

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

May 29, 1997

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

FROM: DIVISION OF COMMUNICATIONS (SIRIANNI) *MS*
DIVISION OF LEGAL SERVICES (STOVER) *MSB*

RE: DOCKET NO. 970225-TP - REQUEST FOR APPROVAL OF AMENDMENT
TO THE INTERCONNECTION, RESALE, AND UNBUNDLING AGREEMENT
NEGOTIATED BY INTERMEDIA COMMUNICATIONS, INC. AND GTE
FLORIDA INCORPORATED

AGENDA: JUNE 10, 1997 - REGULAR AGENDA - PARTIES MAY PARTICIPATE

CRITICAL DATES: COMMISSION MUST APPROVE OR DENY BY 8/6/97 PER
TELECOMMUNICATIONS ACT OF 1996

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970225TP.RCM

CASE BACKGROUND

On May 8, 1997, Intermedia Communications, Inc. (ICI) and GTE Florida Incorporated (GTEFL) filed a request for approval of an amendment to their interconnection, resale, and unbundling agreement. The Commission approved the initial agreement between the companies in Order No. PSC-96-0784-FOF-TP issued June 17, 1996. The parties are seeking approval of the agreement under the Telecommunications Act of 1996.

FORMER NUMBER DATE

4536 ² MAY 29 97

RECORDS AND REPORTING

DOCKET NO. 970225-TP
DATE: May 29, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the amendment to the interconnection, resale, and unbundling agreement between ICI and GTEFL?

RECOMMENDATION: Yes. The Commission should approve the proposed amendment to the interconnection, resale, and unbundling agreement between ICI and GTEFL. The Commission should require ICI and GTEFL to file any subsequent supplements or modifications to their agreement for Commission review under the provisions of 47 U.S.C. § 252(e). (Sirianni)

STAFF ANALYSIS: As stated in the Case Background, ICI and GTEFL are seeking approval of an amendment to their interconnection, resale, and unbundling agreement (Attachment A) under the Telecommunications Act of 1996 (the Act). Both the Act and revised Chapter 364, Florida Statutes, encourage parties to enter into negotiated agreements to bring about local exchange competition as quickly as possible. If the parties reach a negotiated agreement, under 47 U.S.C. § 252(e), the agreement is to be filed with the state commission for approval. 47 U.S.C. § 252(a)(1) requires that "the agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement." Under 47 U.S.C. § 252(e)(4), the state commission must approve or reject the agreement within 90 days after submission, or the agreement shall be deemed approved.

The agreement is a two-year agreement governing the relationship between the companies regarding interconnection, unbundling, and resale of various services. The proposed amendment provides certain terms adopted from the AT&T arbitration agreement (Docket No. 960847-TP). The terms adopted from the AT&T agreement include the general terms and conditions for resale, and the AT&T/GTE pricing agreements, including the 13.04% wholesale discount for resale and prices for unbundled network elements. The parties agree that the rates, terms and conditions from the GTE/AT&T agreement may replace the existing rates, terms and conditions if and when the AT&T agreement becomes effective after approval by order of the Commission in Docket No. 960847-TP. Staff has reviewed the ICI and GTEFL proposed amendment for compliance with the Act and recommends approval of the proposed agreement.

DOCKET NO. 970225-TP
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ISSUE 2: Should Docket No. 970225-TP be closed?

RECOMMENDATION: Yes, with the adoption of staff's recommendation in Issue 1, and issuance of the Commission's order approving the amendment to the agreement, Docket No. 970225-TP should be closed.
(Stover)

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This Interconnection, Resale and Unbundling Agreement (the "Agreement"), is made effective as of February 1, 1997, by and between GTE Florida Incorporated, with its address for purposes of this Agreement at 201 N. Franklin, Tampa Florida 33602 ("GTE"), and Intermedia Communications Inc., in its capacity as a certified provider of local dial-tone service ("ICI"), with its address for this Agreement at 3625 Queen Palms Drive, Tampa, Florida 33619 (GTE and ICI being referred to collectively as the "Parties" and individually as a "Party") This Agreement covers services in the state of Florida (the "State")

WHEREAS, interconnection between competing Local Exchange Carriers ("LECs") is necessary and desirable for the mutual exchange and termination of traffic originating on each LEC's network, and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon points of interconnection, and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties, and

