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October 22, 1993

Mr. Steve C. Tribble, Director
Division of Records & Reporting
Florida Public Service Commission
101 E. Gaines Street
Tallahassee, FL 32399-0865

Dear Mr. Tribble:

Re: Docket No. 921074-TP
In the Matter of the Petition of Intermedia Communications of Florida, Inc. for Expanded Interconnection for AAVs within LEC Central Offices

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Post-Hearing Brief in the above-referenced matter. A copy of the brief is also enclosed on diskette in WordPerfect 5.1.

Service has been made as indicated on the attached Certificate of Service. If you have any questions, please contact the undersigned at 813-228-3094.

Very truly yours,

Kimberly Caswell

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of INTERMEDIA COMMUNICATIONS OF FLORIDA, INC. for expanded interconnection for AAVs within LEC central offices.	))))	Docket No. 921074-TP Filed: 10-22-93

POST-HEARING BRIEF OF GTE FLORIDA INCORPORATED

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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POST-HEARING BRIEF OF GTE FLORIDA INCORPORATED

GTE Florida Incorporated (GTEFL) hereby submits its post-hearing brief in this proceeding.

GTEFL'S Basic Position

GTEFL urges the Commission to take a broad perspective in deciding the issues in this docket, as the rulings made here will establish the underpinnings for eventual, full competition in the local exchange arena. (See Beauvais/GTEFL, Tr. 312, 335; Denton/Southern Bell Telephone (SBT), Tr. 402.) It is imperative that this Commission protect to the fullest extent its ability to influence the fundamental, structural changes the FCC has initiated. Although the FCC has effectively circumscribed the Commission's authority to some degree, it still retains significant ability to guide the development of competition in accordance with State-specific conditions and concerns. To this end, the Commission should adopt a policy of allowing local exchange carriers (LECs) and interconnectors to negotiate their own interconnection arrangements. In addition, the LECs must be given sufficient pricing flexibility to meet ever-increasing competitive challenges. Only through these measures can the Commission continue to assure dependable and affordable telecommunications services in keeping with Florida consumers' needs.

GTEFL's specific positions on the issues remaining for decision in this docket are set forth below.

GTEFL's Specific Positions

Issue 1: Is the expanded interconnection for special access and/or private line in the public interest?

GTEFL Position: ** Expanded interconnection can be in the public interest if it is implemented along with a policy allowing negotiated collocation arrangements and increased pricing flexibility for services for which expanded interconnection will be available. **

The public interest effects of expanded interconnection for special access and private line services will depend on the manner in which it is implemented. Expanded interconnection will increase the scope of competition for these services. Theoretically, increased competition is associated with consumer gains such as greater consumer choice and lower prices. For this reason, GTEFL does not oppose expanded interconnection. However, the asserted benefits of competition will never come about if some market participants remain handicapped by unduly restrictive regulations while others remain free of such competitive limitations. The Commission must grant the LEC sufficient pricing flexibility to compete on equal terms with other providers of special access and private line services. The existing contract serving arrangement (CSA) mechanism is a laudable step toward this goal, but further measures, such as zone pricing, will also be necessary. (See GTEFL Position on Issue 15 for a more complete discussion of pricing flexibility.) In addition, a LEC-option policy of satisfying collocation requests through negotiation is most consistent with

the public interest. In this way, the Commission can preserve its ability to meet long-term state needs and social objectives and protect the integrity and reliability of the public switched network. (See GTEFL Position on Issue 6.)

Issue 4: Does Chapter 364 Florida Statutes allow the Commission to require expanded interconnection?

GTEFL Position: ** Chapter 364 does not appear to forbid the Commission from requiring expanded interconnection for special access services. **

Issue 5: Does a physical collocation mandate raise federal or state constitutional questions about the taking or confiscation of LEC property?

GTEFL Position: ** Yes. A physical collocation mandate requires permanent physical intrusions that constitute a "taking" of the LEC's property under both the Florida and United States Constitutions. **

Yes. Mandatory physical collocation is a taking of the LECs' property under both the Fifth Amendment of the United States Constitution (applied to the states through the Fourteenth Amendment) and Article 10, Section 6, of the Florida Constitution. Although the FCC has ostensibly mandated physical collocation, the debate as to its constitutionality remains unsettled. A number of parties, including GTE Corporation, have appealed the FCC's physical collocation decision to the United States Court of Appeals for the District of Columbia Circuit. (Beauvais/GTEFL, Tr. 315.) Even FCC Chairman Sikes dissented from the physical collocation requirement, stating that it "raises serious questions about a 'taking' or confiscation of local exchange carrier property in violation of the Fifth Amendment that are not adequately addressed by the Commission." Expanded Interconnection with Local Telephone

Co. Facilities, FCC 92-440, CC Dkt. No. 91-141 ("Interconnection Order"), Separate Statement of Chairman Alfred C. Sikes (October 19, 1992).

The fundamental questions relevant to determining a constitutional violation in this case are: (1) Will a physical collocation mandate effect a taking?; and (2) Does the Commission have the ability to take private property? The constitutional guarantees protecting private property are the same under both Florida and federal constitutional law, so there is no need to perform separate state and federal analyses. See Florida Canners Ass'n v. State of Florida, Dep't of Citrus, 371 So. 2d 503, 513 (Fla. 2d DCA 1979); Fla. High School Activities Ass'n v. Bradshaw, 369 So. 2d 398, 402 (Fla. 2d DCA 1979).

With regard to the first question, "regulations that compel the property owner to suffer a [permanent] physical 'invasion' of his property" constitute a taking "no matter how minute the intrusion." Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886, 2893 (1992); see also Storer Cable T.V. of Fla. Inc. v. Summerwinds Apartments Associates, Ltd., 493 So. 2d 417, 419 (1986). A taking has occurred to the extent that an owner can no longer own and enjoy his property as he intended. Vatalaro v. Dep't of Environmental Regulation, 601 So. 2d 1223, 1228-29 (Fla. 5th DCA 1992), citing Penn Central Transportation Co., v. City of New York, 438 U.S. 104, 130-31, 98 S.Ct. 2646, 2662, 57 L.Ed.2d 631 (1978). Furthermore, "'a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve.'" Storer Cable T.V. of Fla., 493 So. 2d at 419,

citing Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982); see also Lucas, 112 S. Ct. at 2900.

The invasion of LEC property involved in mandatory physical collocation is undeniably the type of permanent physical occupation that amounts to a taking. As the U. S. Supreme Court has said, "whether a permanent physical occupation has occurred presents relatively few problems of proof. The placement of a fixed structure on land or real property is an obvious fact that will rarely be subject to dispute." Loretto, 458 U.S. at 437. Under a mandatory collocation regime, LECs will be required to relinquish portions of their private real property to their competitors for an unlimited duration. Collocators will affix their equipment and equipment racks within the LEC central office building, maintain dominion and control over the portion of the building dedicated to their exclusive use, and secure easements for ingress and egress through other portions of the building. See Interconnection Order, App. B, rule 64.1401(d). These permanent physical intrusions unmistakably constitute a taking of LECs' property. A physical collocation directive by this Commission would sanction the uninvited, permanent physical occupation of LEC property by others exercising rights purportedly conferred on them by the Commission.

