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October 28, 1996

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

960847-TP

Re: Docket No. 960980-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation in the above docket are the original and 15 copies of MCI's Post-Hearing Brief, together with a 5.1 WordPerfect diskette.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,

Richard D. Melson

RDM/cc
Enclosures
cc: Parties of Record

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LEG 5
MAS
OPC 1
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, and MCI Metro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996.	Docket No. 960847-TP Docket No. 960980-TP Filed: October 28, 1996

MCI'S POSTHEARING BRIEF

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, MCI) hereby file their posthearing brief.

EXECUTIVE SUMMARY

This arbitration proceeding, and others like it, will shape the future of local competition for years to come. This is particularly true with respect to GTEFL which, unlike BellSouth and the other RBOCs, has already entered the interLATA long distance market. While BellSouth has some incentive to open its local markets to competition in order to meet the checklist requirements that are a prerequisite to its entry into the interLATA market, GTEFL has absolutely no incentive to open its local markets to competition. Instead, GTEFL has every incentive to delay entry as long as possible, so that it can retain a preferred position as the only "one-stop" provider of a full array of local and long distance telecommunications services. For this reason, it is vitally important that the Commission

require GTEFL to take the steps necessary to permit local competition to begin to develop, and that the Commission be especially vigilant to prevent GTEFL from acting in an anticompetitive manner, such as by delaying the introduction of operations support systems necessary to allow other carriers to compete on an equal basis.

The Telecommunications Act of 1996 (Act) sets forth numerous standards that the Commission must apply in resolving the issues submitted for arbitration. Among these is the provision in Section 252(c) which states that the Commission must apply the requirements set forth in the regulations prescribed by the Federal Communications Commission (FCC) pursuant to Section 251 of the Act (FCC Rules).

The United States Eighth Circuit Court of Appeals has entered a partial stay of the FCC Rules. The Commission is, of course, required to apply the remaining, unstayed provisions of those rules. Although the Commission is not required at this time to apply the pricing provisions of those rules as a result of the stay, it is still required to comply with the pricing provisions of the Act.[1] The Eighth Circuit did not consider, much less decide, whether the FCC's pricing rules are inconsistent with the Act. Rather, the stay was issued solely on the ground that a question exists about the FCC's authority to promulgate pricing rules.

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[1] The Commission will be bound by the FCC's pricing rules in the event the stay is dissolved prior to the date of the Commission's vote in this docket.

As will be shown later in this brief, the pricing principles contained in the FCC Rules are consistent with sound economic principles and with the terms of the Act. The Act requires the Commission to set rates based on forward-looking economic cost (TELRIC). Any other costing methodology, such as one based on historical costs, would effectively create a barrier to entry and would violate the Act. MCI therefore urges the Commission to adopt pricing principles in this proceeding which follow the FCC Rules to the maximum extent possible, consistent with the Commission's view of any Florida-specific public interest factors.

In resolving the numerous issues presented in this proceeding, the Commission should ask:

- Does its decision create an environment that promotes investment and the development of a flourishing array of new services?
- Does it establish prices that mirror a fully competitive market?
- Does it provide vigilant oversight against anti-competitive practices?

Six of the major issues in this proceeding are the extent to which GTEFL is required to provide the unbundled network elements requested by MCI; the appropriate price for such network elements; the prices, terms and conditions for interconnection and for the transport and termination of local traffic; the extent to which GTEFL is required to allow its services to be

resold; the appropriate wholesale price for such resold services; and how to ensure that MCI is provided access to operational support systems that is equal in quality to GTEFL's access to such systems.

With respect to unbundled network elements, the Commission should strictly scrutinize any claim by GTEFL that unbundling is not technically feasible. Unless the Commission applies an appropriate standard for technical feasibility, GTEFL will be able to create barriers to competitive entry by MCI and others. The Commission should also reject GTEFL's claim that MCI should not be allowed to combine unbundled network elements in any manner it chooses, even if that combination is used to provide a service that GTEFL provides today. Prices for unbundled network elements should be based on their forward-looking economic cost in accordance with total element long-run incremental cost (TELRIC) principles. The Hatfield Model results presented by MCI in this docket include all costs that would be incurred by an efficient wholesale provider of unbundled network elements, and therefore provide a reasonable basis for setting rates consistent with TELRIC principles.

With respect to interconnection, MCI should be permitted to interconnect at any technically feasible point on GTEFL's network that MCI designates and should not be required to interconnect at more than one point per LATA. MCI and GTEFL must use the same MCI-designated interconnection point for traffic in each direction. Prices for transport and termination of local traffic

should be based on their forward-looking economic cost in accordance with total element long-run incremental cost (TELRIC) principles.

With respect to resale of GTEFL services, the Commission should not permit GTEFL to withhold any services from resale, nor to impose unreasonable or discriminatory restrictions or limitations on resale. The prices for resold services should be set to reflect the retail costs that GTEFL avoids when it provides services on a wholesale basis. The avoided cost study presented by MCI in this docket provides a reasonable basis on which to set a 17.68% discount for such wholesale services.

With respect to operational support systems, the Commission should require GTEFL to provide real-time, interactive electronic interfaces to support the ordering, provisioning, maintenance and billing functions as quickly as such systems can be deployed. GTEFL's failure to provide MCI with access to the same interfaces that GTEFL uses today will impair MCI's ability to offer its customers the same quality of service that end users currently receive from GTEFL.

ISSUE-BY-ISSUE ANALYSIS

The following is a summary of MCI's position on the issues identified in the prehearing order, together with a discussion of the applicable portions of the Act, the FCC Rules, and the evidence that supports MCI's position on each issue.

Issue 1. What services provided by GTEFL, if any, should be excluded from resale?

MCI: The Act requires GTEFL to offer for resale any telecommunications service that it provides at retail to end use customers who are not telecommunications carriers. Thus no retail services should be excluded from resale. Specifically, residential service, promotions, contract services, and Lifeline and LinkUp services must be made available for resale.

Section 251(c)(4) of the Act establishes GTEFL's obligation to offer services for resale. Under that section, GTEFL has the duty:

> (A) *to offer for resale* at wholesale rates *any telecommunications service* that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) *not to prohibit*, and not to impose unreasonable or discriminatory conditions of limitations on, *the resale of such telecommunications service*, except that a State commission may, consistent with regulations prescribed by the [FCC] under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

The Act makes no exceptions to this resale obligation. Thus there is no basis for GTEFL to refuse to offer any retail service for resale.

GTEFL nevertheless takes the position that it will not offer the following services for resale: services priced below cost,[2] existing contract service arrangements, promotions, and public

[2] By this, GTEFL means residential local exchange service. (Wellemeyer, T 1465; McLeod, T 1321)

and semi-public pay telephone lines.[3] (Wellemeyer, T 1445-6, 1448) GTEFL claims either that these services are not services provided at retail to end user customers who are not telecommunications carriers OR that its proposed prohibition on resale is a "reasonable and nondiscriminatory limitation" that is permitted by the Act. (See Wellemeyer, T 1442, 1445, 1460)

This latter claim must be rejected outright as a matter of law. The Act does not permit "prohibitions" on the resale of retail telecommunications services. The "conditions or limitations" that can be imposed on a reasonable and nondiscriminatory basis thus refer to limitations that constitute something less than a total prohibition on resale. GTEFL ignores this statutory distinction, and treats a prohibition on resale as simply another type of condition or limitation. This interpretation is at odds with the plain language of the Act and must be rejected.

Each of the services that GTEFL would exempt from resale will be addressed briefly.

Residential Services. GTEFL refuses to offer residential exchange services for resale. GTEFL's rationale for refusal is that (1) while the FCC "declined to limit" resale offerings to preclude resale of below cost services, it "did not prohibit a resale restriction," and (2) GTEFL would be prevented from

[3] GTE initially opposed resale of grandfathered services and discounted calling plans, but now has agreed to offer such services for resale. (Wellemeyer, T 1442, 1444)

covering its total costs if it were required to resell services that are provided below cost.

GTEFL's first point is based on a misreading of the FCC Order. (See Wellemeyer, T 1518-20) Paragraph 956 of the FCC Order, from which Mr. Wellemeyer quoted out of context, provides that:

> 956. Subject to the cross-class restrictions discussed below, we believe that below-cost services are subject to the wholesale rate obligation under section 251(c)(4). First, the 1996 Act applies to any "telecommunications service" and thus, by its terms, does not exclude these types of services. Given the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain services where the 1996 Act does not specifically do so.

It is questionable whether the FCC, by rulemaking, could have limited the incumbent LECs' resale obligations where the Act did not specifically do so. It is clear, however, that this Commission, by order, cannot limit that obligation.

GTEFL's second point regarding its inability to recover its total costs does not have any validity in light of the avoided cost pricing standard for resold services. Assuming that a service is priced below cost, the end user receives an implicit subsidy today. If tomorrow the service is sold at wholesale to MCI at a price which properly takes into account the costs that GTEFL avoids by selling the service at wholesale rather than retail, GTEFL receives revenues from MCI which cover as much of GTEFL's costs as if it had sold the service at retail. When MCI sells the service to the end user, the end user gets the same

implicit subsidy as he receives today. So long as MCI is permitted to resell residential service only to residential customers -- a cross-class selling restriction which MCI accepts (Price, T 799) -- GTEFL is no better and no worse off than it is today. (Price, T 850-1, 903-4; see FCC Order ¶ 956)

LinkUp and Lifeline. LinkUp and Lifeline are subsidized programs designed to assist low income residential customers. Although GTEFL did not mention these programs specifically, they would apparently be covered by its refusal to offer for resale any service that GTEFL believes is priced below cost. It is entirely appropriate to place a limitation which restricts the resale of these services to customers who would be eligible to obtain the service directly from GTEFL. (Price, T 799) It is inappropriate, however, to prohibit their resale. GTEFL will continue to receive any subsidy funds associated with the offering of these services for resale.

Contract Service Arrangements. A contract service arrangement is simply a retail service that has been priced pursuant to contract rather than tariff. If GTEFL were permitted to preclude the resale of contract service arrangements, it would be able to use such contracts to provide differential pricing to customers that it knows its competitors could not meet. (Price, T 798) This would enable GTEFL to avoid its obligation under the Act to make all retail services available for resale.

GTEFL says that it will agree to offer "new" contract service arrangements for resale, but will not agree to offer

existing contract services for resale at wholesale rates. GTEFL gives no explanation, however, of how its refusal to sell existing CSAs complies with the resale requirements of the Act. (Wellemeyer, T 1148) And GTEFL's offer is not as generous as it would appear on a casual reading. On cross-examination, Mr. Wellemeyer clarified that GTE does not intend to resell any CSA -- whether that CSA exists today or comes into existence at some point in the future. When GTEFL offers to resell "new" CSAs, it means only that GTEFL will negotiate a new CSA with its competitor on a case-by-case basis, the same way that it would negotiate a new CSA with any other party. (Wellemeyer, T 1521-3) This proposal is inconsistent with the plain requirements of the Act, and must be rejected.

Promotions. GTEFL objects to providing promotions for resale at any price. The FCC, in an unstayed portion of its rules, held that all promotions must be available for resale, but that the wholesale discount can be applied to the ordinary retail rate (rather than the promotional rate) if the promotion is for less than 90 days and the LEC does not use successive promotions to avoid the wholesale rate obligation. 47 C.F.R. §51.613(a)(2). MCI must therefore be permitted to resell promotions of 90 days or less at either the promotional price or at a discount off the nonpromotional retail rate.

Public and Semi-Public Pay Telephone Lines. GTE's rationale for refusing to resell public pay telephone lines and semi-public pay telephone lines is no more consistent with the Act than its

refusal to offer other services for resale. (See Wellemeyer, T 1445-6) These are telecommunications services offered at retail to persons who are not telecommunications carriers, and thus clearly fall within the resale requirements of the Act.

