

FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

MARCH 12, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (GREER, GRISWOLD, NORTON, SHELFER, STRIANNI, STAVANJA, WIDELL) *5/16* *Log* *man* *ad*
DIVISION OF LEGAL SERVICES (BROWN) *MSB*

RE: DOCKET NO. 960847-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. (AT&T) FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH GTE FLORIDA INCORPORATED (GTE) CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996

AGENDA: MARCH 18, 1997 - REGULAR AGENDA - POST HEARING DECISION - APPROVAL OF ARBITRATED AGREEMENT - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: MARCH 19, 1997 - 30 DAY REVIEW PERIOD PURSUANT TO THE ACT ENDS

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960847TP.RCM

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FPSC-RECORDS/REPORTING

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CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC 151 et. seq., provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements established by compulsory arbitration. Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On March 11, 1996, AT&T Communications of the Southern States (AT&T) requested that GTE Florida Incorporated (GTE) begin negotiations for an interconnection agreement pursuant to Section 252 of the Act. On August 16, 1996, AT&T filed a petition for arbitration of unresolved issues pursuant to Section 252 of the Act.

On April 3, 1996, MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively MCI) requested that GTE begin negotiations. On August 28, 1996, MCI filed its petition for arbitration with GTE, and also filed a motion to consolidate its arbitration proceeding with the AT&T/GTE arbitration proceeding. Docket No. 960980-TP was established for MCI's petition. On September 13, 1996, MCI's motion to consolidate was granted by Order No. PSC-96-1152-PCO-TP.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC order, and

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requested a stay of the Order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Order.

On October 14-16, 1996, the Commission conducted an evidentiary hearing for the consolidated dockets. At its December 2, 1996, Agenda Conference the Commission made its decision on the issues addressed by the parties in four main subject areas: network elements; resale; transport and termination; and, implementation matters.

On January 17, 1997, the Commission issued Order No. PSC-97-0064-FOF-TP memorializing its arbitration decision the remaining unresolved issues between AT&T and GTE. In the Order, the Commission directed the parties to file agreements memorializing and implementing its arbitration decision within 30 days. The parties filed their arbitrated agreement with the Commission on February 17, 1997 and identified the sections where there were still disputes on the specific language. This recommendation addresses approval of the agreement.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the sections of AT&T and GTE's arbitrated agreement identified in Exhibit A?

RECOMMENDATION: Yes. The Commission should approve the sections identified in Exhibit A. The sections are consistent with Section 251 of the Act and the Commission's arbitration order.

STAFF ANALYSIS: The parties to the proceeding have agreed to all of the language in the sections identified in Exhibit A, except for the sections identified by an (*) in the exhibit. For these sections, the parties agreed to portions of the language and were in dispute with other portions in the section. Normally, staff would exclude the entire section from the agreement if there was disputed language within a section and the issue was not arbitrated by this Commission or critical to the implementation of the agreement. This approach was taken due to our inability to determine if the parties would still agree on certain language in a section if their disputed language was not included. However, for these sections, staff believes the Commission should include the agreed language although there is disputed language that staff is recommending the Commission exclude from the agreement. The agreed language in these sections deal with the handling of E911 and Relay calls. Although the parties disagree with what the charge for the specific services should be, staff believes it is important to ensure that these services are not adversely impacted.

Section 252(e)(2)(B) states that the Commission can only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to section 251, or the standards set forth in subsection (d) of Section 252 of the Act. Staff has reviewed the agreed language for compliance with the Commission's order issued in this proceeding, the Act and the FCC's implementing rules and orders. Staff believes that the language is appropriate. Therefore, staff recommends that the Commission approve the language contained in the sections identified in Exhibit A.

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ISSUE 2: Should the Commission incorporate language in the AT&T and GTE arbitration agreement for the disputed sections identified in Exhibit B that were not considered in the arbitration proceeding?

RECOMMENDATION: No. The Commission should not incorporate language in the arbitrated agreement for the disputed sections identified in Exhibit B that were not part of the arbitration proceeding. These sections should be eliminated from the final agreement approved by the Commission.

STAFF ANALYSIS: The parties to this proceeding have not agreed to language in the sections identified in Exhibit B. Staff has reviewed the issues and the language that the sections in Exhibit B address. Since those issues were not matters that the Commission arbitrated, staff recommends that the Commission should not establish language for these sections. The sections should be eliminated from the final agreement approved by the Commission.

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ISSUE 3: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Preface and General Terms and Conditions that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

a. Preface

Sixth Recital
Now, Therefore clause

AT&T's Proposed Language:

Sixth Recital: none

Now, therefore clause: Now, therefore, in consideration of the premises and the mutual covenants of the Agreement, AT&T and GTE hereby agree as follows:

GTE's Proposed Language:

Sixth Recital: WHEREAS, the Parties have been made to produce this Agreement as a result of a compulsory arbitration and the Order of the Florida Public Service Commission, dated January 17, 1997, pursuant to Section 252 of the Act, and only certain provisions of the Agreement are the product of negotiations conducted by and between the Parties pursuant to Section 251 of the Act, accordingly neither Party is entering into this Agreement voluntarily.

Now, therefore clause: NOW, THEREFORE, acting in compliance with the aforementioned Order, AT&T and GTE hereby submit the following Agreement.

Staff's Recommended Language: Use AT&T's proposed language.

Staff's Rationale: GTE and AT&T agree on most of the language in the Preface to the Agreement. However, GTE has proposed to insert a sixth Recital that GTE considers to be recognition that the agreement is not an agreement in the sense that it was voluntarily produced by the parties, but is instead an "arbitrated agreement" whereby each party specifically reserves its rights to contest the provisions of the Agreement and the Commission's order. GTE's

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proposed language for the "Now, therefore " clause also recognizes that it is simply complying with the Commission's order.

AT&T opposes the insertion of the sixth recital, and it has also proposed different language for the "Now, therefore" clause, stating that it is satisfied that the language on the cover page of the Agreement preserves its right to appeal. The language on the cover page, which has not been disputed by the parties, reads in part:

The filing of this arbitrated Agreement ... in accordance with Order No. PSC-97-0064-FOF-TP ... does not in any way constitute a waiver by either AT&T Communications ... or GTE Florida Inc. of any right which any such party may have to appeal to a competent court of law, or to petition the Commission for reconsideration of, any determination contained in the Order, or any provision included in this Agreement pursuant to the Order.

In this document the Parties attempt to comply with the Order Nothing contained herein shall be construed ... by either party that any such provision of the Order or the language herein complies with the duties imposed by the Telecommunications Act of 1996, the decisions of the FCC and the Commission, or other law, and each Party thus expressly reserves its full right to assert and pursue claims that the Order does not comport with applicable law.

Neither party addressed their reason for opposing the language of the other party, and why it believed it did or did not preserve appeal rights. Staff does not believe that insertion or omission of the language proposed by GTE in its sixth recital would affect appeal rights either way. We agree with AT&T that the parties have preserved their appeal and reconsideration rights with the language on the first page of the agreement. Staff recommends that the sixth recital proposed by GTE not be inserted into the agreement, and that AT&T's language in the "Now, Therefore" clause be inserted into the agreement.

b. General Terms and Conditions

<u>Section</u>	<u>Title</u>
2.	Term of Agreement
11.3, 11.5	Service Parity and Standards
18.1	Branding

Section 2. Term of Agreement

The disputed sentence in this paragraph reads as follows:

This Agreement shall become effective on the later [GTE] **earlier** [AT&T] of the date the same is executed by authorized representatives of all Parties, or the date the same becomes effective under Section 23.8 (the "Effective Date"), and shall remain effective for a period of three (3) years.

Staff's Recommended Language: This agreement shall become effective two weeks following the issue date of the final order in this proceeding. This agreement will be prepared, signed and executed no later than the effective date ordered by the Commission. Each party shall designate a representative to sign the agreement. The agreement shall remain effective for a period of three (3) years.

Staff's Rationale: GTE argues that AT&T's proposed language assumes that the Agreement may become effective prior to approval by the Commission in accordance with Section 252, which is not necessarily true. GTE argues that its language allows, but does not assume, the possibility of Commission approval prior to the Effective Date. AT&T, on the other hand, is concerned that under GTE's proposed language, GTE could indefinitely delay the Agreement taking effect simply by not executing it. This particular point was not a specific issue in the case, but the filing and effective date of the arbitrated agreement is an issue. Therefore, staff believes that the Commission should resolve this dispute. Staff would note that Section 23.8, entitled Regulatory Agency Control, and which was not disputed by the parties, states in part that

If this Agreement is subject to advance approval of a regulatory agency, this Agreement shall not become effective until five (5) Business Days after receipt by the Parties of written notice of such approval.

Therefore, staff recommends that the Commission order that the parties must prepare, sign and execute the agreement no later than

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the effective date ordered by the Commission. Staff also recommends that the Commission's ordered effective date be set for two weeks following the issue date of the Order, and that a representative be designated by each party to sign the agreement. The remaining language in this paragraph addressed notice of termination procedures, was not disputed, and staff recommends that it be approved as written.

Section 11.3, 11.5 Service Parity and Standards

GTE's Proposed language:

Section 11.3 GTE and AT&T agree to implement the quality standards ("Quality Standards") described in Attachment 12 to measure each Party's performance of its respective obligations hereunder. Imposition of the penalties set forth in Attachment 12 shall be the sole remedy for any violation of the Quality Standards. No such violations shall constitute a breach of this Agreement or shall give rise to any claim or cause of action other than the imposition of the penalty specified in Attachment 12.

Section 11.5 If AT&T requests a standard higher than GTE provides to itself, such request shall be made as a Bona Fide Request pursuant to Attachment 12, and GTE shall provide such standard to the extent technically feasible. AT&T shall pay the incremental cost of such higher standard or other measurement of quality.

AT&T's Proposed Language:

Section 11.3 GTE and AT&T agree to implement the quality standards ("Quality Standards") described in Attachment 12 to measure each Party's performance of its respective obligations hereunder.

Section 11.5 If AT&T requests a standard higher than GTE provides to itself, such request shall be made as a Bona Fide Request pursuant to Attachment 12, and GTE shall provide such standard to the extent technically feasible. AT&T shall pay

the incremental cost, prorated in a competitively neutral manner, of such higher standard or other measurement of quality.

Staff's Recommended Language:

Section 11.3 GTE and AT&T agree to implement the quality standards ("Quality Standards") described in Attachment 12 to measure each Party's performance of its respective obligations hereunder.

Section 11.5 If AT&T requests a standard higher than GTE provides to itself, such request shall be made as a Bona Fide Request pursuant to Attachment 12, and GTE shall provide such standard to the extent technically feasible. AT&T shall pay the incremental cost of such higher standard or other measurement of quality.

