specific basis because the vast majority of the affected activities are performed on a centralized basis from regional and national service centers located throughout the country. Witness Wellemeyer asserts that each of these workcenters handles one or more specific retailing functions for several states. Witness Wellemeyer defines a workcenter as a collection of activities that exhibit: (1) common functions; (2) a common unit measure of demand; (3) a common unit measure of resource consumption; (4) a common geographic uniqueness; and/or (5) a common management structure. The witness argues that most of the workcenters are defined based on common functions or work activities.

Witness Wellemeyer asserts 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. The witness contends that the changes in workcenter costs that result from offering services on a wholesale, rather than retail, basis arise solely from activities associated with the distribution of services, and not from production activities.

Witness Wellemeyer asserts that the affected workcenters are uniquely associated with one of the three lines of business organizations within GTE Telephone Operations. GTEFL states that those lines of business are Consumer, Business and Carrier. The Consumer line serves the residence 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. The witness states that workcenters are identified for all Network Operations and Corporate General and Administrative functions. Witness Wellemeyer further contends that these workcenters were reviewed, but generally they are 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 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 states that the workcenter costs include labor costs, support and supervision, data processing, training and other employee-related expenses. In addition, the witness states that the data processing costs were included without 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.

Witness Wellemeyer 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 that it is proper to include them in the study because the costs would be affected when services are offered for resale the same way that the related direct labor costs would be affected. In addition, Witness Wellemeyer states that an adjustment was made to workcenter costs to remove any non-recurring costs associated with service ordering activities. The witness contends that 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, GTEFL assigned the remaining workcenter costs to the service categories. The witness contends that the target retail service categories were Residential, Business, Usage, Vertical, Advanced and "Other." The "Other" category was further divided into Directory, Customer Premises Equipment (CPE), CALC and Other.

Witness Wellemeyer 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 for both business and residential customers. The witness 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.

Witness Wellemeyer states that for residential, business and advanced services, avoided costs were divided by the number of lines. The witness explains that for usage, avoided costs were divided by the number of minutes. The witness adds that per unit affected costs for vertical services were not calculated, because data for the second component of avoided costs, substitute resale costs, was 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, 6.6%, and the avoided cost discount rate for business vertical features was set equal to the avoided cost discount of local business service, 5.5%. 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, 6.2%.

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

Witness Wellemeyer 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).

The witness acknowledges that there are two exceptions that may affect the assessment of foregone toll contribution under this resale scenario. First, Witness Wellemeyer states that it is possible that an ALEC reseller has self-provided toll service to the end-user 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 self-provide toll service. In this case GTEFL would continue to provide intraLATA toll and, again, there would be no opportunity loss.

Witness Wellemeyer contends that since the analysis assumes that the ALEC reseller will self-provide intraLATA toll 100 percent of the time, it is proper to establish a credit rate equal to the opportunity cost that 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 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, 6.2%.

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Based on its Avoided Cost Study, GTEFL suggests 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.

Witness Wellemeyer 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 the costs associated with current wholesale offerings as proxies. Witness Wellemeyer states that GTEFL assumed that the offering of residential, business, and advanced services for resale was analogous to the current wholesale provision of special access service. In addition, GTEFL assumed that the wholesale offering of retail usage services was analogous to the current provision of originating and terminating switched access. The witness states that these services constitute GTEFL's most accurate information on the cost of the wholesale provision of line-based and usage-based services.

Witness Wellemeyer further states that the per unit affected retail costs for each retail service category are:

Residential	$1.36 per month per line
Business	$1.60 per month per line
Usage	$.01006 per minute
Advanced	$4.30 per month per line

Witness Wellemeyer suggests that the results of the study for the Vertical features category be expressed as a set of discount rates to be applied to the respective retail prices:

Residential vertical features	6.6%
Business vertical features	5.5%
Composite	6.2%

Witness Wellemeyer 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. The witness adds 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.

In response to the FCC Order, GTEFL submitted another cost study that is a modified version of the cost study that MCI provided to the FCC. See Order 96-325 at ¶890. Witness Wellemeyer states that GTEFL developed methods of allocating direct expenses in the model, based on an analysis of actual costs. GTEFL contends revenues for services to which the avoided cost discount rate is not to be applied were identified and then subtracted from operating revenues. This was done in order to determine the appropriate revenue base for calculating the resale discount rate. Witness Wellemeyer states that GTEFL 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. The witness contends that public telephone expenses, account 6623, are not avoided costs because these expenses 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. The witness further contends that GTEFL did not avoid Operator Services because 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 because product planning is required regardless of whether the products are offered at retail. Witness Wellemeyer states that plant-related expenses, return and taxes were identified as attributable to avoidable land and support assets, and included as avoidable costs.

Witness Wellemeyer contends that GTEFL's modification to certain inputs to the ARMIS-based model used in preparing the Modified Avoided Cost Study properly identifies avoided costs in accordance with the FCC's proposed avoided cost criteria. The witness asserts that GTEFL strongly believes that its Avoided Cost Study best reflects the intent of the Act, and offers the Modified Avoided Cost Study as an alternative to be used only if the FCC rules on avoided costs are held to be lawful. As previously noted, GTEFL's Modified Avoided Cost Study using the ARMIS-based model results in a single discount factor of 11.25%.

Since the analysis in GTEFL's Avoided Cost Study was based on data for total GTEFL domestic telephone operations, we cannot identify state-specific costs. That is, the avoided cost percentages developed from the workcenter analysis are not state specific. We note that for the Modified Avoided Cost Study, GTEFL applies the national workcenter based cost percentages to state-specific, ARMIS data, which provides a better state level estimate. GTEFL's witness Wellemeyer states that the workcenters often handle one or more specific retailing functions for several states, with the vast majority of such functions being performed on a centralized basis from regional and national service centers located throughout the country.