Further, mandatory physical collocation is no less a taking of property merely because the Commission provides a mechanism by which LECs can be compensated through intrastate tariffs requiring some payment by collocators for their use of the LECs' property. Although the State and federal constitutions prohibit uncompensated

takings, the payment of compensation does not transform a taking into something else.

The second question--whether this Commission has authority to take the LECs' property--is just as easily settled. The power to take private property "must...be given in express terms or by necessary implication." Western Union Telegraph Co. v. Pennsylvania R.R., 195 U.S. 540, 569 (1904). See also Regional Rail Reorganization Act Cases, 419 U.S. 102, 127 n.16 (1974); Hooe v. United States, 218 U.S. 322, 336 (1910). No Florida State agency or private entity may take property without a specific statutory delegation of authority to do so. District Board of Trustees of the Daytona Beach Community College v. Allen, 428 So.2d 704 (Fla. App. 5th DCA 1983); see also 21 Fla. Jur. 2d Eminent Domain sec. 4 and cases cited therein.

The legislature has seen fit to confer the power of eminent domain in numerous instances. See, e.g., Fla. Stat. ch. 373.1961(7) (granting the power to governing boards of water management districts); ch. 235.05 (giving school boards the right to take property for school purposes); ch. 155.15 (permitting counties to take property for hospital purposes); ch. 421.12 (granting housing authority the right to take property for slum clearance); ch. 361.07 (giving entities operating sewer systems the authority to take property); ch. 333.12 (giving political subdivisions the power to take property for airport purposes); ch. 337.27 (allowing Department of Transportation to use eminent domain to establish and maintain highway systems). There is nothing, however, in Chapter 364 (or elsewhere in the Florida Code) that

explicitly or implicitly gives this Commission the power to take private property, either for its own use or for the use of others.

Given that mandatory physical collocation would effect a taking for which this Commission lacks the requisite specific authority, adoption of a physical collocation rule would be unconstitutional. GTEFL urges the Commission to avoid making the same mistake the FCC has. The Commission should leave it to the LEC to determine, through negotiations with interconnectors, whether expanded interconnection will be furnished by physical or virtual collocation. This is the best approach on both legal and policy grounds. (See GTEFL Position on Issue 6.) It will also minimize the potential disruption if the FCC's mandatory collocation ruling is ultimately struck down on appeal, as GTEFL believes it will be. Since physical or virtual collocation arrangements will have been voluntarily negotiated, constitutional taking problems are avoided. Moreover, those arrangements would remain in place, while compelled physical collocation configurations would be subject to dismantling after the physical collocation mandate is overturned. (See Beauvais/GTEFL, Tr. 360.)

Issue 6: Should the Commission require physical and/or virtual collocation?

GTEFL Position: ** No. The Commission should not require either physical or virtual collocation. Instead, it should allow LECs and interconnectors to negotiate their own collocation arrangements. Under this policy, the access market can develop in accordance with state-specific conditions. **

No. The Commission should not mandate any specific form of interconnection. (Beauvais/GTEFL, Tr. 309-10; Denton/SBT, Tr. 391-

92; Poag/United, Tr. 496-97.) A physical collocation requirement would be particularly onerous. The GTE companies, along with numerous other parties, believe the FCC failed to meaningfully evaluate valid concerns about physical collocation. The result of this lapse is an unnecessarily restrictive and problematic policy decision. To this end, GTEFL concurs in former Chairman Sikes' dissenting view that:

> The highly regulatory and inflexible approach the Commission has adopted seems likely to create more concrete problems than the illusory ones it seeks to resolve.

Sikes Separate Statement.

Commissioner Quello shares this position, noting:

> Our predilection for physical co-location, and the procedures we prescribe to effectuate it, could well be a solution in search of a problem. More importantly, there is also the distinct possibility that in preferring physical over virtual co-location we may end up creating more problems than we solve.

Separate Statement of Commissioner James H. Quello.

Physical collocation would require GTE Florida to grant any competitor or end user the right to occupy a portion of a central office the interconnector chooses for an indefinite period of time. These central offices are, of course, critical components of the core telecommunications infrastructure used to deliver intrastate telephone service to Florida ratepayers. It is thus essential for LECs to maintain the ability to use their central office space and other company resources to meet consumers' demands for improved and expanded service in the most efficient way. A physical collocation requirement will undermine this ability. LEC operations would be

subject to numerous ongoing disruptions that would severely compromise this Commission's mandate to assure reliable and economical telephone service. The following sections explore the effects of these disruptions.

1. A Physical Collocation Rule Will Remove the LEC's Ability to Meet Long-Term State Needs and Social Objectives

Intractable space allocation and exhaustion problems are an inevitable outcome of a physical collocation rule. These problems are perhaps most obviously linked to the level of intrastate rate base. If central office space is allocated to interconnectors, LECs may have to build or buy additional space for equipment to meet the State's telecommunications needs. This may well increase the costs of providing intrastate service.

The inevitable outcome of an inflexible physical collocation rule is costly disruption of plans for enhancement of the local network. Even if this Commission were to explicitly permit the LECs to reserve space for their own future use, it is impossible to exactly anticipate long-run requirements, given demographic vagaries and the technological dynamism that characterizes the telecommunications industry. Any expectation that the LECs "will consider interconnector demands for central office space when remodeling or building new central offices," Interconnection Order at para 80 & App. B, rule 64.1401(b), is an unfair burden. Increasing competition (and the attendant need to cut costs), along with the demand for innovative services, renders the LECs' capital planning process ever-more challenging. Forcing them to anticipate

possible interconnectors' requests will introduce an additional element of risk into this process. Ratepayers will ultimately be forced to bear the costs of this unwarranted competitive disadvantage for the LECs.

Further, if the LEC builds additional space on the basis of anticipated collocation demand, and no party decides to collocate there, the ratepayers will again have to pick up the associated costs. (Ex. 4 at 33.) There is no automatic federal exogenous adjustment in these situations, as Mr. Canis seems to imply. (Ex. 4 at 34.) Exogenous adjustments are typically permitted only for occurrences beyond the company's control, such as extraordinary tax changes. In any case, regardless of any FCC decision about the treatment of costs incurred for excess construction, this Commission would still need to address the recovery of these costs at the state level.

Faced with increasing technological and market uncertainties, it is crucial for the LEC to retain as much flexibility as possible to satisfy evolving consumer demands and public interest goals. The best way to preserve maximum maneuverability for the future is a policy allowing the LEC to meet interconnection demands with either virtual or physical collocation, under an arrangement negotiated between the LEC and the interconnector.

2. Forced Reconfiguration of LEC Central Offices Will Raise Costs and Reduce Efficiency

In addition to the detrimental effects on the LEC's rate base and its ability to meet future service needs, the immediate measures necessary to accommodate physical collocators will

directly affect LEC costs and productivity. LECs would be required to arrange for collocators' electricity, heat, air conditioning, security and other such services. Depending on the configuration of a particular central office, significant new construction might be required to allow physical collocation of other entities' equipment. For security purposes, interconnectors' space would need to be physically segregated within the LEC's central office facility. (Beauvais/GTEFL, Tr. 307.) In most cases, this would require the LEC to build new walls and to create new building accesses. Where multiple collocators are present within a single office, their spaces would also need to be physically separated from one another.

LECs would also be compelled to install coded locks or magnetic card readers on all doors, stairwells, and elevators in facilities where interconnectors are located. Where building modifications are infeasible, security and safety would require round-the-clock presence of LEC personnel in the central office or an "on call" escort arrangement to permit interconnectors to gain access to their equipment and to guard against harm to LEC facilities.