WHEREAS, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations on LECs with respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights-of-way and, in certain cases, the offering of certain unbundled network elements and physical collocation of equipment in LEC premises,

WHEREAS, GTE is entering, under protest, into certain aspects of this Agreement that incorporate adverse results from the arbitrated agreements approved by the Commission in this state and is doing so in order to avoid the expense of arbitration while at the same time preserving its legal positions, rights and remedies,

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GTE and ICI hereby covenant and agree as follows

ARTICLE I SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end user customers, and reciprocal access to their poles, ducts, conduits and rights-of-way This Agreement also governs the purchase by ICI of certain telecommunications services provided by GTE in its franchise areas for resale by ICI, the purchase by ICI of certain unbundled network elements from GTE, and the terms and conditions

of the collocation of certain equipment of ICI in the premises of GTE. This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. This Agreement will be submitted to the Commission (the "Commission"), and the Parties will specifically request that the Commission refrain from taking any action to modify, supplement, suspend or otherwise delay implementation of this Agreement. For the term of this Agreement, the Parties shall not advocate before any legislative, regulatory, judicial or other public forum that any terms of this Agreement between the Parties be modified, supplemented, suspended or eliminated. Notwithstanding this mutual commitment, the Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement. GTE's execution of this Agreement is not a concession or waiver in any manner concerning its position that certain of the rates, terms and conditions contained herein are unlawful, illegal and improper.

ARTICLE III
GENERAL PROVISIONS

1 Scope of General Provisions Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall take precedence, these General Provisions apply to all Articles and Appendices of this Agreement

2 Term and Termination

2.1 Term Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be two (2) years from the effective date referenced in the first paragraph of this Agreement and shall continue in effect for consecutive one (1) year terms until either Party gives the other Party at least ninety (90) calendar days' written notice of termination, which termination shall be effective at the end of the then-current term

2.2 Post-Termination Arrangements Except in the case of termination as a result of either Party's default or a termination upon sale, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue without interruption under (a) a new arrangement voluntarily executed by the Parties, (b) standard terms and conditions approved and made generally effective by the Commission, if any, or (c) tariff terms and conditions made generally available to all competitive local exchange carriers

2.3 Termination Upon Default Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party, *provided however*, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt of written notice thereof. Default is defined to include

(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party, or

(b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation any of the material terms or conditions of this Agreement

2.4 Termination Upon Sale Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof of such Party if such Party sells or otherwise transfers the area or portion thereof. The Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas

- 2.5 **Liability upon Termination.** Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.
- 3 **Amendments.** Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.
- 4 **Assignment.** Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.
- 5 **Authority.** Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
- 6 **Billing and Payment.**
- 6.1 **Dispute.** If Customer disputes a billing statement, Customer shall notify Provider in writing regarding the nature and the basis of the dispute within sixty (60) calendar days of the statement date or the dispute shall be waived. Provider and Customer shall diligently work toward resolution of all billing issues.
- 6.2 **Late Payment Charge.** If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider may charge, and Customer agrees to pay, interest on the past due balance at a rate equal to the lesser of one and one-half percent (1½%) per month or the maximum nonusurious rate of interest under applicable law. Late payment charges shall be included on the next statement.
- 6.3 **Taxes.** Provider shall charge and collect from Customer, and Customer agrees to pay to Provider, appropriate federal, state, and local taxes, except to the extent Customer notifies Provider and provides to Provider appropriate documentation that Customer qualifies for a full or partial exemption.
- 7 **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

- 8 Compliance with Laws and Regulations Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement
- 9 Confidential Information
- 9.1 Identification Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information") In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import Orally disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within twenty (20) calendar days after oral disclosure
- 9.2 Handling In order to protect such Confidential Information from improper disclosure, each Party agrees
- (a) That all Confidential Information shall be and shall remain the exclusive property of the source,
 - (b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement,
 - (c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature,
 - (d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source,
 - (e) To return promptly any copies of such Confidential Information to the source at its request, and
 - (f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing
- 9.3 Exceptions These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or that is

required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements

- 9.4 **Survival** The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information

10 **Consent** Where consent, approval, or mutual agreement is required of a Party, it shall not be unreasonably withheld or delayed