Staff's Rationale: The parties agree on most of the provisions for service standards and quality. In these subsections, they also agree with two exceptions. With respect to Section 11.3, GTE proposes to add language addressing limitations of penalties arising from violation of the Quality Standards. The Commission has ordered, in this proceeding, that it does not have the jurisdiction to determine limits of liability. This language should not be included in the final agreement approved by this Commission

With respect to Section 11.5, although staff agrees with AT&T that its proposed language would produce an equitable result, neither this Commission nor the Act addressed the method of cost recovery in this instance, beyond the requirement that ALECs pay the costs of provision of service standards higher than that which GTE provides to itself. Therefore, we recommend that the AT&T proposed language not be inserted into the paragraph above. We would note, however, that the language in Attachment 12 describes the Bona Fide Request process, and provides that disputes may be resolved via the Dispute Resolution process. The parties have not disputed this section. We would hope that agreement on appropriate cost recovery could be secured this way.

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Section 18.1 Branding

GTE's Proposed Language:

Operator Services and Directory Assistance provided by GTE to AT&T local service customers under this Agreement will be branded exclusively as AT&T services, where technically feasible. GTE will perform the necessary software upgrades to allow for rebranding of its Operator Services and Directory Assistance in AT&T's name on a switch by switch basis, subject to capability and capacity limitations; until those upgrades have been completed, GTE will provide rebranded services through alternate means to the extent technically feasible. Where it is not technically feasible for GTE to provide Operator Services and Directory Assistance as rebranded services, then GTE will provide such services without any branding, if allowed by state laws and regulations. Live operators handling Operator Services and Directory Assistance calls from AT&T local service customers will identify themselves as AT&T operators; where such rebranding is not technically feasible, live operator response will be provided on an unbranded basis. For those offices that AT&T has requested GTE to rebrand and/or unbrand OS and DA, AT&T shall continue exclusively to use GTE rebranded and/or unbranded OS and DA for the duration of this Agreement. During the period between the execution of this Agreement and the implementation of rebranding, where GTE unbrands live operator handled OS and DA calls, AT&T agrees to withdraw its request for rebranding of OS and DA calls handled by automated systems until these systems are capable of rebranding. To the extent the costs of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing rebranding of OS and DA on a non-recurring charge basis.

AT&T's Proposed Language:

Operator Services and Directory Assistance provided by GTE to AT&T local service customers under this Agreement will be branded exclusively as AT&T services, where technically feasible. GTE will perform the necessary software upgrades to allow for rebranding of its Operator Services and Directory Assistance in AT&T's name on a switch by switch basis, subject to capability and capacity limitations; until those upgrades have been completed, GTE will provide rebranded services through alternate means to the extent technically feasible. Where it is not technically feasible for GTE to provide

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Operator Services and Directory Assistance as rebranded services, then GTE will provide such services without any branding, if allowed by state laws and regulations. Live operators handling Operator Services and Directory Assistance calls from AT&T local service customers will identify themselves as AT&T operators; where such rebranding is not technically feasible, live operator response will be provided on an unbranded basis. **AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such branding.**

Staff's Recommended Language:

Operator Services and Directory Assistance provided by GTE to AT&T local service customers under this Agreement will be branded exclusively as AT&T services, where technically feasible. GTE will perform the necessary software upgrades to allow for rebranding of its Operator Services and Directory Assistance in AT&T's name on a switch by switch basis, subject to capability and capacity limitations; until those upgrades have been completed, GTE will provide rebranded services through alternate means to the extent technically feasible. Where it is not technically feasible for GTE to provide Operator Services and Directory Assistance as rebranded services, then GTE will provide such services without any branding, if allowed by state laws and regulations. Live operators handling Operator Services and Directory Assistance calls from AT&T local service customers will identify themselves as AT&T operators; where such rebranding is not technically feasible, live operator response will be provided on an unbranded basis.

Staff Rationale: This was not an issue in the AT&T/GTE arbitration proceeding. Therefore, the parties may not litigate it here. GTE noted in its comments on this section that it believed that the issue may have been resolved, and that it would so notify the Commission if such were the case. No notification has been received as of filing. Therefore, staff has recommended that the disputed language not be included, and that only the agreed upon language be inserted into the final agreement.

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ISSUE 4: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Part I (Local Services Resale) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

Part I - Local Services Resale

a.	<u>Section</u>	<u>Title</u>
	24	Telecommunications Services Provided for Resale

AT&T's Proposed Language

Upon request by AT&T in accordance with Attachment 4 and subject to the restrictions contained in Section 25.3 hereunder, GTE shall make available to AT&T at the applicable rate set forth in Attachment 14, any Telecommunications Service that GTE currently offers or may hereafter offer at retail to subscribers that are not telecommunications carriers. Such Telecommunications Services and **SERVICE SUPPORT FUNCTIONS** provided by GTE pursuant to this Section are collectively referred to as "Local Services."

AT&T Rationale: AT&T contends that its language suggests that service support functions are included in Local Services Resale. AT&T states that the FCC Order (1970) requires ILECs to provide and provision services at the same quality level as they provide and provision services for themselves or any third party.

GTE's Proposed Language

Upon request by AT&T in accordance with Attachment 4 and subject to the restrictions contained in Section 25.3 hereunder, GTE shall make available to AT&T at the applicable rate set forth in Attachment 14, any Telecommunications Service that GTE currently offers or may hereafter offer at retail to subscribers that are not telecommunications carriers. Such Telecommunications Services provided by GTE pursuant to this Section are

collectively referred to as "Local Services."

GTE's Rationale: GTE argues that AT&T's language to extend GTE's resale obligation to "service support functions" lacks any foundation in the Order. GTE states that the Commission ruled that, under the Act, GTE is required to resell any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers. (Order at 51)

Staff's Recommended Language: Staff recommends that the Commission approve GTE's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: The language proposed by AT&T includes "service support functions" in the local services resale section. Quality of service provisions were not addressed in the resale issue and should not be included in this portion of the agreement. GTE has stated that its obligation in a resale environment is to provision a service to AT&T's customers in essentially the same manner in which the service is provisioned to GTE's customers. GTE argues that this will involve the use of the same "service support functions" whether the customer is AT&T's or GTE's; therefore, staff agrees with GTE that AT&T's proposed language is superfluous.

<u>b. Section</u>	<u>Title</u>
25.3	Restrictions on Resale

AT&T's Proposed Language

To the extent consistent with the applicable rules and regulations of the FCC and the Commission, AT&T may resell all GTE's Local Services as defined in GTE's tariffs. The following restrictions shall apply to the resale of Local Services, as described in Section 24 of this Agreement by AT&T: (i) AT&T shall not resell residential services to business customers; (ii) AT&T shall not resell Lifeline/Linkup services to nonqualifying customers; and (iii) AT&T shall resell grandfathered services only to customers qualified to receive such services from GTE.

AT&T's Rationale: AT&T contends that it has proposed language which incorporates the Commission's ruling that the only restrictions on resale are that residential services, Lifeline/LinkUp services and grandfathered services shall only be

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resold to customers eligible to receive such services from GTE. AT&T asserts that GTE has proposed an additional restriction of "below cost" services which has no definition and is also, not included in the Commission's very clear direction regarding resale restrictions.

GTE's Proposed Language

To the extent consistent with the applicable rules and regulations of the FCC and the Commission, AT&T may resell all GTE Local Services as defined in GTE's tariffs. The following restrictions shall apply to the resale of Local Services, as described in Section 24 of this Agreement by AT&T. AT&T may not resell any below cost services, residential services, "grandfathered" services, or means-tested services, including Lifeline and LinkUp services, except to the same class of customers to which GTE offers that particular service.

GTE's Rationale: GTE argues that AT&T's language unduly circumscribes the cross-selling resale restriction as contemplated in the FCC Order. GTE contends that cross-class restriction on resale of residential service to business customers is necessary and appropriate because residential service is priced below its relevant costs. GTE states that while residential service is now its only below-cost offering, AT&T's narrow language would preclude any possibility of restricting resale of other below cost services if GTE is ordered to offer such services in the future. GTE asserts that this is a distinct possibility because universal service is an evolving concept. Likewise, AT&T's use of the specific terms "lifeline" and LinkUp" will not permit restrictions on other means-tested services should they be offered in the future.

Staff's Recommended Language: Staff recommends that the Commission approve AT&T's proposed language with the modifications noted below.

To the extent consistent with the applicable rules and regulations of the FCC and the Commission, AT&T may resell all GTE Local Services as defined GTE's tariffs. The following restrictions shall apply to the resale of Local Services, as described in Section 24 of this Agreement by AT&T: (i) AT&T shall not resell residential services to non-residential end users; (ii) AT&T shall not resell Lifeline/Linkup services or any other means-tested service offering, to nonqualifying customers; and (iii) AT&T shall resell grandfathered services

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only to customers qualified to receive such services from GTE.

Staff's Rationale: GTE proposed language that included an additional resale restriction of "below cost" services that was contrary to the Commission Order. With a few clarifications to AT&T's proposed language, staff believes AT&T's language accurately states the requirements of the arbitration Order, as well as, the FCC Order and should be approved.

<u>c. Section</u>	<u>Title</u>
26.6	Telephone Relay Service

AT&T's Proposed Language

Where GTE provides to speech and hearing impaired callers a service that enables callers to type a message into a telephone set equipped with a keypad and message screen and to have a live operator read the message to a recipient and to type message recipient's response to the speech or hearing-impaired caller ("Telephone Relay Service"), GTE shall make such service available to AT&T **AT NO ADDITIONAL CHARGE** for use by AT&T Customers who are speech or hearing-impaired. Information concerning qualifications for Telephone Relay Service will be made available on the Customer Service Record (CSR)

AT&T's Rationale: AT&T contends that Telephone Relay Services provided by GTE to its customers should likewise be made available to AT&T customers at no additional charge. AT&T states that the additional costs to GTE of providing this service are funded through the state.

GTE's Proposed Language

Where GTE provides to speech and hearing impaired callers a service that enables callers to type a message into a telephone set equipped with a keypad and message screen and to have a live operator read the message to a recipient and to type message recipient's response to the speech or hearing-impaired caller ("Telephone Relay Service"), GTE shall make such service available to AT&T **at its retail cost** for use by AT&T Customers who are speech or hearing-impaired. Information concerning qualifications for Telephone Relay Service will be made available on the Customer Service Record (CSR).

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GTE's Rationale: GTE states that it is not clear whether AT&T is requesting telephone relay service for resale or whether it seeks to have GTE to continue to provide this service to AT&T's customers. GTE contends that the phrase "at no additional charge" fails to convey any idea whatsoever of the price that GTE must charge for the service.

Staff's Recommended Language: Staff recommends approving the undisputed portion of this section as stated below.