Issue 2. Should GTEFL be prohibited from imposing restrictions on the resale of GTEFL services?

MCI: Yes. The Act prohibits GTEFL from imposing unreasonable or discriminatory conditions or limitations on the resale of services. No restrictions should be allowed except for user restrictions which permit residential service, grandfathered services, and Lifeline and LinkUp services to be sold only to end users who would be eligible to purchase the service directly from GTEFL.

As noted above, Section 251(c)(4) of the Act establishes GTEFL's obligation to offer services for resale. Under that section, GTEFL cannot "impose unreasonable or discriminatory conditions or limitations on, the resale of. . .telecommunications service," except for certain cross-class selling restrictions.

MCI agrees that certain cross-class selling restrictions are appropriate, in particular those which would limit resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such services directly from GTEFL. (Price, T 799, 850)

GTEFL does not appear to propose any resale restrictions beyond those covered in Issue 1 (i.e., services it refuses to resell), nor does it attempt to rebut the presumption that any

limitations on resale that might be found in its tariffs are unreasonable. As the FCC Order states:

> 939. We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include limitations contained in the incumbent LEC's underlying tariff. . . .

To avoid potential controversy in the future, the Commission should rule that existing tariff restrictions do not apply to limit the resale of GTEFL's services. In particular, GTEFL has agreed to resell discounted calling plans. (Wellemeyer, T 1464) The Commission's order should therefore make it clear that any minimum usage requirements in those tariffs do not apply to individual end users who obtain service from a reseller, but apply to the reseller only on an aggregate basis. (See FCC Order ¶ 953: "it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in the aggregate, under the relevant tariff, meets the minimal level of demand.")

Issue 3. What are the appropriate wholesale rates for GTEFL to charge when AT&T or MCI purchase GTEFL's retail services for resale?

MCI: Section 252(d)(3) of the Act requires wholesale rates to be based on the retail rates for the service less costs that are avoided by GTEFL as a result of offering the service on a wholesale basis. The application of this standard produces wholesale rates for GTEFL that are 17.68% below the current retail rates.

Section 252(d)(3) of the Act provides the methodology for determining the wholesale price for resold telecommunications services:

> (d) PRICING STANDARDS.--
>
> (3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES.-- For purposes of section 251(c)(4), a State commission shall determine the wholesale rates on the basis of retail rates charged to subscribers for the telecommuni-cations service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

The purpose of calculating wholesale rates in this manner is to quantify, and deduct, costs of GTEFL that are not incurred in the provision of service at wholesale. In order to determine the appropriate wholesale rates, all -- not just part -- of GTEFL's retailing costs must be deducted from the retail rates. (See Price, T 796-7, 807, 851-5)

The fundamental feature of the avoided cost calculation presented by Mr. Price is that it determines and excludes the total amount of GTEFL's retailing costs in calculating the wholesale discount. (Price T. 851, 859-60) In this regard, it leaves in the wholesale price only those costs that are incurred in the provision of the service at wholesale. This calculation shows that the appropriate wholesale discount for GTEFL is 17.68%. (Price, T 807; Ex. 22, DGP-3)

If anything, MCI's approach to calculating GTEFL's avoided costs is conservative, and tends to understate the amount of the appropriate discount. For example, MCI made the conservative

assumption that indirect costs are avoided in proportion to the ratio of avoided direct costs to total direct and indirect costs, rather than the ratio of avoided direct costs to total direct costs. (Price, T 872) MCI's study -- in an effort to be true to the methodology used by the FCC to calculate the default proxies -- also did not consider some additional categories of costs which MCI's original filing at the FCC had demonstrated would in fact be avoided. (Price, T 805-6, 926-7) To the extent that MCI had not made either of these conservative assumptions, and instead had applied the literal language of either the FCC Rules or the Act, the discount it calculated would have been higher.

Mr. Wellemeyer's calculation, on the other hand, significantly understates the appropriate discount. First, his study excludes only a portion of GTEFL's retailing costs, on the theory that GTEFL will continue to be a retail service provider and will continue to incur those retailing costs. What Mr. Wellemeyer's approach ignores, however, is that these retailing costs can and will be recovered through its retail rates, and under the Act should not be recovered through its wholesale rates. (Price, T 854-5, 878-9) In preparing his avoided cost study, for example, Mr. Wellemeyer left in entire categories of costs that have nothing to do with the provision of wholesale services -- including such things as advertising, aircraft costs, development costs for new ventures, and advanced product planning for GTEFL's video services product line. (Wellemeyer, T 15114-5) Mr. Wellemeyer's study even assumes that <u>none</u> of GTEFL's general

and administrative costs will be avoided by offering services at wholesale rather than retail. This approach to identifying avoided costs ignores the clear intent of the Act to deduct the costs associated with retailing when setting the wholesale price for a service. (Price, T 851)

Mr. Wellemeyer's approach also does not even attempt to calculate a Florida-specific discount. (Price, T 855) Instead, he bases his analysis on nationwide figures, and thereby produces the same residential discount ($0.83/line/month) and business discount ($1.06/line/month) for each of GTE's 28 states. (Wellemeyer, T 1420, 1513)

Mr. Wellemeyer's methodology produces a residential discount of only 6.6% and a business discount of only 5.5%. (Wellemeyer, T 1421-2) These are well below the 11.25% discount that Mr. Wellemeyer calculates when he purports to use the FCC's avoided cost methodology (Wellemeyer, T 1433), and even further below 17.68% that Mr. Price's conservative application of the FCC methodology produces.

Mr. Wellemeyer does not stop here, however. He recognizes that when GTEFL loses a local customer to competition it likely will lose the opportunity to profit from the sale of intraLATA toll service to that customer as well. Mr. Wellemeyer labels this loss of toll contribution (net of access charge contribution) an "opportunity cost" and proposes to adjust the discount downward to keep in GTEFL's pockets the same contribution that GTEFL would have received if it had not lost

the customer. (Wellemeyer, T 1423-4, 1511-3) This mathematical gyration produces a business discount of only $0.30 per line per month. This is less than a 1% discount when compared to an average business line rate in the range of $33 per month. (Wellemeyer, T 1512) This "make whole" approach advocated by Mr. Wellemeyer is not only inconsistent with the avoided cost standard in the Act, it is inconsistent with sound public policy. This approach would ensure that competition puts no downward pressure on GTEFL's rates -- GTEFL would remain indifferent to whether it loses a customer or not because its contribution would be protected in either event. (Price, T 858-9) The Commission has previously rejected a make-whole approach to pricing unbundled elements (see Order No. PSC-96-0811-FOF-TP, page 17), and should reject it again as an approach to pricing wholesale services.

Issue 4a. Should GTEFL be required to implement a process and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are at least equal in quality to those that GTEFL provides itself and its affiliates?

MCI: Yes, GTEFL should be required to implement a process and standards to ensure that MCI receives services that are at least equal in quality to what GTEFL provides to itself or its affiliates. In addition, GTEFL should meet a series of specified technical standards and performance measures tailored to the competitive environment.

In order to compete with GTEFL, MCI must be able to offer at least the same level of quality that GTEFL provides to its customers. To monitor that performance, GTEFL should be required

to meet objective measures of service quality and to provide periodic reports to MCI on the level of service provided to MCI and to its other customers, including end users. (deCamp, T 1025-6, 1046-8)

The details of such performance standards are best left to negotiations by the parties. (deCamp, T 1025-6) To ensure that GTEFL recognizes its obligation to negotiate these matters, however, the Commission should find as a matter of policy that the final agreement submitted to it must contain appropriate technical standards and performance measures. The Commission should also find as a matter of policy that adherence to these standards can be enforced through a system of credits for failure to meet the applicable standards.

Issue 4b. Should GTEFL be required to provide AT&T and MCI loop testing information prior to the establishment of service to an AT&T or MCI customer?

MCI: Yes, in any case in which GTEFL would have performed loop testing if the loop was to be used by GTEFL in the provision of its own local exchange service.

In order to ensure that new entrants achieve parity as service providers, GTEFL should be required to provide loop testing information to the new entrants in any case where GTEFL would have provided loop testing information to itself in the provision of its own local exchange service. (Shurter, T 221, 288)

Issue 5. What are the appropriate contractual provisions for liability and indemnification for failure to meet the requirements contained in the arbitrated agreement?

MCI: The appropriate contractual provisions for liability and indemnification are set out in the testimony of Mr. Inkellis. Without such provisions, GTEFL will have no incentive to honor its contractual commitments to MCI, and in fact would have a financial incentive not to meet those commitments.

One of the major unresolved contractual issues between the MCI and GTEFL relates to the appropriate language for the liability and indemnification provisions of the contract. The appropriate language for such provisions is set forth below, and places reciprocal obligations on both parties to the agreement. (Inkellis, T 1065-7). The highlighted portions show the particular provisions which GTEFL refuses to accept. It should be noted that this language has been accepted by GTE-California in agreements with MCI and at least one other competitive carrier, by BellSouth, and by Pacific Bell. (Inkellis, T 1074)

> Limitation of Liability. Neither Party shall be liable to the other for any lost profits, or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited in the event of its willful or intentional misconduct, including gross negligence, ***its repeated breach of any one or more of its material obligations under this Agreement,*** or its acts or omissions causing bodily injury, death or damage to tangible property, ***or with respect to the Indemnifying Party's indemnification obligations under this Agreement.***
>
> Indemnity. Each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and

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

The principal difference between the parties is that GTEFL is unwilling to take responsibility for the natural consequences that would flow from its failure to provide interconnection services to MCI in accordance with the terms that will be contained in the arbitrated agreement. (Inkellis, T 1067) Without the disputed language, GTEFL could repeatedly breach its obligation to meet due dates for installing interconnection circuits (or unbundled loops or resold services) by significant margins, yet be totally free from liability unless MCI could prove that such failures were the result of gross negligence or intentional misconduct. (Inkellis, T 1070, 1099-1100)

And these types of breaches would at once benefit GTEFL and harm MCI. For example, if GTEFL repeatedly failed to meet due dates for installation of unbundled loops or resold services, GTEFL would financially benefit from the delay (by keeping the customer for an additional period of time), and financially harm MCI, both by depriving MCI of revenues and by hurting MCI's image as a quality provider of service. Similarly, if GTEFL failed to provide interconnection circuits in a timely manner, MCI's entire

customer base could experience unsatisfactory blocking rates, causing MCI to lose revenues and disgruntled MCI customers to reconvert to GTE. (Inkellis, T 1068-71)

The need for GTEFL to accept responsibility for the consequences of its actions is particularly acute in the current situation, since the normal remedy of one who is harmed by breach of contract -- to obtain replacement services in the open market and recover any increased cost from the breaching party -- is not available to MCI. GTEFL is the only source for interconnection, unbundled elements, and resold services. Yet GTEFL and its employees will lack the normal commercial incentives to try to satisfy a major customer, since the better GTEFL's employees perform under the interconnection agreement, the better able MCI will be able to compete with GTE in its local exchange market. (Inkellis, T 1067, 1078-9, 1099-1100)

GTEFL's response is to throw up a parade of horribles in which a number of insignificant breaches are followed by one major breach, which causes tremendous liability for GTEFL.[4] (See Inkellis, T 1082-5) What GTEFL ignores is that it will be held liable for consequential damages only if there are ***repeated breaches*** of ***material obligations*** under the agreement, if MCI is able to convince a trier of fact that this standard has been violated, and if MCI can prove that it was damaged by the breach.

[4] Even a major breach, if caused by factors beyond GTEFL's control, would be excused under the force majeure clause.

In this situation, good public policy dictates that GTEFL be held liable for the consequences of its actions.

