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December 26, 1996

961537-TP

Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

BY HAND DELIVERY

Dear Ms. Bayo:

Enclosed are an original and fifteen copies of the Petition for Arbitration of American Communications Services, Inc. Also enclosed are an original and fifteen copies of the direct testimony of: C. William Stipe, III; Marvin H. Kahn; and Richard Robertson.

13743-96 13744-96 13745-96

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,

Norman H. Horton, Jr.
Norman H. Horton, Jr.

- ACK _____
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Enclosures

cc: James F. Falvey, Esq.
Parties of Record

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Before the
PUBLIC SERVICE COMMISSION
of the State of Florida

In the Matter of)
)
Petition by American Communications)
Services, Inc., and its local)
exchange operating subsidiaries,)
for Arbitration with GTE)
Florida, Inc.)
pursuant to the)
Telecommunications Act of 1996)
_____)

Docket No.:
Filed: December 26, 1996

PETITION FOR ARBITRATION
OF AMERICAN COMMUNICATIONS SERVICES, INC.

I. INTRODUCTION

American Communications Services, Inc. ("ACSI"), and its local exchange operating subsidiaries in Florida, American Communications Services of Jacksonville, Inc. and American Communications Services of Tampa, Inc., by its undersigned attorneys, pursuant to Section 252(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 252(b), hereby petitions the Florida Public Service Commission ("PSC" or "Commission") to arbitrate the unresolved issues in the interconnection negotiations between ACSI and GTE Florida, Inc. ("GTE")¹. Specifically, ACSI requests that the Commission establish cost-based rates according to the statutory guidelines set forth in Section 252(d)(1) of the Act for the unbundled network elements about which ACSI and GTE (collectively, the "Parties") could not agree. These rates must be established pursuant to the rules adopted by the Federal

¹ As detailed below, ACSI requested in Florida interconnection with GTE on July 30, 1996. Accordingly, pursuant to Section 252(b) of the Act, this petition is timely.

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Communications Commission ("FCC") in its recent *Interconnection Order* implementing Section 251 and 252 of the Act.² ACSI also requests that the Commission require GTE to establish competitively-neutral, TELRIC-based rates for the recovery of cost associated with interim local number portability, in accordance with Sections 251(b)(2) and 251(e) of the Act and the FCC's order in the *Telephone Number Portability* docket.³ ACSI further requests the arbitration of disputes between the Parties concerning (1) ACSI's request to cross-connect directly with other telecommunications carriers collocated with GTE at the same premises as ACSI; (2) reciprocal compensation arrangements for the mutual exchange of local interconnected traffic; (3) whether ACSI may combine unbundled elements it receives from GTE in order to provide any telecommunications service; (4) whether ACSI may collocate its remote switching modules at GTE central offices; and (5) GTE's obligation to offer to ACSI on a nondiscriminatory basis individual provisions of other interconnection agreements into which GTE has entered.

In support of this Petition, and in compliance with Section 252(b) of the Act, ACSI states as follows:

II. FACTUAL BACKGROUND

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *Report and Order*, CC Docket No. 96-98, FCC 96-325 (released August 8, 1996).

³ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, CC Docket No. 96-116 (rel. July 2, 1996) ("Telephone Number Portability Order").

1. ACSI is a publicly traded Delaware corporation, having its principal place of business at 131 National Business Parkway, Annapolis Junction, Maryland 20701. ACSI has almost two dozen operating subsidiaries providing or authorized to provide competitive local access and exchange services. ACSI currently has more than 200 employees. ACSI constructed its first network in October 1994, and currently has 18 operational local fiber optic networks. In addition, ACSI has networks under construction in 6 other locations. ACSI plans to have a total of over 30 local networks constructed by mid-1997 and a total of 50 local networks by mid-1998.

2. GTE is an incumbent local exchange service provider operating within Florida. Within its operating territories, GTE has at all relevant times been a monopoly provider of such services.

3. GTE is and at all material times has been "incumbent local exchange carrier" ("ILEC") in Florida as defined by the Act. 47 U.S.C. § 251(h).

4. On July 30, 1996, ACSI, on behalf of its operating subsidiaries, requested interconnection, service, and unbundled network elements ("ACSI Request") from GTE in the State of Florida under Section 251 of the Act. This request was made during the course of negotiations with respect to interconnection in other jurisdictions.

5. Subsequent to the ACSI Request, the Parties have negotiated in an attempt to reach an agreement on the terms, conditions, and rates of the requested information, services, and unbundled elements. The Parties exchanged several draft agreements, held a number of face-to-face meetings, and conducted numerous conference calls.

6. As a result of these negotiations, in which ACSI has consistently conducted itself in good faith, the Parties reached agreement on nearly all issues and expect to soon execute a contract governing those issues. (A copy of the agreement, once it is completed, will be submitted to the PSC for approval pursuant to Section 252(e)(2)(A) of the Act, and will be provided to the arbitrator in this docket.) Exhibit "A," appended hereto, is an overview of the issues upon which tentative agreement was reached during the course of the negotiations.⁴

7. Unfortunately, during the course of the negotiations, the Parties did not reach agreement on all issues. First, ACSI and GTE could not agree on the proper pricing for several unbundled products, albeit they reached agreement on the terms and conditions associated with those products. The network elements for which ACSI asks the Commission to establish a rate through arbitration are (1) the unbundled exchange access loop ("Unbundled Loop"), including associated charges, if any, for linking ACSI's collocated equipment to the main distribution frame, and (2) ACSI's use of the Network Interface Device ("NID").

