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GTE SERVICE CORPORATION

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

March 15, 1999

Re: Docket No. 990182-TP
Petition of DIECA Communications Inc. d/b/a Covad Communications Company
for Arbitration of Interconnection Rates, Terms, Conditions and Related
Arrangements with GTE

Dear Ms. Bayo:

Please find enclosed an original and fifteen copies of the Direct Testimonies of
Samuel M. Jones, Michele Meny and Dennis B. Trimble on behalf of GTE Florida
Incorporated for filing in the above matter. Service has been made as indicated on
the Certificate of Service. If there are any questions regarding this filing, please
contact me at 813-483-2617.

Sincerely,

Kimberly Caswell

Kimberly Caswell

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
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- LIN 3 orig
- OPC _____
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- WAS _____
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A part of GTE Corporation

PPSC-BUREAU OF RECORDS

03271-99 Jones

03272-99 Meny

03273-99 Trimble

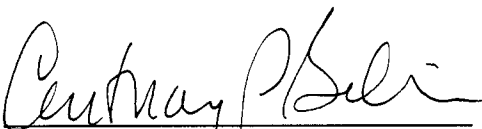
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Direct Testimonies of Samuel M. Jones, Michele Meny and Dennis B. Trimble on behalf of GTE Florida Incorporated in Docket No. 990182-TP were hand-delivered(*) or sent via overnight delivery(**) on March 15, 1999 to:

Staff Counsel(*)
Florida Public Service Commission
2540 Shumard Oak Boulevard
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James D. Earl(**)
Assistant General Counsel
Covad Communications Company
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McLean, VA 22101

DIECA Communications, Inc.(**)
c/o Covad Communications Company
2330 Central Expressway, Building B
Santa Clara, CA 95050


Kimberly Caswell

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of DIECA Communications d/b/a)
Covad Communications Company for)
arbitration of interconnection rates, terms,)
conditions and related arrangements with)
GTE Florida Incorporated.)
_____)

DOCKET NO. 990182-TP
Filed: March 15, 1999

**DIRECT TESTIMONY
OF
SAMUEL M. JONES
ON BEHALF OF
GTE FLORIDA INCORPORATED**

**DIRECT TESTIMONY OF
SAMUEL M. JONES
DOCKET NO. 990182-TP**

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Samuel M. Jones. My business address is 600 Hidden Ridge, Irving, Texas 75038.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am Manager-Compensation Planning for GTE Network Services.

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND WORK EXPERIENCE.

A. I began working for GTE in 1975 as a Communications Consultant. Since then, I worked for GTE in a variety of positions of increasing responsibility. I have worked in GTE's Wholesale Markets business unit for approximately ten years. During that time my responsibilities have focused primarily on GTE's regulatory activities that specifically affect or involve other carriers. For the past four years I have been involved exclusively in local competition activities including negotiating interconnection contracts and representing GTE's positions in regulatory dockets and workshops. I was appointed to my present position in April 1996.

I have a B. S. from Georgia Tech and an M.B.A. from Duke University.

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Q. WHAT ARE YOUR PRINCIPAL RESPONSIBILITIES IN YOUR PRESENT POSITION?

A. As Manager-Compensation Planning, I am responsible for, among other things, coordinating and conducting negotiations with a number of competitive local exchange carriers (CLECs) regarding such issues as interconnection, access to unbundled network elements (UNEs), and resale of local exchange services in multiple states in which GTE operates.

Q. HAVE YOU TESTIFIED IN OTHER PROCEEDINGS?

A. Yes. I have testified before utilities commissions in California, Oregon, Washington, and Idaho.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY HERE?

A. I will set forth GTE Florida Incorporated's positions on the issues that have been tentatively identified for resolution in this arbitration.

Q. WHAT PRICE SHOULD APPLY TO: (A) UNBUNDLED LOOPS; (B) NIDS; AND (C) TRANSPORT?

GTE continues to support the UNE cost studies and associated prices it proposed in GTE's arbitration proceeding with AT&T and MCI, completed in 1997. (Petitions by AT&T Comm. of the Southern States, Inc., MCI Telecomm. Corp. and MCI Metro Access Transmission Services, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE Florida Inc.