Issue 6a. Should GTEFL be required to provide real-time and interactive access via electronic interfaces to perform the following:

Pre-Service Ordering
Maintenance/Repair
Service Order Processing and Provisioning
Customer Usage Data Transfer
Local Account Maintenance

MCI: Yes. Real-time, interactive access via electronic interfaces is required in order for MCI to be able to provide the same quality of service to its customers as is currently provided by GTEFL.

Section 251(c)(3) of the Act requires GTEFL to provide "nondiscriminatory access to network elements on an unbundled basis." Section 3(45) of the Act defines network element to include "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

The FCC concluded that operations support systems and the information they contain fall squarely within the definition of "network element" and must therefore be unbundled upon request. (FCC Order ¶ 516) Further, the requirement for nondiscriminatory access means that if GTEFL's internal systems provide such information electronically, similar electronic access must be provided to competing carriers. (FCC Order ¶ 516) The FCC codified this requirement in Section 51.319(f) of its Rules, which requires specified operations support systems functions --

including each of those requested by MCI -- to be made available as expeditiously as possible, but in any event no later than January 1, 1997.

In order to provide service that is equal in quality to that provided by GTEFL, it is essential that MCI have real-time, interactive access to the various operations support systems. (deCamp, T 1021-2, 1046-7) GTEFL, on the other hand, refuses to provide real-time, interactive access to its provisioning or repair and maintenance systems. (Drew, T 2066-7) Instead, GTEFL takes the position that MCI will receive "service parity" so long as GTEFL personnel process an order received from MCI using the same systems that those personnel use to process an order received directly from an end user. (See Drew, T 2015-6) This is simply wrong -- the use of the same systems is not parity. MCI will not achieve parity with GTEFL until an MCI customer service representative can access the same operations support systems and make the same electronic entries into those systems as a GTEFL customer service representative. (deCamp, T 1036-8)

GTEFL proposals for access to operational support systems all involve a manual element. For example, if MCI wants to obtain access to information about a customer's existing service, it must call a GTEFL customer service representative to obtain that information.[5] This is neither efficient nor inexpensive. Mr. Wellemeyer's confidential exhibit shows that such an inquiry

[5] See Issue 9 for discussion of the terms and conditions on which MCI should be given access, with the customer's authorization, to such information.

will take a significant amount of time, and, under GTEFL's proposal, MCI would incur a substantial per occurrence charge for making such inquiries. (Wellemeyer, T 1516-7; Conf. Ex. 36, A-136)

When MCI needs to obtain a telephone number assignment and a service installation due date for a new MCI customer, MCI cannot directly access GTEFL's electronic systems, but must put its customer on hold and dial an 800-number to talk to a GTE service representative. (Drew, T 2020; deCamp, T 1050-1) When MCI subsequently submits an order for that customer's service, and transmits the order electronically to GTEFL, there will still be human intervention as a GTEFL employee enters the data manually into GTEFL's order processing system. (Drew, T 2021) Later, if MCI needs to make a trouble report, it cannot input that report directly into GTEFL's system, but must place a telephone call to a GTEFL repair center, where a GTEFL customer service representative enters the data into the system. (Drew, T 2024-5) Each of these manual processes introduces costs, delays, and potential inaccuracies which would be avoided if MCI had direct electronic access to GTEFL's pre-ordering, provisioning, and maintenance and repair systems. Based on MCI's experience in the access arena, the availability of real-time interactive interfaces is a key driver of the timeliness of repairs, and the absence of such interfaces puts MCI at a significant competitive disadvantage. (deCamp, T 1043)

As described in detail in the testimony of Mr. deCamp, GTEFL should be required to provide real-time access to support the pre-ordering and ordering processes, the provisioning and installation functions, and the maintenance and trouble resolution functions. (deCamp, T 1027-32) In addition, MCI must have access to the entire range of GTEFL's operations support databases. (deCamp, T 1033-35) Without such access, GTEFL will retain an unfair market advantage and will be able to thwart competitive entry into the local exchange market. (deCamp, T 1035)

In addition to access to these support systems, MCI needs an administratively simple "transfer-as-is" mechanism to transfer customers from GTEFL to MCI in cases where the customer wants to obtain from MCI the same services that it obtains today from GTEFL. (deCamp, T 1029) GTEFL appears determined to frustrate this process, however, by insisting that (1) the written order for conversion of a customer must include information relating to all existing, new and disconnected services for the customer (Drew, T 2019), while at the same time insisting that (2) MCI cannot have access to information about the customer's existing service unless it has previously provided a written letter of authorization from the customer. (Drew, T 2052) These two proposed requirements would seriously impair MCI's ability to attract customers from GTEFL. In order to verify customer orders and avoid rejection by GTEFL, MCI must have accurate information about the details of the customer's account, and such information

must be available in a timely manner. (deCamp, T 1039) Residential and small business sales generally take place during the course of a single telephone call, in which all sales order and pre-ordering activities occur. Unless MCI's salespeople have on-line, real-time access at that point to the customer's service records, MCI will not be able to accurately quote prices for service comparable to what the customer currently receives, nor to accurately place an order to replicate the customer's existing service. (deCamp, T 1039) If MCI does not have access to the information necessary to take and process the customer's order in an error-free manner, the customer will perceive this as the fault of the new provider. (deCamp, T 1040)

The Commission should therefore rule that GTEFL's proposals do not achieve service parity, that GTEFL must provide real-time interactive access to its operations support systems on a timetable determined in accordance with Issue 6b, and that GTE must provide an administratively simple "transfer-as-is" mechanism for customers who choose to move from GTEFL to MCI.

Issue 6b. If this process requires the development of additional capabilities, in what time frame should they be deployed?

MCI: The FCC Rules require such interfaces to be deployed by January 1, 1997. If the Commission determines that it is impossible to deploy the required interfaces by January 1, 1997, interim arrangements should be implemented by that date and permanent arrangements should be implemented as soon thereafter as possible.

Electronic bonding is MCI's interface of choice for all operations systems, but MCI recognizes that electronic bonding

for all systems may not be realistic in the near-term. The industry Electronic Communications Implementation Committee has only recently agreed to review electronic bonding interfaces with respect to local operations systems.

Similarly, the issue of service order processing and provisioning is currently before the industry Order and Billing Forum, which has published the initial draft of the Local Service Ordering Guideline (LSOG) and the Local Service Request (LSR)/Industry Support Interface (ISI) for ordering all unbundled and resold local services. (deCamp, T 1040-1, 1042-3) Many issues remain to be resolved, however, so it is apparent that non-interactive, non-real-time interfaces will continue to be in place for an interim period of time.

In order to comply with the Act and the FCC Order, the Commission should direct GTEFL to file a schedule detailing its plans for developing real-time, interactive electronic interfaces by the FCC's deadline of January 1, 1997. The Commission should further direct GTEFL to specify, if it cannot meet that deadline, the impediments it faces; to outline its plans for developing the required electronic bonding; to identify the date by which deployment of such systems will be possible; and to detail the interim systems it plans to implement in the absence of electronic bonding.

GTEFL has no incentive to develop these interfaces on its own. In fact, since GTEFL is in the unique situation of already having entered the interLATA business, it has the incentive to

delay the deployment of such systems as long as it possibly can. (deCamp, T 1041) It is only when state commissions require GTEFL to develop a realistic timetable for system deployment -- as the Georgia Commission did earlier this year -- that GTEFL will begin to take seriously its obligation to provide access to such systems on a nondiscriminatory basis. Even a Commission order is no guarantee of success -- the parties in Georgia have had some difficulty in reaching agreement on a means to implement that commission's order.

Issue 6c. What are the costs incurred, and how should those costs be recovered?

MCI: Each party should bear its own costs of implementing the necessary interfaces.

The costs of implementing electronic interfaces have not been identified. It is clear that there will be shared benefits to such interfaces, however, since GTEFL will be able to eliminate costly, manual processes that are required in the absence of electronic bonding. For example, Mr. Wellemeyer testified one reason the nonrecurring charges for resold services and unbundled loops are so high is that the work activities that will be required are comparable to the costs that are incurred today to respond to retail service orders from end users. (Wellemeyer, T 1500) Unless and until GTEFL establishes an electronic interface so that a requesting carrier can place a service order without human intervention, Mr. Wellemeyer predicted that GTEFL would not see any significant reduction in

the activity required for service order processing. (Wellemeyer, T 1500-03)

With an electronic order entry interface, however, GTEFL will be able to eliminate manual intervention and will experience a reduction in its costs. (See Wellemeyer, T 1500-01) This will make GTEFL a more efficient provider of wholesale services, and means that it will share in the benefits of the enhanced interfaces. GTEFL should experience similar savings once electronic interfaces are available for the other support functions, such as the entry and tracking of repair orders. In this situation, where both parties benefit, each party should bear its own costs of implementing the necessary interfaces. (deCamp, T 1055-6; Shurter, T 198)

Section 251(c)(3) of the Act requires access to operations support systems to be provided on terms and conditions that are just, reasonable, and nondiscriminatory. That standard will not be met if MCI and the other new entrants are required to pay more than their own costs. All parties have the obligation to develop a competitive local market. Requiring new entrants to pay all of the costs for GTEFL systems would place a huge financial burden on the new entrants, would unduly favor GTEFL, and would not be competitively neutral. Establishing a system in which each party bear its own costs would not only reflect the sharing of the benefits, but would also provide GTEFL with the incentive to keep the systems development expense reasonable -- an incentive it

lacks if it can look to its competitors for payment of those costs.

Issue 7a. When AT&T or MCI Resells GTEFL's local exchange service, or purchases unbundled local switching, is it technically feasible: 1) to route 0+ and 0- calls to an operator other than GTEFL's; 2) to route 411 and 555-1212 directory assistance calls to an operator other than GTEFL's; or 3) to route 611 repair calls to a repair center other than GTEFL's?

MCI: Yes. Such routing is technically feasible using either line class codes or AIN capabilities. Such routing is required so that customers of MCI will enjoy dialing parity with customers of GTEFL and to avoid creating a barrier to entry.

FCC Rule 51.319(c)(1)(i)(C)(2) requires GTEFL to unbundle "any technically feasible customized routing functions" provided by a local switch. MCI has requested that GTEFL provide customized routing to allow calls by MCI's local customers to directory assistance (411), repair service (611), or operator service (0-) to be routed to an appropriate MCI platform.[6]

GTEFL claims that such unbundling is not technically feasible. While the basis for that claim is not entirely clear, GTEFL apparently believes that (1) a line class code solution to providing such routing might require an increase in switch capacity, depending on the number of carriers making such requests (Hartshorn, T 1127, 1135-8) and (2) there would be an administrative burden associated with having a customer service representative manually look up the correct line class code for a

[6] It appears that 611 access to repair centers is not an issue, since GTEFL uses 1-800 access to its repair center, and competing carriers can use similar 1-800 access to their own repair centers. (See Price, T 909-10)

particular customer (Hartshorn Depo., Ex. 28, p. 18-25). Neither of these concerns shows a lack of technical feasibility under the controlling definition in the FCC Rules. For example, when asked what it would take to increase the switch capacity to permit such routing, Mr. Hartshorn indicated that GTEFL did not know if any increases would be required, or whether the requests could be met with existing switch capacity. (Hartshorn Depo., Ex. 28, p. 10-11) As Mr. Powers stated, if line class code exhaust is a potential problem, GTEFL should be working proactively with its switch vendors to find solutions. (Powers, T 989) Similarly, the fact that GTEFL customer service representatives who manually look up line class codes today would have a bigger list to look at tomorrow does not even come close to demonstrating technical infeasiblity.

Further, line class codes are only one of the available methods to implement selective routing. Bell Atlantic-Pennsylvania has recently agreed to implement selective routing using AIN capabilities. The fact that another incumbent LEC can use this technology undercuts any claim that use of AIN in this application is not technically feasible. (Price, T 841) If GTEFL needs to undertake some additional development work to employ AIN for this purpose, it could make use of line class codes to provide selective routing capability for an interim period while such development work is underway.