8. Second, the Parties could not agree on either the recurring or nonrecurring charges ACSI will pay for interim local number portability.

9. Third, ACSI and GTE did not reach agreement on rates, if any, for ACSI's cross-connection to other entities with equipment collocated at GTE's central offices.

10. Fourth, ACSI and GTE could not agree on reciprocal compensation arrangements for the mutual exchange of local telecommunications traffic.

⁴ To the extent an agreement is not finalized on some or all of these issues, ACSI requests arbitration of those disputes as well.

11. Fifth, ACSI requests that the arbitrator override GTE's refusal to permit ACSI to combine unbundled network elements in any manner it chooses in order to provide any telecommunications service.

12. Sixth, ACSI requests that the arbitrator order GTE to permit ACSI to collocate its remote switching modules in GTE central offices.

13. Finally, ACSI requests that the arbitrator order GTE to permit ACSI to obtain interconnection or unbundled elements in accordance with individual provisions contained in other agreements to which GTE is a party, on the same terms and conditions as provided in those agreements.

III. JURISDICTION OF THE PSC

14. Under the Act, parties to a negotiation for interconnection, service, or unbundled elements within a particular State under Section 252 of the Act have the right to petition the respective State commission for arbitration of any open issues whenever negotiations between them fail to yield an agreement. 47 U.S.C. § 252(b). Either Party may seek such arbitration during the period between the 135th day and the 160th day, inclusive, after the date the ILEC received the request for negotiation. *Id.* Because GTE received the ACSI Request on July 30, 1996, the window for requesting arbitration began on December 13, 1996 and ends on January 7, 1997, inclusive. Accordingly, this Petition is being filed within the time period established by the Act.

15. Given the specific areas in which the Parties failed to reach agreement, ACSI seeks arbitration of the following: (1) rates for (a) Unbundled Loops, including associated

charges, if any, for linking ACSI's collocated equipment with GTE's main distribution frame, and (b) use of the NID; (2) rates for interim local number portability which comply with the FCC's order in the *Telephone Number Portability* docket; (3) rates for ACSI's cross-connection to other entities collocated at GTE's central offices, and (4) reciprocal compensation arrangements for the mutual exchange of interconnected local traffic. ACSI also requests an order that it is entitled to (a) combine GTE unbundled elements in order to provide any telecommunications service, (b) collocate its remote switching modules at GTE central offices, and (c) obtain interconnection and/or access to unbundled network elements pursuant to the terms and conditions of individual provisions entered into by GTE with other carriers.

IV. POSITION OF THE PARTIES

16. Pursuant to Sections 252(b)(2)(i) and (ii) of the Act, 47 U.S.C. §§ 252(b)(2)(i) and (ii), the following is ACSI's position on each of the unresolved issues. In addition, ACSI states the position of GTE on each issue as it is understood by ACSI. To the extent ACSI inaccurately reports GTE's position, ACSI expects GTE will clarify its position, and the basis therefor, in its response pursuant to Section 252(b)(3) of the Act.

A. Pricing of Loops and Related Unbundled Elements

1. ACSI's Position

17. With regard to the pricing of each of the unbundled network elements at issue, ACSI's position is the same: Total Element Long Run Incremental Costs ("TELRIC") form the proper cost-basis under Section 251(d)(1) of the Act for the development of rates for unbundled network elements. The relevant statutory standard requires that rates must be

"based on cost" and "may include a reasonable profit." 47 U.S.C. § 251(d)(1) (emphasis added).

18. The FCC's *Interconnection Order* confirms the position taken by ACSI during the negotiations. In its decision, the FCC established the costing methodology to be used in arbitrations establishing rates under Section 251(d)(1) -- TELRIC.⁵ As determined by the FCC, states are to set prices for interconnection and network elements at TELRIC plus a "reasonable share of forward-looking joint and common costs."⁶ For local loops, the FCC also required that a state set loop rates using at a minimum three geographically deaveraged rate zones. Until such time as the States have TELRIC studies at their disposal, they may utilize the relevant default proxies adopted by the FCC. These proxies establish a range or set an upper bound on the pricing of unbundled network elements. If a default proxy is to be used, the State's decision, ACSI submits, must be based on the best information regarding TELRIC that is available.

19. In Exhibit "B" appended hereto, ACSI sets forth its initial proposed interim rates for the unbundled elements identified above. GTE has not provided ACSI with any TELRIC (or TSLRIC⁷) studies, despite several requests. Accordingly, ACSI developed these rates based on the best information publicly available on the TELRIC of providing the

⁵ As the FCC notes, TELRIC and Total Service Long Run Incremental Costs utilize similar costing methodologies. The difference between the two is the cost object. TSLRIC examines the costs to provide a service, whereas TELRIC relates to the costs to provide an unbundled network element.