We have several other concerns with GTEFL's Avoided Cost Study. We are concerned that GTEFL has not considered indirect costs, such as general and administrative costs. We are also concerned that GTEFL has used substitute costs for services it cannot directly measure, such as resale, and that it has included opportunity costs. We believe that in order to determine an appropriate wholesale discount, indirect costs must be considered. It is appropriate to consider indirect costs because it is likely that there will be some reduction in overhead costs in a wholesale environment.

We believe that GTEFL will incur costs associated with certain wholesale functions, and that it is appropriate to exclude such costs with GTEFL's avoided retail costs. We do, however, question the reasonableness of the proxies used by GTEFL. As set forth above, GTEFL's substitute costs were calculated based on special and switched access. Existing wholesale services were assumed to be similar to services that will be offered for resale. In addition to doubts as to the reasonableness of the procedures used to derive the proxy costs, we do not believe there is an adequate basis to conclude that the proposed proxies will be representative of the costs associated with the services to be resold.

Finally, we believe GTEFL's inclusion of "opportunity costs" is unacceptable. In actuality, these "opportunity costs" are not really costs, but are a contribution that may be foregone if toll revenues decline due to resale. We have previously indicated that a LEC has no entitlement to such revenues and that a make whole provision is inappropriate. Consequently, we hereby reject GTEFL's recommended avoided cost model.

GTEFL's modified avoided cost study is, essentially, in compliance with the Act. GTEFL's modified avoided cost study attempts to estimate those costs which GTEFL actually will forego due to offering a service at wholesale instead of at retail. The FCC Order considers account 6621, Call Completion, and account 6622, Number Services, presumptively avoidable. The FCC Order indicates, however, that this presumption is rebuttable. GTEFL has adequately supported its claim that it will continue to incur some of these costs. Accordingly, we find that these costs shall not be treated as avoidable.

Based on the arguments and evidence presented, we believe that GTEFL's modified avoided cost study is the most reasonable and appropriate option. We do, however, believe that two adjustments are warranted. First, since GTEFL's position is that public telephone services should not be available for resale at a discount, the Company excluded their associated revenues from the revenue base for computing the resale discount. Herein, we determine that these services must be made available for resale; accordingly, public telephone revenues must be included in the revenue base. Second, in GTEFL's analysis, it considered only 9.0834% of account 5301, Uncollectibles - Telecommunications, avoidable. We disagree with this percentage. Thus, we used data in the Company's work papers supporting its avoided cost studies to estimate what portion of account 5301 was attributable to retail services. We then included the resulting, higher uncollectibles amount in our analysis.

Applying our adjustments to GTEFL's modified avoided cost study yields a wholesale discount of 13.04%. While 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 do not have sufficient data in this docket to determine different rates. Consequently, we shall require GTEFL to offer retail services at a wholesale discount rate of 13.04%. We believe that this 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 and is based on GTEFL's retail costs that can reasonably be avoided in the provision of wholesale service.

VI. ACCESS TO CUSTOMER SERVICE RECORDS

As the ILEC, GTEFL has been the sole custodian of customer service records for customers of local service. This information is referred to as customer proprietary network information (CPNI). Following entry into the local market by the ALECs, each local service provider will be maintaining and updating its local customer service records. If a customer changes local service providers, his customer service records should be made available to the new carrier. In this fashion, the change can be as "seamless" as possible, similar to what occurs when a customer changes long distance carriers today. Sprint witness Hunsucker explained that Sprint will need this information to smoothly transfer service so that the customer is not inconvenienced.

In this proceeding the term "pre-ordering", in the context of accessing CPNI, refers to Sprint having access to customer information after Sprint has received a request for service from an end user, but before Sprint places a service order with GTEFL. Witness Hunsucker states that the term should not be confused with Sprint having access to customer records prior to a customer ordering service from Sprint.

The parties disagree on timing and content of CPNI. GTEFL witness Drew states that Sprint should not be allowed unrestricted or unauthorized access to GTE's customer account information, because of the proprietary nature of the information. He argues that only after customer authorization should the information be made available to Sprint. Sprint agrees that customer approval is needed for the release of CPNI. Sprint, however, disagrees with GTEFL on the timing of the release of the information and to what carrier the information should be released. The parties also disagree on what information should be included in the record provided to Sprint.

Both GTEFL witness Drew and Sprint witness Hunsucker refer to the Act's provision on CPNI. Section 222(c)(2) 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 witness Drew argues that Section 222 of the Act protects CPNI. Sprint witness Hunsucker states that GTEFL believes this means the release of CPNI requires the customer's written approval.

Sprint witness Hunsucker believes that reading Section 222(c) in isolation is insufficient. He believes that the release of CPNI is permissible under Section 222(d)(1), the Act's exception to the written authorization rule. Sections 222(d) and 222(d)(1) provide:

> (d) EXCEPTIONS.--Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents--
>
> (1) To initiate, render, bill, and collect for telecommunications services.

Witness Hunsucker states that for the ALEC to initiate service, Congress specifically required the LECs to disclose customer proprietary network information. GTEFL witness Drew testified that Section 222(d) refers to carriers using CPNI for purposes related to serving their own customers, it does not permit release of information to another carrier to service that customer.

The FCC's Order also addresses access to customer proprietary network information, although it does not fully address the issue. At Paragraph 492 it states:

> We also conclude that access to call-related databases as discussed above, and access to the service management system discussed below, must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. Section 222, which was effective upon adoption, sets out requirements for privacy of customer information. 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. 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." Sections 222(c) and (d) provide protection for, and limitations on the use of, and access to, customer proprietary network information (CPNI).

We note that the FCC has initiated a proceeding to clarify the obligations of carriers with regard to section 222(c) and (d). <u>Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rule making</u>, CC Docket No. 96-115, FCC 96-221, released May 17, 1996.

