

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of ) DOCKET NO. 950984-TP  
petition(s) to establish ) ORDER NO. PSC-96-0364-PHO-TP  
nondiscriminatory rates, terms, ) ISSUED: March 14, 1996  
and conditions for resale )  
involving local exchange )  
companies and alternative local )  
exchange companies pursuant to )  
Section 364.161, Florida )  
Statutes. )  
\_\_\_\_\_ )

Pursuant to Notice, a Prehearing Conference was held on March 1, 1996, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

Richard M. Rindler, Esquire, and James C. Falvey, Esquire, Swidler & Berlin, Chartered, 3000 K Street N.W., Suite 300, Washington, D.C. 20007  
On behalf of Metropolitan Fiber Systems of Florida, Inc.

Anthony P. Gillman, Esquire, Post Office Box 110, FLTC0007, Tampa, Florida 33601  
On behalf of GTE Florida Incorporated.

Lee L. Willis, Esquire, and J. Jeffry Wahlen, Esquire, Macfarlane Ausley Ferguson & McMullen, Post Office Box 391, Tallahassee, Florida 32302  
On behalf of Central Telephone Company of Florida and United Telephone Company of Florida.

Michael W. Tye, Esquire, 101 N. Monroe Street, Suite 700, Tallahassee, Florida 32301  
Robin D. Dunson, Esquire, 1200 Peachtree Street, N.E., Promenade I, Room 4038, Atlanta, Georgia 30309  
Mark Logan, and Brian Ballard, Bryant, Miller, and Olive, 201 South Monroe Street, Suite 500, Tallahassee, Florida 32301  
On behalf of AT&T Communications of the Southern States, Inc.

Laura L. Wilson, Esquire, 310 N. Monroe Street, Tallahassee, Florida 32301  
On behalf of Florida Cable Telecommunications Association, Inc.

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Patrick K. Wiggins, Esquire, Wiggins & Villacorta, Post Office Drawer 1657, Tallahassee, Florida 32302  
On behalf of Intermedia Communications of Florida, Inc.

Floyd R. Self, Esquire, and Norman H. Horton, Jr., Esquire, Messer, Caparello, Madsen, Goldman & Metz, P.A., Post Office Box 1876, Tallahassee, Florida 32302-1876  
On behalf of WorldCom, Inc. d/b/a LDDS WorldCom Communications.

Richard D. Melson, Esquire, Hopping Green Sams & Smith, Post Office Box 6526, 123 South Calhoun Street, Tallahassee, Florida 32314  
On behalf of MCI Metro Access Transmission Services, Inc.

Robert S. Cohen, Esquire, Pennington, Culpepper, Moore, Wilkinson, Dunbar & Dunlap, P.A., Post Office Box 10095, Tallahassee, Florida 32302-2095  
On behalf of Time Warner AxS of Florida L. P. and Digital Media Partners.

Donna L. Canzano, Esquire, Scott Edmonds, Esquire, and Tracy Hatch, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Commission Staff.

### PREHEARING ORDER

#### I. CASE BACKGROUND

The 1995 Florida Legislature approved substantial revisions to Chapter 364, Florida Statutes. Included in these changes are provisions that authorize the competitive provision of local exchange telecommunications service. Incumbent local exchange companies may elect to be price regulated, rather than rate base rate-of-return regulated companies.

Section 364.161, Florida Statutes, provides that upon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities, and offer them to any other telecommunications provider requesting them for resale to the extent technically and economically feasible. If the parties to this proceeding are unable to successfully negotiate the

terms, conditions, and prices of any feasible unbundling request, the Commission, pursuant to Section 364.162(3), Florida Statutes, is required to set nondiscriminatory rates, terms, and conditions for resale of services and facilities within 120 days of receiving a petition. To ensure that this requirement is met, this docket has been opened to process petitions which could be filed by eligible local exchange or alternative local exchange companies.

On August 30, 1995, the Prehearing Officer set forth the procedural dates governing petitions filed requesting the Commission to establish nondiscriminatory rates, terms, and conditions for resale. On January 24, 1996, Metropolitan Fiber Systems of Florida, Inc. (MFS-FL) filed petitions requesting that the Commission establish such nondiscriminatory rates, terms and conditions for resale with GTE Florida Incorporated, United Telephone Company of Florida and Central Telephone Company of Florida (collectively United/Centel). By Order No. PSC-96-0137-PCO-TP, issued January 31, 1996, the Prehearing Officer set forth further procedural dates. The Chairman set the matter for an administrative hearing beginning March 20, 1996.