⁶ As explained below, a suitable mark-up to recover joint and common costs should be no more than the markup GTE allows itself for services in a competitive market, such as Centrex.

⁷ Total Service Long Run Incremental Cost.

unbundled elements at issue in the State of Texas. This information has been developed using publicly available data for the dominant ILEC in each state (generally the Bell Operating Companies) and the Hatfield Model which calculates an upper bound on TELRIC for unbundled network elements within each State. It is ACSI's position that absent valid TELRIC data from GTE it is reasonable to use this data for purposes of setting GTE's rates.

20. ACSI expects to obtain cost and competitive rate information from GTE through discovery in this arbitration proceeding -- to the extent such data exists -- and reserves its right to modify its proposals based upon any information received in discovery. If TELRIC studies have not been completed by GTE, then the PSC should order GTE to complete such studies and propose TELRIC-based rates within sixty (60) days from the filing of this petition. In the event that GTE produces clear and convincing evidence of an inability to complete TELRIC cost studies within this timeframe, then ACSI requests that the PSC prescribe interim rates to be replaced by TELRIC-based rates within six (6) months of the date hereof.

2. GTE's Position

21. GTE has proposed prices for some of the unbundled network elements at issue as set forth in Exhibit "C" appended hereto. GTE's position during the negotiations was that negotiated rates need not be cost-based. Accordingly, ACSI cannot state with any degree of certainty what rates GTE believes would be consistent with the Section 251(d)(1) standard and the FCC's *Interconnection Order*.

B. Rates for Interim Local Number Portability

1. ACSI's Position

22. ACSI submits that the nonrecurring charges for interim number portability associated with the initial transfer of numbers by GTE to a competitor should be a portion of the incremental costs incurred by GTE in conducting this activity. Similarly, the recurring charges ACSI pays to GTE for the subsequent forwarding of calls to ACSI pursuant to interim number portability should equal a portion of GTE's incremental costs. Specifically, pursuant to the FCC's *Telephone Number Portability Order*, *supra* the NRCs should equal a competitively neutral allocation of the TELRIC costs, *i.e.*, an allocation that does not require new entrants to bear all of the costs of implementing currently available number portability. Rather, ACSI should contribute to the costs of interim number portability an amount based upon its size relative to GTE and other carriers the Commission determines must contribute.

2. GTE's Position

23. GTE has proposed that the NRC and recurring charges for interim number portability be equal to its tariffed charges for such services within Florida.

C. Rates for Cross-Connections to Other Collocated Entities

1. ACSI's Position

24. The Parties have agreed that ACSI may cross-connect directly with other entities collocated at the same interconnection point with GTE. ACSI believes that it should be able to do so either by making arrangements directly with the other collocated entity -- without GTE's assistance -- or by contracting with GTE to perform the cross-connect to the other entity. If ACSI connects with other entities without GTE's assistance, ACSI contends that GTE should not be permitted to charge ACSI for such arrangement. If, on the other hand, GTE's assistance is needed to make the cross-connection, ACSI proposes to compensate

GTE on a time and materials basis for the personnel and equipment used to make such connection. In no event, however, should GTE be entitled to a transiting or a traffic sensitive charge for permitting ACSI to cross-connect to other collocated entities.

2. GTE's Position

25. Although GTE has agreed to permit ACSI to cross-connect with other collocated entities, it has refused to accept ACSI's proposed compensation arrangement for interconnecting with other collocated entities. Moreover, GTE has not proposed rates that it would find acceptable for such cross-connection. Therefore, ACSI is unable to ascertain GTE's position on this issue.

D. Reciprocal Compensation for the Transport and Termination of Local Telecommunications Traffic

1. ACSI's Position

26. Section 252(d)(2) of the Act provides that parties exchanging local traffic must provide for the "mutual and reciprocal recovery of costs" associated with the transport and termination of calls originating on the other carrier's network. 47 U.S.C. § 252(d)(2)(A)(i). The statute explicitly permits state commissions to "afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)." *Id.* § 252(d)(2)(B)(i). Further, the FCC concluded that states may reasonably assume that the amount of traffic terminated by each carrier will be approximately equal.

27. ACSI proposes, therefore, that the parties initially begin with a bill-and-keep method of compensation, unless and until there is sufficient evidence to conclude that the volume of traffic exchanged will be significantly out of balance. Specifically, ACSI proposes

bill-and-keep, subject to the following conditions: If, during the first 12 months of the agreement, one party's volume of terminating traffic exceeds that of the other party by more than 2 million minutes in a state, the parties shall mutually compensate each other at the agreed-upon compensation level (explained below).⁸ During the second 12 months of the agreement, bill-and-keep will be used unless one party's volume of terminating traffic exceeds that of the other party by more than 10 percent *and* the amount of compensation for the excess traffic (using the compensation level explained below) would exceed \$10,000.

28. If bill-and-keep is not prescribed by the Commission, or when, as explained above, the parties terminate a bill-and-keep arrangement, ACSI proposes that each carrier transport and terminate local traffic originating on the other carrier's network at a total compensation rate of \$0.009 per minute of traffic.