Other necessary projects might involve addition and/or relocation of cable conduit and risers and power lines; reconfiguration of heat and cooling distribution systems; and augmentation of systems such as primary and back-up power, heat and cooling, and fire detection and suppression.

In addition to the direct costs of accommodating interconnectors in LEC facilities, physical collocation would

impose expensive administrative burdens on the LECs. (Beauvais/GTEFL, Tr. 308.) LEC employees would need to develop recurring charges for space rental and associated services (i.e., lighting, power, heat and cooling, etc.) and file appropriate tariffs. Rates will need to be periodically assessed for continued reasonableness and tariffs revised as necessary.

As noted earlier, mandatory physical collocation would require the LEC to incorporate anticipated demand for central office space into its long-range expansion and remodeling plans. Although any such effort would likely prove futile due to the unavailability of information about interconnectors' plans, the LEC would be required to undertake it nevertheless. Inclusion of this component in the LEC planning process and the need to revise forecasts as interconnector plans become known will drive up the LECs' administrative costs. (Beauvais/GTEFL, Tr. 306-07.)

It is unrealistic to believe that all of these various types of costs flowing from physical collocation can ever be recovered in tariffed interconnection charges. (Beauvais/GTEFL, Tr. 308.) Indeed, many of the most substantial costs are largely unquantifiable, as they derive from the injection of inefficiencies into LEC operations. For instance, LEC employees must suffer the intrusive effects of construction projects every time their workplace must be altered to accommodate an interconnector. In addition, LEC personnel will no longer enjoy immediate unrestricted access to all portions of central offices where interconnectors are present. Instead, they will need to employ card keys and/or enter combinations to move among their own work areas in the LEC facility.

Employees' freedom to exchange information about LEC plans and operations will also be restricted by the interconnectors' presence. Additionally, full or part-time assignment of LEC personnel to provide interconnectors access to the central office, where necessary, would take employees away from their regular duties.

In short, mandatory physical collocation would create disruptions to day-to-day LEC operations that will necessarily compromise LEC productivity and efficiency. The LEC will have no recourse to prevent these costly consequences.

3. Mandatory Physical Collocation Poses Serious Network Security and Reliability Risks

Even under the best of conditions, it is difficult to safeguard the integrity of the numerous electronically complex and diffuse systems that comprise local network operations. Despite costly and extensive efforts to devise foolproof security strategies, this task will become effectively impossible if LECs are forced to grant other entities access to their central offices. (Beauvais/GTEFL, Tr. 309.) Indeed, this concern about LECs' loss of ability to protect network reliability figured into Chairman Sikes' dissenting view that an FCC-mandated physical collocation rule is unwarranted. See Sikes Separate Statement.

Today, one of the LEC's principal means of protecting against network harm is its complete discretion to determine who may enter its facilities. A mandatory physical collocation rule in Florida will undermine this authority. The result will be increased

potential for both intentional and inadvertent interference with LEC operations. Even mundane occurrences, such as momentary misplacement of a LEC card key in a common area, would present a risk of network sabotage that does not today exist.

A more subtle, but no less important, security threat stemming from presence of non-LEC personnel in its buildings is the increased potential for inadvertent leakage of sensitive competitive information about LEC operations, including plans for expansion or new services, service failures or difficulties, customer base, operating procedures, and the like. Indeed, the very presence of competitors in a LEC central office will give them knowledge of LEC deployment of advanced technologies and network upgrades before such efforts are publicly disclosed. They can then tailor their network planning and marketing efforts accordingly. Simply by conducting its own business, the LEC will be compelled to confer unwarranted advantages upon its collocated competitors. The asserted benefits of competition will be impossible to attain in the resulting, artificially skewed marketplace.

Finally, there is the potential that safety hazards in non-LEC portions of the building could affect the entire central office. (Beauvais/GTEFL, Tr. 309.) Since the LEC would have little authority over CAPs' activities, equipment choices and installation practices, safety hazards arising within their restricted spaces could interfere with service provided to LEC customers. Because interconnectors' areas will be locked, the ability of LEC personnel to quickly and effectively respond to an emergency there would be severely curtailed.

4. A LEC Option Rule Will Best Preserve This Commission's Power to Direct Telecommunications Policy

A flexible policy of permitting LECs and interconnectors to opt for either virtual or physical collocation for special access is the best way for the Commission to assure dependable and affordable telecommunications services in keeping with Florida consumers' needs. This approach will also allow this Commission to determine the contours of the access market in accordance with State-specific initiatives to foster development of the competitive special access market. This is true because the FCC's virtual collocation scheme affords technical interconnection arrangements equal to those associated with a physical collocation regime. (Beauvais/GTEFL, Tr. 297, order cite.) Even Teleport, an AAV, concedes that "[a] virtual arrangement which is technically, operationally and economically equal to a physical arrangement is workable." (Ex. 8 at 34.) Sprint, a potential interconnector and end user of AAV services, agrees that a physical collocation requirement is not necessary, as virtual collocation can offer the same level of service as physical. (Rock/Sprint, Tr. 446.)

Under both types of collocation, the equipment used to terminate interconnected circuits will be located in the LEC's central office. Interconnection Order at n.99. The interconnector will use the same equipment to obtain the same functionalities. As Commission Quello aptly recognized, "the only real difference between physical co-location and virtual co-location is whether the local exchange carrier or the interconnector installs, maintains, and repairs the interconnector's equipment." Quello Separate

Statement. As discussed below, this difference is not sufficient reason to justify the drawbacks associated with mandatory physical collocation.

With regard to the operational specifics of virtual collocation, the LEC will designate an interconnection point (e.g., a manhole) near its central office that is physically accessible to both the LEC and the interconnector on non-discriminatory terms. Interconnection Order at para. 84. LECs and interconnectors would remain free to negotiate the key details of virtual collocation arrangements, allowing the parties to tailor rates, terms, and conditions to the type of central office equipment an interconnector wishes to use. Interconnection Order at paras. 136, 159. The same arrangements will be made available to any similarly situated entity with the same central office. Interconnection Order at para. 159.

In contrast to a physical collocation mandate, allowing the LECs to choose virtual collocation will in no way trammel the Commission's policymaking authority. Indeed, the LEC option approach was preferred over a physical collocation mandate by a number of state commissions filing comments in the FCC proceeding, including Florida. See Interconnection Order at para. 318 & accompanying n.70, citing, e.g., Florida Comments at 4-5; Illinois Comments at 3-4; Michigan Comments at 5; New York Comments at 8-9. In the information services context, this Commission explicitly rejected mandatory physical collocation in favor of a policy allowing the LEC to choose between physical and virtual collocation. An Investigation into the Statewide Offering of Access to

the Local Network for the Purpose of Providing Information Services, Order No. 21815 (Sept. 5, 1989).

As Commissioner Clark correctly recognized, the LEC's decisions with regard to management of its real estate (e.g., the terms of collocation deals, the LEC's retention of space for itself) would always remain subject to the Commission's review. (Clark, Tr. 523-24.) This continuing oversight will allay any concerns about the fairness of LECs' collocation practices as to ratepayers and interconnectors alike.