## II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Commission Clerk's confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties (and Staff) has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issues #</u>
Timothy T. Devine	MFS-FL	All
Dr. Nina Cornell	MCI Metro	1-3
Mike Guedel	AT&T	1-4
Joseph Gillan	AT&T	1-4
Dennis B. Trimble	GTEFL	1, 3
Beverly Y. Menard	GTEFL	2, 3, 4
Dr. Gregory M. Duncan	GTEFL	3
Sandra A. Khazraee	United/Centel	All
F. Ben Poag	United/Centel	All

- Direct and Rebuttal will be taken together.

V. BASIC POSITIONS

MFS-FL (GTE PETITION):

MFS-FL and GTEFL have reached agreement on all issues in this proceeding except the pricing of unbundled elements, and certain minor operational issues. GTEFL will unbundle and separately price and offer two-wire and four-wire, analog and digital loop and port elements such that MFS-FL will be able to lease and interconnect to whichever of these unbundled elements MFS-FL requires and to combine the GTEFL-provided elements with facilities and services that MFS-FL may provide itself. GTEFL should price these unbundled elements at Long Run Incremental Cost, subject to the pricing guidelines recommended in this proceeding by MFS-FL. GTEFL will permit MFS-FL to collocate digital loop carrier systems.

MFS-FL (UNITED/CENDEL PETITION):

United/Centel must unbundle and separately price and offer two-wire and four-wire, analog and digital loop and

port elements such that MFS-FL will be able to lease and interconnect to whichever of these unbundled elements MFS-FL requires and to combine the United/Centel-provided elements with facilities and services that MFS-FL may provide itself. United/Centel should price these unbundled elements at Long Run Incremental Cost, subject to the pricing guidelines recommended in this proceeding by MFS-FL. United/Centel should permit ALECs to collocate digital loop carrier systems, or alternatively, unbundle United/Centel digital loop carrier systems.

**GTEFL:** GTEFL understands that providing certain network services on an unbundled basis will be important to fostering a competition in the local exchange. To this end, GTEFL will make available unbundled loops and any required transport, unbundled ports, and channel multiplexing. The pricing of these elements must be based on proper economic principles if fair and efficient competition is to develop. If regulators are to establish prices, they should emulate competition as closely as possible. That is, they should fall between average stand-alone costs (as a ceiling) and total service long-run incremental costs (TSLRIC) (as a floor). Above all, prices should not be set equal to total service long-run incremental cost (TSLRIC). This approach will deny a firm the ability to recover its costs of common and/or shared facilities and equipment, driving it toward bankruptcy.

At this time, GTEFL believes the appropriate rate level for basic unbundled loops is the current 2-wire special access line tariffed rate, which is \$23.00. Even at this rate, GTEFL will experience significant loss of contribution and stranded investment. As such, implementation of this proposed rate should ideally occur in conjunction with comprehensive rate rebalancing. To the extent that this is not possible, the Commission should consider mechanisms such as universal service funding and user restrictions to address GTEFL's economic and legal concerns.

**UNITED/CENTEL:**

The unbundled elements of the Companies' special access tariff represent the elements that would be provided to ALECs on an unbundled basis. Unbundled services should be priced consistent with the Companies' special access tariffs. The technical arrangements contained in the Companies' special access tariff represent the basics of



the required technical arrangements. It is not necessary for the Commission to address other detailed operational issues at this time.

**AT&T:** AT&T submits that attempts to promote the development of local exchange competition serve the public interest, but it must be recognized that the general availability of facilities-based competition, while desirable, is not likely to develop in the near term. Therefore, to encourage the development of potential local competition, and to encourage the breadth of competitive availability, the Commission must order the LECs to unbundle their services into underlying Basic Network Functions (hereinafter "BNFs".) The unbundled BNFs should be offered to new entrants under the same basic arrangements and with the same technical capabilities as they are used by the LEC in the provision of its services. To further encourage the potential development of competition, the unbundled elements should be priced at the Total Service Long Run Incremental Cost (hereinafter "TSLRIC") incurred by the LEC in providing each element.