2. GTE's Position

29. GTE agrees with ACSI that a compensation amount of \$0.009 per minute should be prescribed if bill-and-keep is not used, and also agrees that bill-and-keep should be employed for at least an initial period. However, GTE proposes an automatic bill-and-keep mechanism for a period of only 6 months. After that 6 month period, GTE proposes the transport and termination charge apply if, during any quarter, the volume of traffic terminated by one party exceeds that of the other party by more than 10 percent *and* the amount due that party would exceed \$2,000.

E. Use of Unbundled Network Elements by ACSI

⁸ Both parties agree that GTE will have the responsibility to track the volume of traffic exchanged pursuant to Section 251(b)(5).

1. ACSI's Position

30. ACSI submits that pursuant to Section 251(c)(3) adopted by the 1996 Act, it is free to combine and use the unbundled network elements it purchase from GTE to provide any telecommunications service it chooses which the unbundled network elements can be used to support.

2. GTE's Position

31. GTE simply refuses to agree that ACSI will be able to combine network elements as it sees fit to provide telecommunications service of its choosing.

F. Collocation of ACSI Remote Switching Modules

1. ACSI's Position

32. Section 251(c)(6) gives ACSI the right to collocate at GTE's central offices any equipment "necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6). ACSI requests pursuant to this section that it be permitted to locate its remote switching modules at GTE's premises, in order to obtain interconnection and access to GTE unbundled loops. A remote switching module is a remote device used to connect ACSI's switch to unbundled loops it obtains from GTE and performs limited switching functions at the direction of the ACSI host switch. ACSI seeks to locate this equipment at the central office in order to obtain the most efficient method of interconnection consistent with its own network architecture.

2. GTE's Position

33. GTE refuses to permit ACSI to collocate remote switching modules at GTE's central offices. GTE contends that ACSI may collocate "interconnection" equipment, but not "switching" equipment.

G. Nondiscriminatory Access to Interconnection Arrangements

1. ACSI's Position

34. ACSI submits that, pursuant to its interconnection agreement with GTE, it should be entitled to choose among *individual* provisions contained in publicly filed interconnection agreements between GTE and any other telecommunications carrier, including both landline and wireless providers. Moreover, the rates, terms and conditions under which ACSI obtains interconnection and unbundled elements must be on a nondiscriminatory basis with those received by any other telecommunications carrier, whether or not the interconnection agreement is publicly filed.

2. GTE's Position

35. GTE would deny ACSI the ability to choose among provisions of agreements.

V. ARGUMENT

A. Applicable Standards

36. This arbitration must be resolved by the standards established in Section 252(c) of the 1996 Act, 47 U.S.C. § 252(c), and the rules adopted by the FCC in its *Interconnection Order*. Section 252(c) requires a State commission resolving open issues through arbitration to:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251 (*e.g.*, interconnection,

pricing guidelines, unbundled network elements, telephone number portability);

- (2) establish any rates for interconnection, services, or network elements according to [section 252(d)]; and
- (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.⁹

37. Accordingly, the PSC must make an affirmative determination that the rates it prescribes in this arbitration proceeding are consistent with Section 251 and meet the pricing standards established in Section 252(d)(1) and the FCC's *Interconnection Order*. Section 251(c) governs the obligations of an ILEC to offer, *inter alia*, interconnection to the facilities of other telecommunications carriers and access to unbundled elements of its network. ILECs must offer interconnection and unbundled elements to other telecommunications carriers on rates, terms and conditions that are "just, reasonable and nondiscriminatory."¹⁰ The PSC, therefore, must evaluate whether the prices proposed by the Parties are just and reasonable and whether they are discriminatory.

B. The Unbundled Loop and Related Network Elements Must Be Made Available at Non-Discriminatory TELRIC-Based Rates

38. Section 252(d) -- which applies specifically to arbitrations conducted before state regulatory commissions -- amplifies and reinforces Section 251's requirements. Section 252(d)(1) requires that a state commission's determination of the rates for unbundled elements shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the . . . unbundled network element" and "may include a

⁹ 47 U.S.C. § 252(c).

¹⁰ *Id.* §§ 251(c)(2)(D); 251(c)(3); 251(c)(6).

reasonable profit." 47 U.S.C. § 252(d)(1) (emphasis added). Significantly, Section 252(d)(1) precludes the establishment of loop rates based upon traditional regulatory pricing principles, including application of embedded cost or fully distributed cost methodologies. Instead, an incremental cost approach is required.

39. On August 1, 1996, the Federal Communications Commission adopted rules which implement the interconnection provisions of Sections 251 and 252. Those rules, which apply to this arbitration proceeding, require rates for interconnection and unbundled network elements to be equal to TELRIC plus a reasonable share of forward-looking joint and common costs. Where TELRIC information is unavailable, the FCC has established rate ranges within which and rate ceilings below which prices for rate elements must be set. In addition, rates for unbundled loops must be deaveraged and priced on a density-zone basis, with at least three zones in each state.