Issue 7b. If this process requires the development of additional capabilities, in what time frame should they be deployed?

MCI: There is no evidence that line class codes cannot be used immediately to provide selective call routing.

There is no evidence that GTEFL cannot begin immediately to use line class codes to implement selective call routing.

Issue 7c. What are the costs incurred, and how should those costs be recovered?

MCI: GTE should recover only the forward-looking incremental cost of implementing such capability in the most efficient manner possible. GTE should bear the burden of proving such costs.

Where GTEFL must incur costs to provide a network capability to a new entrant, GTEFL should be entitled to recover no more than the TELRIC of implementing such capability in the most efficient manner possible. (See Goodfriend, T 727) GTEFL has not shown that there will be any costs involved in employing line class codes to provide selective call routing. Since GTEFL has not borne its burden of proving such costs, no recovery should be permitted at this time.

Issue 8a. Should GTEFL be required to provide AT&T and MCI with the billing and usage recording services that AT&T and MCI requested?

MCI: Yes.

In order for MCI to accurately bill end user customers, GTEFL must provide MCI with accurate billing information in a timely manner. (deCamp, T 1032) GTEFL appears to agree that it

will generate and electronically transmit daily file records to MCI with respect to MCI's customers. (Drew, T 2068) The Commission should order that such billing information be exchanged on a timely basis, and should require the parties to agree on a specific format for such data exchange as part of the arbitrated agreement to be submitted at the conclusion of this proceeding.

Issue 8b. If this process requires the development of additional capabilities, in what time frame should they be deployed?

MCI: Billing and recording services should be available by January 1, 1997.

There is no evidence that additional capabilities will be required for GTEFL to provide MCI with the necessary billing information.

Issue 8c. What are the costs incurred, and how should those costs be recovered?

MCI: GTE should recover only the forward-looking incremental cost of implementing such capability in the most efficient manner possible. GTE should bear the burden of proving such costs.

The applicable cost recovery principle -- pricing at no more than the TELRIC of providing the capability in the most efficient way possible, is the same as the principle that applies to implementation of selective call routing. See Issue 7c, above. Since GTEFL has not demonstrated that any additional capabilities will be required to provide this billing information to MCI, it

has not borne its burden of proving that there is any cost to be recovered at this time.

Issue 9. What type of customer authorization is required for access to customer account information and transfer of existing services?

MCI: GTEFL should provide access to customer account information and should transfer existing services pursuant to a blanket letter of authorization in which MCI commits that it will access such information and transfer such services only after obtaining the customer's consent.

MCI must obtain the customer's authorization to access that customer's account information or to transfer existing services from GTEFL to MCI. That authorization should be evidenced by a blanket letter of authorization, in which MCI represents that it will access such information, and make such transfers, only with the customer's permission. (deCamp, T 1038, 1056-7) GTEFL, on the other hand, initially took the position that it would provide such information to MCI only upon written authorization from the customer, and would transfer customers only with a written letter of authorization. (Drew, T 2052, 2065) On cross-examination, Mr. Drew clarified that a blanket letter of authorization would suffice for customer transfers, and that while GTEFL was currently insisting on a specific LOA to disclose customer information, it might be possible to work out an arrangement based on oral authorization. (Drew, T 2089-90)

The blanket letter of authorization procedure proposed by MCI for access to customer specific information is consistent with the requirements of both state and federal law. Section

222(c)(1) of the Act prohibits disclosure of customer proprietary network information (CPNI) "[e]xcept. . .with the approval of the customer." Similarly, Section 364.24(2), Florida Statutes, prohibits such disclosure "except as authorized by the customer." It is important to note that neither the federal law nor state law requires that such approval or authorization be in writing.[7] GTEFL's insistence on written authorization is thus simply another attempt to create artificial barriers to competitive entry. (Shurter, T 194-5)

Issue 10. What are the appropriate rates, terms, and conditions, if any, for call guide pages, directory distribution, and inclusion of AT&T's and MCI's logos on the directory cover?

MCI: MCI should have the same ability as GTEFL to have information regarding its services published in the call guide pages and to have its logo on the directory cover. GTEFL should be required to distribute directories to all customers at no charge.

New entrants should have the same ability as GTEFL to have information regarding their services published in the call guide pages and to have their logo appear on the directory cover. (Shurter, T 225-7) GTEFL proposes to limit the number and content of call guide pages and to prohibit logos other than its own on the directory cover. (Peters, T 1188-9) In particular, GTEFL proposes to limit the number of call guide pages available to MCI and to preclude MCI from placing any product information

[7] Section 222(c)(2) of the Telecommunications Act requires a carrier to disclose such information upon "written request" of the customer. Section 222(c)(1), in contrast, permits such disclosure "with the approval of the customer," which does not have to be in writing.

on those pages. (Peters, T 1188-9) Unless GTEFL also agrees to remove GTEFL product information from its call guide pages, these proposed restrictions place MCI and other new entrants at a competitive disadvantage and deny consumers the benefit of easy access to information about the competitive alternatives available to them. (See Price, T 826; Shurter, T 226-7)

GTEFL should be required to distribute directories to MCI customers on the same basis as it distributes directories to its own customers. In particular, GTEFL should not be allowed to charge MCI or its customers for secondary distribution except to the extent that it imposes such a charge on its own customers. (Shurter, T 226)

Issue 11a. Should GTEFL be required to provide AT&T and MCI access to GTEFL's directory assistance database?

MCI: Yes. MCI should have the option of accessing GTEFL's directory assistance database either through a real-time interactive interface or through the purchase of information resident in the database. In addition, MCI should have the option to route DA calls to GTEFL's operators.

MCI should have three options for providing directory assistance service. First, it should have the option to have real-time interactive access to GTEFL's directory assistance (DA) database. Second, MCI should have the option to purchase the information in GTEFL's DA database (with daily updates) in order to populate an MCI database that would be accessed by MCI's own operators. Third, MCI should have the option to route DA calls to GTEFL's operators. (Price, T 820, 822-3, 915-8)

Issue 11b. If this process requires the development of additional capabilities, in what time frame should they be deployed?

MCI: The option to purchase database information does not require the development of additional capability and should be available immediately. Other options should be available by January 1, 1997.

The purchase of database information involves nothing more than the routine exchange (electronically or on magnetic tape) of existing database information. No additional capability is required, so this form of data exchange should be available immediately. The option for electronic access to GTEFL's database should be provided by the January 1, 1997 date established by the FCC for access to all unbundled network elements. To the extent that GTEFL is required to develop any additional interfaces to support this access, the timetable for such development should be established and enforced through the mechanisms discussed in Issue 6b, above, for operations support systems.

Issue 11c. What are the costs incurred, and how should those costs be recovered?

MCI: GTE should recover only the forward-looking incremental cost of implementing such capability in the most efficient manner possible. GTE should bear the burden of proving such costs. The cost associated with the database information purchase option should be very small.

The applicable cost recovery principle -- pricing at no more than the TELRIC of providing the capability in the most efficient way possible -- is the same as the principle that applies to implementation of selective call routing. See Issue 7c, above.

Since GTEFL has not demonstrated that any additional capabilities will be required to provide DA information to MCI on magnetic tape, any cost associated with that option should be very small or nonexistent.

Issue 12. How should PIC changes be made for AT&T's and MCI's local customers?

MCI: GTEFL should not accept a PIC change directly from an IXC for an MCI local customer; such requests should be made by the IXC through MCI.

Today, a monopoly local service provider such as GTEFL accepts PIC changes directly from its local customer or from an IXC. Tomorrow, GTEFL proposes to continue to accept PIC changes from an IXC for MCI's local customers who are served by the resale of GTEFL's services. This is inappropriate.

Just as the IXC's request today must be submitted to the customer's local service provider (i.e. GTEFL will not accept a PIC change for a customer of BellSouth), the IXC's request tomorrow should likewise be submitted to the customer's local service provider, in this case MCI. GTEFL does not have a direct relationship with MCI's customer and should not undertake to make PIC changes affecting that customer except when that request is forwarded to it by MCI. (See Shurter, T 219-21, 283-8)

Issue 13a. Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for GTEFL to provide AT&T and MCI with these elements?

Network Interface Device
Loop Distribution

Local Switching
Operator Systems
Dedicated Transport
Common Transport
Tandem Switching
Signaling Link Transport
Signal Transfer Points
Service Control Points/Databases
Loop Concentrator/Multiplexer (AT&T only)
Loop Feeder (AT&T only)
Multiplexing/Digital Cross-connect (MCI only)
DA Service (MCI only)
911 Service (MCI only)
AIN Capabilities (MCI only)
Operations Support Systems (MCI only)

MCI: Each of the items requested by MCI is a network element, capability or function, and it is technically feasible to unbundle each of the requested elements. The Commission should strictly scrutinize any claim by GTEFL that unbundling is not technically feasible to preclude GTEFL from creating barriers to competitive entry by MCI and others.

Section 251(c)(3) of the Act describes GTEFL's duty to provide access to unbundled network elements as follows:

> (3) UNBUNDLED ACCESS.-- The duty to provide, to any requesting telecommunications carrier, for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Sections 51.307 to 51.321 of the FCC Rules flesh out GTEFL's duty to provide unbundled network elements.[8] Those rules require

[8] These portions of the FCC Rules have not been stayed and, under Section 252(c)(1) of the Act, are therefore binding on this Commission.

GTEFL to unbundle seven specifically identified and defined network elements. 47 C.F.R. §51.319. The rules also establish the standards that the Commission must apply in determining what additional unbundled elements must be provided. 47 C.F.R. §51.317. The elements requested by MCI in this proceeding will be discussed in two groups -- elements the FCC Rules provide must be unbundled, and elements that must be evaluated under the FCC-prescribed standards for additional unbundling.

The FCC has identified seven network elements that ***must*** be unbundled. If a carrier requests access to elements other than those seven, the FCC Rules require the Commission to first determine whether unbundling is technically feasible. 47 C.F.R. §51.317(a). If so, the Commission may decline to require unbundling only in certain limited circumstances. 47 C.F.R. §51.317(b).

In making determinations of technical feasibility, the Commission must apply the definition in §51.5 of the FCC Rules:

> Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommuni-cations carrier for such interconnection, access or methods. ***A determination of technical feasibility does not include consideration of economic, accounting, billing, space or site concerns,*** except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. ***The fact that an incumbent LEC must modify its facilities or equipment to respond to***

> ***such request does not determine whether satisfying such request is technically feasible.*** An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access or methods would result in specific and significant network reliability impacts. (emphasis added)

Elements Specifically Identified in FCC Rules

FCC Rule 51.319 lists seven network elements which GTEFL is required to provided on an unbundled basis. These are: (1) the local loop, (2) the network interface device (on a NID-to-NID basis), (3) local and tandem switching capability (including all features, functions and capabilities of the switch), (4) interoffice transmission facilities, (5) signaling networks (including signaling links and signaling transfer points) and call-related databases, (6) operations support systems functions,[9] and (7) operator services and directory assistance facilities.

It appears GTEFL recognizes that it must unbundle local loops, NIDs (on a NID-to-NID basis),[10] tandem switching, interoffice transmission facilities (i.e. dedicated and common transport), signaling links and signaling transfer points, and operator services. The only question for these elements is price, which is covered later in Issue 13b.

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[9] Operations support systems are the subject of Issue 6a, and have been dealt with above.

[10] MCI initially sought interconnection directly to GTEFL's NID. MCI is now willing to accept, at this time, unbundling via a NID-to-NID connection.

