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**ORIGINAL
FILE COPY**

March 5, 1996

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

Dear Ms. Bayo:

ACK Re: Docket No. 950984-TP
AFA _____ Resolution of petition(s) to establish nondiscriminatory rates, terms and
APP _____ conditions for resale involving local exchange companies and
CAF _____ alternative local exchange companies pursuant to Section 364.161,
Florida Statutes

Chase
CTR _____ Please find enclosed for filing an original and fifteen copies of the Position of GTE
EAD _____ Florida Incorporated Regarding Additional Legal Issue (Issue No. 5) in the above
LDC 1 _____ matter. Service has been made as indicated on the Certificate of Service. If there are
LIR 5 _____ any questions with regard to this matter, please contact me at 813-228-3087.

OPC _____ Very truly yours,
RCH _____
SEC 1 Anthony P. Gillman / dm
WAS _____ Anthony P. Gillman
VTH _____

APG:tas
Enclosures

A part of GTE Corporation

DOCUMENT NUMBER-DATE
02669 MAR-5 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

In re: Resolution of petition(s) to establish)
nondiscriminatory rates, terms and conditions)
for resale involving local exchange)
companies and alternative local exchange)
companies pursuant to Section 364.161,)
Florida Statutes)
_____)

Docket No. 950984-TP
Filed: March 5, 1996

POSITION OF GTE FLORIDA INCORPORATED
REGARDING ADDITIONAL LEGAL ISSUE
(ISSUE NO. 5)

GTE Florida Incorporated (GTEFL), in accordance with the directives of the Commission at the prehearing conference held in this matter on March 1, 1996, files its position on Issue No. 5. GTEFL's position on this issue is as follows:

Legal Issue No. 5: To what extent are the non-petitioning parties that actively participate in this proceeding bound by the Commission's decision in this docket as it relates to Sprint-United/Centel and GTEFL?

GTEFL Position: GTEFL contends that the legislature intended that LECs would negotiate individual contracts with individual ALECs. As such, as long as the LECs do not unreasonably discriminate against ALECs, they could enter agreements containing potentially different rates, terms and conditions, depending upon the particular needs of the ALEC. Thus, the non-petitioning parties would not necessarily be bound by the rates approved in this docket.

However, intervening (although not petitioning) ALECs would be precluded from relitigating the same issues under the doctrine of *res judicata*. That doctrine applies to subsequent administrative hearings in which identical parties litigate the same issues previously litigated. Thus, although non-petitioning parties would still have the right to

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negotiate interconnection and resale agreements regardless of the outcome of this proceeding, they would not be permitted to relitigate the same issues against the same party at some point in the future (assuming no material change in circumstances).

As noted by United, non-petitioning parties should not be entitled to two bites of the apple on the same issue. If those parties lose on an issue, they may not raise the same issue a later time merely by filing a petition.

Respectfully submitted on March 5, 1996.

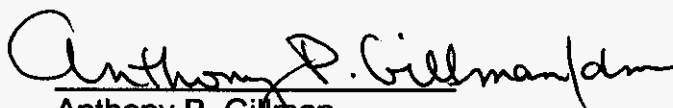
By: Anthony P. Gillman/dm

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Position of GTE Florida Incorporated Regarding Additional Legal Issue (Issue No. 5) in Docket No. 950984-TP were sent via U.S. mail on March 5, 1996 to the parties on the attached list.


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