11 **Cooperation on Fraud Minimization** The Parties shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unreasonably burden or harm one Party as compared to the other. At a minimum, such cooperation shall include, when permitted by law or regulation, providing the other Party, upon reasonable request, information concerning end users who terminate services to that Party without paying all outstanding charges, when that Party is notified that such end user seeks service from the other Party. If required, it shall be the responsibility of the Party seeking the information to secure the end user's permission (in the format required by law) to obtain the information. Although in most circumstances the end user's current telephone number may be retained by the end user when switching local service providers, if an end user has past due charges associated with the account, for which payment arrangements have not been made with GTE, the end user's previous telephone number will not be made available to ICI until the end user's outstanding balance has been paid

12 **Dispute Resolution**

- 12.1 **Alternative to Litigation** Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach

- 12.2 **Negotiations** At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among

the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

- 12.3 **Arbitration** If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in Tallahassee. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.
- 12.4 **Costs** Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.
13. **Entire Agreement** This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
14. **Expenses** Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
15. **Force Majeure** In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire,

flood, earthquake or likes acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased), *provided however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease

- 16 Governing Law This Agreement shall be governed by and construed in accordance with the domestic laws of the state where the Services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein
- 17 Headings The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement
- 18 Independent Contractor Relationship The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party They shall not be considered employees of the other Party for any purpose Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision
- 19 Liability and Indemnity
- 19.1 Indemnification Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action
- 19.2 End User and Content-Related Claims Customer agrees to release, indemnify, defend, and hold harmless Provider, its affiliates, and any third-party provider or operator of

facilities involved in the provision of Services, unbundled network elements or facilities under this Agreement (collectively, the "Indemnified Parties") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by Customer's end users against an Indemnified Party arising from Services, unbundled network elements or facilities. Customer further agrees to release, indemnify, defend, and hold harmless the Indemnified Parties from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by Customer or Customer's end users, or any other act or omission of Customer or Customer's end users.

19.3 **DISCLAIMER** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, UNBUNDLED NETWORK ELEMENTS OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

19.4 **Limitation of Liability** Provider's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the pro rata portion of the monthly charges for the Services, Unbundled Network Elements or facilities for the time period during which the Services, Unbundled Network Elements or facilities provided pursuant to this Agreement are inoperative, not to exceed in total Provider's monthly charge to Customer. Under no circumstance shall Provider be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, the Parties recognize that Provider may, from time to time, provide advice, make recommendations, or supply other analysis related to the Services, unbundled network elements or facilities described in this Agreement, and, while Provider shall use diligent efforts in this regard, Customer acknowledges and agrees that this limitation of liability shall apply to provision of such advice, recommendations, and analysis.

19.5 **Intellectual Property** Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory

infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party

- 20 **Multiple Counterparts** This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document
- 21 **No Offer** Submission of this Agreement for examination or signature does not constitute an offer by Provider for the provision of the products or services described herein. This Agreement will be effective only upon execution and delivery by both Parties
- 22 **Notices** Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission. "Business Day" shall mean Monday through Friday, except for holidays on which the U.S. mail is not delivered. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section

If to GTE

GTE Florida Incorporated
Attention: Regional Director Regulatory Industry Affairs
201 N. Franklin
Tampa, Florida 33602
Facsimile number (813)223-4888

GTE Carrier Markets
201 N. Franklin
Tampa, Florida 33602

If to ICI

Intermedia Communications, Inc
Attention: Mr. Tom Allen
3625 Queen Palm Drive
Tampa, Florida 33619
Facsimile number (813) 829-2470

- 23 **Protection**
- 23.1 **Impairment of Service** The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and

concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service")

- 23.2 **Resolution** If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.
- 24 **Publicity** Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of services, unbundled network elements or facilities pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both GTE and ICI.
- 25 **Regulatory Agency Control** This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications Commission and/or the applicable state utility regulatory commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency. Notwithstanding the date set forth in the first paragraph of this Agreement, 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. Such date (i.e., five Business Days after the Parties receive the written notice of approval) shall become the "effective date" of this Agreement for all purposes.
- 26 **Rule of Construction** No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.
- 27 **Section References** Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.
- 28 **Severability** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this

Agreement without penalty or liability for such termination upon written notice to the other Party