5. AAVs' Arguments for Physical Collocation Are Unconvincing

The interconnectors' primary argument in support of physical collocation is an asserted need to maintain control over their own operations. Virtual collocation is unsatisfactory, they believe, because it will deny interconnectors unfettered access to their equipment. As such, LEC performance standards will become the norm for interconnectors' operations, as well. (Canis/ICI, Tr. 31-32.) This argument ignores the fundamental nature of expanded interconnection itself.

Expanded interconnection means other entities' networks will be linked with that of the LEC. To the extent that they are interconnected with the LEC's network, reliability will necessarily be the same for both interconnectors and the LEC. This is true regardless of whether interconnection occurs through a virtual or physical arrangement. As the FCC has explained, "by interconnecting with the LEC network rather than bypassing it entirely, interconnectors are, in essence, accepting LEC performance

standards on the LEC circuit to which they are connected." Interconnection Order at n.103. The AAVs' emphasis on the need to maintain their own performance standards is thus somewhat disingenuous.

ICI has consistently touted its assertedly greater service reliability, transmission quality, network redundancy, and the like. (See, e.g., Canis/ICI, Tr. 43, 84-85.) Teleport similarly stresses the importance of "a redundant and diverse access supply in order to ensure continuous telecommunications service regardless of the operational status of any single provider." (Ex. 8 at 21.) With the advent of expanded interconnection, these selling points will be considerably weakened. (See Clark, Tr. 151.) Where the LEC's and interconnector's networks are linked, the interconnector's transmission quality, error rate, and the like can be no better than that of the LEC to which it is connected. Even if the AAV leg of the transmission is flawless, a disruption in the LEC leg will be reflected in the ultimate service to the end user. Mr. Canis finally admitted under questioning from Commissioner Clark that an AAV's ability to provide redundancy will now be only as good as the underlying LEC network to which the AAV is interconnected. (Canis/ICI, Tr. 150; see also Canis/ICI, Tr. 95.) "If the AAVs now offer fully redundant, state-of-the-art, top-of-the-line services and the LECs do not, to the extent that you're making that connection over the LEC network, you're going to have to accept their limitations." (Canis/ICI, Tr. 151.) To obtain full redundancy and diversity, a customer would need to connect with an AAV through at least two LEC central offices--something the

customer can do today through the LEC itself. The AAV thus becomes a "superfluous party." (Clark, Tr. 151.)

In opting for interconnection, interconnectors knowingly give up much of the control they now have over their existing, stand-alone networks. It is the act of interconnecting itself--not the particular interconnection arrangement--that will curtail most of the interconnector's control over its operational standards.[1] If ICI, in fact, fears the LEC's "insinuation" "between an AAV and the service the AAV provides" (Canis/ICI, Tr. 31), it would continue to maintain its wholly independent network.

In addition, the AAVs believe that, "absent a Commission mandate, collocators have no power to negotiate reasonable collocation terms and conditions with LECs." (Canis/ICI, Tr. 608; see also Ex. 8 at 13-14.) Actual experience in Florida, however, demonstrates this assertion to be false. United Telephone Company currently has about 15 situations where entities are physically collocated in its central offices in this State, (Poag/United, Tr. 507, 497), and negotiations for at least one other arrangement are underway (Id. at 521). ICI is among these collocated entities. (Id. at 524).

All of these mutually beneficial collocation arrangements were freely negotiated between United and the interconnectors. (Id. at

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[1] To the extent that LEC and AAV operations are severable, AAVs can still secure higher performance standards. As the FCC has recognized "LECs and interconnectors, of course, are free to negotiate such terms for virtual collocation on their own." Interconnection Order at n.103. If a particular interconnector wishes to pay more for quicker DS-1 provisioning, for example, it could obtain this standard by contract with the LEC. (Beauvais/GTEFL, Tr. 327-28.)

507, 520-23.) There has been no testimony that they have been unsatisfactory either from the LEC's or interconnectors' standpoint. Indeed, ICI's opposition to negotiated arrangements is puzzling, since it was able to reach mutually satisfactory collocation terms with United without resorting to this Commission. (Poag/United, Tr. 524.)

Mr. Canis declined to focus on this kind of Florida-specific information--presumably because it undermines his arguments. Instead, he continually emphasized his experience in New York. (See, e.g., Canis/ICI, Tr. 18, 65, 180-81; Ex. 4 at 36; Lauredo, Tr. 104.) Mr. Canis appeared to care little for tailoring his recommendations to regulatory and market conditions in Florida. For instance, he is not familiar with the Florida statutes (Canis/ICI, Tr. 624; Ex. 4 at 46), nor with LECs' pricing practices in Florida (Canis/ICI, Tr. 101). He also admitted that he is not very familiar with the tariffing process in Florida and could only base his remarks on this topic on other jurisdictions with which he is familiar. (Canis/ICI, Tr. 68-69.) Nevertheless, he took a definite position on the tariffing question with regard to both LECs and AAVs. (Canis/ICI, Tr. 68.) By the same token, he opined that existing CSAs are adequate to meet LECs' pricing flexibility needs (Canis/ICI, Tr. 112)--even though he does not know this Commission's rules and regulations concerning CSAs and when they can be used (Canis/ICI, Tr. 112-13).

Mr. Canis was similarly unfamiliar with his own client's operations. He was unaware of Intermedia's pricing practices and could only speak about his experience with other AAVs in this area.

(Canis/ICI, Tr. 103.) He did not even know what services ICI provides. He stated the belief that ICI does not provide packet switched services. (Canis/ICI, Tr. 74.) This is incorrect. In response to a Staff data request, ICI included packet transport services in a list of its offerings that are "functionally equivalent to those of a LEC." (Canis Ex. 1 at 1-2.)[2] These critical gaps in Mr. Canis' knowledge about Florida conditions cast serious doubt on the credibility of his recommendations to the Commission.

In fact, the AAVs' lack of regard for states' interests has been plainly apparent in the federal collocation debate since its inception. In filings before the FCC, the AAVs' trade association (of which ICI is a member), termed state interests in the interconnection area "speculative," and remarked that state expanded interconnection proceedings were likely motivated "by a desire to frustrate the federal policy favoring interstate expanded interconnection, not by genuine state policy initiative on intrastate expanded interconnection." (Association for Local Telecommunications Services Petition for Partial Reconsideration and Clarification at 11-12, filed in FCC CC Dkt. No. 91-141, Dec. 18, 1992.) As discussed above, GTEFL disagrees with this evaluation. Florida has a substantial interest in assuring its citizens affordable, reliable, and innovative telecommunications services. A physical

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[2] The Commission has forbidden AAVs to use packet transport technologies, in accordance with Chapter 364 of the Florida Statutes. Order No. 24877 at 20.

collocation directive will compromise its ability to satisfy these fundamental objectives.

Further, in an attempt to respond to arguments that forced physical collocation poses a significant threat to network security, ICI emphasizes that no harm has occurred in New York or Massachusetts, where physical collocation tariffs are in effect. (Canis/ICI, Tr. 48.) This reasoning makes no sense. Even in New York, where the first collocation tariff was filed, physical arrangements have been in place for less than two years. (Canis/ICI, Tr. 609.) Just because there have been no major accidents in the relatively short time that collocation has been in place does not mean that none will occur in the future.