40. In addition to being required by the Act and the FCC's *Interconnection Order*, TELRIC-based pricing is the most economically efficient standard for determining rates for unbundled network elements. Prices in a competitive market are based on efficiently-incurred forward-looking, market-oriented costs. In order for regulators to replicate this pricing for unbundled network elements (which are not subject to competitive pressures), rates should be developed using the total element long run incremental cost methodology (TELRIC), plus a competitive-based markup to permit recovery of forward-looking, efficiently incurred joint and common costs. This approach will encourage an efficient level of entry in telecommunications markets, promote the efficient production of services, lead to competitively determined end user prices, and guard against anticompetitive behavior by incumbent local exchange carriers.

ACSI submits that under the Act, GTE has the burden of establishing what its TELRIC is for each of the network elements ACSI has requested, and GTE should be required to submit TELRIC cost studies as promptly as possible, but in any event no later than 60 days from the date of this Petition.

41. Unfortunately, GTE thus far has refused to provide ACSI with TELRIC studies and has insisted in the negotiations that it need not propose TELRIC-based rates. Therefore, in the absence of TELRIC data, ACSI has used the best available alternative to develop its proposed rates. That alternative uses the updated Hatfield Model¹¹ to estimate an upper bound for TELRIC data. This model, which is still being refined, produces TELRIC data by line density zones for each state. ACSI has analyzed the methodology of the Hatfield Model, and recommends that, until complete TELRIC data is available, this data be used as an upper bound for the TELRIC of the elements at issue.

42. In order to estimate a suitable mark-up to recover joint and common costs, ACSI submits that the Commission should use a competitive surrogate as an upper limit on such costs. The mark-up that the LEC itself finds acceptable in a competitive market, such as, for example Centrex, is an appropriate standard to apply to the LEC's network elements. Use of such a surrogate captures a competitive outcome in the pricing of ILEC network elements. In the event appropriate GTE data on forward-looking joint and common costs is available, a different mark up may be warranted.

¹¹ Version 2.2, Release 2, by Hatfield Associates, Inc., attached to an *ex parte* filed by AT&T Corp. on September 10, 1996, in FCC CC Docket No. 96-98.

43. ACSI submits that the foregoing alternative may be relied upon by the Commission, in conjunction with the default ranges established in the FCC's *Interconnection Order*, in the absence of adequate TELRIC studies. See 47 U.S.C. § 252(b)(4). The Commission should set rates for an interim period, while TELRIC studies are being completed and reviewed by the Parties and the Commission. Once such rates have been developed, they should immediately apply to ACSI for local loops and related unbundled elements.¹²

C. Interim Local Number Portability Should Be Provided on a Competitively Neutral Basis

44. GTE's proposed rates for number portability, both nonrecurring and recurring, would saddle ACSI with all (or nearly all) of the incremental costs of currently available number portability methods. Such an arrangement would be in flagrant contravention of the FCC's *Telephone Number Portability Order*. That *Order* imposed two principle requirements under the general rubric of mandating "competitively neutral" cost recovery of interim number portability. First, any cost recovery mechanism must not give "one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber." *Id.* ¶ 132. Second, cost recovery should not be borne fully for a new entrant. Rather, the incumbent and resellers, at a minimum, should be required to bear a share of those costs based upon a relevant measure of each carrier's size, such as the relative number of telephone numbers actively designed to each carrier, or the relative number of

¹² As explained previously, ACSI believes such states should be submitted within 60 days so that they may be evaluated within the statutory timeframe. In the event TELRIC studies are not available, the Commission should order them to be supplied no later than six months from the date hereof.

resubscribed carriers. *Id.* ¶¶ 134-35. See 47 U.S.C. § 251(e)(2) (all carriers must share the costs of number portability).

45. Accordingly, in order to ensure the competitively neutral recovery of the costs of currently available number portability methods, the Commission should require ACSI to pay a portion of NRCs and recurring charges equivalent to the size of ACSI relative to GTE (as measured by the active numbers assigned to each). Those charges should be based on the costs that would be incurred in a competitive environment, *i.e.*, TELRIC.

D. ACSI Should Be Permitted to Cross-Connect with Other Collocated Entities Without Charge, or Pay for Such Cross-Connect on a Time and Materials Basis if GTE Performs the Cross-Connection

46. Under Section 251(c)(3) of the Act, a requesting telecommunications carrier is permitted to use unbundled network elements in any manner it sees fit to provide telecommunications services. 47 U.S.C. § 251(c)(3). The FCC underscored this in its *Interconnection Order* by saying that ILECs may place *no restrictions* on the use of network elements. Consequently, it is extremely clear that ACSI can use the equipment or facilities obtained from GTE to cross-connect with other entities that are similarly collocated with ACSI.¹³ Indeed, GTE does not contest ACSI's ability to engage in this activity.

47. The FCC also required in its *Interconnection Order* that ILECs must either provide this connection or "permit the collocating parties to provide this connection for themselves."¹⁴ If the collocating parties provide the connection themselves, however, the ILEC has not incurred any costs for which it may charge pursuant to the Commission's pricing

¹³ See *Interconnection Order* at ¶ 594.

¹⁴ *Id.* at ¶ 595.

methodology. Accordingly, if the collocating entities provide a cross-connection themselves, without the assistance of GTE, GTE should not be permitted to impose any charge for such connection.