- 29 Subcontractors Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement
- 30 Subsequent Law The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline
- 31 Trademarks and Trade Names Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever
- 32 Waiver The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect
- 33 Amendment of Certain Rates, Terms and Conditions The Parties agree as follows with respect to modification of the rates, terms and conditions initially provided for herein

The rates, terms and conditions that are specified in Appendix H (the "GTE Terms") may be replaced by the rates, terms and conditions from the GTE/AT&T Interconnection, Resale and Unbundling Agreement (the AT&T Agreement), respectively, that are specified in Appendix I (the "AT&T Terms") if and when the AT&T Agreement becomes effective after approval by order of the Commission in Docket No. 960847-TP. The rates, terms and conditions that are specified in Appendix I (the "AT&T Terms") shall not take effect for purposes of this Agreement until ten (10) days following GTE's receipt of written notice of ICI's election to replace the specified "GTE Terms" with the specified "AT&T Terms", which notice may be given no earlier than the date the AT&T Agreement is approved by the Commission and effective. GTE and ICI agree that if the "AT&T Terms" are deemed to be unlawful, or are stayed, enjoined or otherwise modified, in whole or in part, by a court or commission of competent jurisdiction, then this Agreement shall be deemed to have been amended accordingly, by modification of the "AT&T Terms" or, as appropriate, the substitution of "GTE Terms" for all stayed or enjoined "AT&T Terms", and such amendment shall be effective retroactive to the Effective Date of the "AT&T Terms."

GTE and ICI further agree that the terms and conditions of this Agreement reflect certain requirements of the FCC's First Report and Order in CC Docket No. 96-98. The terms and conditions of this Agreement shall be subject to any and all actions by any court or

other governmental authority that invalidate, stay, vacate or otherwise modify the FCC's First Report and Order, in whole or in part. To the extent required by any such subsequent action, the parties agree to modify, in writing, the affected terms and conditions of this Agreement to bring them into compliance with the subsequent action. ICI acknowledges that GTE may seek to enforce such subsequent action before a commission or court of competent jurisdiction. GTE does not waive any position regarding the illegality or inappropriateness of the FCC's First Report and Order.

The rates, terms and conditions (including rates which may be applicable under true-up) specified in both the "GTE Terms" and the "AT&T Terms" are further subject to amendment, retroactive to the Effective Date of the Agreement, to provide for charges or rate adjustments resulting from future Commission or other proceedings, including but not limited to any generic proceeding to determine GTE's unrecovered costs (e.g., historic costs, contribution, undepreciated reserve deficiency, or similar unrecovered GTE costs (including GTE's end user surcharge)), the establishment of a competitively neutral universal service system, or any appeal or other litigation.

If the Commission (or any other commission or federal or state court) in reviewing this Agreement pursuant to applicable state or federal laws, including Section 252(e) of the Telecommunications Act of 1996, deletes or modifies in any way this Section 3.3, ICI agrees that this entire Agreement is void and will not become effective, and ICI agrees to withdraw this Agreement from consideration by the Commission (or any other commission or federal or state court).

APPENDIX H
GTE TERMS

Pursuant to Section 33 of Article III of this Agreement, the following terms shall be applied in the event the AT&T Terms are deemed to be unlawful, or are stayed or enjoined by a court or commission of competent jurisdiction

- The rates in Appendix C will apply instead of Appendix I
- The resale discount in Appendix E will apply instead of Appendix I
- The rates in Appendix F will apply instead of Appendix I
- Sections 3.4, 5.4, 5.6, 5.8 and 5.9 of Article IV will apply instead of Appendix I
- Section 2.3 of Article VI will apply instead of Appendix I

APPENDIX I
TERMS ADOPTED FROM THE AT&T ARBITRATION AGREEMENT

Main Agreement, § 25.

25 **General Terms and Conditions for Resale**

25.1 **Ordering**

25.1.1 Orders for resale of Local Services will be placed utilizing a standard Local Service Request ("LSR") form. A complete and accurate LSR must be provided by AT&T before a request can be processed, provided, however, that immaterial deviations or omissions in the LSR will not prevent an order from being processed. Each Party shall transfer the customer's service features and functionalities "as is" to the other Party when requested by a customer. For purposes of this Section 25, an "as is transfer" is the transfer of all the telecommunications services and features available for resale that are currently being provided for the specified account without the requirement of a specific enumeration of the services and features on the LSR.