Finally, the alleged additional costs ICI claims are associated with virtual (relative to physical) collocation (e.g., unfair apportionment of overtime costs, equipment mark-ups) (Canis/ICI, Tr. 106-09), are simply not a problem in Florida. As discussed in GTEFL's position on Issue 11, it is in ICI's best interest to create the least favorable impression of virtual collocation that it can. For this reason, Mr. Canis repeatedly refers to the Ameritech virtual collocation model, which was the target of much criticism at the federal level. No LECs in this proceeding have proposed the kind of burdensome virtual collocation conditions included in the Ameritech plan and, as Sprint has correctly explained, the cost differences between physical and virtual collocation are minimal. (Rock/Sprint, Tr. 471-72.)

Issue 7: What LECs should provide expanded interconnection?

GTEFL Response: ** If the Commission requires expanded interconnection, GTEFL would support extension of this requirement to large (Tier 1) LECs only. **

In theory, if the Commission finds that expanded interconnection will create benefits for Florida consumers, then all LECs should be required to offer this service. However, the FCC has restricted the expanded interconnection mandate to Tier 1 LECs (defined as companies having annual revenues from regulated telecommunications operations of $100 million or more). Interconnection Order at n.1. It is probably best for Florida to adopt this limitation as well. Costs associated with expanded interconnection will not be recoverable for the non-urban areas typically served by smaller companies due to insufficient demand. (Beauvais/GTEFL, Tr. 313-14.)

Issue 8: Where should expanded interconnection be offered?

GTEFL Response: ** Expanded interconnection should be offered only where sufficient demand exists or is anticipated to generate incremental revenues greater than the incremental costs associated with the offering. **

If expanded interconnection is ordered, the criteria governing its offering it should be the same as for any new service. GTEFL should not be required to lose money on the service. Consistent with GTEFL's response to Issue 7, expanded interconnection should be offered only where sufficient demand exists for it or where it is anticipated that incremental revenues from the service will exceed its incremental costs. These guidelines suggest that expanded interconnection would be offered primarily in larger central offices in the major metropolitan areas. If the Commission

adopts GTEFL's position that interconnection should be negotiated, rather than mandated, there is no need for the Commission to establish any restrictions on where the service is to be offered. If an arrangement in a particular central office is mutually advantageous to the LEC and the interconnector, the service will be offered there.

Issue 11: Should the Commission require standards for physical and/or virtual collocation? If so, what should they be?

GTEFL Response: ** No. Standards are not necessary. It is better to allow the parties to negotiate a mutually advantageous agreement than to impose standards. If, however, the Commission decides to establish standards, it should generally adopt the standards established by the FCC. **

GTEFL assumes the term "standards" in this question means specific technical and operational requirements that would govern physical and/or virtual collocation. GTEFL does not believe that such standards are necessary or desirable. Instead of imposing one set of standards on all interconnection arrangements, parties should be permitted to negotiate their own collocation contracts. In this way, agreements can be tailored to accommodate the particular circumstances of each interconnector. (Beauvais/GTEFL, Tr. 327-28.)

If the Commission, however, believes that it is necessary to establish standards, it is probably best to closely track the general guidelines set forth by the FCC. Floor space should be allocated on a first-come, first-served basis, interconnection of non-fiber optic facilities should generally be prohibited, and the LEC should be required to specify an interconnection point near the

central office. It would be infeasible to establish very different physical collocation standards for the respective interstate and intrastate jurisdictions. For example, this Commission should not depart from the 100 square foot block floor space allotments reflected in the federal tariffs. Because most carriers commingle interstate and intrastate traffic, any attempt at separate space allocation schemes "would create ridiculous administrative problems." (Denton/SBT, Tr. 419-20; Ex. 14 at 50-51.)

The FCC has allowed parties relatively more freedom in delineating virtual collocation terms than it has with regard to physical collocation elements. This is the best approach, permitting the parties to tailor arrangements to their own particular circumstances. See Interconnection Order at paras. 136, 159.

This Commission should reject ICI's attempts to secure more restrictive conditions for virtual collocation arrangements. ICI has proposed an involved process for verifying space constraints in central offices, as well as a number of specific virtual collocation standards. The following sections expose the flaws in the reasoning underlying these recommendations.

1. Independent Verification of Central Office Space Would Be Wasteful and Unnecessary

Under the FCC's Interconnection Order, LECs are permitted to provide virtual, rather than physical, collocation in central offices for which they can demonstrate that insufficient space exists to accommodate physically collocated interconnection.

Interconnection Order at para. 41. In their filings to support a space exhaustion exemption from the physical collocation mandate, LECs submitted charts listing the central offices for which exemption was sought, the square footage of each of those offices, and the amount of space currently occupied by LEC equipment or reserved for future use. Numerous affidavits of employees having personnel knowledge of space limitations in particular central offices were also submitted. See Expanded Interconnection with Local Tel. Co. Facilities, Memorandum Opinion and Order, CC Dkt. No. 91-141 ("Space Exemption Order") at para. 7 (June 9, 1993). The FCC specifically found this information to be sufficient to assess the exemption requests. Id. at paras. 8, 10. After reviewing GTE's data, the FCC excused GTEFL from providing physical collocation in four central offices in Florida.

ICI would now require this Commission to institute a regulatory process to again verify that there is insufficient floor space in exempted offices. Specifically, Mr. Canis recommends that the Commission establish "independent verification" procedures. (Canis/ICI, Tr. 120-21, 607-08.) If a LEC states that a particular central office cannot accommodate physical collocation, Mr. Canis would require the company to detail the total central office space, the amount of unused space remaining, and the amount of space reserved for the LEC's own services over the next three years. This information would be accompanied by the LEC's sworn affidavit. If any party contests the LEC's representations, the potential collocator or an "independent third party" would be permitted to verify the LEC's information through inspection of the central

office. (Canis/ICI, Tr. 607-08.) As an alternative to inspection, Mr. Canis suggests the submission of blueprints or photographs of central offices. (Ex. 4 at 14.)

None of these measures is necessary or desirable. For the most part, the informational submissions and affidavits ICI recommends were already filed with the FCC.[3] There is no reason to produce the same information to this Commission and require it to duplicate the FCC's thorough evaluative process.

Moreover, even if this Commission were to rule that one or more of the four exempted GTEFL offices had enough space for physical collocation, the FCC space exemption would still stand for interstate services. ICI would legally only be permitted to use the space at issue for intrastate services. Since most of ICI's services are interstate, it would be extremely unlikely that the company would provide intrastate services through virtual collocation and interstate services through physical collocation in the same location. The practicalities of the situation thus render ICI's argument unworthy of serious consideration.

ICI's recommendations would not even achieve their stated goals. Independent third party verification and review of blueprints or photographs contemplate only observation of the physical area itself. They reveal nothing about the reasonableness of LEC plans for expansion. And, as the FCC found, blueprints or

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[3] ICI would have this Commission restrict LECs' reservation of space to just three years, a patently unreasonably planning period. The FCC has permitted a five-year forecasting period. Space Exemption Order at para. 16.

photographs might disclose proprietary information or present security issues. Space Exemption Order at para. 8.

ICI's proposal would also add to the Commission's regulatory burden and foment litigation. Under ICI's scheme, an interconnector denied physical collocation because of space limitations would have the right to demand independent verification. It is inevitable that this verification will be requested in all instances. It is also highly likely that the LEC and interconnector will continue to disagree about the amount of space available, even after the evaluation is completed. The dispute would then fall to the Commission for resolution.