Witness Drew argues that GTEFL may disclose customer account information to designated providers only upon written authorization from the customer. Specifically, the approval must be received by GTEFL prior to its release of the information. Sprint witness Hunsucker testified that Sprint would provide a blanket letter of authorization (LOA) for access to a customer's CPNI, where access to the CPNI will only occur after the customer requests service from Sprint. Sprint witness Hunsucker apparently does not believe that GTEFL is required to have any written authorization from the customer, either before or after an order to initiate service is made to GTEFL by Sprint. Witness Hunsucker testified that he believed the company would tell the customer that it would be requesting information from GTEFL; however, it is unclear if it would be in written or verbal form.

Witness Drew testified that slamming is a problem in the interexchange market (IXC), and could be a problem for the local market if Sprint is allowed access to CPNI without prior customer authorization. In its brief, GTEFL discusses at length its belief that slamming will be a problem. Therein, GTEFL identifies several dockets where the Commission has addressed slamming. Sprint does not address the potential for slamming in the local market in either its testimony or in its post hearing brief.

We have considered all the arguments, but cannot conclude with certainty that slamming will be a problem in the local market. Moreover, we believe that there are sufficient avenues outside this arbitration proceeding in which any slamming problems that may arise can be addressed.

With respect to the content of customer service records, Sprint witness Hunsucker states that Sprint requires certain pre-order information to fill "as is" orders. This information includes customer service records. Witness Hunsucker states that the term "as is" is used in a variety of contexts, for example, an as is process, as is customer information, as is status, as is orders, and as is migrations. Witness Hunsucker explains 'as is' as follows: Sprint acquires a customer, and is provided any information on the customer that GTEFL currently has. GTEFL will then transfer the customer's 'as is' services to Sprint so that none of the customer's services are interrupted. Thereafter, Sprint can provide service to the customer.

GTEFL is concerned about the amount of information to be included in a transfer of CPNI. Regarding the transfer of a customer's account information "as is," GTEFL witness Drew testified that Sprint "should work with their new customer to determine the services they desire from Sprint." GTEFL witness Drew testified that Sprint proposes that for any GTEFL customer who agrees to obtain some type of service from Sprint, GTEFL must automatically transfer the customer's entire local service account to Sprint. Sprint does not specify the type of 'Sprint service' that would trigger the automatic transfer of GTEFL's entire local service account information, according to Witness Drew.

It is unclear what a customer service record contains, but it may include information on non-telecommunications services. GTEFL's attorney asked Sprint witness Hunsucker if he thought the account might contain services that are not telecommunications services, such as inside wire maintenance and voice messaging. Witness Hunsucker agreed that it could occur. However, witness Hunsucker also believes GTEFL can control what is included in a record. He testified that it would be GTEFL's decision whether to include such information in the CPNI.

GTEFL witness Drew contends that electronic access to customer information will allow Sprint 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 states that it will not have similar access to Sprint's customer account information, and therefore, Sprint will have a competitive marketing advantage.

Sprint witness Hunsucker states that Sprint disputes the contention that its information will not be available to GTEFL. Witness Hunsucker testified that Section 222 of the Act applies to all carriers, and that any CPNI requirements placed on GTEFL will be applicable to Sprint as well. With respect to GTEFL's specific contention that Sprint will use the information for marketing, Section 222(b) does not allow telecommunications carriers to use proprietary information for marketing purposes. Additionally, witness Hunsucker argues that because a customer takes Sprint long distance service, that does not entitle Sprint to that customer's local service CPNI.

Upon consideration, we find that requiring the ALECs to obtain prior written authorization from customers before being permitted to access CPNI may cause a delay in the ALEC's ability to provide service. When questioned whether this is true when switching a customer to Sprint, GTEFL witness Drew stated that the potential exists.

Section 222(d)(1) provides for access to CPNI for purposes of initiating telecommunication services without mentioning customer approval. We find that Sprint's method of issuing a blanket letter of authorization to GTEFL is appropriate, but with the added requirement that Sprint shall obtain the customer's permission before accessing his or her CPNI. We note that Sprint witness Hunsucker states that Sprint it will do this.

Based on the foregoing, GTEFL shall not require Sprint to obtain prior written authorization from each customer before allowing access to CPNI. Sprint shall issue a blanket letter of authorization to GTEFL which states that it will obtain the customer's permission before accessing his CPNI.

Sprint indicates that when a customer requests a transfer of all his current services, the customer would be inconvenienced if his services are not transferred in full. This includes the transfer of services that are not telecommunications services subject to resale such as voice messaging and inside wire maintenance. We believe that in many cases a customer who wants to change his provider will not split his service between carriers. Rather, he will more than likely want to transfer his local service account in its entirety to his selected carrier.

We also believe that there will probably be many instances during a change of service providers, where a customer will want to modify his level of service. GTEFL witness Drew stated that Sprint should work with its customers to determine their needs, as should GTEFL. We agree. However, the local service provider should make available customer records that reflect what services the customer is taking at the time a request for service is made. In this respect, we find this coincides with Sprint's definition of "as is" service. Additionally, as witness Hunsucker pointed out, the Act applies to all carriers. Section 222 (b) of the Act does not allow carriers to use additional information for marketing purposes, thus restricting the use of the "extra" information.

Even with the legal constraints on its use, the information to be made available needs to be clarified. The amount of information made available to competitors concerns GTEFL. Witness Drew testified that GTEFL cannot provide direct access to the database containing CPNI. He asserts that if a company has direct access to the database, it can access any account information contained in the account.

Sprint witness Hunsucker indicates that "as is" service, which includes the record identifying what services an end user is currently taking at the time a request to change carriers is made, but not historical activity records, constitutes what should be included in the customer record made available to the competitor. We agree. Therefore, we find that customer records to be made available by the competitors to each other need only contain the information on the customer's current level of service.

Sprint witness Hunsucker testified that he believed that access to customer service records for the purpose of providing local service should be reciprocal. We agree that the current service provider, whether LEC or ALEC, has this obligation. We also find that both parties must use the information as intended.