GTEFL does appear to question its obligation to provide unbundled local switching as defined in the FCC Rules. The issue raised by GTEFL in this regard relates to the technical feasibility of using the local switch to provide customized routing to another carrier's operator service, directory assistance service, and repair service platforms. This question is covered in Issue 7a, above.

Additional Elements Requested by MCI

In addition to the seven minimum elements specified in the FCC Rules, MCI has asked GTEFL to unbundle loop distribution (where there is an existing cross-connect in GTEFL's network), and multiplexing/digital cross-connect.[11] The multiplexing/digital cross-connect element does not appear to be in dispute except for price.

GTEFL has stated that it will provide loop distribution on an unbundled basis, but only on an individual case basis. (Hartshorn, T 1126) Any time case-by-case decisions are made, however, there are delays. Thus it is important for the Commission not to allow GTEFL to reserve the right to make case-by-case determinations, which could stall competitive entry, in situations where case-by-case analysis is not required. (Powers,

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[11] MCI initially asked GTEFL to provide loop concentration and loop feeder on an unbundled basis. MCI has withdrawn its request for these subloop elements at this time. MCI also initially asked GTEFL to provide unmediated access to various AIN capabilities. MCI is now willing to accept mediated access to service control points (SCPs) through GTEFL's signal transfer points (STPs), which MCI understands is the form of AIN access that GTEFL is willing to provide. MCI reserves the right to make a bona fide request for any or all of these unbundled elements in the future.

T 987) As discussed below, there is no reason to require individual case basis analysis of unbundled loop distribution where MCI seeks interconnection only at existing cross-connect points.

Loops are commonly divided into two portions: loop distribution from a customer's premises to a cross-connect point, such as a feeder distribution interface (FDI) or a loop concentrator/multiplexer; and loop feeder from the cross-connect point to GTEFL's central office. (Powers, T 974; Hartshorn, T 1129) Unbundled loop distribution is necessary to give MCI the flexibility to use its own loop feeder plant where available. For example, MCI has deployed SONET fiber rings in many metropolitan areas (Powers, T 975), including Miami, Tampa and Orlando. By interconnecting its fiber with GTEFL's unbundled loop distribution at existing cross-connect points, MCI can carry traffic from a customer directly to MCI's local switch. This enables MCI to make more efficient use of its own facilities, since it avoids the need to use GTEFL's loop feeder, to make a cross-connection at GTEFL's central office, and then to transport the traffic over interoffice transport facilities to MCI's switch. By permitting MCI to maximize the use of its facilities where they are available, unbundling of loop distribution facilities will encourage more rapid development of facilities-based competition. (Powers, T 975)

GTEFL claims that because there are various loop designs -- principally feeder/distribution (what Mr. Powers calls

"interfaced" or "cross-connected") and main cable-fed (what Mr. Powers calls "dedicated" or "home run") -- all loop distribution unbundling requests must be analyzed on an individual case basis. While MCI agrees that a bona fide request process would be appropriate in the latter case of a main cable-fed design, there is no need for individual case analysis when GTEFL uses the more common feeder/distribution design. In that case, MCI simply needs to connect its feeder plant to GTEFL's loop at an existing cross-connect point, in the same way that GTEFL connects its feeder plant today.

MCI's request for unbundling of loop distribution does not create the network security or reliability concerns raised by Mr. Hartshorn (T 1133-4), since MCI is willing to have all work at the cross-connect point performed for MCI by GTEFL personnel. (Powers, T 987)

The Commission should therefore reject GTEFL's contention that loop distribution unbundling must be considered on an individual case basis, at least where the connection to such loop distribution will be performed by GTEFL personnel at existing cross-connect points.

Issue 13b. What should the price of each of the items considered to be network elements, capabilities, or functions?

**MCI: The price of unbundled elements should be based on the forward-looking, long-run economic costs, calculated in accordance with TELRIC principles, that a wholesale-only LEC would incur to produce the entire range of unbundled network elements. These costs are calculated

by the Hatfield Model, and the appropriate prices are set forth in the direct testimony of Mr. Wood.**

Section 252(c)(2) of the Act requires the Commission to establish rates for unbundled network elements according to the pricing standards of Section 252(d)(2). That section in turn provides that:

> (d) PRICING STANDARDS.--
>
> (1) INTERCONNECTION AND NETWORK ELEMENT CHARGES.-- Determinations by a State commission of. . .the just and reasonable rate for network elements for purposes of subsection (c)(3) of [section 251]--
>
> (A) shall be--
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the. . .network element. . ., and
>
> (ii) nondiscriminatory, and
>
> (b) may include a reasonable profit.

In order to meet the requirements of Section 252(d)(2), prices must be set based on their forward-looking economic cost. (Goodfriend, T 715) The use of revenue-requirement-based embedded cost standards would prevent the market from driving local exchange rates to economic cost and would violate the provision of the Act which precludes reference to rate-of-return or rate-based proceedings.

The FCC coined a new term -- Total Element Long-Run Incremental Cost (TELRIC) -- for its forward-looking costing methodology. Nevertheless, the TELRIC methodology is nothing

more than a Total Service Long-Run Incremental Cost (TSLRIC) methodology in which the item to be costed is an "element" rather than a "service." While the Commission is not currently required to apply the FCC's TELRIC methodology due to the stay of the pricing provisions of the FCC Rules, the Commission has previously adopted the similar TSLRIC standard as a basis for setting prices under state law (see Order No. PSC-96-0811-FOF-TP, pages 14-15, 25), and should continue to use a TSLRIC/TELRIC standard for its cost and price determinations under the Act.

The Commission has been provided with competing cost studies which purport to comply with TSLRIC/TELRIC pricing principles. One set of studies, sponsored by Mr. Steele of GTEFL, was furnished on a confidential basis. Like prior GTEFL cost studies, these studies use a "black box" approach, under which the relationships used to translate from inputs to outputs are unavailable for critical review. (See, Goodfriend, T 730-2)

The other study, the Hatfield Model presented by Mr. Wood, is an open model which makes use of publicly available data to estimate the forward-looking costs that a wholesale-only LEC would incur to produce the entire range of outputs that the FCC Order requires to be unbundled. The Hatfield Model attributes costs of shared plant to each of the network elements that use that plant, thus appropriately capturing these shared plant costs. It also adds a 10% markup to capital and network operations costs as an estimate of forward-looking overhead costs. (Goodfriend, T 732-5) The Hatfield Model includes cost of

capital in its cost calculations, thus satisfying the provision of the Act that permits the recovery of a reasonable profit. (Wood, T 1601)

If the Commission set the prices for network elements equal to the costs that the Hatfield Model reports for each element, those prices would allow GTEFL to recover all of its economic costs, including a reasonable profit, of doing business as a wholesale-only firm engaged in the business of providing network elements. (Goodfriend, T 735) Pricing in accordance with the Hatfield Model is both reasonable, and fully consistent with the pricing principles of the Act.

Strengths of the Hatfield Model

The primary strengths of the Hatfield Model are that it uses sound economic costing principles to estimate the relevant costs of a wholesale provider of unbundled network elements using the best publicly available data and that, as an open model, its operations can be readily scrutinized and a large number of its key inputs can be set by users. (Wood, T 1597)

The Hatfield Model is consistent not only with the costing provisions of the FCC Order but also with the Act and with sound economic costing principles generally. (Wood, T 1599-1600, 1767) The Hatfield Model is forward-looking. As such, it does not use embedded investment, but instead uses existing wire center locations and then develops investments using the most efficient, currently available technologies for the provision of loop facilities, switching, interoffice transport, and signaling.

(Wood, T 1601) The Hatfield Model uses a long-run, total element methodology. It models a period long enough so that all of the firm's investments and expenses become variable or avoidable, and it studies an increment equal to the entire quantity of the network element being costed. (Wood, T 1600-01) The Hatfield Model uses a forward-looking cost of capital, thereby providing a reasonable profit on the firm's forward-looking investment. (Wood, T 1601) The Hatfield Model uses cost-causative principles to identify forward-looking costs with specific network elements, and it attributes the cost of shared investments to specific elements in reasonable proportions. (Wood, T 1603-05) The Hatfield Model adds a 10% markup to capture an appropriate level of overhead (or common) costs. (Wood, T 1604-05)

As mentioned above, the Hatfield Model is an open model. The model itself, and accompanying documentation, is publicly available through the International Transcription Service of Washington, D.C.[12] (Wood, T 1597) In fact, both the model and its documentation have been entered into the record in this proceeding (Ex. 41, 43), and the Commission staff has run the model with differing inputs to test the sensitivity of the model to changes in assumptions. (See Wood, T 1751, 1757) The inputs into the model are available for inspection (Ex. 41, pages C-1 to C-7; Ex. 44), and, except for Census Block Group and U.S.

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[12] While Mr. Wood could not identify on cross-examination by staff the precise date that Version 2.2.2 of the Hatfield Model became publicly available (Wood, T 1762-6), GTE's witness Duncan has had a working copy of the model since August 26. (Ex. 47, p. 3, footnote 4)

Geological Survey data, the model inputs are user definable. (Wood, T 1662-3) This degree of openness, which is unprecedented in telecommunications cost studies, enables independent scrutiny and evaluation of the assumptions and methodology, and enables a reviewer to test the reliability of the final product. (Wood, T 1598-9)

Response to Criticisms of the Hatfield Model

The chief criticisms that GTEFL makes of the Hatfield Model came through the testimony of Dr. Duncan. Each of them will be examined in turn.

Dr. Duncan's first major criticism is that the Hatfield Model has not been externally validated. (Duncan, T 1785) In his paper, Dr. Duncan suggests that such validation could be performed by calibrating the model using publicly available TS/TELRIC data for a number of firms over a period of time. (Ex. 47, p. 4-6) However, in his deposition, Dr. Duncan admitted that (1) the data he says is necessary to calibrate the model is not publicly available (Ex. 48, p. 31-32), and (2) he is not aware of any TELRIC model in the telecommunications industry which has been calibrated in the manner that he suggests. (Ex. 48, p. 31) In particular, Dr. Duncan did not even review, much less validate, the models used in this proceeding by GTE witnesses Trimble and Steele. (Ex. 48, p. 17-18)

Dr. Duncan's next major criticism is that the model produces cost results which are substantially different from those provided by other models such as BCM2 or the Cost Proxy Model

(CPM). (Duncan, T 1785) However, if Dr. Duncan is not aware of any TELRIC model in the telecommunications industry which has been externally validated (Ex. 48, p. 31), then there is no objective reason for him to prefer the BCM2 or CPM results to those produced by the Hatfield Model.[13] Dr. Duncan is arguing in essence that the proper cost result is a matter of popular vote, and that if a new model produces results which differ in magnitude from prior unvalidated LEC cost models, then the new model is presumptively incorrect. (See Wood, T. 1631, 1637) In fact, when Dr. Duncan's testimony quantifies the "underestimate" of loop and switching costs produced by the Hatfield Model at $9.00 per month (Duncan, T 1783), he is comparing the Hatfield result for Pacific Bell/California to the result of the CPM model for Pacific Bell/California (Ex. 47, p. 19-20; Ex. 48, p. 56-7), even though his understanding of the CPM model is limited to what he has heard in California unbundling and universal service proceedings. (Ex. 47, p. 19)

Dr. Duncan criticizes the Hatfield Model for violating the principle of "linear homogeneity," which simply means that if all input values to a cost model are increased by the same arbitrary amount -- say 10% -- then the output should increase by the same 10%. (Duncan, T 1786) Dr. Duncan's calculations on this point do not square with Mr. Wood's, however. Dr. Duncan purportedly

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[13] Of course, Dr. Duncan has spent the last 10 years of his professional career working for GTE, either directly or as a consultant (Duncan, T 1788-9), so his preference for LEC cost models may be explainable on subjective grounds.