Aside from its practical drawbacks, ICI's duplicative verification proposal is objectionable for its motivation. It can be driven only by the belief that LECs are lying. (See Ex. 4 at 12-14, Ex. 4 at 32.) GTEFL takes strong exception to this implication. There is absolutely no evidence of LEC "bad faith" in obtaining space exhaustion exemptions--as Mr. Canis was eventually compelled to concede. (Ex. 3 at 14-15.) In GTEFL's case, exemptions for just four out of 90 offices in Florida is patently reasonable. Nevertheless, ICI would have this Commission waste resources on a second space verification process. Bare and unfounded allegations of bad faith are certainly not sufficient justification to institute duplicative controls on floor space evaluation.

2. ICI's Proposed Virtual Collocation Standards Respond to Illusory Problems

ICI has suggested a number of virtual collocation standards concerning training and overtime charges; markups on collocated equipment; warehousing of spare equipment; ownership of collocated equipment; and expedited consideration of collocator complaints. (Canis/ICI, Tr. 613-14; Ex. 4 at 16-19.)[4] These measures are purportedly necessary to ensure reasonable virtual collocation terms. (Canis/ICI, Tr. 613.) The fundamental flaw in this reasoning was already discussed in GTEFL's Position on Issue 6. In short, actual experience in Florida demonstrates that no Commission intervention is necessary to prompt the LEC to negotiate fairly with interconnectors. Moreover, Mr. Canis' recommendations are rooted in his unduly pessimistic portrayal of the virtual collocation concept.

Not surprisingly, Mr. Canis has used Ameritech's virtual collocation arrangement as his model for discussion in this proceeding. (See, e.g., Ex. 3 at 13 and Att. C.; Ex. 4; Canis/ICI, Tr. 165.) Among the LECs' virtual collocation filings at the FCC, Ameritech's was the most unusual. It deviated sharply in certain respects from the other companies' views on implementation of virtual collocation; its terms were the most unfavorable to interconnectors. Virtually all of the complaints about virtual

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[4] ICI recommends the additional "safeguard" of eliminating "individual case basis changes." (Canis/ICI, Tr. 613.) GTEFL discusses the necessity of retaining customer-specific pricing in its response to Issue 15.

collocation terms at the federal level were directed at the Ameritech scheme. See Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, Order Designating Issues for Investigation, CC Dkt. No. 93-162, at 5-6, 14 (July 23, 1993) (included in Ex. 3.)

To GTEFL's knowledge, the warehousing, lease-back, and certain other "problems" Mr. Canis raised with regard to virtual collocation appear only in Ameritech's scheme. They are not features of GTE's plan and neither GTEFL nor any other LEC in this proceeding has proposed them. And none of the other "safeguards" Mr. Canis suggests respond to any proposals made by any LEC in this case. There is thus no need for regulations to cure abuses that are highly unlikely to arise in Florida.

Issue 12: Should collocators be required to allow LECs and other parties to interconnect with their networks?

GTEFL Response: ** Yes. In order to achieve maximum competitive benefits and ensure development of the most innovative telecommunications infrastructure possible, interconnection should be made available with all types of networks. **

If the Commission determines that expanded interconnection with LEC networks will provide consumer benefits, these benefits will be enhanced by permitting interconnection of all types of networks. (Beauvais/GTEFL, Tr. 318.) If a non-LEC firm has lower costs and more reliable service than the LEC in certain aspects, an efficient market solution would be to permit LECs and other entities to purchase inputs from that firm and utilize them in providing their own services. One of those inputs is floor space.

ICI, the only AAV participating in this proceeding that provides service in Florida is willing to permit LECs to interconnect with its network. (Canis/ICI, Tr. 52.) Sprint also agrees that other interconnectors should be required to offer interconnection with their networks. (Rock/Sprint, Tr. 448.)

Issue 13: What standards should be established for the LECs to allocate space to collocators?

GTEFL Response: ** Ideally, the market should be allowed to operate, thus obviating the need for any space allocation standards. In practical terms, however, it is probably impossible for this Commission to establish space allocation standards that deviate from the FCC's first-come, first-served allocation scheme. **

Consistent with its other positions, GTEFL believes the best approach to space allocation is market-based. (Beauvais/GTEFL, Tr. 327-28.) In this way, limited central office space would be allotted in the most efficient manner. Mr. Poag described how a market mechanism might be employed to decide among requests for physical collocation. (Poag/United, Tr. 581-82.) Competition results in the best and highest use of central office space, to the ultimate benefit of the LEC ratepayer.

Nevertheless, it must be recognized that the FCC has established a first-come, first-served space allocation scheme. Most of the traffic moving over collocated facilities will likely be mixed intrastate and interstate. There is currently no way to verify the nature of jurisdictional traffic over AAVs' facilities. Under these circumstances, it would be extremely difficult to maintain different space allocation standards for state and federal purposes.

Issue 14: Should the Commission allow expanded interconnection for non-fiber optic technology?

GTEFL Response: ** No. To avoid rapid exhaustion of central office space, interconnection should generally be limited to fiber facilities. **

If the Commission decides to permit LECs and interconnectors to negotiate their own physical or virtual collocation arrangements, it is possible that they could arrive at some accommodation for non-fiber technologies. (Beauvais/GTEFL, Tr. 316.) Because non-fiber facilities use more space than fiber, however, the LEC must be given the final decision on interconnection of non-fiber technologies. Otherwise, immediate exhaustion of or excess demand for LEC structural space could occur. (Id.)

If the Commission declines to allow parties to negotiate their own collocation agreements, then a requirement restricting interconnection of non-fiber technologies will be necessary. (Beauvais/GTEFL, Tr. 316.) The restriction on non-fiber technologies will preclude acceptance of Teleport's recommendation that interconnection should be permitted at the DS0 level, as well as DS1 and DS3. (Kouroupas/Teleport, Tr. 245.) As Mr. Kouroupas acknowledged, DS0 interconnection may require interconnection of copper facilities. (Kouroupas/Teleport, Tr. 282.) Placement of relatively large copper cable would rapidly deplete finite central office space.

Issue 15: If the Commission permits expanded interconnection, what pricing flexibility should the LECs be granted for special access and private line services?

GTEFL Response: ** The current contract serving arrangement mechanism should be left in place. Zone pricing, allowing

geographical deaveraging, should also be implemented. In the absence of sufficient pricing flexibility, the LEC will be foreclosed from meeting competitive challenges from interconnectors. **

Today, LEC competitors remain free of any constraints on pricing and marketing of their services, while LECs remain subject to significant regulatory controls in these areas. GTEFL has consistently argued that this lack of parity suppresses the creation of a truly competitive marketplace that will produce maximum consumer gains. Restricting the LEC's ability to compete encourages entrance of inefficient competitors, which do not need to meet a tough competitive price test. These competitors need only price under the LEC's pricing "umbrella" kept artificially high by regulation. (Denton/SBT, Tr. 424-25; Poag/United, Tr. 483, 561.) This kind of market distortion will become substantially more pronounced as parties are allowed to interconnect with the LECs' network.

As GTEFL pointed out in the introduction to this brief, full local competition is a not-too-distant eventuality. This proceeding will presumably establish the direction for development of the market for not just dedicated services, but the whole range of switched and other LEC offerings. It is thus critical for the Commission to establish the foundation for fair competition in this docket. If it delays in taking this action, it will be too late, to the detriment of ratepayers who will be forced to bear the ongoing effects of unwarranted competitive disadvantages imposed on the LECs.