48. If, on the other hand, the collocating parties require the assistance of GTE to make the connection (*e.g.*, by pulling the connecting cables through its central office), GTE should be compensated at a TELRIC-based rate for its effort. ACSI believes that compensation for the time and materials expended by GTE to make the connection, at rates equivalent to that which GTE charges itself or its affiliate for the services of the individuals involved, is more than sufficient to recover GTE's TELRIC. Accordingly, the Commission should mandate that GTE may charge no more than its standard time and materials rates charged to itself or its affiliates for performing a cross-connect between collocated entities.

E. The Parties Should Compensate Each Other for the Transport and Termination of Local Traffic on a "Bill-and-Keep" Basis

49. The Parties have agreed to transport and terminate the local exchange traffic routed to their own networks from the other but have not agreed upon a compensation mechanism. Section 252(d)(2) of the Act provides that such a compensation mechanism must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network of the other carrier." 47 U.S.C. § 252(d)(2)(A)(i). Section 252(d)(2) permits the PSC "to afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)." 47 U.S.C. § 252(d)(2)(B)(i).

50. In interpreting these statutory provisions and developing nationwide guidelines for State commissions to follow when arbitrating interconnection disputes, the FCC concluded that bill-and-keep arrangements would be appropriate and in the public interest where the amount of traffic terminated on each of the two networks in a given scenario are approximately in balance.¹⁵ The Commission based its determination on the fact that a bill-and-keep mechanism is administratively simple and avoids the need to invest in costly measurement systems. Where traffic is essentially balanced, the public interest would not be served by requiring such investment. As noted above, the FCC concluded that states may presume traffic will be roughly in balance, and that the burden shall be on the party opposing this presumption to provide reliable evidence to rebut the presumption.¹⁶ ACSI believes that the volumes of traffic originated on ACSI's and GTE's networks that are terminated on the other's facilities will be roughly in balance, and is not aware of any evidence suggesting a contrary conclusion. Accordingly, a bill-and-keep mechanism as proposed by ACSI is just and reasonable and in the public interest. The PSC should order that such a compensation mechanism be instituted.

51. The FCC indicated that bill-and-keep may be inappropriate only if the volume of traffic exchanged is likely to be out of balance by a substantial margin. ACSI's proposed thresholds for ending the bill-and-keep mechanism protect that parties' interests in the event the volume of traffic actually exchanged is not roughly in balance. During the initial 12 month period, if the volume of traffic terminated by a party exceeds that which it hands off for

¹⁵ *Interconnection Order* at ¶ 1112.

¹⁶ *Id.* at ¶ 1113.

termination by more than 2 million minutes in a month, bill-and-keep would not apply thereafter. This level is especially appropriate for the initial period of competition, as new carriers such as ACSI begin to sign up customers. It protects ACSI and other new entrants from sharp increases in its expenses while it is developing an initial base of customers. In addition, at least initially, it will be difficult to track all traffic exchanged with a reasonable degree of accuracy. A standard which requires bill-and-keep unless the imbalance exceeds 2 million minutes in a month ensures that minor inaccuracies in tracking volumes will not arbitrarily require a party to make monetary payments to the other party.

52. After one year, however, it is reasonable to tighten the degree by which traffic must be out of balance in order to require monetary compensation. A standard which requires that the imbalance both be greater than 10 percent (in terms of minutes of traffic exchanged) and be at a level such that the terminating carrier would be owed more than \$10,000 in compensation for the period, is a sufficient standard to allow compensation when the volume of traffic is substantially out of balance.

F. ACSI Must Be Free to Use Unbundled Network Elements to Provide Any Service It Chooses

53. Section 251(c)(3) adopted by the 1996 Act obligates incumbent LECs to provide access to "unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide [a telecommunications service]."¹⁷ This provision, unequivocally "bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or *use* of unbundled elements that would impair the ability of

¹⁷ 47 U.S.C. § 251(c)(3).

requesting carriers to offer telecommunications services in the manner they intend."¹⁸ In short, new entrants must be able to "provide any telecommunications services that can be offered by means of the element."¹⁹

54. Furthermore, new entrants must be free to *combine* elements in any manner they choose with other elements or their own facilities.²⁰ Indeed, incumbent LECs must provide unbundled elements in a way that facilitates such combinations, provided such combinations are technically feasible, regardless of whether they are ordinarily combined in that manner.²¹

55. Therefore, there is no doubt that ACSI can combine the network elements it purchase from GTE as it sees fit. The arbitrator should order that the interconnection agreement between the Parties make this explicit.

G. ACSI Should Be Able to Collocate Its Remote Switching Modules at GTE Facilities

56. Section 251(c)(6) requires ILECs like GTE to permit physical collocation of interconnecting entities' "equipment necessary for interconnection or access to unbundled network elements." 47 U.S.C. § 251(c)(6). The FCC, in its *Interconnection Order*, concluded that the term "necessary" in Section 251(c)(6) refers to any equipment "used" or

¹⁸ *Interconnection Order* ¶ 292 (emphasis added).

¹⁹ *Id.*

²⁰ *Id.* ¶ 294.

²¹ *Id.* ¶¶ 294, 296. *See also id.* ¶ 296 (incumbents have the burden to prove a combination is not technically feasible).