**FCTA:** At this time, the FCTA urges the Commission to require the unbundling of LEC loops, ports, loop transport and loop concentration to any ALEC requesting them, pursuant to tariff. Other LEC network features, functions and capabilities should be unbundled and made available for resale, upon request and pursuant to Section 364.161, Florida Statutes.

**INTERMEDIA:**

This proceeding addresses the petition of Metropolitan Fiber System of Florida, Inc. (MFS-FL) which was unable to reach an agreement with GTE Florida Incorporated (GTEFL), United Telephone Company of Florida or Central Telephone Company of Florida (United/Centel) with respect to the terms and conditions for resale. Intermedia has reached an agreement with GTEFL and United/Centel on these matters, however. Given this agreement, Intermedia takes no position as to what should be the terms and conditions for resale between MFS-FL and GTEFL or United/Centel.

**LDDS:** The Commission should recognize that the creation of end-to-end wholesale network arrangements are paramount to the development of meaningful local competition. Thus, in approving the pending requests, the Commission should



recognize that other carriers may have different unbundling and resale requirements that would necessitate different wholesale local service arrangements.

**MCIMETRO:** United/Centel and GTEFL should make unbundled local loops, loop transport, and loop concentration available to MFS-FL at prices equal to their total service long run incremental cost. The unbundling of such elements is technically and economically feasible. Such elements should be priced equal to their direct economic cost (i.e. TSRLIC) in order to prevent the possibility of price squeezes.

**TIME WARNER:**

Time Warner believes that for local competition to develop and be sustained, there must be facilities-based alternatives to the local exchange companies. Chapter 364.161, Florida Statutes, and the new Federal legislation require local exchange companies to unbundle all of their network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting them for resale. There is still an issue of the amount of avoidable costs and on whether services that are priced below cost should be discounted at all. However, the price for unbundled elements provided by the LECs must pass an imputation test to insure that new entrants are not caught in a price squeeze.

**STAFF:**

As envisioned by the statute, each local exchange company, upon request, shall unbundle network features, functions, and capabilities, including access to signalling databases, systems, and routing processes. These unbundled elements should be offered to any telecommunications provider requesting such features, functions and capabilities for resale to the extent technically and economically feasible. Staff does not consider currently tariffed items to be unbundled elements but rather items to be unbundled.

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based

upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: What elements should be made available by United/Centel and GTEFL to MFS-FL on an unbundled basis (e.g. link elements, port elements, loop concentration, loop transport)?

POSITIONS:

MFS-FL (GTE PETITION):

MFS-FL and GTEFL have agreed that GTEFL will provide the elements requested by MFS-FL on an unbundled basis. GTEFL will provide to MFS-FL unbundled access and interconnection to two-wire and four-wire analog and digital loops and ports. GTEFL will also provide to MFS-FL the capability to perform loop concentration through collocation of MFS-FL's own digital loop carriers ("DLCs").

MFS-FL (UNITED/CENTEL PETITION):

MFS-FL seeks unbundled access and interconnection to two-wire and four-wire analog and digital loops and ports. MFS-FL also seeks the capability to perform loop concentration, either through collocation of its own digital loop carriers, or by connecting to United/Centel digital loop carrier systems at United/Centel's wire centers.

GTEFL: This issue has been stipulated. Please see the attached Partial Florida Co-Carrier Agreement between MFS and GTEFL.

UNITED/CENTEL:

The unbundled elements of the Companies' special access tariff represent the elements that would be provided to ALECs on an unbundled basis. In addition, the Companies propose to provide unbundled ports which provide the capability to originate and/or terminate local, long distance, directory assistance, operator, and 911 type calls.

**AT&T:** The LECs should be required to unbundle local loops and local switching ports.

The local loop functions to connect an end user premises to the service wire center of the local exchange company. The traditional local loop facility can be divided onto three sub-elements: loop distribution, loop multiplexing and concentration, and loop feeder.