25.1.2 A Letter of Authorization ("LOA") will be required before Local Services will be provided for resale to a subscriber that currently receives local exchange service from GTE or from a local service provider other than AT&T. Such LOA may be a blanket letter of authorization (Blanket LOA) or such other form as agreed upon by AT&T and GTE. When a Blanket LOA has been provided by AT&T, GTE shall not require an additional disconnect order, LOA or other writing from a customer, or another LEC, in order to process an order for Local Service. Each Party will provide the capability for customers to retain their current phone number in the event that they change local service providers to the extent technically feasible, allowing them to retain all existing features and functionalities.

Main Agreement, § 25.3

25.3 **Restrictions on Resale**

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: (i) AT&T shall not resell residential services 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 only to customers qualified to receive such services from GTE

Main Agreement, § 32.5

32.5 GTE shall offer each Network Element individually and in combination with any other Network Element or Network Elements, so long as such combination is technically feasible, in order to permit AT&T to combine such Network Element or Network Elements with another Network Element or other Network Elements obtained from GTE or with network components provided by itself or by third parties to provide telecommunications services to its customers.

Attachment 14
AT&T/GTE Pricing Agreement

1. **Local Service Resale**

The prices charged to AT&T for Local Service shall be calculated using the avoided cost discount applicable in the State determined on the basis of the retail rate charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by GTE, as further specified in Appendix 1.

The prices shall be GTE's retail rates applicable on the Effective Date, less the applicable discount. If GTE reduces or increases its retail rates after AT&T executes this Agreement, the applicable discount shall be applied to the reduced or increased retail rates.

2. **Unbundled Network Elements**

The prices charged to AT&T for Network Elements shall be as further specified in Appendix 2.

4 **Interconnection Services**

GTE will make interconnection arrangements available at all tandem switching and end office switching locations. At the discretion of AT&T, local interconnection may be accomplished via one-way local trunks, or two way local trunks, or AT&T may chose to deliver both local and toll traffic over the same trunk group(s). With respect to the latter scenario, AT&T will have to provide an available Percent Local Usage (PLU) to facilitate billing if it desires application of the local interconnection rate.

Prices and terms for Interconnection Services are specified in Appendix 4.

5 **Other**

Prices and terms for trunking interconnection and E911/911 are specified in Appendix 6 and Appendix 7, respectively.

Appendix 1 - Local Service Resale

Beginning with the Effective Date of this Agreement, Resale Services will be priced in accordance with the standards and prices described below

- 1 The wholesale rates for Local Service Resale will be calculated based upon the discounts described in Annex 1. Such discounts will be applied against the Retail Rates for each GTE Retail Offering
- 1.1 "Retail Rates" are the effective rates a GTE retail customer would have paid GTE under the Retail Offering selected by AT&T, taking into consideration all applicable discounts, including, but not limited to, volume, term and time of day
- 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, Grandfathered Services
- 2 Nonrecurring "change" or "record" charges, rather than service establishment charges, shall apply for the conversion of existing Customers of GTE services, received either directly from GTE or through another reseller, to AT&T local service

Appendix 1 - Annex 1 - Schedule of Wholesale Discounts

Florida

Basic Local Service (Residence & Business)	13.04%
Line Charge	13.04%
Usage Charge	13.04%
Features	13.04%
Listing Charges	13.04%
Non-recurring Charges	13.04%
Toll Service	13.04%
Operator Services	13.04%
Directory Assistance	13.04%
Business Trunk and Service Arrangements	13.04%
ISDN Services	13.04%
CENTRANET Services	13.04%
Private Line Services	13.04%
Inbound/Outbound Services	13.04%
Promotional Offerings (90 days or more)	13.04%
Promotional Offerings (less than 90 days)	Not subject to wholesale discount
Services for disabled persons (including free directory assistance)	13.04%
In Contact Services	13.04%
Public and Semi-Public Payphone Services	13.04%
Contract Services	13.04%
Grandfathered Services	13.04%
All Other retail Telecommunications Services not excluded from resale by order of the Commission	13.04%