Maintenance of the existing contract serving arrangement (CSA) mechanism will go a long way toward preventing these deleterious effects. CSAs allow a LEC to offer a customer off-tariff pricing for a specific service in response to a competitor's bid to serve that same customer. At least one of the two AAVs in this proceeding does not oppose retention of the CSA mechanism. (Kouroupas/Teleport, Tr. 279-80.)

While the CSA device can provide the LEC a good degree of flexibility, its utility has been limited by the ever-expanding competitive pressures that have come to bear since its creation. CSAs were authorized before AAVs had appeared, at a time when access bypass by interexchange carriers was severely restricted. (Poag/United, Tr. 652.) They cannot be expected to serve as the LEC's sole response in today's vastly altered marketplace. (Id. at 653.)

The CSA imposes administrative burdens on the LEC that translate into competitive disadvantages vis-a-vis other entities that are not subject to such requirements. Before a LEC can offer a CSA, it must know the competitor's proposed price, as well as the LEC's own incremental cost of providing the service. (Poag/United, Tr. 555.) With regard to the first requirement, a LEC has little opportunity to make a counteroffer unless the customer informs it of the competitor's price. (See Poag/United, Tr. 554-56.) Under the second requirement, regarding the LEC's pricing of the CSA, the LEC is to apply up to 14 items in developing the cost of its offering. (Poag/United, Tr. 555, 572-73.) The pricing process can thus use up valuable time that the potential customer may not have.

(See Poag/United, Tr. 653.) Further, the LEC must file quarterly reports of CSA activity, on the basis of which the Commission may demand a review of the contracts. (Poag/United, Tr. 557.) In contrast, an AAV is never required to submit studies of any kind to support its pricing or any other aspect of its business.

To alleviate some of the shortcomings of the CSA, GTEFL urges the Commission to grant additional flexibility through the use of zone pricing. The FCC has instituted a type of zone pricing plan for interstate special access services. This plan permits the establishment of density pricing zones (up to three without further justification) within each existing study area. Rates must still be averaged within the zones, but may differ as between zones. (See Poag/United, Tr. 494.) A similar scheme could be established at the State level, with some modifications. GTEFL concurs in Sprint's view that "the FCC has been overly restrictive" in allowing zone pricing only after expanded interconnection offerings are operational in a particular study area. (Rock/Sprint, Tr. 450.) This Commission should permit density zone pricing whether or not competitive entry has occurred, in order to send the correct economic signals to potential market entrants. (Rock/Sprint, Tr. 450.) In addition, LECs should be permitted to propose different initial rates in each zone, so that prices can more accurately reflect underlying costs. (Rock/Sprint, Tr. 451.)

Zone pricing is consistent with the beneficial trend toward moving prices to cost in the telecommunications industry. Teleport, at least, did not feel strongly about whether the LECs should have the ability to deaverage prices. Mr. Kouroupas stated

that "that's a pricing decision on [the LEC's] part," and offered no opinion on setting prices more in line with the costs of serving particular areas. (Kouroupas/Teleport, Tr. 280-81.) The Commission should resist AAV exhortations to wait for some future, unspecified event to trigger greater pricing flexibility for the LECs. As Mr. Denton testified, neither this Commission nor the FCC has ever stopped existing carriers from expanding their comparative pricing options in response to regulatory actions to enhance competition. (Denton/SBT, Tr. 405, 411.) For example, when the Commission certified Microtel as a long distance carrier in Florida, it refused this new entrant's pleas for protection from competition. At the same time, AT&T and the LECs were permitted pricing flexibility to offer new services in competition with Microtel. Microtel, of course, survived. (Denton/SBT, Tr. 426.)

In adopting zone pricing, the FCC explicitly rejected arguments that pricing flexibility for the LECs would be premature. It recognized that rate averaging creates a pricing umbrella for AAVs, depriving customers of maximum competitive gains. The FCC also found that average pricing fosters inefficiency by preventing the LEC from effectively competing even when it is the low cost provider. "Handicapping the LECs in this fashion could also increase their competitive losses under expanded interconnection, bringing upward pressure to bear on the LEC rates for less competitive services, including those used by residential customers." Interconnection Order at para. 178.

These kinds of concerns have also led the state commissions to grant LECs pricing flexibility where intrastate expanded intercon-

nection arrangements predated the FCC's interstate interconnection ruling (i.e., Illinois, New York, and Massachusetts). Interconnection Order at para. 176. (See also Denton/SBT, Tr. 412.)

Contrary to some indications at the hearing, CSAs and zone pricing are properly viewed as complementary (rather than mutually exclusive) measures. (Beauvais/GTEFL, Tr. 368-69; Denton/SBT, Tr. 647.) To this end, it is worth noting that in the Commission's AAV investigation, ICI explicitly did not oppose additional regulatory measures that would "help the LEC respond more quickly to market opportunities." (Post-Hearing Brief of ICI in Docket No. 890183-TL at 25; Canis/ICI, Tr. 74) ICI's abandonment of its earlier position is explicable only in terms of self-interest. Certainly, the LEC's need for tools to effectively respond to competition is much greater under expanded interconnection than it was when the Commission issued its AAV Order over two years ago. The Commission needs to retain the CSA, but also add zone pricing if the LEC is to have any chance of meeting the intense competition associated with the opening up of its network.

Issue 16: If the Commission permits collocation, what rates, terms and conditions should be tariffed by the LEC?

GTEFL Response: ** It is best to permit the parties to negotiate their own collocation arrangements rather than restricting them with tariffs. If, however, the Commission believes that collocation tariffs are necessary, it should require LECs to mirror the prices and other terms of their interstate tariffs in their state tariffs. **

GTEFL believes that reliance on the market is the best means of arriving at prices and other terms governing floor space and other items associated with collocation. (Beauvais/GTEFL, Tr. 324.) However, these terms have already been established in

interstate tariffs filed at the direction of the FCC. As a practical matter, it would be infeasible to set different rates or terms for these elements at the state level. (Beauvais/GTEFL, Tr. 326.) The Commission should thus require mirroring of the state and federal collocation tariffs. Since most interconnectors provide jurisdictionally mixed services, different state and federal prices for the same items would only lead to arbitrage.

Issue 17: Should all special access and private line providers be required to file tariffs?

GTEFL Response: ** All market participants should be allowed the same freedom to compete, under the same terms and conditions. Thus, if the Commission finds it appropriate for the LECs to operate under tariffs, then all special access and private line providers should be subject to the same condition. **

In general, GTEFL believes that less, rather than more, regulation is desirable in today's competitive telecommunications marketplace. The best approach would be to forego tariffing requirements for all special access and private line providers, including the LECs. In this way, all market participants could compete fairly and openly.

If, however, the Commission decides to maintain tariffing requirements, these same requirements should apply to all special access and private line providers. Unilateral tariffing requirements tend to weaken price competition, thus lessening the benefits to the ultimate consumer. (Beauvais/GTEFL, Tr. 323-24.) Sprint's Mr. Rock agrees that all interconnectors must be required to file tariffs, offering the additional rationale of preventing discrimi-

nation among the various kinds of entities that may be interconnectors. (Rock/Sprint, Tr. 453.)