"useful" for the purpose of interconnection or access to unbundled elements.²² Therefore, a collocator may choose to deploy any equipment of its choosing for the purpose of interconnection or access to unbundled elements, even if the use of other equipment might also be possible.²³ The FCC gave the states discretion to identify, if a dispute arises, whether a specific piece of equipment is "used or useful" for the purpose of interconnection or access to unbundled elements.²⁴

57. ACSI's remote switching modules are equipment used or useful to ACSI to interconnect unbundled loops obtained from GTE with ACSI's network facilities. ACSI has found that the most efficient network architecture for making such interconnection is to collocate its remote switching modules -- which both connect ACSI's equipment to unbundled loops and perform limited switching functions -- directly at the GTE facilities. As the FCC recognized, this type of dual use equipment is becoming increasingly common in the industry.²⁵ Accordingly, ACSI should be permitted to collocate remote switching modules at GTE central offices.

H. ACSI Should Be Able to Choose Among Individual Provisions Contained in Interconnection Agreements Between GTE and Other Carriers

58. Section 252(i) added by the 1996 Act provides that an incumbent LEC "shall make available any interconnection, service, or network element provided under an agreement

²² *Interconnection Order*, at ¶ 579.

²³ *Id.*

²⁴ *Id.* at ¶ 581.

²⁵ *Interconnection Order* at ¶ 581.

approved under [Section 252] to which it is a party" to any other requesting carrier upon request upon the same terms and conditions. This section is a primary, but is not the exclusive, tool for preventing discrimination in the access of carriers to unbundled network elements in Section 251(c)(3). The FCC, in its *Interconnection Order*, concluded that national standards should govern implementation of Section 252(i). The FCC determined that carriers requesting interconnection or elements from a specific incumbent LEC may choose among the individual provisions in other agreements to which that LEC is a party, if the requesting party chooses.²⁶

59. It is clear then that GTE must be required to make available to ACSI any rate, term, or condition made available to another carrier under an approved agreement. Further, under the nondiscrimination provisions of Section 251(c), GTE cannot discriminate between ACSI and any other carrier, whether an approved agreement is publicly disclosed or not. Thus, ACSI must be able to take interconnection or unbundled elements at the same rates, terms and conditions made available to any other carrier.

VI. PROCEDURAL MATTERS

60. Section 252(b)(4)(c) requires that the PSC render a decision in this proceeding not later than nine months after ACSI submitted its request for negotiations to GTE, *i.e.*, by January 26, 1997. In order to allow for the most expeditious conduct of this arbitration, ACSI respectfully requests that the PSC convene a status conference, as promptly as possible, to

²⁶ *Interconnection Order* ¶¶ 1309-10.

establish a procedural schedule for discovery requests and the conduct of a hearing in this matter.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, the PSC should conclude that ACSI's proposed rates for Unbundled Loops and the Network Interface Device are consistent with Section 252(d)(1) of the Act. The PSC should also require GTE to establish competitively-neutral, TELRIC-based rates for the recovery of the costs associated with interim local number portability, in accordance with Sections 251(b)(2) and 251(e) of the Act. In addition, the PSC should grant ACSI's requests on the terms and condition set forth herein (a) to cross-connect directly with other telecommunications carriers collocated with GTE at the same premises as ACSI; (b) for the reciprocal compensation for the mutual exchange of local interconnected traffic; (c) to combine unbundled elements it receives from GTE in order to provide any telecommunications service it chooses; (d) to collocate its remote

switching modules at GTE central offices; and (e) to obtain on a nondiscriminatory basis individual provisions of other interconnection agreements into which GTE has entered.

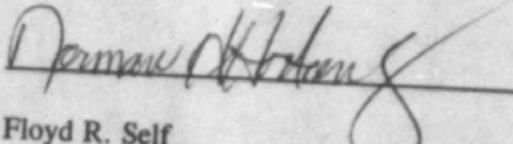
Respectfully submitted

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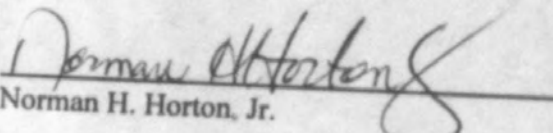
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Petition for Arbitration of American Communications Services, Inc. has been furnished by Hand Delivery (*) and/or Overnight Delivery (**) on this 26th day of December, 1996 to the following parties of record:

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**SUMMARY OF ISSUES EXPECTED TO
BE RESOLVED AND THOSE ON WHICH
THE PARTIES WERE UNABLE TO AGREE**

ACSI believes the Parties have reached substantial agreement on the subjects listed below, and expects that a final agreement concerning those topics will be reached soon. Out of an abundance of caution, however, ACSI hereby requests arbitration of the issues listed below.

1. **ACCESS TO UNBUNDLED NETWORK ELEMENTS**

The Parties expect to agree on an initial set of unbundled network elements (UNEs) that would be made available, order processing procedures, service quality standards, interface arrangements, and a procedure for the addition of other UNEs.

The Parties could not agree on recurring and non-recurring charges for the UNEs described in the Petition, however. In addition, the Parties were unable to agree on terms applicable to ACSI's ability to recombine UNEs to enable it to provide telecommunication services.