1 Concerning Interconnection and Resale Under the Telecomm. Act of
2 1996 General Proceeding to Determine Permanent Pricing for
3 Unbundled Network Elements, Docket Nos. 960847-TP and 960980-
4 TP (GTE/AT&T Arbitration).) In separate testimony, GTE witnesses
5 Michele Meny and Dennis Trimble sponsor and incorporate by
6 reference into this proceeding those earlier-filed cost studies and
7 proposed rates, respectively.

8
9 In the GTE/AT&T Arbitration, the Commission found that GTE's cost
10 studies "are appropriate because they approximate TSLRIC cost
11 studies and reflect GTEFL's efficient forward-looking costs. We
12 believe the cost studies can be used to set permanent rates for those
13 elements covered by the cost studies, since the assumptions appear
14 reasonable." (Order No. PSC-97-0064-FOF-TP (GTE/AT&T
15 Arbitration Order) (Jan. 17, 1997).)

16
17 While the Commission in the GTE/AT&T Arbitration used GTE's cost
18 studies as a basis for pricing UNEs, it made certain revisions to that
19 study and it rejected GTE's proposed prices, which included an
20 appropriate level of common costs. As a result, the prices the
21 Commission ordered there were well below a level that would permit
22 GTE to recover its actual costs. In fact, the rates ordered for GTE's
23 2-wire and 4-wire loops were even below GTE's TSLRIC. GTE has,
24 therefore, appealed the GTE/AT&T Arbitration Order to federal district
25 court. That case has been argued and a decision is pending. (GTE
26 Florida Inc. v. Julia Johnson et al. and AT&T Comm. of the Southern

1 States, Inc.; MCI Telecomm. Corp.; and MCI Metro Access
2 Transmission Services, Inc., Civ. Action No. 4:97CV26MP.)
3

4 Even though GTE strongly disagrees with the rates established in the
5 GTE/AT&T arbitration, GTE is willing to offer them to Covad. Under
6 this approach, Covad would pay all of the charges (both recurring and
7 nonrecurring) the Commission established for each of the UNEs
8 Covad seeks in this arbitration. This offer does not in any way
9 compromise GTE's rights to appeal or otherwise challenge the rates
10 set in this arbitration. In fact, GTE specifically conditions the
11 availability of these rates upon the appropriate reservation of rights by
12 GTE. If Covad accepts the rates offered here, it must be with the
13 understanding that if they are stayed, enjoined, or otherwise modified
14 by a court or commission, the agreement shall be deemed to have
15 been amended accordingly by modification of the UNE prices (or
16 other terms), effective retroactive to the effective date of the
17 agreement.

18
19 GTE makes this offer in the spirit of compromise and practicality. The
20 Commission has already evaluated and rejected the rates GTE filed
21 in its arbitration with AT&T and MCI, and it has already evaluated and
22 revised the cost studies submitted there. GTE does not wish to force
23 the Commission to formally repeat this process. GTE's compromise
24 offer—if Covad accepts it—will save the Commission and the parties
25 the considerable time and resources they would otherwise need to
26 spend on a full cost case. It recognizes, in addition, the parties' need

1 to go forward with business as usual while the issues presented by
2 the Supreme Court's ruling in AT&T Corp. v. Iowa Util. Bd., Nos. 97-
3 286 et al., _____ U.S. _____ (Jan. 25, 1999) are resolved. (The legal
4 effect of the Court's ruling is discussed in GTE's Response to Covad's
5 Petition.)

6
7 GTE's proposal is very fair to Covad. The UNE rates GTE has offered
8 Covad have been adopted (through the federal Telecommunications
9 Act's Section 252(i) opt-in process) by most ALECs that have
10 executed interconnection contracts with GTE.

11
12 Covad suggests that if the Commission declines to adopt the proxy
13 rates, "it will either have to complete the cost case required by 47
14 C.F.R. section 51.51(e)(2) by June 9, 1999, or this arbitration will be
15 removed to the FCC pursuant to 47 C.F.R. sections 51.801-807."
16 (Petition at 11.) That is not true. GTE's compromise approach would
17 avoid both the non-cost based proxy rates and another complete cost
18 case. If Covad continues to insist on the FCC's proxy rates, however,
19 GTE will have no choice but to rely on its previously submitted cost
20 studies.