Where GTE provides to speech and hearing impaired callers a service that enables callers to type a message into a telephone set equipped with a keypad and message screen and to have a live operator read the message to a recipient and to type message recipient's response to the speech or hearing-impaired caller ("Telephone Relay Service"), GTE shall make such service available to AT&T for use by AT&T Customers who are speech or hearing-impaired. Information concerning qualifications for Telephone Relay Service will be made available on the Customer Service Record (CSR).

Staff's Rationale: While Telephone Relay Service was not an arbitrated issue, staff believes it is important that it remain in the agreement since it provides a necessary function to customers. Staff recommends that the Commission remove the disputed language regarding pricing from this section and approve the remaining language. This will ensure that Telephone Relay Service will be provided.

d.	<u>Section</u>	<u>Title</u>
	28.1	Routing to Directory Assistance, Operator or Repair Service
	28.4	Repair Calls

AT&T's Proposed Language

Section 28.1

Where AT&T purchases either Local Services or Local Switching as an Unbundled Element, unless AT&T requests otherwise, GTE will where technically feasible, provide the functionality and features required to modify AT&T

Customer's line at GTE's local switch (LS) to route all calls to the AT&T Network for local Directory Assistance and the AT&T Platform for Operator **and Repair Services**. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252 (d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

Section 28.4

GTE shall route repair calls dialed by AT&T Customers directly to the AT&T repair center.

In the event an AT&T Customer calls GTE with a request for repairs, GTE shall provide the AT&T Customer with AT&T's repair 800- telephone number. AT&T agrees to provide GTE with AT&T's repair 800-telephone numbers. In the event a GTE Customer calls AT&T with a request for repairs, AT&T shall provide the GTE Customer with GTE's repair 800-telephone number. GTE agrees to provide AT&T with GTE's repair 800-telephone number.

AT&T's Rationale: AT&T contends that it has proposed that GTE route, upon AT&T's request, repair calls to AT&T's repair center. AT&T states that as recognized by this Commission, the ability to provide such routing may already reside in GTE's switch. AT&T argues that GTE's proposal to avoid direct routing is inconsistent with the Commission's decision that direct routing is feasible and should be supplied by GTE.

GTE's Proposed Language

Section 28.1

Where AT&T purchases either Local Services or Local Switching as an Unbundled Element, unless AT&T requests otherwise, GTE will where technically feasible, provide the functionality and features required to modify AT&T Customer's line at GTE's local switch (LS) to route all calls to the AT&T Network for local Directory Assistance and the AT&T Platform for Operator. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252 (d) of the Act and in such amounts or levels as determined by the Commission for implementation of

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such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

Section 28.4

In the event an AT&T Customer calls GTE with a request for repairs, GTE shall provide the AT&T Customer with AT&T's repair 800-telephone number. AT&T agrees to provide GTE with AT&T's repair 800-telephone numbers. In the event a GTE Customer calls AT&T with a request for repairs, AT&T shall provide the GTE Customer with GTE's repair 800-telephone number. GTE agrees to provide AT&T with GTE's repair 800-telephone number.

GTE's Rationale: GTE argues that AT&T's proposal for routing of repair calls goes beyond the terms of the order in this arbitration. GTE contends that AT&T requested that repair calls be routed to AT&T using the same dialing arrangements that GTE provides for its customers. GTE states that it does not use 611 for repair calls in Florida.

Staff's Recommended Language

Staff recommends that the Commission approve AT&T's proposed language for Sections 28.1 and 28.4.

Staff's Rationale: This Commission found that it is technically feasible for GTE to provide customized routing to AT&T, specifically for operator services, directory assistance, and repair calls. The Commission order also states that GTE does not use 611 for repair calls in Florida, instead it uses a 1-800 number for repair services. Moreover, AT&T has agreed to use the same dialing arrangements that GTE provides for its customers for the customized routing of repair services (i.e., 1-800 number). While GTE may not provide customized routing for repair service in Florida and AT&T has agreed to use the same arrangement as GTE provides for its customers, the Commission continued to find that it is technically feasible to provide customized routing of repair services. Therefore, staff recommends that the Commission approve AT&T's language for Sections 28.1 and 28.4.

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e.	<u>Section</u>	<u>Title</u>
	29.1.7	Electronic Interface

AT&T's Proposed Language

GTE shall recover its costs of creating the permanent OSS gateway and any interim interfaces in a competitively neutral manner as determined by the Commission. GTE shall file with the Commission TSLRIC cost studies for each interface as it is developed together with a proposed cost recovery mechanism sixty (60) days before the implementation of such interface.

AT&T's Rationale: AT&T contends that it has proposed language which implements the Commission's Order, providing that costs will be recovered on a competitively neutral basis pursuant to Section 252(d) pricing standards.

GTE's Proposed Language

None provided.

GTE's Rationale: None provided.

Staff's Recommended Language: Staff recommends the language stated below be approved.

All parties shall be responsible for their share of costs to develop and implement electronic interfaces with operational support system. GTE shall provide TSLRIC cost studies for each interface as it is developed. The cost study shall be filed, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

Staff's Rationale: Since there were differences in this section, staff's proposed language is directly from the order. This should clarify any disputed areas.

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ISSUE 5: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Part II (Unbundled Network Elements) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

Part II - Unbundled Network Elements

<u>Sections</u>	<u>Title</u>
32.4	Unbundled Network Elements

AT&T's Proposed Language

AT&T may use one or more network elements to provide any feature, function, or service option that such network element is capable of providing.

AT&T's Rationale: AT&T contends that its proposed language is consistent with this Commission's order that AT&T be permitted to combine network elements and use them in any way AT&T chooses to provide services to its local exchange customers. AT&T asserts that the provisions also require that GTE not place any limits or restrictions on the implementation of such combinations that GTE does not place upon itself or its affiliates, including equipment or extra charges.

GTE's Proposed Language

Except as provided otherwise in this Agreement. AT&T may use one or more network elements to provide any feature, function, or service option that such network element is capable of providing.

GTE's Rationale: GTE argues that this section was not addressed in the arbitration; however, it does propose language. GTE contends that AT&T's use of unbundled network elements is governed by the Act and the FCC's Rules, and cannot exceed what is permitted by the Act and the Rules. GTE also argues while some network elements may be capable as a general matter of providing a particular use, some may not be so in specific instances.

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Staff's Recommended Language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: GTE contends that this issue was not part of the arbitration. Staff disagrees. There was a specific issue in this proceeding that dealt with the rebundling of network elements. Based on the clear direction of section 251 (c) (3) of the Act and the FCC's Order and rules, this Commission found it appropriate for AT&T to combine unbundled network elements in any manner it chooses, including recreating existing GTE services. Therefore, staff recommends that the Commission approve AT&T's proposed language.

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ISSUE 6: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Part III (Ancillary Functions) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS: AT&T's requested language for PART III follows.

Part III - Ancillary Functions

- a. 34 **GTE Provision of Ancillary Functions**
- 34.1 GTE will offer ancillary functions to AT&T on rates, terms and conditions that are just, reasonable, and non-discriminatory and in accordance with the terms and conditions of this agreement.
- 34.2 GTE will permit AT&T to interconnect AT&T's equipment and facilities or equipment and facilities provided by AT&T or by third parties for purposes of interconnection or access to network elements at any point that is technically feasible.
- 34.3 AT&T may use any ancillary function to provide any feature, function, or service option that such ancillary function is capable of providing.

AT&T's Rationale: GTE in the Joint Submission to the Michigan Public Service Commission on December 23, 1996, agreed to the provisions it now disputes. The disputed provisions state the general principles of both the applicable law and the Commission's Order that GTE shall offer collocation, interconnection, and access to Rights-of-Way, etc. pursuant to just reasonable, nondiscriminatory terms and conditions.

GTE's Rationale: GTE believes this issue was not arbitrated. GTE has the same objection to this language as it did for the substantially identical language in the Unbundled Network Elements section discussed above. It is completely unnecessary and burdensome and is an example of AT&T overkill--asking for performance standards, reporting on those standards, penalties if the standards are not met, and a license to ask GTE for broad categories of information, even when there is no evidence of a

problem. AT&T's complaint that GTE will not provide ancillary functions to AT&T equal to what it provides GTE's end-user customer is nonsensical. As GTE has pointed out to AT&T many times, GTE does not provide ancillary functions (i.e., collocation, rights of way, conduit pole, attachments, etc.) to its end-user customers. (GTE's emphasis)

Staff's Rationale: Staff believes this language falls under Issue 4(a). (Equal in Quality)

Regarding GTE's rationale, staff cannot see a relationship between performance standards, penalties, and a license to ask for broad categories of information and AT&T's proposed language. According to AT&T, the language in Sections 34.1-.3 has been agreed to in Michigan. But GTE does not agree to it for Florida. No explanation is offered as to why this is the case. However, there is no assurance that the Michigan Agreement and the Florida Agreement are the same throughout. Consequently, GTE's dispute of the language may be based on the role the language plays in the Florida Agreement as compared to its role in the Michigan Agreement. AT&T's language falls under Issue 4(a). Therefore, staff recommends the Commission approve AT&T's proposed language.

- b. 35 **Standards for Ancillary Functions**
- 35.1 Each ancillary function shall meet or exceed the requirements set forth in applicable technical references, as well as the performance and other requirements, identified herein.
- 35.2 Each ancillary function provided by GTE to AT&T shall be equal in the quality of design, performance, features, functions and other characteristics, including, but not limited to levels and types of redundant equipment and facilities for diversity and security, that GTE provides in the GTE network to itself, its own customers, its affiliates or any other entity.
- 35.3 GTE shall provide to AT&T, upon reasonable request, such engineering, design, performance and other network data sufficient for AT&T to determine that the requirements of Part III and Attachment 3 of this Agreement are being met. In the event that such data indicates that the requirements of PART III and Attachment 3 of this Agreement of this

Agreement (sic) are not being met, GTE shall, within 30 days, cure any design performance or other deficiency and provide new data sufficient for AT&T to determine that such deficiencies have been cured.

- 35.4 Unless otherwise designated by AT&T, each ancillary function provided by GTE to AT&T shall be made available to AT&T on a priority basis that is at least equal to the priorities that GTE provides to itself, its customers, its affiliates or any other entity.

AT&T's Rationale: GTE has not agreed to provide performance data which would permit AT&T or the Commission to determine if GTE is providing the required parity of service. In addition, GTE, despite its previous agreement to the provisions of Sections 35.1-2, and 35.4, now disagrees with the provisions which state the obligation to provide such functions upon terms and conditions that are just, reasonable, and nondiscriminatory.