The local switch functions to create on demand temporary paths connecting local loops to other local loops or local loops to interoffice transport facilities. Typical switching functions include: 1) recognizing service requests, 2) obtaining call specific information, 3) data analysis, 4) route selection, 5) call completion, 6) testing and recording, etc. Further local switching BNFs must include access to unbundled Advanced Intelligent Network (AIN) triggers. These triggers will offer a new entrant certain call control capability within the LEC switch allowing it to customize its end user offerings without having to duplicate the LEC switch.

**FCTA:** Unbundled LEC loops, ports, loop concentration and loop transport should be made available at this time.

**INTERMEDIA:**

No position.

**LDDS:** The requested unbundling and resale requests should be granted. However, in approving these requests, the Commission should recognize that because each competitor's service requirements may be different, the unbundled components approved in this proceeding may be insufficient or inappropriate for other competitors.

**MCIMETRO:** United/Centel and GTEFL should make available to MFS-FL unbundled loops, loop concentration and loop transport. The unbundling of such elements is technically and economically feasible. In addition, United/Centel and GTEFL should make available, upon request, any other element that it is technically and economically feasible to unbundle, including the additional elements requested by MFS.

**TIME WARNER:**

Unbundled loops, ports, loop concentration and loop transport should be made available.

**STAFF:** Elements for consideration should include, but not be limited to, all items requested in MFS-FL's petition.

**ISSUE 2:** What are the appropriate technical arrangements for each such unbundled element?

**POSITIONS:**

**MFS-FL (GTE PETITION):**

MFS-FL and GTEFL have agreed to all of MFS-FL's requests regarding this issue. Interconnection will be achieved via collocation arrangements that MFS-FL will maintain at the wire center at which the unbundled elements are resident. MFS-FL also will be able to install digital loop carriers at GTEFL's virtual collocation sites.

**MFS-FL (UNITED/CENTEL PETITION):**

Interconnection should be achieved via collocation arrangements MFS-FL will maintain at the wire center at which the unbundled elements are resident. MFS-FL also must be able to install digital loop carriers at United/Centel virtual collocation sites. United/Centel should unbundle and separately price and offer these elements.

**GTEFL:** This issue has been stipulated. Please see the attached Partial Florida Co-Carrier Agreement between MFS and GTEFL.

**UNITED/CENTEL:**

The technical arrangements contained in the Companies' special access tariff represent the basics of the required technical arrangements.

**AT&T:** The overarching guideline should be to provide the unbundled elements in such a manner as to not inhibit the new entrant from providing the same quality of service as the incumbent LEC. That means that the technical arrangements used to connect the unbundled element(s) to

a new entrant's network should be equal to those currently used to connect the elements(s) within the LEC's own network. New entrants should have cooperatively engineered interconnection arrangements, equal service quality or performance parity, and the opportunity to interconnect at the same points or virtually the same points where practicable as the incumbent LEC.

**FCTA:** Unbundled elements should be made available at interconnection points between the LEC and the ALEC networks.

**INTERMEDIA:**

No position.

**LDDS:** The technical arrangements requested should be approved.

**MCIMETRO:** Unbundled loops should be provided from the customer's premises to United/Centel and GTEFL's central office and interconnection, at the MFS-FL's option, to (i) MFS-FL's co-located facilities, (ii) the co-located facilities of another carrier, or (iii) loop transport facilities provided by United/Centel and GTEFL. Loop transport should be provided to transport traffic to or from the United/Centel and GTEFL central office to the point of interconnection with MFS-FL, if not co-located at United/Centel and GTEFL's central office (e.g. to a mid-span meet or to an MFS-FL entrance facility at another central office or access tandem). Loop concentration should be provided to maximize the efficiency with which traffic is delivered through transport facilities.

**TIME WARNER:**

Unbundled elements should be made available at interconnection points between the LECs and ALECs network.

**STAFF:** No position at this time.

**ISSUE 3:** What are the appropriate financial arrangements for each such unbundled element?

**POSITIONS:**

**MFS-FL (GTE PETITION):**

GTEFL's direct LRICs are the appropriate price for unbundled loops and other elements. Furthermore: 1) the sum of the prices of the unbundled rate elements must be no greater than the price of the bundled dial-tone line; 2) the price to LRIC ratio for each element and for the bundled dial-tone line must also be equal.