Section 222(b) imposes on all carriers the obligation to use customer account information responsibly. They must only provide telecommunications services from which the CPNI is derived. We do not believe ILECs are the sole guardians of customers' privacy. As noted by witness Hunsucker, ALECs have that duty as well. Accordingly, we find that Sprint and GTEFL shall make customer records available for the purpose of providing local service to each other when the records are requested for that purpose. The same terms and conditions for handling CPNI shall to both companies.

In its post-hearing brief, citing Order No. 21815 in Docket No. 880423-TP, GTEFL asserts that the Commission's rules for CPNI as they relate to information services providers (ISPs) are applicable to this issue. That Order states:

> All information service providers, including a LEC's affiliated ISP, should be required to obtain written authorization from a customer before they can access that customer's CPNI.

Upon review, we find three reasons why this policy is not applicable in this instance. First, in Docket No. 880423-TP, the issue was the release of CPNI to ISP service providers, not its release to an ALEC, as is the case in this docket. Second, the Commission noted in Order No. 21815 that "[h]istorically, we have, as a matter of policy protected customer-specific information from unauthorized disclosure. Nothing in this record convinces us to treat customer specific CPNI differently." We note that GTEFL comments numerous times that any decision reached in this case must be based solely on this proceeding and its record. As the Commission noted in Order No. 21815, it found no reason in the record of that proceeding to change its policy on the release of CPNI. This is not the same record. The decisions we reach in this proceeding are based on this record. Third, and related to the second reason, is that changes have occurred since Order No. 21815 was issued September 5, 1989. Specifically, we must consider the passage of the Act and its provisions for handling customer records, the FCC's existing rulings, and the FCC's pending ruling on CPNI in CC Docket 96-115.

In its post-hearing brief, GTEFL states that the ALECs never used the term 'service initiation' in their requests. GTEFL argues that the term 'pre-ordering' was, in fact, used. We note that it is unclear if the term "requests" means the ALECs' requests for services from GTEFL or the ALECs' petitions for arbitration. GTEFL believes that not using the term "service initiation" implies that the ALECs are attempting to gain something not contemplated in the statute (Act). However, GTEFL does not distinguish what it believes the ALECs will gain. In Sprint's Resale and Interconnection Agreement form, Sprint Terms for LEC/CLEC Interconnection and Other Agreements and Sprint's Petition, the term "pre-ordering" is used followed by the term "ordering." During cross examination of witness Hunsucker, the term "pre-ordering" is absent, while "service initiation" is used often. The term "initiate service" is used by both the GTEFL attorney and witness Hunsucker in a series of questions and responses concerning CPNI. Sprint witness Hunsucker refers to Section 222 and notes that one of the exceptions is that nothing prohibits a telecom carrier from using, disclosing, or permitting access to CPNI to initiate service. He states that's all Sprint is asking for. Upon review, we believe that the parties are using the the terms "pre-ordering" and "initiate service" in similar contexts.

GTEFL also argues that Section 364.24(2), Florida Statutes, makes it a second degree misdemeanor for any telecommunications company employee to disclose customer account records "except as authorized by the customer" or through other legal means. We find that since release of customer proprietary information is authorized by the Act, there is no violation of Section 364.24(2), Florida Statutes.

Upon consideration, we find that GTEFL shall provide customer service records to Sprint for pre-ordering purposes. Sprint shall issue a blanket letter of authorization to GTEFL which states that it will obtain a customer's permission before accessing his customer service records. GTEFL shall not require Sprint to obtain prior written authorization from each customer before providing it with customer service records. The customer records must contain, at a minimum, information on the customer's current level of service. Providers shall not be required to make available additional information. Finally, the duty to provide customer service records is reciprocal.

VII. RATES FOR TRANSPORT AND TERMINATION OF LOCAL TRAFFIC

Reciprocal Compensation

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

GTEFL witness Menard argues that GTEFL 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. Under the Act, GTEFL contends that any compensation mechanism for transport and termination of traffic must provide for the mutual and reciprocal recovery by each carrier of cost associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier. GTEFL states that the cost determination must be made on the basis of a reasonable approximation of the additional costs of terminating such calls.

GTEFL contends 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 Menard 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 Menard also argues that the cost of transport and termination will generally be higher for an ILEC than an ALEC because ILEC equipment is older and will tend to have a lower throughput than ALEC equipment. GTEFL offers 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 Menard 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 Menard, this results in a lower per unit cost for ALECs.

GTEFL offers 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 recovers its costs at a higher rate than the ALEC. Witness Menard 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 argues that Section 252(d)(1)(A)-(B) requires 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 Menard argues that the Act provides 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 determine costs on the basis of a reasonable approximation of the additional costs of terminating such calls. (§252(d)(2(A)(i)-(ii)) GTEFL also contends that Section 252(d) provides 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.

Witness Menard asserts "bill-and-keep" arrangements may be appropriate where traffic exchanged between the two carriers is approximately equal. However, GTEFL states that symmetrical pricing between Sprint and GTEFL will not afford GTEFL recovery of its costs. Witness Menard asserts that Sprint's costs for terminating calls will, most likely, be less than GTEFL's cost for terminating calls. GTEFL argues that using symmetrical pricing, Sprint will receive a subsidy from GTEFL, because it will be receiving far more than the cost it incurs to complete a call. Therefore, GTEFL asserts that its costs are not a suitable proxy for determining the actual costs of interconnection for Sprint. Witness Menard contends that the Commission should adhere to the intent of the Act and allow the parties to recover their respective true costs of transport and termination. However, GTEFL argues that if the Commission decides symmetrical pricing is justified, pending judicial review of the FCC Order, it should be allowed a true-up of its costs in the event the FCC's requirement of symmetrical pricing is eventually overturned.

Section 252(d)(2)(A) provides the general rule that governs state commission approval of reciprocal compensation arrangements. Specifically, this section provides:

> (A) IN GENERAL. - For purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -

> (i) 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
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

Section 252(d)(2)(A) applies regardless of whether the arrangements have been established by the parties through a voluntary agreement under Section 252(a) or through action by a state commission under Section 252(b).