GTE's Rationale: GTE has the same objection to this language as it did for the substantially identical language in the Unbundled Network Elements section discussed above. It is completely unnecessary and burdensome and is an example of AT&T overkill--asking for performance standards, reporting on those standards, penalties if the standards are not met, and a license to ask GTE for broad categories of information, even when there is no evidence of a problem. AT&T's complaint that GTE will not provide ancillary functions to AT&T equal to what it provides GTE's end-user customer is nonsensical. As GTE has pointed out to AT&T many times, GTE does not provide ancillary functions (i.e., collocation, rights of way, conduit pole, attachments, etc.) to its end-user customers. (GTE's emphasis)

Staff's Rationale: Staff believes GTE has focused on AT&T's use of the phrase "its customers" in Sections 35.2 and 35.4 as referring solely to end user customers. AT&T's language includes GTE itself, GTE's affiliates, and any other entities. Staff agrees with GTE that referring to providing ancillary services on the same basis as the end user receives these services makes no sense. But, staff believes AT&T's language is directed at telecommunications providers, and not end users. In addition, the inclusion of performance standards and standards reports fall within Issue 4(a). Staff cannot find the language regarding penalties, language which GTE complains of, in AT&T's proposed language. Thus, GTE's complaint of such language is irrelevant. According to AT&T, the

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language in Sections 35.1-2 and 35.4 has been agreed to in Michigan. But GTE does not agree to it for Florida. No explanation is offered as to why this is the case. However, there is no assurance that the Michigan Agreement and the Florida Agreement are the same throughout. Consequently, GTE's dispute of the language may be based on the role the language plays in the Florida Agreement as compared to its role in the Michigan Agreement. Therefore, staff recommends the Commission approve AT&T's proposed language.

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ISSUE 7: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Attachment 2 (Services Description: Unbundled Network Elements) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

Attachment 2 - Unbundled Network Elements

<u>a. Sections</u>	<u>Title</u>
4.2.1.3	Unbundled Network Elements

AT&T's Proposed Language:

GTE shall route local directory assistance, **repair** and operator services calls on a per line or per screening class basis to (1) GTE platforms providing Network elements or additional requirements, (2) AT&T designated platforms, or (3) third-party platforms. AT&T shall be responsible for the cost of providing customized routing to the extent ordered by the Florida Public Service Commission. In no event, however, shall AT&T be responsible for the costs associated with providing customized routing within the capabilities that reside, as of the effective date, in the switch.

AT&T's Rationale: AT&T asserts that when AT&T leases a GTE switch, GTE should provide routing of AT&T customer calls to AT&T's designated platform, including repair services and voice mail services and messaging services. AT&T also contends that GTE provide the interfaces required for voice-mail services. AT&T asserts that GTE's narrow interpretation of customized routing, to include operator services and directory assistance, is not supported by the Act or FCC order. In addition, AT&T contends that GTE has agreed to provide the routing and voice mail interfaces to MCI in the Texas Agreement.

GTE's Proposed Language:

GTE shall route local directory assistance, and operator services calls on a per line or per screening class basis

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to (1) GTE platforms providing Network elements or additional requirements, (2) AT&T designated platforms, or (3) third-party platforms. AT&T shall be responsible for the cost of providing customized routing to the extent ordered by the Florida Public Service Commission. In no event, however, shall AT&T be responsible for the costs associated with providing customized routing within the capabilities that reside, as of the effective date, in the switch.

GTE's Rationale: GTE asserts that AT&T's proposal for routing of repair calls goes beyond the terms of the order. GTE contends that AT&T requested that repair calls be routed to it using the same dialing arrangements that GTE provides for its customers. GTE asserts that it does not use 611 for repair calls in Florida. GTE asserts it uses a 1-800 number for repair services. GTE believes that AT&T's language does not comport with the Commission's order or with the way GTE receives repair calls and should be deleted.

Staff's Recommended Language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: This Commission found that it is technically feasible for GTE to provide customized routing to AT&T, specifically for operator services, directory assistance, and repair calls. The order also states that GTE does not use 611 for repair calls in Florida, instead it uses a 1-800 number for repair services. Moreover, AT&T has agreed to using the same dialing arrangements that GTE provides for its customers for the customized routing of repair services (i.e., 1-800 number). While GTE may not provide customized routing for repair services in Florida and AT&T has agreed to using the same arrangement as GTE provides for its customers, the Commission continued to find that it is technically feasible to provide customized routing of repair services. Therefore, staff recommends that the Commission approve AT&T's proposed language.

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<u>b. Sections</u>	<u>Title</u>
4.2.1.4	Unbundled Network Elements
4.2.1.6	
4.2.1.9	

AT&T's Proposed Language:

Section 4.2.1.4

GTE shall provide recorded announcements as designated by AT&T and call progress tones to alert callers of call progress and disposition.

Section 4.2.1.6

GTE shall perform routine testing (e.g. Mechanized Loop tests (MLT) and test calls such as 105, 107, and 108 type calls) and fault isolation on a reasonable schedule designated by AT&T.

Section 4.2.1.9

GTE shall perform manual call trace as designated by AT&T and permit customer originated call trace.

AT&T's Rationale: AT&T asserts it is willing to pay for services, interconnection and network elements as determined by GTE's costs pursuant to Section 252(d) of the Act and this Commission's arbitration order. AT&T contends that prices should be cost-based and competitively neutral. AT&T asserts that throughout the agreement, GTE insists that AT&T agree to pay for costs up front, before the real costs are known, and that AT&T should bear the cost for changes that benefit others, including GTE. AT&T believes that GTE's additional pricing proposals are contrary to the Commission's order regarding pricing and cost recovery procedures.

GTE's Proposed Language:

Section 4.2.1.4

GTE shall provide standard recorded announcements as designated by AT&T and call progress tones to alert callers of progress and disposition. AT&T shall pay all costs associated thereof to the extent not otherwise included in the underlying element costs.

Section 4.2.1.6

GTE shall perform routine testing (e.g. Mechanized Loop tests (MLT) and test calls such as 105, 107, and 108 type calls) and fault isolation on a reasonable schedule designated by AT&T. AT&T shall pay all costs associated thereof to the extent not otherwise included in the underlying element costs.

Section 4.2.1.9

GTE shall perform manual call trace as designated by AT&T and permit customer originated call trace. AT&T shall pay all costs associated thereof to the extent not otherwise included in the underlying element costs.

GTE's Rationale: GTE asserts that its proposed cost recovery language is necessary because, pursuant to the Act and the Order, GTE should be allowed to fully recover its costs for any function performed by GTE for AT&T.

Staff's Recommended Language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: As stated in Section 51.319(c)(1)(i) of the FCC rules and this Commission's order, the unbundling of local switching was mandated. The local switching element includes all vertical features that the switch is capable of providing, including custom calling, custom local area signalling service features, and Centrex, as well as any technically feasible customized functions. Thus, staff believes that GTE is fully recovering its costs for the various functions performed by GTE for AT&T through its local switching rate element. In addition, pursuant to this Commission's order, GTE is required to provide a TSLRIC cost study identifying the costs for providing customized routing that are beyond those capabilities that currently reside in the switch.

Moreover, as stated in the FCC Order (at 314), if the LEC is requested to provide access or unbundled elements of higher quality than that which it provides itself, there is nothing to excuse the LEC, where technically feasible, from providing the higher quality of service. The order also states that the LEC should be fully compensated for any efforts it makes to increase the quality of service in its network. Therefore, if AT&T requests a feature or function from GTE that requires additional compensation, above the

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rates set by this Commission, the parties have the ability to negotiate this among themselves or bring this matter back to the Commission in another Arbitration proceeding. Therefore, staff recommends that the Commission approve AT&T's proposed language.

<u>c. Sections</u>	<u>Title</u>
4.2.1.28	Unbundled Network Elements

AT&T's Proposed Language

GTE shall assign each AT&T customer line the class of services designated by AT&T (e.g., using line class codes or other switch specific provisioning methods) and shall route operator calls from AT&T customer to AT&T operators at AT&T's option. For example, GTE may translate 0- and 0+ intraLATA traffic, and route the call through appropriate trunks to an AT&T operator services position system (OSPs). Calls from local switching must pass the ANI-II digits unchanged. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

AT&T's Rationale: AT&T asserts that GTE is required to provide customized routing for operator services. AT&T also contends that while the parties have agreed upon language for customized routing to directory assistance, GTE disputes essentially the same language proposed by AT&T for operator service. In addition, AT&T asserts that GTE's proposed language places the entire costs of implementing such routing upon AT&T, which is contrary to the Commission's order.

GTE's Proposed Language:

Where technically feasible, GTE shall route local Operator Services calls (0-, 0+) dialed by AT&T customers directly to the AT&T local Operator services platform, unless AT&T requests otherwise pursuant to Section 28.6.1. Such traffic shall be routed over trunk groups specified by AT&T which connect GTE end offices and the AT&T local operator services platform, using standard operator services dialing protocols of 0+ or 0-. Where

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intraLATA presubscription is not available, GTE will provide the functionality and features within its local switch (LS), to route AT&T Customer dialed 0- and 0+ intraLATA calls to the AT&T designated line or trunk on the main distributing from (MDF) or digital cross connect (DSX) panel via modified operator services (MOS) feature group C signaling. Where intraLATA presubscription is available, AT&T customer dialed 0- or 0+ intraLaTATA calls will be routed to the intraLATA PIC carrier's designated operator services platform. In all cases, GTE will provide post-dial delay at least equal to that provided by GTE for its end user customers. AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing. Such costs shall only include GTE's costs for providing customized routing that requires capabilities that are beyond those that currently reside in the switch.

GTE's Rationale: GTE contends that this Commission's decision only requires customized routing for local operator services. GTE also asserts its proposed language is more precise than AT&T's, and it specifies the routing requirements for situations where intraLATA presubscription may or may not be available at a particular central office.

Staff's Recommended Language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: This Commission found that it is technically feasible for GTE to provide customized routing of operator services, directory assistance, and repair calls to AT&T. In addition, GTE asserts that the Commission's decision requires customized routing for local operator services only. Staff disagrees. Since 0+ calls can be local or toll, staff does not believe that any distinction was made between local or toll regarding the provision of customized routing of operator services. In addition, while staff does not object to the specificity in GTE's language regarding the handling of 0+ and 0- calls with and without the implementation of intraLATA presubscription, staff does not believe that this issue was arbitrated to that level of specificity. Therefore, staff recommends that the Commission approve AT&T's proposed language.

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operator-assisted directory assistance, and rate quotes.

GTE's Rationale: GTE asserts that the technical limitation stated by GTE is consistent with the requirements of the Act and the Commission's Order.

Staff's Recommended Language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: This Commission found it technically feasible for GTE to provide customized routing of operator services to AT&T. Therefore, staff recommends that the Commission approve AT&T's proposed language.

f. <u>Section</u>	<u>Title</u>
5.1.2	Unbundled Network Elements
5.1.2.15	
6.1.1	
6.2.2	

AT&T's Proposed Language:

Section 5.1.2

Operator Services provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Operator services on a switch-by-switch basis, subject to capability and capacity limitations. To the extent the costs of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing customized operator services in accordance with this agreement.