Appendix 1 - Annex 2 - Summary of Wholesale Charges

This Annex refers to contract or retail service charges

Local Services-Residence and Business

Line Charges: These services should include but not be limited to the exchange line charges, by rate area within the jurisdiction. The price structure should encompass flat rates, measured rate service, one and/or two-party lines and any other subcategory that pertains to that jurisdiction. Line prices that reflect usage for such services as call-packs, extended area service, community calling would be included in this category

Usage Charges: Includes all usage not captured in the line charge, such as messages or minutes in excess of any limited calling-plan

Features: Custom calling features and advanced custom calling features as designed to be compatible with single and multi-line residence and business customer exchange lines. Custom calling features would include month and pay per attempt charges. Associated feature discounts for quantity or other marketing bundles would also be included. (Central office features that support CENTRANET and private line services would be included with each specific service category.)

Listings: All forms of directory listings for both local and toll services. Prices for customer listing options such as bold type, dual name, business name and custom advertising for the white and yellow pages are included

Non-recurring charges: Charges associated with the installation, addition, changing or moving of service and equipment for local service

Toll Services: Charges for any service that has been ordered by the Commission to be open to intraLATA presubscription whether charged on a per minute of use or other basis. This includes the non-recurring and listing charges associated with installation or record affecting work for toll service or toll usage plans and for listings, advertising and associated services in the 800 service directory

Operator Services: Charges associated with, but not limited to, obtaining operator assistance for call placement, busy-line verification and interruption, time and weather and, if priced as such, DA call completion

Directory Assistance Services: Charges associated with the use of directory assistance operators in obtaining local telephone numbers

Business Trunks and Service Arrangements: Charges associated with PBX trunk arrangements for single and multi-line customers. Included are line and usage charges, features and service arrangements for direct inward (and/or outward) dialing.

ISDN Services: Charges associated with Integrated Services Digital Network. Service for residence and business customers for the transmission of voice, data and packet switched signals.

CENTRANET Services: Charges associated with the provision and use of central office based private branch exchange services using equipment located on the premises owned or leased or controlled by GTE and connected by local loops to the premises of the customer or an authorized user.

Private Line Services: Charges associated with the provision and use of dedicated facilities between two or more customer locations.

Inbound/Outbound Services: Charges associated with the provision and use of WATS 800 (inbound) and Wide Area Telephone service (outbound) and other like services.

End User Access Services: Charges associated with the provision and use of common and dedicated facilities to provide access service to end user customers.

Appendix 2 - Prices for Unbundled Network Elements

Beginning with the Effective Date of this Agreement, Network Elements and Combinations will be priced in accordance with the standards and prices described in this Appendix 2.

Other than the prices identified as interim, the prices listed in this Appendix 2 will remain in effect for three (3) years (Initial Contract Period) unless amended pursuant to pricing orders applicable to Network Elements and Combinations provided by GTE to AT&T in the State. The prices identified as interim are subject to further order of the Commission pending submission of cost studies by GTE. At the end of the Initial Contract Period, the agreement will automatically renew for an additional one year term, unless one party gives 90 days written notice of a wish to terminate. Upon the giving of such written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to terminate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix 2 will continue to remain in effect.

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

Appendix 2 - Annex 1

FLORIDA

Summary of PSC Modified Monthly Recurring Costs
For GTE Florida, Inc.

	Rates
<u>Unbundled Loops</u>	
2-Wire Analog Loop	\$20 00
4-Wire Analog Loop	\$25 00
Loop Distribution	\$7 50 - interim
Loop Feeder	\$3 00 - interim
<u>NID</u>	
Basic NID	\$1 45
12xNID	\$2 10
<u>Cross Connects</u>	
DS-0	\$1 60
DS-1	\$4 00
DS-3	\$31 00
<u>Local Switching</u>	
Per Originating MOU	\$ 004
Per Terminating MOU	\$ 00375
Port Charges Per Month	
2-wire Analog Port	\$4 75
4-wire Analog Port	Cost study due
DS-1 Port	\$72 25
<u>Tandem Switching</u>	
Per MOU	\$ 0009512
<u>Common Transport</u>	
Transport Termination	\$ 0001