**MFS-FL (UNITED/CENTEL PETITION):**

United/Centel's direct LRICs are the appropriate price for unbundled loops and other elements. Furthermore: 1) the sum of the prices of the unbundled rate elements must be no greater than the price of the bundled dial-tone line; 2) the price to LRIC ratio for each element and for the bundled dial-tone line must also be equal.

**GTEFL:**

Sound economic principles compel pricing for unbundled elements to be set at levels that would obtain in a competitive marketplace. As such, prices should fall between stand-alone costs and total service long-run incremental costs. The Commission should reject any suggestion that prices should be set just at TSLRIC. This approach will drive firms out of business, as they will be unable to obtain any contribution to their common and/or shared costs. This result is unfair and inimical to efficient competition.

Consistent with these principles, GTEFL believes the appropriate rate for basic unbundled loops is the current 2-wire special access line rate in its Facilities for Intrastate Access tariff--\$23.00. In the absence of comprehensive rate rebalancing, this price will still result in significant revenue losses for GTEFL. The Commission should use whatever mechanisms it can--for example, universal service funding and user restrictions--to address this serious concern.

With regard to unbundled ports, GTEFL will apply a monthly recurring rate based on the monthly cost of the port (e.g., line card and associated equipment), plus a reasonable contribution. GTEFL will also charge a usage rate which is the same as the tariffed rate currently paid by shared tenant service providers.

Finally, GTEFL's currently tariffed rate will apply for multiplexing service.

**UNITED/CENDEL:**

Unbundled services should be priced consistent with the Companies' special access tariffs. Doing so will allow the Companies to provide similar services on a nondiscriminatory basis to ALECs, IXCs, AAVs, and cellular providers at the same rates, terms and conditions.

**AT&T:**

The target price for the unbundled elements should be the Total Service Long Run Incremental Cost (TSLRIC) that the LEC incurs in providing them. Pricing at TSLRIC will simultaneously ensure that the incumbent LEC recovers all of the costs that it incurs in providing the unbundled element(s) (including cost of money), while it encourages the potential development of competition by offering the unbundled element(s) (at least from a price perspective) in a competitively neutral manner.

**FCTA:**

Chapter 364.161, Florida Statutes, and the new Federal legislation require local exchange companies to unbundle all of their network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting them for resale. There is still an issue of the amount of avoidable costs and on whether services that are priced below cost should be discounted at all.

Time Warner further recognizes that existing LEC services such as special access provide a contribution toward the preservation of universal service and carrier of last resort obligations, and that until the conclusion of rate and universal service reform, it may not be appropriate to lose this contribution. However, the price for unbundled elements provided by the LECs must pass an imputation test to ensure that new entrants are not caught in a price squeeze.

**INTERMEDIA:**

No position.



**LDDS:** The pricing of the unbundled elements should be based on the direct economic cost of the wholesale component purchased.

**MCIMETRO:** The price of each such unbundled element should be set equal to its direct economic cost, i.e. its total service long run incremental cost.

**TIME WARNER:**

Chapter 364.161, Florida Statutes, and the new Federal legislation require local exchange companies to unbundle all of their network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting them for resale. There is still an issue of the amount of avoidable costs and on whether services that are priced below cost should be discounted at all.

Time Warner further recognizes that existing LEC services such as special access provide a contribution toward the preservation of universal service and carrier of last resort obligations, and that until the conclusion of rate and universal service reform, it may not be appropriate to lose this contribution. However, the price for unbundled elements provided by the LECs must pass an imputation test to ensure that new entrants are not caught in a price squeeze.

**STAFF:** The prices for each unbundled element should be based on incremental cost.

**ISSUE 4:** What arrangements, if any, are necessary to address other operational issues?

**POSITIONS:**

**MFS-FL (GTE PETITION):**

MFS-FL and GTEFL have stipulated to some operational issues. GTEFL will apply all transport-based and switch-based features, grades-of-service, etc. which apply to bundled service to unbundled links. MFS-FL and GTEFL did not agree, but MFS-FL submits that GTEFL should permit any customer to convert its bundled service to an MFS-FL unbundled service with no penalties. GTEFL will provide

MFS-FL with the appropriate billing and electronic file transfer arrangements. Certain issues remain to be negotiated, and the parties have agreed to negotiate them within the next 60 days. The Commission should leave this portion of the docket open until these issues are fully resolved.