Section 5.1.2.15

AT&T's proposed language identical to Section 5.1.2 above.

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Section 6.1.1

Directory Assistance provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Directory Assistance on a switch-by-switch basis, subject to capability and capacity limitations. To the extent the costs of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing customized operator services in accordance with this agreement.

Section 6.2.2

AT&T's proposed language identical to Section 6.1.1 above.

AT&T's Rationale: AT&T asserts that GTE's proposed language places unacceptable restrictions on AT&T's right to obtain AT&T branded or unbranded operator and Directory assistance services from GTE. AT&T contends that GTE's restriction that AT&T use GTE's services exclusively for the entire term of the agreement is anti-competitive and would prevent AT&T from providing its own services or from contracting with a third party at a later date.

GTE's Proposed Language:

Section 5.1.2

Operator Services provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Operator services on a switch-by-switch basis, subject to capability and capacity limitations. For those offices that AT&T has requested GTE to provide customized operator services, AT&T shall continue exclusively to use GTE customized operator services for the duration of this agreement. To the extent the costs of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing customized operator services in accordance with this agreement.

Section 5.1.2.15

GTE's proposed language identical to Section 5.1.2 above.

Section 6.1.1

Directory Assistance provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Directory Assistance on a switch-by-switch basis, subject to capability and capacity limitations. For those offices that AT&T has requested GTE to provide customized directory assistance, AT&T shall continue exclusively to use GTE customized operator services for the duration of this agreement. To the extent the costs of these services are not covered by the underlying element charge, AT&T agrees to reimburse GTE for the total cost of implementing customized operator services in accordance with this agreement.

Section 6.2.2

GTE's proposed language identical to Section 5.1.2 above.

GTE's Rationale: GTE asserts that the provision of customized operator services modifications requested by AT&T will require substantial time, effort, and expense on its part. GTE believes that there is no incentive in the agreement to prohibit AT&T from requiring GTE to reconfigure its network, only for AT&T to abandon the GTE service a short time later. Therefore, GTE proposes language which it believes will fairly compensate GTE for its expenses incurred in reconfiguring its network. GTE's language also obliges AT&T to carefully consider its branding requests, in that it requires AT&T to use the GTE OS/DA services that it has reserved, for the duration of the agreement.

Staff's Recommended language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: GTE asserts that AT&T should be required to exclusively use its customized OS/DA for the duration of this agreement. However, staff believes that this restriction is beyond the scope of this arbitration and should not be included in this agreement. Therefore, staff recommends that the Commission approve

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AT&T's proposed language.

g.	<u>Section</u>	<u>Title</u>
	11.7.2	
	13.5.1	
	13.5.2.3	
	13.5.3.2.1	
	12.5.3.2.2	

AT&T's Proposed language: The disputed portion of these sections are diagrams.

AT&T's Rationale: The sections listed above do not pertain to any specific proposed language submitted by AT&T. However, AT&T proposes the use of figures and drawings in these sections.

GTE's Proposed Language: The disputed portion of these sections are diagrams.

GTE's Rationale: GTE asserts it opposes the use of AT&T's figures. GTE contends that although AT&T's position is that the figures are merely illustrative, GTE is concerned that the figures may introduce ambiguity into the agreement. GTE asserts that it is the language of the agreement which sets forth the parties' respective obligation. GTE contends that if the figures are used, it should be with the caveat that they may only be used for illustrative purposes and not in any interpretation of the agreement for, by example, an arbitrator in accordance with Attachment 1.

Staff's Recommended Language: Staff recommends the figures and diagrams be included in the agreement with the caveat that they may only be used for illustrative purposes.

Staff's Rationale: GTE asserts that the use of diagrams were not part of the arbitration. Staff disagrees. The provision of various network elements, including SS7, AIN, and local switching were part of the arbitration procedure. While the use of diagrams and figures were not specifically discussed, staff believes that they fall under the various network elements. Staff believes that the use of pictorials aid in the understanding of how complex network elements are provisioned. Staff would also note that GTE did not object to the use of illustrations in the MCI agreement. Therefore, staff recommends the Commission approve the use of the figures and diagrams in the agreement with the caveat that they may be used for illustrative purposes only.

h.	<u>Section</u>	<u>Title</u>
	13.5.1	Unbundled Network Elements

AT&T's Proposed Language:

Figure 3 depicts Signaling System 7 (SS7) Network interconnection. SS7 Network interconnection is the interconnection of AT&T local signaling transfer point switches (STPs) and AT&T local or tandem switching systems with GTE STPs. This interconnection provides connectivity that enables the exchange of SS7 messages among GTE switching systems and databases (DBs), AT&T local or tandem switching systems, and other third-party switching systems directly connected to the GTE ss7 network.

AT&T's Rationale: AT&T asserts it has proposed a definition of SS7 interconnection which would enable a uniform understanding for purposes of implementing the agreement. AT&T contends that GTE's definition would restrict AT&T to an intraLATA connection with the result that AT&T would need to deploy a switch in each LATA in which a GTE STP is located in order to connect to the GTE databases. AT&T asserts that this is an onerous requirement and is not supported by concerns of technical feasibility.

GTE's Proposed Language:

SS7 Network interconnection is the interconnection of GTE signal transfer points (STPs) with AT&T STPs or AT&T local or tandem switching systems, for the purpose of providing local exchange or exchange access services. This connectivity enables the exchange of SS7 messages between AT&T local or tandem switching systems and GTE's local or tandem switching systems, and between AT&T local or tandem switching systems and other third-party local or tandem switching systems with signaling connectivity to the same STPs. This connectivity also enables the exchange of messages between AT&T local or tandem switching systems and GTE call-related databases.

GTE's Rationale: GTE asserts that AT&T's language defines SS7 interconnection broader than the Commission's order contemplates. GTE contends it will provide connectivity to components of its SS7 network on an intraLATA basis via interconnection with a GTE STP pair serving the desired LATA, with the exception of access to

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GTE's 800/888 (toll-free calling) database, which can be accessed via interconnection to a GTE STP pair.

Staff's Recommended Language: Staff recommends the Commission approve AT&T's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: GTE asserts that it will provide connectivity to components of SS7 network on an intraLATA basis. However, staff believes that GTE's language which restricts AT&T to an intraLATA interconnection is beyond the scope of this arbitration and should not be included in this agreement. Therefore, staff recommends that the Commission approve AT&T's proposed language.

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ISSUE 8: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Attachment 3 (Service Description: Ancillary Functions) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

a. 2.2.1.1-Collocation

AT&T's Proposed Language

GTE will not restrict AT&T's access to existing space for collocation on the basis of GTE plans for future use of that space, **except on terms and conditions for reserving** future space that are made available to all collocating carriers who wish to hold space for future use and that do not favor GTE over such other carriers. AT&T will pay for any space reserved for future use in accordance with such non-discriminatory terms for reserving collocation space and in accordance with the pricing terms of Attachment 14 and future order of the Commission.

AT&T's Rationale: AT&T has proposed language which implements the Commission's Order that GTE may not reserve space for itself upon terms that are more favorable than that it makes available to other carriers. GTE has proposed language that would permit it to reserve space for future use, including officers, filing, etc., while denying such space to AT&T for collocation purposes. GTE proposes that only when it reserves space for telecommunications equipment use do the nondiscrimination rules come into effect

GTE's Proposed Language

GTE may restrict AT&T's access to existing space for collocation on the basis of GTE's plans for future use of that space; provided that if GTE reserves space for a type of equipment that is permitted to be collocated under Section 2.2.4 then GTE must permit AT&T or other collocating carriers to reserve space for the same type of equipment on terms and conditions that are made available to all collocating carriers who wish to hold space for such equipment for future use and that do not

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favor GTE over such other carriers. AT&T will pay for any space reserved for future use in accordance with such non-discriminatory terms for reserving collocation space and in accordance with the pricing terms of Attachment 14 and future order of the Commission.

GTE's Rationale: GTE's proposed language reflects the duty to provide collocation for interconnection equipment on a nondiscriminatory basis. It prohibits GTE from reserving space for the type of equipment that AT&T may collocate for interconnection functions without allowing AT&T and other ALECs to reserve space for the collocation of the same type of equipment. AT&T's proposed language goes beyond the scope of GTE's obligation as set forth in the Act and the Order (which incorporates the collocation requirements in the Act, Order at 129) as it would allow AT&T to reserve space for equipment that is not for interconnection purposes. The Commission should thus adopt GTE's more reasonable language.

Staff's Recommended Language

Staff recommends that the AT&T proposed language be approved.

Staff's Rationale: Staff agrees with AT&T's concern that the GTE language would allow GTE to reserve space for equipment not for interconnection purposes without allowing AT&T to reserve space for that same type of equipment. Therefore, staff recommends using AT&T language.

b. 2.2.4-Collocated Equipment

AT&T's Proposed Language

AT&T may collocate **any** type of equipment **it chooses** in its collocated space that is for interconnection functions (which include interconnection with GTE's network **and other collocated carriers** or access to GTE's unbundled network elements), including but not limited to transmission equipment and multiplexing equipment provided however, AT&T may not collocate enhanced service equipment or switching equipment. **GTE will not place any restrictions on AT&T's use of its collocated space, other than limitations based on space availability and reasonable security requirements, applied in a nondiscriminatory manner.**

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AT&T's Rationale: Although AT&T disagrees with the Commission's order regarding the collocation of equipment, AT&T has proposed language which incorporates the ruling that enhanced services equipment and switching equipment are not required to be collocated. GTE objects to AT&T's language because it does not include a specific prohibition of the collocation of remote switching modules. Remote switching modules serve interconnection purposes, particularly with regard to the quality of transmission when digital loop carrier is used. Cascading of such transmissions was not intended and results in poor quality of transmission. AT&T's language is consistent with the Commission's Order and the FCC Order (§ 579).

GTE's Proposed Language

AT&T may collocate the amount and type of equipment in its collocated space that is necessary for interconnection functions (which include interconnection with GTE's network or access to GTE's unbundled network elements), including but not limited to transmission equipment and multiplexing equipment; provided however that AT&T may not collocate enhanced services equipment or equipment that can perform switching functions, including without limitation remote switching modules.

GTE's Rationale: GTE's language is more consistent with the Commission's Order regarding equipment that may be collocated. Among other things, the Commission found that AT&T should be permitted to place only equipment "necessary for interconnection and access to unbundled network elements." (Order at 128.) Equipment that performs switching functions does not fall into this category. With its language, AT&T intends to introduce a significant loophole to the Commission's Order, as well as the Act and the FCC Rules the Order is based on. AT&T's language would allow collocation of remote switching modules, which perform switching functions--exactly the type of use the Order was intended to prevent. GTE's formulation should be approved as it is more reasonable and faithful to the Order.