21
22 **Q. IF COVAD DEMANDS THE FCC'S PROXY RATES TO PRICE**
23 **UNES, WILL THE COMMISSION NEED TO CONDUCT A FULL**
24 **COST CASE?**

25 A. Yes. If Covad rejects the rates reflected in GTE's Compliance Filing,
26 GTE will have no choice but to stand on its cost studies and rates as

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originally submitted in the GTE/AT&T Arbitration. The alternative Covad has proposed—the FCC's proxy rates—is absolutely unacceptable.

Q. WHY CAN'T THE COMMISSION USE THE FCC'S PROXY RATES FOR UNES, AS COVAD RECOMMENDS?

A. The proxy prices were intended only as defaults in the event adequate cost studies could not be made available to state commissions in time for arbitration proceedings. Any perceived need for reliance on proxy defaults has long since passed. In fact, in its brief before the Supreme Court in the Iowa Utilities Board case, the FCC confirms that "the Commission's temporary and optional 'default proxies' were designed for a past period in which no cost studies could have been made available to the state commissions. They have no relevance to this case." (Reply Brief for the Federal Petitioners and Brief for the Federal Cross-Respondents at 7 fn. 5.)

This Commission agrees that proxy prices are not appropriate for UNE rate-setting. It never considered relying on the FCC default prices in any of GTE's arbitrations. As I mentioned earlier, the Commission used GTE's studies as the basis for setting UNE rates. Covad's recommendation that the Commission depart from this ILEC-specific, cost-based approach in favor of non-cost based, non-ILEC-specific proxies makes no sense.

Q. SHOULD COVAD'S USE OF LOOPS AND NIDS ALLOW FOR THE

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PROVISION OF SPECIAL ACCESS SERVICE?

A. Covad believes that it should have the ability to use unbundled NIDs and/or loops to provide interstate special access, as well as local exchange, services. GTE does not disagree with Covad's position. GTE believes the parties have resolved this issue through negotiation, and expects that it will be withdrawn from arbitration.

Q. SHOULD THERE BE A 30-DAY PERIOD FOR THE FILING OF TARIFFS TO IMPLEMENT CHANGES IN REGULATION REGARDING COLLOCATION?

A. I don't believe such a provision is necessary. Covad wants the parties' interconnection contract to specify that, in the event of state or federal regulatory changes affecting the provision of collocation, GTE will modify its tariffs accordingly within 30 days. GTE does not oppose prompt modification of collocation tariffs as required by state or federal law. However, I believe that the draft contract's existing change-of-law provision resolves this issue. As detailed in GTE's Response to Covad's Petition, that draft language indicates that if the legal requirements governing the contract change, the contract will change along with them. If any such modified laws, rules, or regulations require the parties to negotiate, they are to agree on compliance amendments within 30 days. If they do not, they shall resolve their dispute in accordance with the dispute resolution mechanism stated in the contract.

In view of this generally applicable provision, Covad's suggested

1 collocation-specific language is unnecessary. Although Covad's
2 language does not refer to dispute resolution, that mechanism will be
3 available, in any event, if the parties disagree about the nature of the
4 contract changes prompted by the legal or regulatory changes. There
5 is, thus, no practical difference between the effect of the existing,
6 general change-of-law provision and the more specific one Covad has
7 suggested.

8
9 I believe Covad may have overlooked the more general provision and
10 expect that we can settle this issue through negotiation.

11

12 **Q. SHOULD GTEFL BE REQUIRED TO TAKE INTO CONSIDERATION**
13 **COVAD'S PRESENT AND FUTURE COLLOCATION**
14 **REQUIREMENTS WHEN GTEFL PLANS RENOVATIONS OF**
15 **EXISTING FACILITIES OR CONSTRUCTS OR LEASES NEW**
16 **FACILITIES?**

17 A. As Covad has recommended, GTE will agree to consider the
18 collocation needs of Covad, as well as GTE's own space
19 requirements, in renovating or constructing central office facilities.
20 GTE believes this issue has now been resolved through negotiations
21 and expects it to be withdrawn.