Tariffing of AAVs in the new environment of expanded interconnection is consistent with this Commission's decision in its generic AAV investigation (Docket No. 890183-TL). As ICI has correctly pointed out, the Commission has not required tariffing for AAVs because their customers "are generally sophisticated users who do not need expansive Commission protection." (Canis/ICI, Tr. 53, 70.) Mr. Canis acknowledged that this was the only rationale offered by the Commission for its decision not to tariff AAVs. (Canis/ICI, Tr. 73-74; Order No. 24877 at 17-18.)

Expanded interconnection will greatly alter the circumstances existing when the Commission issued its AAV order. An AAV will no longer be confined to only the high volume users located on its ring; now, it will be able to reach any customer on the LEC's ubiquitous network. (Canis/ICI, Tr. 70, 91, 144.) Under these circumstances, any rational firm will strive to make the maximum use of its facilities to serve as many customers as possible. Indeed, ICI has explicitly expressed its intentions to expand its marketing efforts to medium and small users--and perhaps even the residential market--as regulators allow increasingly greater competition. (Canis/ICI, Tr. 70-71, 629-30; Canis Ex. 1.) As Mr. Canis affirmed these smaller users are generally less aware of competitive choices and alternatives than existing, typically large, AAV customers. (Canis/ICI, Tr. 70.) In ICI's view, "Larger customers know of and use competitive services; medium to small

customers are not generally aware of which if any services are competitive." (Ex. 1 at 5.)

The enormous expansion of the potential AAV customer base upon implementation of expanded interconnection removes the Commission's sole justification for not tariffing AAVs in the early stages of their operation. AAVs can now serve any customer the LEC or an interexchange carrier (IXC) can. If the Commission continues to believe that tariffs are important to fully inform LEC and IXC customers of their choices and alternatives, this reasoning applies with equal force to an AAV capable of serving the same base of "average" consumers. Indeed, even ICI witness Canis at one point seemed to assume that AAVs's services would be tariffed: "Once I put that equipment in, turn it up, start providing it to a customer, it's going to appear in my tariffs and everybody is going to know that's a service I'm providing. I want people to know that." (Canis/ICI, Tr. 179.) This reasoning affirms the informational benefits of tariffs for consumers.

Finally, tariffing of AAVs is not a new or unusual concept. As Mr. Canis testified, New York, California, and now the FCC are among those jurisdictions that require AAV tariffing. (Canis/ICI, Tr. 183-84.)

While GTEFL supports identical tariffing requirements for all market participants, it recognizes that the Commission has great latitude in determining what type and level of information may be required in an interconnector's tariff. If the Commission declines to require full LEC-type tariffing of AAV and other interconnectors' services, it could consider streamlined procedures like

those presented as options by Teleport (e.g., rate bands and short notice periods) (Kouroupas/Teleport, Tr. 268) and Sprint (price lists) (Rock/Sprint, Tr. 453) in this proceeding.

Issue 18: What separations impact will expanded interconnection have on the LEC?

GTEFL Response: ** Expanded interconnection could have potentially significant effects on the jurisdictional separation of LEC costs. It will result in a decrease of the costs of special access and an increase in the cost of all other LEC services. **

As firms begin to interconnect at the LECs' central offices and abandon existing LEC access connection facilities, the total LEC investment in these joint facilities will not disappear; rather, it will be reallocated among the services and jurisdictions which remain, based on the usage of these facilities. As the interLATA access usage declines, more of the interoffice transport facility costs will be allocated to the remaining extended area service and intraLATA toll services. This impact of special access interconnection will therefore be a decrease in the costs of special access and an increase in the cost of all other LEC services. (Beauvais/GTEFL, Tr. 321-22.) While the relative jurisdictional impact of switched interconnection will be much greater than that of expanded special access interconnection (Beauvais/GTEFL, Tr. 322), it is important for the Commission to begin to consider separations effects at this initial stage.

Issue 20: How would ratepayers be financially affected by expanded interconnection?

GTEFL Response: ** The ratepayer effects of expanded interconnection will depend on the way in which it is implemented. In any case, expanded interconnection will ultimately mean higher rates for the average residential ratepayer. **

Having established the expanded interconnection structure, the FCC has now left the states to grapple with the difficult decisions directly affecting ratepayers. (Lauredo, Tr. 597; Beauvais/GTEFL, Tr. 357.) Commissioner Lauredo, in particular, inquired throughout the hearing about the effects of expanded interconnection on the average LEC ratepayer. (Lauredo, Tr. 104-5, 110, 182, 230-31.) He aptly concluded that expanded interconnection will eventually force up basic residential rates. (Lauredo, Tr. 597.) While expanded interconnection for special access and private line services will probably have little impact on the residential customer's bill in the short run (Beauvais/GTEFL, Tr. 356), it must be recognized that it is a significant step toward full local exchange competition, including switched services. (See Beauvais/GTEFL, Tr. 312, 335; Denton/SBT, Tr. 404.) Greater competition for local services can reasonably be expected to compress the existing significant margins of contribution to residential service rates. (Beauvais/GTEFL, Tr. 311, 335; Denton/SBT, Tr. 400-01; Poag/United, Tr. 518-19, 589-91.)

Rate increases for residential service are probably inevitable. Nevertheless, the Commission still retains significant ability to protect the average ratepayer's interests in the expanded interconnection environment. As discussed in GTEFL's Position on Issue 6, mandated physical collocation will force the average residential and small business ratepayer to bear numerous

costs, not only in terms of direct expense, but also through lost efficiencies and diminished ability of the LEC to respond to consumers' telecommunications needs. To avoid this additional burden, the Commission must reject a physical mandate in favor of allowing negotiated collocation arrangements.

Also, because expanded interconnection increases the reach of LEC competitors, it is inevitable that the LEC will lose increasingly more revenue through losses of customers, competitive pricing pressures, and migration from switched to special access. (Beauvais/GTEFL, Tr. 346-47.) The effects of these losses incurred will have to be borne by the average ratepayer. The only way to mitigate this anti-consumer outcome is to give the LEC sufficient flexibility to compete with other market participants. The minimum measures necessary for the LEC to meet increased competitive challenges include retention of CSAs, geographical deaveraging through zone pricing, and comparable tariffing requirements for all special access and private line providers. (See GTEFL's Position on Issue 15.)

Issue 21: Should the Commission grant ICI's petition?

GTEFL Response: ** GTEFL would not object to the Commission's granting ICI's petition, provided the Commission ensured sufficient pricing flexibility for the LEC, symmetrical treatment for all market participants, and a policy of negotiated collocation. **

GTEFL does not oppose expanded interconnection, per se. GTEFL recognizes that increased special access competition can produce consumer benefits. But, as it explained in its previous responses, interconnection must be carefully structured to avoid harming

average ratepayers and undermining social goals. To avoid the anti-consumer effects of regulatory handicapping of the LEC, the Commission must grant it additional pricing flexibility, establish a uniform tariffing policy for all competitors, and forego rigid collocation requirements in favor of negotiated arrangements.

Conclusion

For all the reasons discussed in this brief, GTEFL asks the Commission to adopt its position on each issue remaining for decision in this docket.

Respectfully submitted on October 22, 1993.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Post-Hearing Brief of GTE Florida Incorporated in Docket No. 921074-TP was sent by U. S. mail on October 22, 1993, to the parties on the attached list.

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