Staff's Recommended Language

AT&T may collocate any type of equipment that is for interconnection functions (which include interconnection with GTE's network and other collocated carriers or access to GTE unbundled network elements), including but not limited to transmission and multiplexing equipment; provided however, AT&T may not collocate enhanced service

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equipment or switching equipment including remote switching modules.

Staff's Rationale: Staff's recommendation language is a compromise of the parties' proposed language. GTE did not include interconnection with other collocated carriers. Staff believes that AT&T should be allowed to interconnect with other carriers. AT&T did not restrict remote switching modules. Staff agrees with GTE that remote switching modules perform switching functions much the same as a host digital switch and allowing their collocation would not be consistent with the Commission's order.

c. **Section 3-Definitions**

None of the ten definitions in Attachment 3 were arbitrated; however, five of them are in dispute in the submitted agreement. The primary problem is Section 3.1.4, the definition of the terms facility and facilities. This results in disputes in four other definitions which contain the word "facility" or "facilities." (Sections 3.1.1, 3.1.6, 3.1.7 and 3.1.8)

In addition to these definitions, thirteen other sections are in dispute solely because they contain the word "facility" and/or "structures." Since the definitions were not arbitrated, staff would normally reject all these sections. However; staff believes that the definitions are needed to make the agreement viable, so staff will choose language for the definition of the terms facility and structures to settle these nineteen disputed sections.

3.1.4-Definition of facility and facilities

AT&T'S Proposed Language

The terms "facility" and "facilities" refer to any property, equipment, or items owned or controlled by any person or entity. The terms "facility" and "facilities" include, but are not limited to, poles, anchors, pole hardware, wires, cables, strands, apparatus enclosures, or any other items attached to a pole or attached to hardware affixed to or associated with a pole; conduit and conduit systems and wires, cables, optical conductors, associated hardware, or other equipment located within a conduit system. The terms "facility" and "facilities" may also refer to property, equipment, and items which do not occupy a conduit system or which are not attached to a pole or attached to hardware

affixed to or associated with a pole.

AT&T's Rationale: AT&T seeks a broader definition of the term "facility" than does GTE. AT&T seeks to piggyback along the distribution networks owned or controlled by GTE - which is broader than just rights-of-way, conduits, ducts and poles. AT&T's definition would also cover such pathways as entrance facilities, cable vaults, telephone closets, equipment rooms, risers, and other similar passageways. This is consistent with the FCC First Report and Order, Para. 1185 in which the FCC recognized that "The intent of Congress in Section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities...."

In connection with GTE's more restrictive definition of facilities, it has proposed a restrictive definition of "structure" as well. AT&T and GTE have agreed upon contractual terms which recognize the Commission's direction that access to such ancillary pathways will be decided on a case by case basis. Adoption of GTE's definition of "facilities" and "structure" would be contrary to the Commission's direction that such access be given to ancillary pathways.

GTE's Proposed Language

For the purpose of this Section 3 the terms "facility" and "facilities" include anchors, pole hardware, wires, cables, strands, apparatus enclosures, equipment boxes, optical conductors and associated hardware located on or in a Structure.

GTE's Rationale: AT&T's proposed definition of "facility" and its refusal to adopt GTE's proposed definitions for the terms "facility" and "structure" is nonsensical. Throughout Section 3 of Attachment 3, AT&T apparently proposes using the term "facility" for three distinct purposes. First, AT&T uses it to describe items that are attached to poles, placed in conduits or ducts or on Rights of Way (see e.g., Sections 3.1.6, 3.1.7 and 3.4.1).

Second, the term is used to described poles, conduits, ducts and Rights of Way (see e.g., Sections 3.9.2 and 3.11.2). Finally, the term "facility" is used in its general "everyday" meaning (see e.g., Section 3.5., line 3 "and related facilities"). Instead of proposing language that would clarify what "facility" means in a given section , AT&T suggests a definition that makes the term ambiguous and confusing. In the first sentence of AT&T's definition, the use of the word "any" yields the absurd result that

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facilities" could be anything owned by anyone. AT&T's definition even encompasses items that have nothing to do with providing exchange services and that are owned by third parties. This definition is unreasonable as well as beyond the scope of the Act and this arbitration.

In the second sentence, the phrase "include, but not limited to" and "or any other items" again effectively makes the term "facilities" broad enough to include virtually any item. GTE's proposed definition for the terms "facility" and "facilities" contained in Sections 3.1.4 and the use of these terms through Section 3 of Attachment 3 should be adopted.

Staff's Recommended Language

For the purposes of this attachment, the terms "facility" and "facilities" refer to any property or equipment utilized in the provision of telecommunications services.

Staff's Rationale: Staff believes this language is broad enough to encompass the list of items proposed by GTE and that it will confine the definition to telecommunication items. Staff agrees with GTE's concerns with the broad definition proposed by AT&T in its first sentence and believes that the definition should be limited to property used for telecommunications services.

Staff recommends that staff's proposed language be approved.

3.1.4.1-Definition of Structures

AT&T's Proposed Language

AT&T did not propose any language for this section, since their definition of facilities includes these items. AT&T proposed to use the term "facilities" in every section where GTE proposed the term "structures."

GTE's Proposed Language

For the purposes of this Section 3, the terms "structure" and "structures" refer to poles, ducts, conduits and ROW.

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Staff's Recommended Language

Staff agrees with GTE's argument that using the term "structures" as defined will avoid confusion in some of the contract sections. One example is Section 3.2.2 which is limited to poles, ducts, conduit and ROW, including ancillary pathways. If the term "facilities" replaces the term "structures" in this section as proposed by AT&T, the scope would be extended to include wires, cables, etc. which are not an issue in the section.

Staff recommends that the language proposed by GTE be approved for this definition with the modification of substituting "Attachment 3" for "Section 3."

If the recommended language for the definitions in Sections 3.1.24 and 3.1.4.1 above are approved, the parties should be able to modify the seventeen other contract sections that are in dispute solely because they contain the terms "facility", "facilities", "structure" or "structures" so that agreement can be reached. These sections are 3.1.1, 3.1.5, 3.1.7, 3.1.8, 3.2.2, 3.2.5, 3.4.1, 3.5.1, 3.6.7, 3.9.1, 3.9.2, 3.10.1, 3.10.2, 3.11.2, 3.12.1, 3.12.2 and 3.17.1.

Staff recommends that these seventeen sections be approved for inclusion in the final contract on the condition that the parties modify them and reach agreement.

d. 3.13.1-Notice of Modification of Poles by GTE

AT&T's Proposed Language

If GTE plans to modify or alter any GTE **facilities** upon which AT&T has Attachments, GTE shall provide AT&T notice of the proposed modification or rearrangement at least **sixty (60)** days prior to the time the proposed modification or alteration is scheduled to take place. AT&T shall be allowed to participate with GTE in such modification or rearrangement. **To the extent that AT&T agrees to participate in the modification or rearrangement, AT&T shall pay to GTE AT&T's proportionate share of the costs incurred and shall make all rearrangements of its facilities within such period of time as ins jointly determined to be reasonable by the Parties based on the amount or rearrangements necessary and a desire to minimize chances for service interruption or facilities-based service denial to an AT&T customer.**

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To the extent that AT&T declines to participate in the modification or rearrangement, AT&T shall not be required by GTE to rearrange its attachment and shall not be required to pay any portion of the costs of modification or alternation. Should GTE require AT&T to rearrange its attachment to accommodate the modification or alternation and AT&T agrees to do so, GTE shall reimburse AT&T for AT&T's costs of such rearrangement.

AT&T's Rationale: AT&T's language seeks to implement the FCC's determination concerning when a party benefits from modification of a facility on which it has an attachment and when the party with an attachment need not bear the costs of the modification. This clarification is necessary here because the word "benefits from" as used by GTE could have many different interpretations. AT&T's language tracks the following section of the FCC First Report and Order. "We recognize that limiting cost burdens to entities that initiate a modification, or piggyback on another's modification, may confer incidental benefits other parties with preexisting attachments on the newly modified facility. Nevertheless, if a modification would not have occurred absent the action of the initiating party, the cost should not be borne by those that did not take advantage of the opportunity by modifying their own facilities. Indeed, the Conference report accompanying the passage of the Federal Telecommunications Act of 1996 imposes cost sharing obligations on an entity "that takes advantage of such opportunity to modify its own attachments." This suggests that an attaching party, incidentally benefiting from a modification, but not initiating or affirmatively participating in one, should not be responsible for the resulting cost. Para. 1213. The FCC Order is also implemented in Section 1.14165 of the implementing Rules, reproduced below.

GTE's Proposed Language

GTE proposes two changes to the AT&T language above; 1) substitute the word "structures" for "facilities" in the first sentence; and 2) reduce the notice period from sixty (60) days to thirty (30) days.

GTE's Rationale: GTE's proposal for thirty (30) days' notice is more than adequate for AT&T to decide whether it wants to participate in a modification. A 60-day notice period, as AT&T proposes, would unreasonably complicate GTE's ability to plan for future modifications.

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Staff's Recommended Language

Staff also agrees with the AT&T language for this section with two modifications; 1) substitute the word "poles" for the word "facilities" in the first sentence; and (2) change the sixty (60) days notice to thirty (30) days.

Staff's Rationale: The joint agreement entitles Section 3.13 as "Notice of Modification or Alteration of Poles by GTE." Staff believes with this title there is no reason for the dispute on whether to use the word "facilities" or "structures." Staff believes that when the subject matter is clearly poles, there is no reason to use a more general term. In addition, staff agrees with GTE's argument that thirty (30) days is sufficient notice of pole modifications proposed in the staff language above.

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ISSUE 9: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Attachment 7 (Provision of Customer Usage Data) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS: The proposed language for inclusion in Attachment 7 follows. The bolded text in both upper and lower case is AT&T proposed language that has not been agreed to by GTE.

Attachment 7 - Provision of Customer Usage Data

Appendix II - LOCAL ACCOUNT MAINTENANCE

1. GENERAL

1.1 REQUIREMENT #1 - LSP CHANGE NOTIFICATION CHANGE

Situation: A Customer initiates a change from AT&T to another LSP by contacting the new LSP. (LSP Change Notification Feed)

AT&T's Proposed Language:

GTE shall issue and provide to AT&T at the end of each business day a service activation report **in an electronic format** reflecting change activity occurring on the previous day.

AT&T's Rationale: No rationale provided.

GTE's Proposed Language:

GTE shall issue and provide to AT&T at the end of each business day a service activation report reflecting change activity occurring on the previous day.

GTE's Rationale: No rationale provided.