Section 252(d)(2)(B) provides:

> (B) RULES OF CONSTRUCTION. - This paragraph shall not be construed -
>
> (i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements).

Sprint states that the Act requires that each local exchange carrier has an obligation to establish reciprocal compensation arrangements for the transport and termination of such traffic. Witness Stahly 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 carrier's network of calls that originate on the network of the other carrier.

Sprint asserts that the compensation for local interconnection should be reciprocal between companies and based on TELRIC plus a reasonable allocation of forward-looking joint and common costs. Although witness Stahly described several concerns regarding GTEFL's cost studies, as discussed earlier, Sprint has not conducted any cost studies of its own. Sprint has petitioned the Commission to initiate a generic cost proceeding on rates of BellSouth Telecommunications, Inc., for interconnection, unbundled elements, transport and termination, and resale. Sprint also proposes opening a generic cost docket to review GTEFL's TELRIC, shared and common cost studies. However, Sprint asserts in an effort to utilize the Commission's resources efficiently, such a proceeding should be open to all parties rather than conducted as separate investigations of GTEFL's cost studies.

Sprint acknowledges that initially, bill-and-keep should be implemented while the Commission conducts the cost proceedings to determine the appropriate rates for interconnection. Sprint witness Stahly argues that the Act permits arrangements that provide for the mutual recovery of costs through offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements), to the extent that such arrangements permit the recovery of the related costs.

Although the portion of the Order that refers to bill-and-keep arrangements has been stayed, Sprint states that it interprets the FCC Order to permit bill-and keep arrangements if neither carrier has rebutted the presumption of symmetrical rates and if the volume of traffic that originates on one network and terminates on another network is approximately equal to the volume of terminating traffic flowing in the opposite direction. Sprint contends that absent local traffic studies between an ILEC and a CLEC or approved cost studies, it is reasonable to utilize bill-and-keep. Further, Sprint contends that the establishment of interconnection rates is vital to the development of competition and the subsequent benefits of such competition to end users. Therefore, Sprint recommends that the Commission implement bill-and-keep for an interim period.

Upon consideration, we find that while Section 252(d)(2)(B)(i) does not require a state commission to adopt mutual traffic exchange, it clearly authorizes it to do so. The Act expressly recognizes that the offsetting of reciprocal obligations, whether through bill-and-keep or mutual traffic exchange, is a permissible method of cost recovery. Nothing in the Act states that the rules of construction apply only to voluntarily negotiated compensation mechanisms, and that this Commission would have less latitude than the parties would have to establish an appropriate compensation policy. Accordingly, we have the authority to order mutual traffic exchange on either a temporary or a permanent basis.

We acknowledge that we have ordered bill-and-keep in a previous docket. Although requiring bill-and-keep may be an interim option, we believe reciprocal rates should be set, since there is sufficient evidence in the record upon which to establish rates for tandem and end office switching.

Upon consideration, we find that the pricing for termination should be symmetrical between Sprint and GTEFL. Even though GTEFL argues that each party should recover its respective true costs of transport and termination, the only cost data provided was GTEFL's. GTEFL states that Sprint's costs for terminating calls would be less than its own due to the expectations that Sprint will have deployed newer equipment in its network using a relatively higher percentage of its network capacity. In addition, GTEFL asserts that while GTEFL's traffic is usually disbursed through a large network of end offices and tandem switches that serve a large number of low volume users, an ALEC will have relatively few end office switches that serve a relatively large number of high volume business customers. However, as witness Menard testified, GTEFL has several services, including MetroLAN and SONET-type services, that target large business customers and carriers. Therefore, we do not believe that the cost differential between GTEFL and Sprint would be substantial. Based on the foregoing, we find GTEFL's costs are appropriate for determining symmetrical rates for transport and termination.

GTEFL's Cost Studies

To determine the validity of the TSLRIC cost study provided in this docket, we compared these costs to the costs provided in our state interconnection proceeding. See Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP. The Order, on page 6, states:

> 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 GTEFL's cost study. (Order No. PSC-96-0668-FOF-TP)

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

GTEFL's Proposed Pricing Methodology

Witness Menard asserts that rates for interconnection and for transport and termination should be determined according to the M-ECPR. GTEFL's witness Sibley states that 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 M-ECPR takes full account of 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 argues that if GTEFL is to be required to sell its services and products to Sprint and others, GTEFL should be reimbursed for all its costs and be allowed the opportunity to earn a reasonable rate of return. Witness Menard states that GTEFL should be allowed a true-up of its costs should it eventually be allowed to recover its cost under M-ECPR.

This Commission has already rejected GTEFL's ECPR as a pricing methodology for unbundled network element rates on the grounds that it eliminates the incentive for competition. See Order No. PSC-96-0811-FOF-TP issued June 24, 1996. In addition, we find the FCC's argument regarding ECPR has merit. The FCC Order states 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, we find that the M-ECPR may still discourage the incentive for competition.

Sprint's Pricing Proposal

Sprint proposes that GTEFL utilize a uniform markup of 15 percent to provide some contribution to common costs. Witness Stahly contends that a uniform markup is appropriate because it treats the non-competitive markets as if they were competitive and uniform markups are nondiscriminatory. GTEFL disagrees with Sprint's pricing proposal. GTEFL's witness Sibley argues that competitive markets do not have equal markups, rather the markups chosen by competitive firms differ considerably across products and markets. Further, witness Sibley asserts that uniform markups are more likely to be discriminatory since they create subsidies for some services and result in selling below cost for other services. Therefore, GTEFL contends Sprint's pricing methodology should be rejected.

Although Sprint proposed a bill-and-keep arrangement for interconnection, subsequent to the Commission's decision in Docket No. 960847-TP, Sprint contends it would accept, on an interim basis, all rates, terms, and conditions that resulted from the arbitration between AT&T and GTEFL in Docket No. 960847-TP. Sprint states that the Act supports Sprint's proposal to utilize the rates established in Docket 960847-TP. Section 252(i) states that:

> 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 agreement.