**MFS-FL (UNITED/CENDEL PETITION):**

United/Centel should apply all transport-based and switch-based features grades-of-service, etc. which apply to bundled service to unbundled links. United/Centel should permit any customer to convert its bundled service to an MFS-FL unbundled service with no penalties. United/Centel should provide MFS-FL with the appropriate billing and electronic file transfer arrangements.

**GTEFL:** GTEFL believes any additional operational issues that may arise are best addressed through ongoing negotiations with MFS.

**UNITED/CENDEL:**

It is not necessary for the Commission to address other detailed operational issues at this time. Sprint-United/Centel are willing to work in good faith with MFS and other ALECs to address their operational concerns.

**AT&T:** AT&T takes no position.

**FCTA:** The LEC should provide ordering, repair, testing and any other administrative systems needed on an automated basis.

**INTERMEDIA:**

No position.

**LDDS:** The Commission should recognize that other carriers may have different unbundling and resale requirements that may require further proceedings. At a minimum, the Commission should direct the LECs to provide nondiscriminatory automated operational support mechanisms to facilitate the purchase of all elements of the wholesale local network platform.

**MCIMETRO:** United/Centel and GTEFL should provide order entry, repair, testing, and any other administrative systems

required for the provision of unbundled facilities, on a mechanized basis.

**TIME WARNER:**

The LECs should provide ordering, repair, testing and other administrative systems needed on an automated basis, where possible.

**STAFF:** No position at this time.

**LEGAL ISSUE 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?

**POSITIONS:**

**MFS-FL (GTE PETITION):**

No position.

**MFS-FL (UNITED/CENDEL PETITION):**

No position.

**GTEFL:** 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 non 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 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 non 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.

**UNITED/CENDEL:**

All entities that participate in the proceedings between the petitioner and Sprint-United/Centel should be bound by the Commission's decision, *i.e.*, If and when they seek to purchase unbundled services with Sprint-United/Centel, they should be required to pay and abide by the rates, terms and conditions set in this proceeding for Sprint-United/Centel.

**AT&T:**

AT&T has properly intervened and participated in this docket as a certificated interexchange carrier in Florida. Thus, AT&T should not be bound by the Commission's arbitration of unbundling issues between the parties currently seeking arbitration. Moreover, Section 364.161, Florida Statutes (1995) is only applicable to the specific parties availing themselves of the Commission's jurisdiction to arbitrate unbundling issues. The statute does not contemplate the application of the end product of arbitration upon a party that has not requested a local exchange telecommunications company to unbundle its services or filed an unbundling petition against a local exchange telecommunications company. Since, at this time, AT&T has not filed a request for unbundling or an arbitration petition, the Company should not be bound by the decision in this docket as it relates to Sprint-United/Centel.

**FCTA:**

The Commission's decision in this proceeding is binding to the extent that it will be filed as a tariff by the LEC, which will then be applicable to any carrier on nondiscriminatory terms. However, the existence of such tariff does not prohibit any carrier from entering into negotiations with the LEC to seek new or different rates, terms, and conditions. If such negotiations fail, a petition may be filed with the Commission pursuant to Section 364.161(1) and 364.162.

**INTERMEDIA:**

No position.

**LDDS:**

The Commission's decision in this proceeding is binding to the extent that it will be filed as a tariff by the LEC, which will be available to any carrier. However, the existence of such tariff does not prohibit any carrier from entering into negotiations with the LEC to seek new or different rates, terms, and conditions. If such negotiations fail, a petition may be filed with the Commission pursuant to section 364.161(1) and 364.162.

**MCIMETRO:**

The Commission's decision in this proceeding is binding to the extent that it will be filed as a tariff by the LEC, which will be available to any carrier. However, the existence of such tariff does not prohibit any carrier from entering into negotiations with the LEC to seek new or different rates, terms, and conditions. If such negotiations fail, a petition may be filed with the Commission pursuant to section 364.161(1) and 364.162.