Staff's Rationale: Neither party provided rationale for inclusion or exclusion of the language "in an electronic format" proposed by AT&T. Neither party listed Attachment 7 as containing disputed language. The dispute does not appear to be whether or not GTE should provide AT&T with the service activation report, or the time frame for its delivery. The dispute appears to be over whether or

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not the report should be transmitted electronically. Issue 6(a) dealt with requiring GTE to provide electronic interfaces for a variety of services, including pre-service ordering and service ordering. Issue 6(b) addressed the time-frame for developing the interfaces. Specifically, GTE is to develop interfaces by January 1, 1997, or file a report with the Commission by December 31, 1996, explaining why it was unable to develop an interface. The report was to include a projected date for implementation of the system. GTE did not file a report. Therefore, staff recommends the Commission approve AT&T's proposed language.

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ISSUE 10: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Attachment 11 (Definitions) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

Staff Recommended Language: The following terms should be eliminated from the final arbitrated agreement unless the parties can come to agreement on their own:

Interconnection
LSR
Real Time
Served Premises
Service Order
Work Locations

Staff Rationale: For the most part, there was little discussion of definitions for purposes of the agreement in the course of this proceeding. However, where the parties have agreed on a definition in Attachment 11, staff has recommended that the definitions be included.

In several instances, terms are not defined, but cross references to other parts of the agreement are cited instead. Where neither party disputed this, staff has recommended leaving the term in the agreement. Several definitions in this format were disputed however. In those cases, GTE cited other parts of the Agreement as containing appropriate definitions. AT&T, however, disagreed that the cited parts of the Agreement did in fact define the term. Staff reviewed those portions, and agrees with AT&T that in those instances, the language cannot be construed as a definition. Staff has recommended that those terms not be included in the final arbitrated agreement, since they were not addressed in the proceeding. We do believe, however, that it is important to define those terms and the Commission should encourage the parties to come to an agreement themselves.

Where there is a dispute over definitions, staff has recommended that the Commission not take it on itself to resolve definitional disputes, on the basis that they are outside the scope of this proceeding. In addition, where one party has identified a

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definition as disputed, but the other party has not addressed that definition as in dispute, staff recommends that the Commission consider the definition as stated in the agreement to be agreed upon by both parties.

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ISSUE 11: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Attachment 14 (Pricing) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS: Attachment 14 consists of five sections and 8 Appendices. Three of the appendices have attachments referred to as Annexes. All disputed language falls within the Appendices and the associated Annexes. The agreed language on the pages listed below should be approved. Each dispute will be addressed separately. All disputed language is shown with each party's preferred language. AT&T's proposed language is in bold and GTE's proposed language is underlined.

a. Appendix 1 - Local Service Retail

The disputed language on page 4 is as follows.

- 1.2 A "Retail Offering" is an individual **contract** or tariff retail rate element, or package of retail rate elements, which GTE offers to its retail customers, including, but not limited, to Grandfathered Services.

AT&T's Rationale: The parties are in disagreement with regard to the types of services to which the wholesale rates apply. AT&T believes that all telecommunications services offered at retail, except as restricted by the Commission's order, are available. GTE seeks language that would limit such services to tariffed services. AT&T in response has proposed that Appendix 1 include language that makes it clear that contract services are also subject to the wholesale discounts.

GTE's Rationale: GTE objects to the word "contract" because the universe of the retail offerings that is subject to this Agreement includes far more than the limited number that may be offered on an individual contract basis. For this reason, GTE considers the reference to "contract" retail elements as grossly under-inclusive or, at best, redundant. The reference to "tariff" retail rate elements should suffice, since GTE's tariff will affect all the retail services that are available for resale.

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Staff's Rationale: Services offered for resale was an issue addressed in this proceeding. Section 251 (c)(4) of the Act requires local exchange companies to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This is further clarified in the FCC Order. (FCC 96-325, ¶871) The Commission's Order states "Upon consideration, we find that the FCC's Order and rules require that promotional or discounted offerings, including contract and other customer-specific offerings, shall not be excluded from resale." (Order, pg 48) The Commission's Order is clear that contract type offerings shall be included as Retail Offerings.

Staff recommends that the language in 1.2 should be:

1.2 A "Retail Offering" is an individual contract or retail service rate element, or package of rate elements, which GTE offers to its retail customers, including, but not limited, to Grand fathered Services.

b. Appendix 1 - Annex 1 - Schedule of Wholesale Discounts

This schedule lists various services and associated discounts. The language for one line item is in dispute and concerns the use of the word "tariffed" as it relates to retail services. The disputed language is as follows:

All Other Tariffed retail Telecommunications Services not excluded from resale by order of the Commission.

AT&T's Rationale: AT&T believes that all telecommunications services offered at retail, except as restricted by the Commission's order, are available. GTE seeks language that would limit such services to tariffed services.

GTE's Rationale: None given.

Staff's Rationale: GTE's proposed language attempts to limit all other retail services to those under tariff. However, the Act requires local exchange companies to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Therefore, staff does not believe that any language that could limit which service offerings are available for resale, should be included in the agreement. Staff recommends that the Commission

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remove the word "tariffed" from this Annex in the agreement.

c. Appendix 1 - Annex 2 - Summary of Wholesale Charges

The disputed language in this Annex is as follows:

This Annex refers to **contract or tariffed charges only**

AT&T's Rationale: The parties are in disagreement with regard to the types of services to which the wholesale rates apply. AT&T believes that all telecommunications services offered at retail, except as restricted by the Commission's order, are available. GTE seeks language that would limit such services to tariffed services. AT&T in response has proposed that Appendix 1 include language that makes it clear that contract services are also subject to the wholesale discounts.

GTE's Rationale: GTE objects to the word "contract" because the universe of the retail offerings that is subject to this Agreement includes far more than the limited number that may be offered on an individual contract basis. For this reason, GTE considers the reference to "contract" retail elements as grossly under-inclusive or, at best, redundant. The reference to "tariff" retail rate elements should suffice, since GTE's tariff will affect all the retail services that are available for resale.

Staff's Rationale: With the same rationale as discussed above, staff recommends that the word "tariffed" be removed. Staff recommends that the heading should read:

This Annex refers to contract or retail service charges

d. Appendix 2 - Prices for Unbundled Network Elements and Appendix 6 - Prices for Trunking Interconnection

The disputed language for Appendix 2 is as follows:

Nonrecurring charges for Dedicated Transport, Database and Signaling Systems, and Channelization System to be provided following review of GTE cost data.

The disputed language for Appendix 6 is as follows:

Nonrecurring charges to be provided following review of GTE

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cost data.

Staff has combined discussion on both Appendices here because both concern nonrecurring charges.

AT&T's Rationale: GTE has proposed language which may be correct, but AT&T is unable to find support in the Commission's Order for the proposed additional charges. AT&T is continuing to review the proposed changes and will inform the Commission if the matter is resolved.

GTE's Rationale: GTE's additional language is necessary to reflect that the Order does not prescribe nonrecurring rates for dedicated transport, database and signaling systems, and channelization systems. This language further reflects that cost studies associated with these elements will be provided to the Commission in accordance with the Order.

Staff's Rationale: The dispute here, is that GTE believes that the Commission will review GTE cost data and determine nonrecurring charges (NRCs) for Dedicated Transport, Database and Signaling systems, and Channelization system. AT&T asserts that nowhere in the Order does the Commission state that it will set NRCs for these elements. Although AT&T is correct that it is not in the Order, the Commission did approve staff's recommendation to require GTE to submit TSLRIC cost studies for NRCs where it did not do so already. Therefore, staff recommends that the disputed language in Appendix 2 and Appendix 6, should remain in the agreement. Legal staff will file an amendatory order to include the requirement for TSLRIC NRC cost studies by GTE.

e. Appendix 3 - Annex 1 - Summary of Commission-Approved Charges for Collocation

AT&T's Rationale: GTE has proposed additional language which may be correct, but AT&T is unable to find support in the Commission's Order for the revisions. AT&T is continuing to review the proposed changes and will inform the Commission if the matter is resolved.

GTE's Rationale: In this instance, GTE has simply added the types of units (e.g., per month) that correspond to the particular rate element to determine the charge to be assessed. This language clarifies the basis for the charges.

Staff's Rationale: This Annex lists each Collocation element and the corresponding recurring or nonrecurring charge. The language

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in dispute concerns the type of units that correspond to the particular rate element to determine the charge to be assessed. The designation of the type of units for each element was included in GTE's cost studies; however, staff did not include such designation in the recommendation for this proceeding. Staff recommends that the Commission approve GTE's proposed unit measurement for each of the Collocation elements shown in this Annex.

Appendix 4 - Annex 1 - Prices for Reciprocal Compensation

The disputed language is as follows:

Transiting Service Charge - \$.00125 per minute
Tandem Switching Rate of \$0.00125
per minute plus applicable
Interstate Transport Access Rates

AT&T's Rationale: AT&T states that the parties have been unable to resolve the appropriate charges for transiting traffic.

GTE's Rationale: GTE asserts that its language more clearly states the rates that will be charged for transiting traffic.

Staff's Rationale: Transiting occurs when three parties (carriers) are involved in the origination, transport, and termination of a toll call. The third party is an intermediary that receives the call from the originating party and forwards or passes the call to the terminating party. Transiting of toll calls was not an issue addressed in the proceeding. For this reason, staff recommends that the Commission take out the disputed language in Appendix 4 - Annex 1.

g. Appendix 8 - Rights-of-Way, Conduits, Ducts, and Pole Attachments

AT&T's Rationale: AT&T has proposed that the Commission will determine the appropriate rates upon the filing by GTE of the appropriate TSLRIC cost studies. GTE disagrees, and apparently intends to charge AT&T rates unilaterally determined by GTE. The parties are also in disagreement with regard to AT&T's ability to obtain refunds if GTE tells AT&T a route is available, and subsequently determines that the route is not available. AT&T has proposed language that makes it clear that AT&T will not be required to pay GTE in that case and, in addition, requires GTE to reimburse AT&T for any prepayments, such as the first year's rent.

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GTE seeks to put the burden upon AT&T of determining if a route is available. All of the procedures and information with regard to route availability are under the control of GTE. See Attachment 3, Section 3.4. GTE's improper placing of the burden on AT&T with regard to payment should be rejected.

GTE's Rationale: GTE will accept AT&T's proposed language if AT&T agrees to GTE's proposed additional language. As the last paragraph of Appendix 8 clearly states, "GTE shall not commence work on the request until it receives prior authorization from AT&T." GTE's additional language follows logically and reasonably from the above statement. If GTE cannot commence "make ready" work on a route without "prior authorization" from AT&T, then, notwithstanding GTE's advice that a route is available, AT&T cannot claim to be completely free of fault if it fails to independently verify the availability of the route and it turns out that it is, in fact, not available. GTE's proposed language attempts to make both parties, not just GTE, responsible for avoiding such a costly "mistake of fact." Without GTE's proposed language, AT&T may decline (unreasonably) to avail itself of an opportunity and a "last clear chance" to avoid wasteful expenditure on its behalf as a result of a prior non-intentional error on GTE's part.