22

23 **Q. HAS COVAD PROPOSED ANY ISSUES THAT ARE BEYOND THE**
24 **SCOPE OF ARBITRATION?**

25 A. Yes. Covad's proposed issues concerning limitation of liability and
26 dispute resolution are legal, rather than substantive, in nature. Thus,

1 they do not fall within the arbitrable items reflected in Sections 251
2 and 252 of the Act (that is, interconnection, unbundled access, resale,
3 collocation, and the like). As the Commission stated in GTE's
4 arbitration with AT&T and MCI: "We will limit our consideration to the
5 items enumerated in Sections 251 and 252 to be arbitrated, and
6 matters necessary to implement those items." (Petitions by AT&T
7 Comm. Of the Southern States, Inc., MCI Telecomm. Corp. and MCI
8 Metro Access Transmission Services, Inc. for Arbitration of Certain
9 Terms and Conditions of a Proposed Agreement with GTE Florida
10 Inc. Concerning Interconnection and Resale Under the Telecomm.
11 Act of 1996, Order No. PSC-97-0064-FOF-TP (GTE/AT&T Arbitration
12 Order) (Jan. 17, 1997), at 98.) Neither dispute resolution nor liability
13 measures appears in Sections 251 and 252, and neither is necessary
14 to implement the terms of the Act. Thus, these issues must be
15 resolved through negotiation, rather than arbitration.

16
17 I emphasize that the dispute resolution and limitation of liability issues
18 are only proposed, rather than approved for Commission resolution
19 in this Docket. At the issues identification conference, GTE opposed
20 inclusion of these legal issues. GTE agreed to address them here
21 and in its Response to Covad's Petition only because the expedited
22 schedule in this proceeding would not permit argument on the scope
23 of the issues before the response and testimony were due.

24
25 GTE expects that the parties will soon resolve these legal issues
26 through negotiations. If they do not, GTE understands that the

1 prehearing officer will consider the parties' arguments as to the
2 arbitrability of these issues and decide whether they belong in the
3 case. GTE's discussion of substantive positions here is presented in
4 the unlikely event that Covad's legal issues are approved for inclusion
5 in this arbitration.

6

7 **Q. SHOULD PRIVATE DISPUTE RESOLUTION BE THE SOLE**
8 **REMEDY OF THE PARTIES FOR RESOLVING DISPUTES UNDER**
9 **THE PARTIES' INTERCONNECTION AGREEMENTS?**

10 A. GTE supports alternative dispute resolution mechanisms over
11 litigation. Specifically, GTE has proposed that the parties internally
12 escalate their disputes under the interconnection agreement, then
13 seek binding arbitration if they cannot resolve the issue between
14 themselves. GTE does not believe Covad opposes private dispute
15 resolution. However, Covad apparently views alternative dispute
16 resolution as an option in addition to, rather than instead of, litigation
17 in court. GTE and Covad continue to discuss this issue and GTE is
18 confident they can settle it through negotiations.

19

20 **Q. WHAT ARE THE APPROPRIATE LIMITATIONS ON THE PARTIES'**
21 **LIABILITY IN CASES OF WILLFUL MISCONDUCT OR GROSS**
22 **NEGLIGENCE?**

23 A. The Commission has specifically determined, as a matter of law, that
24 limitation of liability, liquidated damages, and indemnifications issues
25 are not arbitrable, and that "companies should not require the
26 assistance of the Commission to establish contract provisions

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affording to each of them protections that will not cause unreasonable exposure to liability, direct or third-party, or hinder competitive entry.” (GTE/AT&T Arbitration Order at 98.)

In the event that the Commission agrees to resolve the limitation of liability issues, GTE asks it to recognize, as it has before, that “the Act does not require revisions to GTEFL’s tariffed limitations of liability.” (Id.) As such, the liability standard reflected in GTE’s tariffs should govern its contract with Covad, as well. Specifically, liability for negligence or willful misconduct should be limited to a credit for or refund of charges, appropriately prorated to correspond to the duration of the service interruption. This measure of liability is the only reasonable approach here. It recognizes that GTE’s service prices are not set to cover the unknowable and potentially unlimited damages that could flow from telecommunications service interruptions. This rationale applies equally to GTE’s retail services and the wholesale elements to be made available to Covad under contract.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.