**TIME WARNER:**

Non-petitioning parties should not be bound by the decisions made in this docket as they relate to either Sprint-United/Centel or GTEFL. In accordance with Section 120.52(12), Florida Statutes, and the Commission's own rule 25-22.039, F.A.C., the Commission granted Time Warner intervenor status in this docket because it agreed that Time Warner's interests would be substantially affected. Section 364.162(2), Florida Statutes provides specific rights to Time Warner concerning time frames for the negotiation of the rates, terms and conditions for unbundled elements and to petition for assistance should negotiations fail. Time Warner's participation in this docket as a non-petitioning party does not change these statutory rights. Although, as a practical matter, the decisions the Commission makes in this case are likely to have some precedential value, which later petitioning parties may have to overcome in their cases, local competition is new enough and untested enough that, as more experience is gained, the Commission may find, later on, that different

decisions may have more favorable results. Finally, in this new arena, the Commission should be encouraging non-petitioning parties to be active in the docket. The insight and information the Commission gains through a more enriched record is of benefit to the entire process. Requiring non-petitioning parties to be bound by the decisions made here will only serve to deny the Commission this additional information and perspective.

**STAFF:** No position pending oral argument.

- \* All parties agreed to be bound by the decision reached after oral argument on Legal Issue 15 in Docket No. 950985-TP, which will be addressed at the beginning of that hearing starting March 11, 1996.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Timothy T. Devine	MFS-FL (GTE Petition)	TTD-1	Correspondence between GTEFL and MFS-FL in their recent unbundling negotiations.
		TTD-2	Same as TTD-1
		TTD-3	Same as TTD-1
		TTD-4	Same as TTD-1
		TTD-5	Same as TTD-1
		TTD-6	Same as TTD-1
		TTD-7	A C h a r t demonstrating the network elements that MFS-FL has requested be unbundled.

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Timothy T. Devine	MFS-FL (GTE Petition)	TTD-8	An agreement on interconnection issues and unbundled network elements recently signed by MFS-FL and GTE.
Timothy T. Devine	MFS-FL (U/C Petition)	TTD-1	Correspondence between United/Centel and MFS-FL in their recent unbundling negotiations.
		TTD-2	Same as TTD-1
		TTD-3	Same as TTD-1
		TTD-4	Same as TTD-1
		TTD-5	Same as TTD-1
		TTD-6	A Chart demonstrating the network elements that MFS-FL has requested be unbundled.
		TTD-7	An agreement on interconnection issues and unbundled network elements recently signed by MFS-FL and GTE.
Dr. G. M. Duncan	GTEFL	GMD-1	Figure attached to Dr. Duncan's Direct Testimony.
Dennis B. Trimble	GTEFL	DBT-1	Average Business Customer - Contribution Analysis.



<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Dennis B. Trimble	GTEFL	DBT-2	Average Residential C u s t o m e r - C o n t r i b u t i o n Analysis.
		DBT-3	C o n t r i b u t i o n - Preserving Unbundled Loop Rates;
		DBT-4	Revenue Impacts of Unbundling Loops.
Sandra A. Khazraee	United/Centel	SAK-1	(Consists of 2 documents)
Dr. Nina Cornell	MCI Metro	NWC-1	Direct - Academic and professional Qualifications of Dr. Nina Cornell.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

MFS-FL (GTE PETITION):

Issue 1 (elements to be unbundled) and Issue 2 (technical arrangements) have been stipulated by MFS-FL and GTEFL.

GTEFL: As noted, GTEFL and MFS have reached agreement on issues 1 and 2, as reflected in the attached Partial Florida Co-Carrier Agreement.

IX. PENDING MOTIONS

None.

X. RULINGS

In response to United/Centel's Motion on Issues and Parties, filed February 21, 1996, Legal Issue 5 will be an issue in this

ORDER NO. PSC-96-0364-PHO-TP  
DOCKET NO. 950984-TP  
PAGE 24

docket. The non-petitioning parties have properly been granted intervenor status and may participate in this hearing.

The parties in this docket were present during the prehearing conference in Docket No. 950985-TP. The parties stipulated that the Commission's decision reached on Legal Issue 15 in 950985-TP will also bind them regarding Legal Issue 5 in this docket.

All parties are put on notice that the decision reached by the full Commission on Legal Issue 15 in Docket No. 950985-TP could bind each party to the decisions reached on all issues in this docket; therefore, each party shall govern itself accordingly.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 14th day of March, 1996.

  
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J. TERRY DEASON, Commissioner and  
Prehearing Officer

( S E A L )

SKE/DLC

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 this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.