Staff's Rationale: There are two disputes in Appendix 8. First, AT&T believes that the Commission will set prices for Rights-of-Way, Conduits, Ducts, and Pole Attachments. However, the Commission approved staff's recommendation which stated that GTE may charge AT&T a pro rata share of the TSLRIC for supplying the facilities requested in conformance with the FCC's allocation requirements. Staff has found an error in the Commission's Order with respect to the above sentence. Page 142 of the Commission's Order states that "GTE may charge AT&T and MCI a pro rata share of the TSLRIC for supplying the **attachments** requested in conformance with the FCC's allocation process." (emphasis added) Legal staff is preparing an amendatory order to correct "attachments" to read "facilities requested."

This Commission will not establish prices for Rights-of-Way, Conduits, Ducts, and Pole Attachments. GTE has been instructed to follow the FCC's allocation process. If AT&T disputes the TSLRIC prices calculated by GTE, then AT&T may bring the matter before the Commission.

The second dispute is as follows:

If GTE advises AT&T that a route is available and subsequently it is determined that a portion of the route

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is not available, then AT&T will not be required to pay for any work performed by GTE with respect to such route and any prepaid amounts will be refunded to AT&T. However, AT&T is not hereby relieved if its obligation to independently verify and confirm the availability of a proposed route before authorizing GTE to Commence "make ready" work.

A consistent theme throughout the Commission's Order is that costs incurred to perform any modifications to GTE's facilities or structures shall be borne by the cost causer(s) or benefiting party or parties. Staff believes that if AT&T is bound to pay its fair share of costs incurred by GTE for a requested modification, then AT&T should not be required to pay for requested modifications that GTE will not perform. In other words, AT&T should not be required to pay, or forfeit any prepaid amounts, when GTE mistakenly advises AT&T that a route is available, and then subsequently informs AT&T that the route is unavailable after work has commenced. Staff finds GTE's proposed language, which requires AT&T to confirm the available route before authorizing GTE to begin work, unreasonable.

Staff therefore recommends that the Commission approve AT&T's proposed language and the removal of GTE's proposed language in paragraph two of Appendix 8.

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ISSUE 12: What language should the Commission include in the arbitrated agreement of AT&T and GTE for those sections of Attachment 15 (Reciprocal Compensation for Call Termination) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

<u>Section</u>	<u>Title</u>
2.B.3.(a)(1)&(4)	Compensation for Call Termination
2.B.3.(b)(1)	
2.B.3.(c)(1)	
2.B.3.(d)(1)&(3)	
2.B.3.(e)(1)&(3)	
2.B.3.(f)(1)	
2.B.3.(g)(1)	
2.B.4.(a)(2)	
2.B.4.(b)(2)	
2.B.4.(c)(2)	
2.B.4.(d)(2)	
2.B.5.(a)(2)	
2.B.5.(b)(2)	
2.B.5.(c)(2)	
2.B.5.(d)(2)	
2.C.1.(b)	
2.C.2.(b)	

The following language refers to the application of the RIC and the CCL when GTE's unbundled local switching is used to complete intrastate and interstate toll calls to or from an ALEC customer.

AT&T's Proposed Language:

....if such charges are required by the Commission.

GTE's Proposed Language:

[no qualifying language proposed]

Staff's Recommended Language: Use AT&T's proposed language.

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Staff's Rationale: Attachment 15 addresses how calls are charged for purposes of reciprocal compensation, which is referred to as "Bill and Keep" in the agreement language. The parties agree on most of the language. However, they differ with respect to the application of the Residual Interconnection Charge (RIC) and the Carrier Common Line Charge (CCL) for intrastate and interstate calls handled through GTE's unbundled local switching element. GTE believes that the Commission's order allows it to charge these elements. AT&T believes that it does not, and has proposed language in the agreement that leaves the issue to be resolved on a case-by-case basis. At the present time, the applicable language in the FCC order has been stayed, and therefore, Florida law will apply. In the Florida Statutes, Section 364.16(3)(a) requires that:

No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

This issue is left somewhat unclear in that the appropriate access charges have never been determined in this situation on an intrastate basis, and the federal order, which was specific on this point, has been stayed. Staff therefore recommends that AT&T's language be inserted into the agreement, and that particular questions and disputes will have to be resolved on a case by case basis, either by the parties themselves, or by the Commission via the complaint process.

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ISSUE 13: When should AT&T and GTE file a signed agreement incorporating the Commission's decision?

RECOMMENDATION: The parties should file a signed agreement incorporating the Commission's decisions in this recommendation two weeks after issuance of this order, to become effective on that date.

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ISSUE 14: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open until the parties have filed their signed arbitration agreement, and the Commission has completed its review of GTE's cost studies that were required to be filed pursuant to the order in this proceeding.

Agreement ID	Section	Title
Preface - Agreement	Entire Paragraph	
Preface - Recitals	First 5 Paragraphs beginning "WHEREAS"	
Scope, Intent and Definitions	All Sections	
General Terms and Conditions	1, 3, 4, 5, 9-9.2, 10-10.1, 10.4, 11-11.2, 12-18, 19-23.2, 23.4-23.8, 23.10-23.11, 23.13-23.14, 23.16-23.19.2	
Part I	25-25.2, 25.5, 25.5.2-26.5, 27-28, 28.2-28.3, 28.5, 28.7-29.1.6, 29.2-30.5, 30.10-30.11.5	Local Services Resale
Part II	31-32.3, 32.5-32.6, 32.9-32.10.2	Unbundled Network Elements
Part III	33, 34.4	Ancillary Functions
Part IV	36-37.6.2, 37.6.4-37.7, 37.9-37.10, 37.10.1*, 37.10.2-37.10.3.5, 37.10.3.7-38.3.2, 38.4.2-38.4.3, 38.5-39.2.3, 39.2.5-41.2	Interconnection Pursuant to Section 251(C)(2)
Part V	42-43.3.4, 43.3.6-43.3.6.3	Pricing
Attachment 1	All Sections and Appendix 1	Alternative Dispute Resolutions

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Agreement ID	Section	Title
Attachment 2	1-4.2.1.2, 4.2.1.5, 4.2.1.7-4.2.1.8, 4.2.1.10-4.2.1.27, 4.2.1.29, 4.2.1.31-4.2.2, 4.2.2.2-5, 5.1.2.1-5.1.2.14, 5.1.2.16-6.1, 6.2-6.2.1, 6.2.3-8.2.9.3, 8.2.13-11.3.2.10, 11.3.2.12-11.7.1.2, 11.7.1.4-11.7.1.6, 11.7.2.2-12.2.14, 12.2.16-12.3.3, 12.3.6-13.1, 13.1.2-13.1.2.11, 13.1.2.13, 13.2-13.5, 13.5.2-13.5.2.2, 13.5.2.4-13.5.3.2, 13.5.3.3-13.5.3.6 and Appendix A	Service Description: Unbundled Network Elements
Attachment 3	1-2.1, 2.2-2.2.1, 2.2.1.2-2.2.2, 2.2.5-2.2.13, 2.2.16-2.2.23.3.7, 2.2.24-3.1, 3.1.2-3.1.3, 3.1.5, 3.1.9-3.2.1, 3.2.4, 3.3-3.4, 3.4.4-3.5, 3.5.2, 3.6-3.6.1, 3.6.4, 3.6.6, 3.7, 3.8-3.9, 3.10, 3.11, 3.12, 3.13, 3.14, 3.14.2-3.15, 3.16-3.17, 3.18-3.18.2	Service Description: Ancillary Functions
Attachment 4	All Sections	Provisioning and Ordering for Unbundled Elements
Attachment 5	All Sections	Maintenance for Local Services Resale and Unbundled Elements

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Agreement ID	Section	Title
Attachment 6	All Sections and Appendixs A, B and C	Local Services Resale, Unbundled Network Element and Interconnection Billing and Recording
Attachment 7	All Sections and Appendixs I and II	Provision of Customer Usage Data
Attachment 8	1-3.6.1, 3.7*	Interim Number Portability
Attachment 9	1-2, 2.2-4.2	Network Security
Attachment 10	Entire Attachment	Acronyms
Attachment 12	All Sections and Appendixs 1-6	Service Quality Standards and Processes
Attachment 13	All Sections	Principles for Implementing Electronic Interfaces for Operations Support Systems
Attachment 14	Pages 1-3, 7, 9-12, 14, 16, 18	AT&T/GTE Pricing Agreement

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Agreement ID	Section	Title
Attachment 15	All Sections, except 2.B.3.(a) (1)&(4), 2.B.3.(b) (1), 2.B.3.(c) (1), 2.B.3.(d) (1)&(3), 2.B.3.(e) (1)&(3), 2.B.3.(f) (1), 2.B.3.(g) (1), 2.B.4.(a) (2), 2.B.4.(b) (2), 2.B.4.(c) (2), 2.B.4.(d) (2), 2.B.5.(a) (2), 2.B.5.(b) (2), 2.B.5.(c) (2), 2.B.5.(d) (2), 2.C.1.(b) 2.C.2.(b)	Reciprocal Compensation for Call Termination Agreement

Agreement ID	Section	Title
General Terms and Conditions	6-7, 8-8.2, 9.3-9.4, 10.2-10.3, 10.5, 23.3, 23.9, 23.12, 23.15	
Part I	25.5.1, 26.7, 26.8, 28.6, 30.6-30.9	Local Services Resale
Part II	32.7-37.8, 32,10.3.1-32.10.3.2	Unbundled Network Elements
Part IV	37.6.3, 37.8, 37.10.3.6, 38.3.3-38.4.1, 38.4.4, 39.2.4	Interconnection Pursuant to Sections 251(C) (2)
Part V	43.3.5, 43.3.6.3, 43.3.6.4, 43.3.6.5, 43.3.6.6	Pricing
Attachment 2	4.2.1.30, 8.2.10-8.2.12, 11.3.2.11, 11.7.1.3, 11.7.2.1, 12.2.15, 12.3.4-12.3.5, 13.1.1, 13.1.2.12, 13.1.2.14-13.1.2.16	Service Description: Unbundled Network Elements

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Agreement ID	Section	Title
Attachment 3	2.1.1, 2.2.14- 2.2.15, 2.2.23.8.1, 3.4.2-3.4.3, 3.5.3, 3.6.2- 3.6.3, 3.6.5, 3.7.1-3.7.2.4, 3.11.1, 3.14.1, 3.15.1	Service Description: Ancillary Functions
Attachment 9	2.1	Network Security