Sprint argues that the Act clearly states that GTEFL is required to offer Sprint or any other telecommunications provider the same terms and conditions for any interconnection, service or network element that it offers any other company. Further, Sprint contends that Section 251(c) of the Act requires that rates for interconnection and resale be nondiscriminatory. Therefore, since the Commission has set GTEFL's rates for interconnection and resale in Dockets 960847-TP and 960980-TP, it would be discriminatory to allow GTEFL to charge Sprint different rates for the exact same service.

Our review of the cost supporting work papers in this docket indicates that GTEFL employed two factors which may not have been used in the prior study. One factor is to estimate associated land and buildings costs, and the other is to attribute "volume insensitive" costs.

Although we rejected the use of GTEFL's land and building factor for 2-wire and 4-wire loops in setting the rates for unbundled network elements, we find it is appropriate to use GTEFL's land and buildings factor for purposes of switching. As we discussed in detail earlier, the Code of Federal Regulations' descriptions of the Land and Buildings accounts do not differentiate between what is required for central office purposes and what is required for business office purposes. While there may be a minor overstatement of costs for switching due to the inclusion of all land and all buildings, we find that land and buildings costs are more likely to be associated with switching than loops since switches are located at all central offices.

We acknowledge that it is appropriate to include volume insensitive costs in a TSLRIC study. However, we are apprehensive about accepting GTEFL's factor. GTEFL contends that the volume insensitive costs represent the costs associated with standby capacity. GTEFL states that due to the nature of the telecommunications industry and market expectations, service delays are unacceptable; therefore, the company must have sufficient capacity to service its customers on a ready-to-service basis. GTEFL asserts that the cost of standby capacity was determined for loops and transport based on the ratio of GTEFL's objective utilization levels to its actual utilization levels. The volume insensitive costs for switching were determined by using the COSTMOD and SCIS models. In this case, the volume insensitive costs represent the difference between the total cost, by technology type, and the total volume sensitive costs. GTEFL asserts by following this approach, it assures that the entire cost of the network facility is included in the TSLRIC calculation.

While GTEFL has sufficiently described its method for capturing volume insensitive costs, we do not necessarily agree with the company's approach. It appears that GTEFL has attempted to attribute the costs associated with the standby capacity in its network to current subscribers by using actual utilization levels in its cost studies. Utilization levels, i.e. fill factors, are important because they affect unit costs; a low fill factor increases unit costs, while a high fill factor lowers unit costs. GTEFL used its actual fill of 65% to determine its volume insensitive cost for transport and termination elements. We believe that the use of actual fill factors in cost studies arbitrarily inflates the costs in the decision to offer a service, and has nothing to do with the "unused" capacity in the network. Rather than use actual fill factors in determining the volume insensitive costs, we find that the use of design fill factors may prove to be more appropriate. Generally, design fill factors are higher than actual fill factors and would provide a more accurate cost of the network element.

We realize that there are certain costs that the company, and subsequently the consumer, must incur as a cost of doing business. For instance, the company may reserve a portion of its network capacity for testing purposes, future needs or contingencies, including emergencies. However, on the other hand, too much excess capacity is an inefficient use of resources, such as burying plant that will never be used.

We also understand that it is not realistic to expect the company to utilize 100 percent of its network capacity to provide service to its subscribers. However, we do not believe that GTEFL's notion of "standby capacity" appropriately identifies the volume insensitive costs that should be captured in a TSLRIC study.

We believe there is a difference between "unusable" capacity and GTEFL's notion of "standby" capacity. We do not consider "standby" capacity as a volume insensitive cost since it is used up over time as demand grows. While we believe it is appropriate to include volume insensitive costs that attribute the cost of the "unusable" portion of the network to consumers, we do not believe that it is appropriate for GTEFL to attribute costs for its "standby" capacity to current consumers. The application of the volume insensitive factor is a key driver of costs provided by GTEFL. If we endorsed the company's cost result we would be required to endorse GTEFL's volume insensitive factor. Therefore, we reject the end office and tandem switching costs provided by GTEFL.

Based on the record, we have developed 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 additional switching and transport than a call terminated at an end office. The tandem switching rate only includes the costs to terminate at the tandem; therefore, 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 we consider in this portion of our Order are for termination only. The costs that we considered for unbundled switched elements include all the features, functions and capabilities pursuant to the definition of local switching in the FCC's Rules and Order.

Based on the foregoing, we find that a reciprocal rate of $.00125 per minute for tandem switching and $.0025 per minute for end office switching is appropriate. While these rate levels are under GTEFL's reported costs, we find that the rate levels are sufficient to cover TSLRIC costs and provide some contribution to common costs.

As we indicated previously, our rates in this arbitration are based on the record provided in this proceeding. We reiterate that we do not believe that it is appropriate to establish rates in this proceeding based on the evidence provided in another proceeding, as suggested by Sprint. While the rates in this proceeding mirror the rates that resulted in Dockets Nos. 960847-TP and 960980-TP, they are based on our analysis of GTEFL's cost studies provided in this proceeding.

VIII. MISCELLANEOUS

A. Most Favored Nations Status

Section 252(i) of the Telecommunications Act of 1996, the "most favored nations" provision, provides as follows:

> (i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS. - A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement provided 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 agreement.

Sprint argues that the Commission should adopt the FCC's interpretation of Section 252(i) and find that Sprint is entitled to "pick and choose" those rates, terms and conditions offered by GTEFL to Sprint's competitors, which Sprint deems more appropriate than those offered to Sprint. Sprint argues this interpretation of Section 252(i) will "ensure non-discriminatory treatment of all competing ALECs." Sprint cites paragraph 1310 of the FCC's Order in support of its interpretation of Section 252(i). Sprint, however, acknowledges that this portion of the FCC's order has been stayed by the Eighth Circuit Court of Appeals, pending a final decision on the merits. Sprint, nonetheless, maintains the FCC has applied the correct interpretation of Section 252(i), and asserts that nothing in the Eighth Circuit Stay would prohibit the Commission from adopting this interpretation.