Transport Facility / per mile	\$ 0000017
<u>Dedicated Transport</u>	
Entrance Facility	
2 wire voice	\$29 00
4 wire voice	\$35 00
DS-1 system - first	
DS-1 system- add'l	\$125 00
DS-3 protected	\$960 00
Voice facility	
DS-1 facility per mile	\$0 50
DS-1 per termination	\$30 00
DS-3 facility per mile	\$13 00
DS-3 per termination	\$285 00
Channelization System	
DS3 to DS1 multiplexing	\$305 00
DS1 to DS0 multiplexing	\$205 00
<u>Database and Signaling Systems</u>	
Signaling Links and STP	
56 Kbps Links	\$80 00
DS-1 Link	\$125 00
Signal Transport Point (STP)	
Port Termination	\$350 00
<u>Call Related Databases</u>	
Line Information Database	
ABS	\$ 04
Toll Free Calling Databases	
DB800 Queries	\$ 011
Operations Support Systems	Cost study due
Operator Services	

Operator Systems	Cost study due
Directory Assistance	Cost study due
911 Service	Cost study due

Summary of PSC Modified Monthly Non Recurring Costs
For GTE Florida, Inc.

	Non-Recurring Charge
<u>Unbundled Element</u>	
Loop or Port Service Ordering	
Initial Service Order	\$47 25
Transfer of Service	\$16 00
Subsequent Service Order	\$24 00
Customer Service Record Research	\$ 5 25
Installation	
Unbundled loop, per loop	\$10 50
Unbundled port, per port	\$10 50
Loop Facility Charge	\$62 50

Appendix 4 - Reciprocal Compensation

5 Scope

This Appendix prescribes the methods and means for reciprocal compensation of interconnect traffic between GTE's and AT&T's networks as well as transiting traffic between AT&T and third party LECs or ILECs.

6 Interconnecting Local Traffic

On each three (3) month anniversary of the Interconnection Activation Date in a Market Area, the Parties will review the minutes of usage for interconnect traffic for the prior quarter. If the minutes of usage imbalance for interconnect traffic for that period is less than ten (10%) percent, neither Party shall charge the other for services provided under this Appendix. If an imbalance is greater than ten (10%) percent, then the appropriate party may bill the other using the rates discussed in this Appendix. In the event of a disagreement regarding reciprocal compensation billing, either Party may invoke the dispute resolution procedures of Attachment 1.

7 Transiting Traffic

AT&T shall pay to GTE a Transiting Service Charge for the use of its Tandem Switching as described in Annex 1 to this Appendix 4.

Appendix 4 - Annex 1 - Prices for Reciprocal Compensation

These prices will remain in effect for the first three (3) Contract Years of this Agreement ("Initial Contract Period"), unless amended pursuant to pricing orders applicable to the services provided to each other by AT&T and GTE listed in this Appendix 4. Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory Commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Annex will continue to remain in effect.

Dedicated transport - See Appendix 2 - Annex 1 to this Attachment 14 (Note 1)

Common transport - See Appendix 2 - Annex 1 to this Attachment 14 (Note 1)

End Office Switching - \$0.0025 per minute

Tandem Switching - \$0.00125 per minute

Transiting Service Charge - \$0.00125 per minute

Note 1: This provision is scheduled to be deleted from the AT&T Contract

Appendix 6 - Prices for Trunking Interconnection

The prices listed in this Appendix are not subject to change for the first three (3) Contract Years of this Agreement ("Initial Contract Period"). Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures of Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix will continue to remain in effect.

Dedicated Transport Rates

AT&T Dedicated Transport

See Appendix 2 - Annex 1 to this Attachment

GTE Dedicated Transport -

See Appendix 2 - Annex 1 to this Attachment

Nonrecurring charges to be provided following review of GTE cost data

Appendix 7 - Prices for E911/911 Services

The prices listed in this Appendix are not subject to change for the first five (5) Contract Years of this Agreement ("Initial Contract Period"). Upon expiration of the Initial Contract Period, upon written notice by a Party, the Parties agree to renegotiate any or all of the prices, subject to the then applicable pricing standards established by the FCC and/or the state regulatory commission. A Party may deliver only one request to renegotiate during a Contract Year. If the Parties are unable to agree upon revised prices within sixty (60) days of the request to renegotiate, a Party may invoke the Dispute resolution procedures in Attachment 1. Until such time as the revised prices are agreed to, or established by the decision of the Arbitrator in the dispute resolution procedure, the prices described in this Appendix will continue to remain in effect.

[To be provided following review of GTE cost data]