found, using California data, that a 10% change in model inputs produced a 13% change in model results. (Ex. 47, p. 22) Mr. Wood's similar exercise using Texas data showed that a 10% change in input values resulted in a 9.52% change in total loop cost, and changes ranging from 8.999% to 10.360% in the cost of individual elements. (Wood, T 1768)

Dr. Duncan next criticizes the Hatfield Model for not using GTE-specific input values, and generally for using input values that he believes are incorrect. (Duncan, T 1787) Nowhere, however, did Dr. Duncan or GTEFL submit any evidence of better input values than the publicly available values used by the Hatfield Model. Dr. Duncan did observe that the approximate 10% cost of capital used by the Hatfield Model was too low (Ex. 47, p. 17), and that a cost of 30% would be more appropriate. (Duncan, T 1790; Ex. 48. p. 52) In this regard, it should be noted that the weighted cost of capital used in the Hatfield model is approximately 120 basis points higher than the last weighted cost of capital authorized for GTEFL by this Commission (Wood, T 1629, 1719) -- yet Dr. Duncan believes that even so it is too low by a factor of three.[14]

Dr. Duncan also criticized the Hatfield Model for using fill factors that are too low. GTEFL, however, did not appear to realize that the fill factors examined by Dr. Duncan were engineering fills used as model inputs, and that the effective

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[14] In fact, the 10.04% used by the Hatfield Model is only slightly lower than the 10.14% used by Mr. Steele in GTEFL's own cost studies. (Steele, T 1905)

fill factors calculated by the model will be lower. (Wood, T 1698-1700, 1766; Ex. 41, p. 20)

GTEFL also cross-examined Mr. Wood at length about various features of the Hatfield Model. That cross-examination revealed a number of interesting facts. For example, while the Hatfield Model's assumption that households are evenly distributed within each census block group (CBG) might appear unrealistic, it is a conservative assumption which ensures that the model will never understate the amount of distribution required to serve a given CBG. (Wood, T 1708-9)

Problems With GTEFL's Proposed Prices

GTEFL performed a series of cost studies which purport to be TELRIC studies of the cost of various unbundled network elements. GTEFL then proposed prices for some elements (notably the unbundled local loop) equal to "TELRIC-plus," where the "plus" is the lesser of (1) the lost opportunity cost of providing the element on an unbundled basis rather than as a component of a bundled service (i.e. the amount require to keep GTEFL "contribution neutral"), or (2) GTEFL's estimate of the stand-alone price at which a competitor could produce the element or obtain it from another source.[15] (Trimble, T 1821-23) GTEFL proposed prices for other elements which totally disregard the

[15] When GTEFL went through the same exercise in the unbundling proceeding under state law (Docket No. 950844-TP), Mr. Trimble used the intrastate special access rate as the proxy for a competitor's stand-alone cost. In this docket, he uses the interstate special access rate as the proxy, producing just over a $10 increase in the proposed price for a 2-wire unbundled loop.

TELRIC calculation, and simply equal the existing tariffed rates for similar elements or services. Still other elements are priced at TELRIC plus 10%.

There are at least three major flaws with GTEFL's approach. First, the underlying pricing principle -- which GTEFL calls the "M-ECPR" or market-driven efficient component pricing rule -- is fundamentally unsound. Second, GTEFL's approach produces percentage mark-ups which vary wildly from one element to another, with no rational explanation. Third, the underlying TELRIC studies, to the extent they are used at all in the pricing decisions, are not an accurate estimate of forward looking economic costs.

Mr. Trimble relies for his pricing principle on the testimony and Economic Presentation of Dr. Sibley. (Trimble, T 1821-22) Dr. Sibley advocates pricing under what he calls the M-ECPR. During his deposition, Dr. Sibley admitted that the M-ECPR is simply the "plain, unadorned, traditional version" of the ECPR under a new name.[16] (Sibley Depo., Ex. 20, pp. 25-7) Under the M-ECPR, prices are set so that GTEFL recovers the same contribution regardless of whether it sells an unbundled element to a competitor or uses that element in the provision of its own retail service. The goal of this pricing principle is to make GTEFL indifferent to whether it uses the element itself or sells it to a competitor. This is good for GTEFL, but bad for

[16] According to Dr. Sibley, it has been renamed only to distinguish it from the ECPR as described in the FCC Order.

competition. As the Commission found in *rejecting* the ECPR before it was dressed up and renamed the M-ECPR:

> Upon consideration, we do not believe that ECP produces a desirable result. A competitive market does not thrive on indifference. If a LEC is rendered indifferent by virtue of the pricing of its services as to whether it serves the customer or not, the reason for establishing competition is eliminated. There is no longer any incentive for the LEC to seek to attract customers, and the market is no longer driven by competition. If competitive providers do not have to compete, the consumer will not be served well. Therefore, we do not agree with GTEFL that ECP is an appropriate approach to determining prices.
>
> (Order No. PSC-96-0811-FOF-TP, dated June 24, 1996, page 17)

What was true in June is equally true in October -- the ECPR is an inappropriate basis for pricing in a competitive market.

The second fundamental flaw with GTEFL's approach is that it produces incomprehensible differences in percentage mark-up above what GTEFL claims to be the TELRIC of various elements. For example, 2-wire unbundled loops are marked-up by 42%; 4-wire loops by 88%; common shared transmission facilities by 1,129%; DS-1 facilities per airline mile by 3,107%; and tandem switching per average MOU by 4%. (Trimble, T 1929-30; see Ex. 49, DBT-3, page 1) GTEFL could have developed more sensible prices by pulling them out of a hat.

Finally, the underlying TELRIC studies -- which seem to have little bearing on the proposed prices -- are not accurate representations of forward-looking economic costs in any event. The common costs included in such studies are based simply on

GTEFL's historic costs for 1995 -- Mr. Trimble's assumption being that any increases in productivity will be offset by increases in inflation. (Trimble, T 1912-3) In fact, Mr. Trimble believes that these costs are conservative, and makes the amazing claim that GTEFL's expenses are likely to *increase* when it begins to face competition. (Trimble, T 1913)

In any event, embedded costs are not economic costs, so studies that are based on embedded costs cannot possibly provide a reliable estimate of TELRIC.

Issue 14. Should GTEFL be prohibited from placing any limitations on AT&T's and MCI's ability to combine unbundled network elements with one another, or with resold services, or with AT&T's, MCI's or a third party's facilities, to provide telecommunications services to consumers in any manner AT&T or MCI chooses?

MCI: Yes. Section 251(c)(3) of the Act requires that GTEFL offer unbundled elements in a manner that allows MCI to recombine such elements in order to provide telecommunications services. The Act does not allow limitations on the manner in which the elements are combined, or the telecommunications services which can be provided through the use of unbundled elements.

Section 252(c)(3) of the Act obligates GTEFL to provide "network elements in a manner that allows requesting carriers to combine such elements" in order to provide telecommunications services.

GTEFL does not appear to oppose MCI using combinations of network elements with one exception -- it contends that MCI must not be permitted to combine an unbundled loop and an unbundled port (i.e. local switching) to provide local exchange service. (McLeod, T 1278, 1279) The only rationale provided for GTEFL's

refusal, however, is that such recombination would render meaningless the Act's distinction between unbundled elements and wholesale services. (McLeod, T 1279) The FCC Order makes clear, however, that GTEFL's position is inconsistent with the Act and that the proposed prohibition is simply not allowed. FCC Rule 51.315(b) specifically provides that:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

Since GTEFL currently combines loops and switching, this rule precludes GTEFL from separating them, except upon the request of the purchaser of the unbundled elements. If GTEFL does not have the right to separate the elements, MCI certainly has the right to combine them. Since the portion of the FCC Rules relating to combination of elements has not been stayed, the Commission must require GTEFL to allow these elements to be combined.

GTEFL's objection to the combination of loops and switching appears to be based on its desire to retain access charges whenever possible. If MCI offers service through the resale of an existing GTEFL service, GTEFL bills and retains any interexchange access charges. If MCI offers service through the use of unbundled elements -- either in combination with each other or in combination with MCI's own facilities -- then MCI bills and retains any interexchange access charges.[17]

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[17] There is an interim exception in the stayed portion of the FCC Rules for the interstate CCL and a portion of the interstate TIC in cases in which MCI makes use of GTEFL's unbundled local switching, rather than MCI's own switch. Rule 51.515(b) The question of a similar interim exception for the intrastate CCL and RIC -- which MCI opposes -- is discussed in Issue 23 below.

The Act provides three methods for a new carrier to enter the local market -- through resale of LEC services, through the use of unbundled network elements (alone or in combination with the new entrant's own facilities), and through full facilities-based networks. The Act establishes two distinctly different pricing mechanisms for resold services and for unbundled network elements. For resold services, prices are set "top-down" on the basis of current retail rates less avoided retail costs. (See Issue 3, above.) For unbundled network elements, prices are set "bottoms-up" on the basis of forward-looking economic costs. (See Issue 13b, above.) Each new entrant has the choice of which method or methods it will use to provide competitive services.

In either scenario, GTEFL is fully compensated for the service it provides. In the resale scenario, GTEFL continues to receive all revenues it would have received from offering service at retail, less only a discount equal to the retail costs that GTEFL avoids by offering the service at wholesale. In the unbundling scenario, GTEFL receives a different level of revenues, but one which is designed to fully cover all of its forward-looking economic costs, including a reasonable profit. In the latter case, GTEFL may lose some "contribution" that it would have obtained from access charges had it retained the end-user customer, but GTEFL has no right to expect to remain revenue-neutral when it loses a customer to competition.

Issue 15a. Should GTEFL be required to provide AT&T and MCI with access to GTEFL's unused transmission media?

MCI: Yes. From an engineering perspective, unused transmission media such as dark fiber is simply another level in the transmission hierarchy and is a network element which must be unbundled upon request.

Dark fiber refers to fiber optic transmission facilities which have been installed in the GTEFL network, but which have not yet been equipped with the electronic equipment necessary to transmit signals through the fiber. Dark fiber is necessary for MCI to expand the reach of its network using electronics that comport with its network architecture. It does not make sense to require MCI to purchase transport services (i.e. "lit" fiber) from GTEFL when MCI could purchase the spare, unlit facilities and match them with MCI's own, more efficient electronic technologies. (Powers, T 964-5)

Section 251(c)(3) of the Act requires GTEFL to provide "nondiscriminatory access to network elements on an unbundled basis." Section 3(45) of the Act defines network element to mean "a facility or equipment used in the provision of a telecommunications service." GTEFL contends that since dark fiber has never been activated, it is not "used in the provision of a telecommunications service" and is not subject to the unbundling requirement of the Act. (Hartshorn, T 1145-6)

GTEFL's position is based on an overly narrow reading of the Act. Dark fiber has been deployed by GTEFL to provide future capacity for the provision of telecommunications services. From an engineering perspective, it is simply another level in the hierarchy of dedicated interoffice transport. (Powers, T 964) In this regard, it is similar to unused space in a central office

(which is available for future growth or for physical collocation by third parties) or to unused line class codes in a switch. Because fiber is deployed with multiple strands within a single cable sheath, dark fiber commonly coexists in the same cable sheath with "lit" fiber. To label one strand a "network element" and another strand "not a network element" is nothing more than another attempt by GTEFL to create barriers to competitive entry.

Issue 15b. What are the costs incurred, and how should those costs be recovered?

MCI: Like any other unbundled element, the price for dark fiber should be based on its forward looking economic cost in accordance with TELRIC principles.

The applicable cost recovery principle -- pricing at TELRIC -- is the same as the principle that applies to the pricing of any other unbundled network element. See Issue 13b, above.

Issue 16. At what points should AT&T and MCI be permitted to interconnect with GTEFL?