Sprint states that there are five "reasonable restrictions" to this interpretation. First, where cost-based volume discount levels are offered, Sprint must attain the specific volume levels to obtain the discount. Second, where term discounts based only on the length of the service contract are offered, Sprint must contract for the same length of time in order to obtain the discount. Third, Sprint is required to accept different prices if there are significant differences in a service or facility, such as an operational support interface. Fourth, Sprint is required to purchase all necessary elements when feature and function availability demand it, such as the need to purchase local switching in order to obtain call waiting. Finally, Sprint can only obtain geographically deaveraged rates within the identical geographic area over which the cost was calculated.

Sprint argues that Section 252(i) does not require the requesting carrier to adopt an entire agreement. Sprint cites the FCC's order which provides: "Requiring requesting carriers to elect entire agreements, instead of the provisions relating to specific elements, would render as mere surplusage the words 'any interconnection, service, or network element.'

GTEFL contends Sprint's pick and choose interpretation of section 252(i) would stifle both competition and the negotiation process intended by the Act. GTEFL argues that to allow a requesting carrier to pick and choose individual rates, terms, and conditions for a given service or from a given agreement ignores the essential aspect of negotiations and would result in no agreement ever becoming final. GTEFL would provide Sprint and any other requesting ALEC any fully negotiated contract GTEFL enters into with another ALEC.

GTEFL states Sprint's intent underlying its interpretation of Section 252(i) is to avoid the negotiation process by taking isolated provisions from various contracts in order to create a new agreement solely to Sprint's own advantage. GTEFL contends Section 252(i) requires the requesting ALEC to adopt all the terms and conditions from a contract offered to another ALEC. GTEFL believes the terms and conditions of an agreement are reflected in the entire contract, as the entire agreement is the product of the negotiation. Under Sprint's pick and choose interpretation, GTEFL contends it would be wary to negotiate with ALECs, because the benefits and duties achieved through negotiation would be lost by allowing other ALECs to create their own agreement piece-meal through GTEFL's existing negotiated agreements.

GTEFL also argues that the Eighth Circuit Stay decision specifically stayed enforcement of the portion of the FCC's order interpreting Section 252(i). GTEFL contends the Eighth Circuit Stay decision determined the FCC's pick and choose interpretation would cause irreparable harm by "further undercut[ting] any agreements that are actually negotiated or arbitrated" and would undermine the negotiation process. Finally, GTEFL believes its interpretation of MFN is consistent with both Section 252(i) and the MFN provision in GTEFL's Commission-approved interconnection contract with MFS.

Upon consideration, we will not interpret Section 252(i) in this proceeding. 47 U.S.C. § 252(c), Standards for Arbitration, provides in pertinent part:

> In resolving ... any open issues and imposing conditions upon the parties to the agreement, a State Commission shall -
>
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d)...

We are not required by this to interpret 47 U.S.C. § 252(i) to fulfill our arbitration responsibilities. Accordingly, we do not believe a Most Favored Nations clause is a matter to be arbitrated, nor that resolution of this issue is necessary to the implementation of an arbitrated agreement.

B. Arbitrated Agreement Approval Standard

Section 252 sets forth the procedures for negotiation, arbitration and approval of agreements. Specifically, Sections 252(a)(1) and 252(a)(2) address the procedures for agreements arrived at through negotiation, and Section 252(b) addresses the procedure for agreements arrived at through compulsory arbitration. Section 252(e)(1) provides that any agreement adopted by negotiation or arbitration shall be submitted for approval to this Commission, and Section 252(e)(4) provides the time period in which this Commission must act on negotiated and arbitrated agreements.

Section 252(e)(2) states that this 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.

In addition to the above, Section 252(e)(4), Schedule for Decision, provides in pertinent part:

> 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 of an agreement adopted arbitration under subsection (b), the agreement shall be deemed approved.

Sprint simply states that Section 252(e)(1) of the Act requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted to the state commission for approval and that a state commission, to which an agreement is submitted, shall approve or reject the agreement.

GTEFL witness Menard testified that GTEFL would integrate the arbitrated and negotiated terms into a single contract for submission. GTEFL asserts that withdrawal of certain issues from arbitration means only that they were not arbitrated, not that they shouldn't be included in a final agreement.

GTEFL's position is that the Commission should approve the entire agreement, but it should consider the contract provisions that were not arbitrated under the nondiscrimination and public interest standard of section 252(e)(2)(A), rather than (B).

GTEFL states that under the Act, the Commission must approve negotiated and arbitrated agreements. GTEFL argues, however, that there are different standards for negotiated and arbitrated provisions. According to GTEFL:

> Under section 252(e)(2)(A), an agreement (or portion thereof) adopted by negotiation may be rejected only if it discriminates against a

> telecommunications carrier not a party to the agreement of if the agreement's implementation is not consistent with the public interest. If the agreement (or any portion thereof) is adopted by arbitration, the Commission must consider whether it fails to meet the requirements of Section 251, associated regulations, or the standards set forth in subsection 252(d).

GTEFL argues that given the distinction in the Act between the standards for review of negotiated and arbitrated agreements, there is no basis for the Commission to assess the entire agreements under subsection 252(e)(2)(B), which governs only arbitrated terms. GTEFL argues that if the Commission were to review the entire agreement pursuant to Section 252(e)(2)(B), the parties would be driven to submitting two separate agreements for approval. Such a result, GTEFL contends, would be inefficient and nonsensical because the parties will regard the contract as an integrated whole even if it is submitted to the Commission in two separate pieces.