2. **LOCAL TRAFFIC INTERCONNECTION ARRANGEMENTS**

The Parties expect to agree on the types of interconnection that will be available, the designated points of interconnection and most collocation arrangements, as well as trunking, signalling and network management issues surrounding such interconnection.

However, the Parties were unable to agree on ACSI's request to be able to collocate Remote Switching Modules ("RSMs") and associated equipment at GTE wire centers in order to access and utilize UNEs. The Parties also

were unable to agree on the pricing to be applied when ACSI connects to other collocated in a GTE wire center.

3. LOCAL TRAFFIC EXCHANGE

The Parties expect to agree on physical arrangements for the mutual exchange of local traffic and for interconnection necessary to accomplish such exchange.

However, the Parties have been unable to agree on compensation arrangements for the transport and termination of local traffic delivered to one Party by the other Party.

4. MEET-POINT BILLING ARRANGEMENTS

The Parties expect to agree on networks and procedures for the meet-point billing of jointly-provisional interexchange access services traffic.

5. TOLL TRAFFIC INTERCONNECTION

The Parties expect to agree on procedures for the delivery and exchange of interexchange toll traffic.

6. NUMBER RESOURCE ARRANGEMENTS

The Parties expect to agree on procedures to ensure that ACSI has nondiscriminatory access to telephone numbers for assignment and on arrangements to ensure the seamless routing of local exchange calls in areas where GTE functions as the local number administrator.

7. ACCESS TO POLES, DUCTS, CONDUIT AND RIGHTS OF WAY

The Parties expect to agree on procedures for nondiscriminatory access to poles, ducts, conduit and rights of way owned or controlled by the ILEC.

8.

ANCILLARY SERVICES AND PLATFORM ARRANGEMENTS

The Parties expect to agree on arrangements relating to ancillary services including 800 traffic, 911/E-911, operator services, transfer of service announcements, repair services, busy line verification and interrupt, directory assistance, directory listings, and access to signalling and signalling databases.

9.

TELEPHONE NUMBER PORTABILITY ARRANGEMENTS

The Parties expect to agree on arrangements for interim number portability.

However, the Parties have been unable to agree on the pricing of interim number portability arrangements.

10.

OTHER MATTERS

The Parties also expect to reach agreement on various other matters, including procedures for the disconnection of customers, the resale of ILEC local services, network management and control and other responsibilities between the parties.

However, the Parties were unable to agree on ACSI's request for "most favored nation" treatment under Section 252(i) and the nondiscrimination provision of the 1996 Act, or its ability to select more favorable terms from comparable interconnection agreements.

ACSI Rate Proposals for Florida

1. Unbundled Loop (including channelization and network interface device ("NID"))*

	Statewide Average Recurring Charge Monthly	Non-Recurring Charge	
		First line	Additional lines
Analog 2W	\$11.89**	TELRIC + J/C	TELRIC + J/C
Analog 4W	\$11.89***	TELRIC + J/C	TELRIC + J/C
BRI ISDN	\$11.89***	TELRIC + J/C	TELRIC + J/C
ADSL 2W	\$11.89***	TELRIC + J/C	TELRIC + J/C
HDSL 2W	\$11.89***	TELRIC + J/C	TELRIC + J/C
HDSL 4W	\$11.89***	TELRIC + J/C	TELRIC + J/C
Integrated DLC	\$11.89***	TELRIC + J/C	TELRIC + J/C

2. Loop Cross-Connect - Priced at TELRIC + J/C

TELRIC + J/C = Total Element Long Run Incremental Cost plus a reasonable allocation of efficiently-incurred, forward-looking joint and common costs, as defined by the FCC in its First Report and Order in Docket 96-98.

* In those cases where ACSI will take the loop without channelization or NID, its initial interim proposed rate is at the same level.

** See Attachment for geographically deaveraged rate proposals.

*** ACSI proposed rate for this loop type is the same as for Analog 2W, except that ACSI acknowledges additional TELRIC costs, if any, may properly be associated with providing each specific loop type, e.g., the costs properly included in TELRIC associated with conditioning loops to carry digital traffic.

GTE Rate Proposals for Florida

In the course of negotiations, GTE made the following proposals for rates in Florida. ACSI cannot say with certainty that these rates are the "final" proposal made by GTE, nor is ACSI able to state whether or how GTE believes these rates meet the requirements of Section 251(c) and 252(d)(1) of the Telecommunications Act of 1996.

1. **Unbundled Loop**

	Recurring Charge Monthly	Non-Recurring Charge	
		First line	Additional Lines
Analog 2W	\$38.08/month	NRCs in General Subscriber Tariff or Special Access Tariff	
Analog 4W	\$52.93/month	NRCs in General Subscriber Tariff or Special Access Tariff	
BRI ISDN	NP	NP	
ADSL 2W	NP	NP	
HDSL 2W	NP	NP	
HDSL 4W	NP	NP	
Integrated DLC	NP	NP	

2. **Loop Cross-Connect:** NP

3. **Network Interface Device:**

NID \$1.50/month
 12xNID \$2.10/month

4. **Loop Channelization**

Included in loop rates.

NP = No proposal