MCI: MCI should be permitted to interconnect at any technically feasible point on GTEFL's network that it designates, and MCI should not be required to interconnect at more than one point per LATA. MCI and GTEFL must use the same MCI-designated interconnection point (IP) for traffic in each direction since traffic on 2-way trunks (which may be requested by MCI) cannot be segregated to separate IPs.

Section 251(c)(3)(B) of the Act places the duty on GTEFL to provide interconnection to MCI "at any technically feasible point" within GTEFL's network. So long as MCI can, from a technical perspective, deliver traffic to the interconnection

point and have it delivered to any particular end office, then that interconnection point is a technically feasible point at which to interconnect to serve those end offices. (Powers, T 941) Given the way that GTEFL's network is designed, with a single tandem serving the entire LATA (Munsell, T 1575), MCI cannot be required to interconnect at more than one point within GTEFL's territory.[18]

MCI should also have the option to make use of either one-way or two-way trunking. (See FCC Order ¶ 219) Where MCI chooses to use two-way trunking, then the interconnection point between GTEFL and MCI must necessarily be the same as the interconnection point between MCI and GTEFL.

Issue 17a. What access should be provided by GTEFL for its poles, ducts, conduits, and rights-of-way?

MCI: GTEFL should be required to make any unused capacity in its poles, ducts, conduits, and rights-of-way available on a nondiscriminatory basis to all carriers, including itself, and should not be allowed to reserve capacity in such facilities.

All carriers are entitled to nondiscriminatory access to GTEFL's poles, ducts, conduits and rights-of-way. It would be inconsistent with this nondiscrimination provision for GTEFL to be permitted to reserve such capacity for itself for a period of five years as proposed by Mr. Jernigan. (T 1192-3)

[18] As shown in MCI's testimony, as a more general principle, MCI should not be required to interconnect at more than one point per LATA even if the LATA is served by multiple access tandems. (Powers, T 941)

MCI has proposed the following procedure for its use of GTEFL's poles, ducts, conduits and rights-of-way:

1. Within 20 business days of a request by MCI to use particular facilities (Request), GTEFL should provide information on the availability and condition of such facilities, including a written confirmation of the availability of such facilities (Confirmation).

2. GTEFL should reserve the requested facilities for MCI for a period beginning on the date of the Request and terminating 90 days after the date of the Confirmation.

3. MCI should elect whether or not to use such facilities during that reservation period. If it decides to use such facilities, MCI should send a written notice of acceptance to GTEFL (Acceptance).

4. MCI should have six months after Acceptance to begin attachment and/or installation of its facilities, and one year after Acceptance to complete such activities. (Price, T 833, 905-7)

To ensure nondiscriminatory treatment, similar time frames should be applied to requests by other carriers, including GTEFL, to use such facilities. (Price, T 843-6)

In addition, in order for MCI to make meaningful use of its right to access GTEFL's poles, conduits and rights-of-way, GTEFL should provide MCI with access to detailed engineering records and drawings of poles, ducts, conduits and rights-of-way on two days' notice, and with information not reflected in such records

on the location and condition of such facilities within twenty business days of a request by MCI. (Price, T 833) To the extent that such records contain any customer proprietary information, it can be protected by an appropriate confidentiality agreement.

GTEFL appears to contend that mandatory use of its poles, conduits and rights-of-way would constitute an impermissible taking under the Fifth Amendment. Even if Section 224 of the Act could be construed to constitute a taking, that taking would not be impermissible under the Fifth Amendment so long as the payment scheme set forth in Section 224(d)(1) provides constitutionally just compensation for the use of those facilities.

Issue 17b. What are the costs incurred, and how should those costs be recovered?

MCI: Costs of existing capacity should be recovered through a nondiscriminatory rental fee designed to recover a pro rata share of the facility costs. Costs of capacity expansions should be borne by the cost-causer, and shared by any party who subsequently makes use of the expanded facility.

If no expansion of existing facilities is required, any party who makes use of those facilities should pay a pro rata share of their cost. If a facility expansion is required, the costs should be borne by the cost-causer, subject to future reimbursement on a pro rata basis by any other party who subsequently makes use of the expanded facility.

Issue 18. Does the term "rights-of-way" in Section 224 of the Act include all possible pathways for communicating with the end user?

MCI: No.

See Price, T 905. To the extent that GTEFL has any control, contractual or otherwise, over other pathways (such as equipment closets in private office buildings), it should be required to allow MCI to access those pathways on a nondiscriminatory basis. GTEFL also should be precluded from using its relationship with property owners to seek to deny MCI access to pathways which it does not own or control.

Issue 19. Should GTEFL be required to provide interim number portability solutions including remote call forwarding, flex-direct inward calling, route index portability hub, and local exchange route guide reassignment?

MCI: GTEFL should be required to provide interim number portability through remote call forwarding and flex-direct inward calling. MCI is not seeking any other method of interim number portability at this time.

GTEFL has tariffed remote call forwarding as an interim local number portability mechanism (Menard, T 2097), and appears to consider flexible direct inward dialing (flex-DID) as an acceptable alternative mechanism. (Menard, T 2099) MCI is not seeking any other method of interim local number portability at this time.

Issue 20. What should be the cost recovery mechanism to provide interim local number portability in light of the FCC's recent order?

MCI: There should be no explicit monthly recurring charge for remote call forwarding used to provide interim local number portability. GTEFL and MCI should each bear their own cost of implementing the interim number portability mechanism.

GTEFL maintains that (1) the appropriate cost recovery mechanism for remote call forwarding (RCF) used to provide interim local number portability should not be decided in this arbitration proceeding, but instead should be resolved in the context of the Commission's upcoming generic investigation into interim local number portability, and (2) the fact that it has previously filed a tariff for RCF exempts GTEFL from the FCC's cost recovery guidelines for interim local number portability.

Both contentions are wrong. Section 251(b)(2) of the Act requires GTEFL to provide number portability in accordance with requirements prescribed by the FCC. Section 251(c)(1) of the Act requires GTEFL to negotiate the terms of an agreement to fulfill the duties imposed by Section 251(b). And Section 252(b) of the Act gives MCI the right to arbitrate any open issues which have not been resolved by negotiation. The fact that the Commission is considering the same issue in a generic docket, scheduled for decision after the deadline for resolving this arbitration proceeding, does not take the issue out of the proper scope of arbitration.

Second, under the terms of the FCC's First Report and Order in Docket No. 95-199 (the FCC's iLNP Order), the cost of providing interim local number portability must be recovered on a competitively neutral basis. The existing cost recovery mechanism approved by this Commission -- under which the costs are recovered solely from new entrants -- does not comply with the requirements of the FCC's iLNP Order. Nothing in that order

provides that a tariff filing exempts a local exchange company from the FCC's cost recovery guidelines. (See Price, T 842)

The Commission should approve a cost recovery mechanism for purposes of this arbitration proceeding in which each carrier, MCI and GTEFL, bears its own costs of providing interim local number portability. This "bill and keep" arrangement is the simplest method of complying with the FCC's ILNP Order, and it avoids the time and expense of implementing a more complicated cost recovery mechanism which would be in place for only a short period of time. (Price, T 813)

Issue 21a. Should GTEFL be prohibited from placing any limitations on the interconnection between two carriers collocated on GTEFL's premises, or on the types of equipment that can be collocated, and or on the types of users and availability of the collocated space?

MCI: Yes, GTEFL should be prohibited from placing such limitations. MCI should have the ability to collocate subscriber loop electronics, such as digital loop carrier; should be permitted to interconnect with other collocators; should be permitted to interconnect to unbundled dedicated transport obtained from GTEFL; and should be able to collocate via either physical or virtual facilities.

Section 251(c)(6) of the Act places on GTEFL a duty to provide "on rates, terms, and conditions that are non-discriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements," except that virtual collocation can be provided if a state commission finds that physical collocation is not practical for technical reasons or because of space limitations.

The requirements for collocation for interconnection and access to unbundled network elements are different, and broader, than what was needed in the past for competitive access providers. (Powers, T 977) To ensure that collocation is a viable means of providing interconnection and access to unbundled network elements, the Commission should confirm that:

1. MCI has the right to collocate subscriber loop electronics, such as digital loop carrier, in the central office;

2. MCI has the right to purchase unbundled dedicated transport from GTEFL between the collocation facility and MCI's network;

3. MCI has the right to interconnect with other collocators in the same central office; and

4. MCI has the ability to collocate via either physical or virtual facilities. (Powers, T 977-8)

Without the right to collocate all types of equipment that is needed to efficiently access unbundled elements, MCI's ability to created innovative products and services would be impaired, and MCI would be forced to build an inefficient network, thereby increasing costs to consumers. (Powers, T 981-2) To the extent that GTEFL is concerned about a competitor using excessive space, MCI would not oppose the establishment of reasonable policies designed to address this concern, similar to those that have been established by NYNEX and Pacific Bell. (See Powers, T 982)

Issue 21b. What are the costs incurred, and how should those costs be recovered?

MCI: Rates for collocation should be based on forward looking economic cost in accordance with TELRIC principles.

Rates for collocation facilities -- like rates for unbundled network elements -- should be based on forward-looking economic costs, in accordance with TELRIC pricing principles. (See Goodfriend, T 727)

Issue 22. What should be the compensation mechanism for the exchange of local traffic between AT&T or MCI and GTEFL?

MCI: The compensation mechanism for transport and termination of local traffic between MCI and GTEFL should use symmetrical rates for transport and termination set in accordance with total element long run incremental cost principles. The Hatfield Model produces costs calculated in accordance with these principles for tandem switching, local switching and transport.

MCI interprets the FCC Order to permit mutual traffic exchange only for the physical interconnection between two networks, and to require reciprocal, symmetrical compensation for transport and termination of traffic delivered over that interconnection facility. (Goodfriend, T 740-1) The symmetrical price for that transport and termination should be set in accordance with TELRIC principles. (Goodfriend, T 742-3) The Hatfield Model produces prices calculated in accordance with such principles for tandem switching, local switching and transport. (Goodfriend, T 744)

GTEFL appears to disagree with MCI's interpretation of the FCC Order, and to believe that "mutual traffic exchange" is a permitted method of compensation for interconnection, transport

and termination under the FCC Rules. (Munsell, T 1551) While GTEFL maintains that the Commission cannot "order" bill and keep, it is willing, in the spirit of compromise, to accept bill and keep under certain terms and conditions. (Munsell, T 1565-6)

If the Commission determines that the FCC Rules permit bill and keep for transport and termination, as well as interconnection -- or if the Commission chooses to apply a bill and keep methodology for transport and termination in light of the stay of the pricing provisions of the FCC Rules -- MCI would not object to a reaffirmation of the Commission's prior order which requires mutual traffic exchange unless and until a carrier proves that traffic is sufficiently out of balance to justify the cost of measurement and billing.

Issue 23. What intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase GTEFL's unbundled local switching element? How long should any transitional period last?

MCI: The price for unbundled local switching should be based on its forward looking economic cost in accordance with TELRIC principles. The price should not include any additional charge for intrastate switched access minutes that traverse GTEFL's switch, and in particular should not replace the CCL and RIC revenues that GTEFL would have received if it had retained the end-user customer.

As discussed under Issue 13b, above, the Act establishes a fully compensatory cost-based pricing standard for unbundled network elements. Those rates may include a reasonable profit, but may not include any funding for universal service, which must

be dealt with through a separate mechanism under Section 254 of the Act and comparable provisions of state law.

Under the Act, a new entrant who purchases unbundled facilities can use those facilities, alone or in combination with its own facilities, to provide any telecommunications service, including exchange service to its end user customers and access service to interexchange carriers. As the "lessor" of the unbundled elements, the new entrant is entitled to all revenues generated through the use of those elements, including any access charges that the entrant chooses to impose on interexchange carriers.