We note that section 252(a)(1) provides that carriers may negotiate and enter into a binding agreement. In those instances where parties are unable to negotiate a binding agreement, section 252(b) provides that the parties may petition the State commission to arbitrate any open issues. This section also requires the petitioner to provide the State commission with all relevant documentation concerning "any other issue discussed and resolved by the parties." We believe the Act contemplates that once the Commission resolves the open issues in an arbitration proceeding, the parties will construct an agreement that encompasses both the issues resolved by the parties and the issues resolved by the Commission. Once the parties have an interconnection agreement, whether adopted by negotiation or arbitration, section 252(e)(1) provides that the agreement shall be submitted for approval to the State Commission. We find that we may only reject a negotiated agreement or a portion of a negotiated agreement for the reasons set forth in sections 252(e)(2)(A). Likewise, we also believe that we may only reject an arbitrated agreement or portion of an arbitrated agreement for the reasons set forth in section 252(e)(2)(B).

It appears that GTEFL interprets the phrase "any portion thereof" in sections 252(e)(2)(A) and (B) to require the Commission to apply the standards of both 252(e)(2)(A) and (B) to a single agreement. We disagree with this interpretation. We believe the phrase "any portion thereof" permits the Commission to reject a portion of a negotiated or arbitrated agreement as discussed above.

GTEFL's interpretation of the "phrase any portion thereof" also appears inconsistent with the schedule for state action in section 252(e)(4). This section provides 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.

Based on the foregoing, we find that since the agreement between GTEFL and Sprint will result from an arbitration pursuant to Section 252(b), it should be approved under the standards in Section 252(e)(2)(B).

D. Post-Decision Procedures

Section 252(e)(1) of the Act requires that any interconnection agreement be submitted to the state commission for approval. Section 252(c)(3)provides that state commissions shall provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Sprint proposes that the parties file an agreement with the Commission for approval within 14 days of the Commission's arbitration order. If the parties are unable to reach an agreement, Sprint further proposes that each party submit to the Commission within 20 days of the Commission's order its proposed contractual language for the issues that remain unresolved. In the latter case, Sprint would have the Commission adopt on an issue-by-issue basis the proposed language that better reflects the Commission's decision.

GTEFL notes that Section 252 requires that the Commission provide a schedule for implementing the terms and conditions of the parties agreement. GTEFL asserts that the Commission should direct the parties to negotiate an agreement incorporating the terms of the Commission's arbitration order. GTEFL further asserts that the agreement should be submitted for the Commission's approval pursuant to Section 252(e)2)(A) for negotiated provisions, and pursuant to Section 252(e)(2)(B) for arbitrated provisions.

In view of numerous complex issues in this proceeding, GTEFL contends that at least 30 days should be provided to the parties in order to devise contract language reflecting the Commission's decisions. GTEFL observes that it is at the same time negotiating a number of interconnection contracts throughout the country.

Upon consideration of the arguments presented, we find that the Act gives us the role under the provisions of Sections 252(b),(c),(d) and (e) both to arbitrate the unresolved issues and approve the agreement that results. Section 252(e)(1) states that any agreement adopted by negotiation or arbitration must be approved by the state commission. Section 252(e)(2)(B) sets out the grounds for rejection of an agreement adopted by arbitration. Finally, Section 252(e)(4) provides that the state commission must act to approve or reject the agreement adopted by arbitration within 30 days of its submission by the parties or it shall be deemed approved. 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 that the parties shall submit a written agreement memorializing and implementing our decisions herein within 30 days of issuance of our arbitration order. Further, we will review the agreement pursuant to the standards in Section 252(e)(2)(B) within 30 days after they 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 choose the language that best incorporates the substance of our arbitration decision.

IX. 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 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 Sprint and GTE Florida, Incorporated are resolved as set forth in the body of this Order. It is further

ORDERED that the rates for the network interface device, local loop, local switching, interoffice transmission facilities, tandem switching and signaling and call related databases are as set forth in Attachment A to this Order, which by reference is incorporated herein. It is further

Ordered that GTEFL shall allow Sprint to combine unbundled network elements in any manner it chooses, including recreating existing GTEFL services as discussed in the body of this Order. It is further

ORDERED that GTEFL shall offer for resale any services it provides at retail to end user customers who are not telecommunications carriers as discussed in the body of this Order. It is further

ORDER that GTEFL shall offer retail services at a wholesale discount rate of 13.04%. It is further

ORDERED that GTEFL shall provide customer service records to Sprint for pre-ordering purposes as discussed in the body of this Order. It is further

ORDERED that Sprint shall issue a blanket letter of authorization to BellSouth as discussed in the body of this Order. It is further

ORDERED that the reciprocal rates for transport and termination of local traffic between Sprint and GTEFL are $.00125 per minute for tandem switching and $.0025 per minute for end office termination as discussed in the body of this Order. It is further

ORDERED that the parties shall submit a written agreement memorializing and implementing our decisions contained in this Order 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 26th day of February, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MMB

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 in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

Attachment A

Table 1: Commission Approved Recurring Rates For Unbundled Network Elements

Network Element	Commission Approved Rates
Network Interface Device	
basic	$ 1.45
12x	$ 2.10
Loops	
2-wire analog	$ 20.00
4-wire analog	$ 25.00
Digital Cross Connect	
DSO	$ 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
Common Transport	
transport termination	$ 0.0001
transport facility/mile	$ 0.0000017
Dedicated Transport	
Entrance Facility:	
2-wire voice	$ 29.00
4-wire voice	$ 35.00
DS1 system first	$ 135.00
DS1 system add'ly	$ 125.00
DS3 protected	$ 960.00
Direct Trunked	
Transport	$ 2.60
voice facility	$ .50
DS1 facility per mile	$ 30.00
DS1 per termination	$ 13.00
DS3 facility per mile	$ 285.00
DS3 per term.	
Tandem Switching	$ 0.0009512

Network Element	Commission Approved Rates
Databases	
LIDB (ABS)	$ .035
Toll-Free calling (800)	$ .009036

Table 2: Commission Approved Nonrecurring Rates for Unbundled Network Elements

Network Element	Commission Approved 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 Research	$ 5.25
Installation:	
Unbundled loop, per loop	
Unbundled port, per port	$ 10.50
Loop Facility Charge	$ 10.50
	$ 62.50