Notwithstanding this statutory scheme, the FCC used its rulemaking authority to create an interim exception to the cost-based pricing standard for local switching. FCC Order ¶¶ 716-32; 47 C.F.R. § 51.515. Under that interim exception (which has been stayed by the Eighth Circuit Court of Appeals), GTEFL would be allowed to continue to collect the non-cost-based CCLC and 75% of the non-cost-based TIC with respect to interstate access minutes which traverse an unbundled local switching element purchased by a new entrant. A parallel rule permitted, but did not require, the states to impose a similar interim charge on intrastate minutes that made use of an unbundled local switching element.

With the Eighth Circuit's stay in effect, however, there is no authority for the Commission to impose such a transitional charge. Instead the Commission is bound by the pricing provisions of the Act, which do not permit any non-cost-based

charge for local switching or for any other unbundled network element.

Even if this portion of the FCC Rules had not been stayed, the Commission should have declined to impose this non-cost-based charge on new entrants, since it would only serve to artificially raise the cost to new entrants and, ultimately, the price paid by consumers for competitive local exchange service.

Issue 24. Should GTEFL be required to provide notice to its wholesale customers of changes to GTEFL's services? If so, in what manner and in what time frame?

MCI: GTEFL should be required to provide notice to its wholesale customers of changes to GTEFL's services at least 45 days prior to the effective date of the change, or concurrent with GTEFL's internal notification process for such changes, whichever is earlier.

MCI has requested that GTEFL provide notice of changes to its retail services at least 45 days prior to the effective date of the change, or concurrent with GTEFL's internal notification process for such changes, whichever is earlier. Unless MCI receives such notification, it will be unable to notify its customers and customer service personnel of the change in a timely manner.

GTEFL, on the other hand, proposes that MCI obtain notice of such changes through the tariff filing process, even if such changes are known to GTEFL at an earlier date. (McLeod, T 1309-10) Part of the basis for GTEFL's position appears to be a concern that it could be liable to MCI in the event that GTEFL notified MCI of an upcoming change and subsequently made a

business decision to abandon that change. (McLeod, T 1332-3) So long as MCI is protected against the possibility of GTEFL providing intentional misinformation, it would appear to be appropriate for the Commission to protect GTEFL from liability for normal changes in business plans which occur after it has provided a reseller with notice of an upcoming retail service change.

Issue 25. What should be the term of the agreement?

MCI: The term of the initial arbitrated agreement should be 5 years, with successive one-year renewal options.

The initial term of the arbitrated agreement should be five years. (Price, T 839) Any shorter term would not provide sufficient certainty for new entrants to make the type of business and financial commitments that are required to enter the local market. (See Shurter, T 189)

Issue 26. Can the agreement be modified by subsequent tariff filings?

MCI: No, the agreement cannot be unilaterally modified by subsequent tariff filings.

GTEFL takes the position that an arbitrated agreement could be modified by subsequent tariff filings. (McLeod, T 1308) On cross-examination, Mr. McLeod was unable to identify any instances in which it would be appropriate to have a tariff override the agreement, except to the extent that the introduction of a new service which could be resold or the repricing of an existing retail service subject to resale might

be deemed to be a change to the arbitrated agreement. (McLeod, T 1329-31)

As a matter of policy and of contract law, GTEFL cannot be allowed unilaterally to modify its agreement. The Commission could address GTEFL's stated concerns, while at the same time preserving the sanctity of the agreement, by (1) declaring that tariff filings cannot modify the agreement, and (2) clarifying that tariff filings which introduce, or make changes to, services subject to resale do not constitute contract modifications.

Issue 27a. When MCI resells GTEFL's services, is it technically feasible or otherwise appropriate for GTEFL to brand operator services and directory services calls that are initiated from those resold services?

MCI: Yes. Such branding is technically feasible, and is necessary to enable a reseller to establish its own identity in the market.

In a resale environment, branding of operator services and directory assistance calls is essential to enable the reseller to establish an identity in the marketplace, to attempt to differentiate its services from those of the incumbent, and to avoid customer confusion. FCC Rule 51.613(c) recognizes the importance of branding in the resale environment, and requires that such branding be provided on request of the reseller, except in certain limited circumstances:

> (c) Branding. When operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller

unbranding or rebranding requests shall constitute a restriction on resale.

(1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

GTEFL's provision of branding in the resale environment depends on its ability to identify an operator service or directory assistance call as having originated from the customer of a particular reseller. This is another aspect of the "selective call routing" capability that is necessary to route DA, operator services, or repair calls to another carrier's platform in an unbundled element environment. As discussed in more detail in Issue 7a, above, the record shows that such selective call routing is technically feasible. Since GTEFL has presented no evidence that branding should be denied for any other reason, the Commission must order GTEFL to provide unbranding or rebranding on MCI's request.

Issue 27b. When GTEFL's employees or agents interact with MCI's customers with respect to a service provided by GTEFL on behalf of MCI, what type of branding requirements are technically feasible or otherwise appropriate?

MCI: When interacting with customers with respect to a service provided by GTEFL on behalf of MCI, it is both feasible and appropriate for GTEFL employees to identify themselves as providing service on behalf of MCI and for such employees to use "leave-behind" cards or other written materials provided by MCI which identify MCI as the provider of service.

MCI and GTEFL appear to disagree on whether GTEFL employees who interact with an MCI customer with respect to a resold service (1) should be required to identify themselves as providing service on behalf of MCI, and (2) should be required to use branded "leave-behind cards" and other written materials.

MCI has requested that GTEFL use leave-behind cards provided by MCI which are branded to identify MCI as the provider of the service. GTEFL refuses to use such reseller-provided leave-behind materials, but offers instead to use a generic, unbranded leave-behind card. (Drew, T 2048-9) There appears to be no technical or operational reason that GTEFL cannot comply with MCI's request. Mr. Drew argued only that the use of multiple leave-behind cards would require technicians to use an inordinate amount of time trying to determine for whom they were working, with a consequent impact on productivity and service delivery. (Drew, T 2049) This is insufficient justification for refusing to take simple measures to ensure that customers are properly informed when service is provided on behalf of their local exchange provider of choice.

Issue 28. In what time frame should GTEFL provide CABS-like billing for services and elements purchased by MCI?

MCI: GTEFL should provide CABS formatted billing for resold services in accordance with the specifications adopted by the industry Ordering and Billing Forum in August, 1996 no later than January 1, 1997. NYNEX will be producing bills in the OBF CABS format effective October 1, 1996, by reformatting the output from its CRIS system.

The industry Ordering and Billing Forum has established a Carrier Access Billing data format which provides a uniform, nationwide format for the provision of billing information for access services. This format provides an appropriate level of detail for carrier-to-carrier billing, allows a carrier to obtain bills in the same format from all LECs, and ensures that the bills can be audited on a mechanized basis. In August, 1996, the industry Ordering and Billing Forum approved specifications for CABS-formatted billing for unbundled network elements and resold services. The use of CABS-formatted billing in the unbundling and resale environment is necessary to provide MCI with billing information in a usable format.

GTEFL proposes to use CABS-formatted billing for trunk-side interconnection, but not for line-side interconnection and resold services. For the latter, it proposes to use a CBSS generated bill, similar to that it provides today to end user customers. Since non-CABS bill formats vary from state to state and LEC to LEC, MCI would have to develop and maintain multiple operational systems to deal with a wide variety of billing formats. This would create inefficiencies in the billing process and would impose unnecessary costs to MCI.

MCI recognizes that GTEFL may still use its CBSS billing system to collect the relevant billing information. GTEFL should be required, however, to translate the output from that system into a CABS-format before forwarding it to MCI. Such a translation is clearly technically feasible. NYNEX will be using

its CRIS system to produce CABS-formatted billing effective October 1, 1996.

MCI believes that with a similar incentive provided by a Commission order, GTEFL should be able to complete the necessary translation work in a short time frame. Without such an order, however, GTEFL appears to lack the incentive to provide CABS-formatted billing on its own.

Issue 29. What are the appropriate rates, terms, and conditions for access to code assignments and other numbering resources?

MCI: Access to code assignments and other numbering resources should be provided on a nondiscriminatory basis. There should be no significant additional costs associated with management of these resources.

This issue does not appear to be in dispute. GTEFL agrees that it will support all requests for NXX code administration and assignments in an effective and timely manner. (See Menard, T 2119)

Other Issues for All Parties

Issue 30. Should the agreement be approved pursuant to the Telecommunications Act of 1996?

MCI: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e).

Section 252(e)(1) of the Act requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. Under Section 252(e)(2), different standards govern approval of

agreements (or portions thereof) adopted by negotiation versus agreements (or portions thereof) adopted by arbitration.

As discussed in Issue 31, below, MCI expects that this proceeding will result in the submission of an arbitrated agreement, which should then be approved or rejected applying the standards contained in Section 252(e)(2)(B).

Issue 31. What are the appropriate post-hearing procedures for submission and approval of the final arbitrated agreement?

MCI: The parties should be directed to negotiate a comprehensive agreement that incorporates the Commission's decisions on the issues decided in this proceeding within 14 days of the Commission's vote. In the event the parties are unable to conclude an agreement within that time frame, each party should submit its proposed agreement within 20 days of the vote. The Commission should then adopt the proposal, or the portions of the competing proposals, which best incorporates its decisions into a comprehensive agreement.

In Order No. PSC-96-1107-PCO-TP in the AT&T/MCI/BellSouth arbitration docket, the Prehearing Officer ruled that the Commission will take action on the major issues identified by the parties to an arbitration proceeding, but will not resolve all of the subsidiary issues necessary to produce a final arbitrated agreement. The Prehearing Officer proposed a post-decision procedure under which the parties would be given a specified period of time to submit a comprehensive arbitrated agreement that incorporates the Commission's decisions on the major issues. If the parties are unable to reach a comprehensive agreement in the specified time frame, the Prehearing Officer proposed that

each party would submit its own version of a proposed agreement, and that the Commission would choose and approve the agreement that best comports with its decision.

MCI believes that it has a right under the Telecommunications Act of 1996 for the Commission to resolve all the issues that MCI submitted for arbitration. Given the number of issues, MCI initially proposed a "Mediation Plus" procedure that was outlined in its Petition for Arbitration. The Mediation Plus procedure contemplated a hearing on the major issues identified by the parties, coupled with Commission-supervised mediation of other issues. MCI's proposal would have required additional hearings on any issues that the parties were unable to resolve in a timely fashion. The Prehearing Officer denied MCI's request for Mediation Plus, and MCI elected not to seek full Commission review of that ruling.

MCI believes that, with a slight modification, the Prehearing Officer's proposal may be a workable procedure for achieving a final arbitrated agreement.

First, the Commission should set the deadline for the parties to submit a comprehensive agreement at 14 days after the date of the Commission's vote on the major issues. The parties can continue to negotiate general contractual terms concurrently with the Commission's hearing and post-hearing procedures, and a 14-day time frame should be sufficient to incorporate the effect of the Commission's vote into a comprehensive agreement. Such a deadline is consistent with the intent of the Act that

arbitration proceedings be completed on an aggressive schedule. If no agreement is reached in that time frame, each party should have until 20 days from the date of the vote to submit its own version of a proposed agreement.

Second, in the event that a comprehensive agreement is not reached by the Commission-imposed deadline, the Commission should not bind itself to accept, in its entirety, the proposed agreement submitted by either party. Instead the Commission should retain the flexibility (a) to accept the entire proposed agreement submitted by either party, or (b) to accept, on an issue-by-issue basis, parts of the proposed agreements offered by each party. This is consistent with the discretion that the FCC would vest in its arbitrators to use either "entire package" final offer arbitration or "issue-by-issue" final offer arbitration in cases where the FCC has assumed jurisdiction over an arbitration. 47 C.F.R. §51.807(d).

RESPECTFULLY SUBMITTED this 28th day of October, 1996.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 28th day of October, 1996.

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