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July 22, 1996

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

Re: Docket No. 950984-TP
Resolution of petition(s) to establish nondiscriminatory rates, terms and conditions for resale involving local exchange companies and alternative local exchange companies pursuant to Section 364.161, Florida Statutes

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of the Reply of GTE Florida Incorporated Opposing Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc. in the above matter. Also enclosed is a diskette with a copy of the Reply in WordPerfect 5.1 format. Service has been made as indicated on the Certificate of Service. If there are any questions with regard to this matter, please contact me at 813-228-3087.

ACK ✓
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Very truly yours,

Anthony P. Gillman/dm

Anthony P. Gillman
APG:tas
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of petition(s) to establish nondiscriminatory rates, terms and conditions for resale involving local exchange companies and alternative local exchange companies pursuant to Section 364.161, Florida Statutes	Docket No. 950984-TP Filed: July 22, 1996

GTE FLORIDA INCORPORATED'S REPLY OPPOSING THE MOTION FOR RECONSIDERATION BY METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.

GTE Florida Incorporated (GTEFL) asks the Commission to deny the Motion for Reconsideration of Order number PSC-96-0811-FOF-TP (Order) filed by Metropolitan Fiber Systems of Florida, Inc. (MFS) in this docket on July 8, 1996. Much of MFS' motion is entirely new matter with no evidentiary support whatsoever. Other material re-argues points MFS made and which the Commission explicitly considered and rejected. Either way, MFS has failed to meet the reconsideration standard and there is no legal basis for granting the modifications it seeks. GTEFL will briefly respond to each of MFS' arguments in turn.

I. The Commission Should Reject the Costing Modifications MFS Seeks.

MFS has suggested a number of changes in the Order's method for calculating the costs used to set rates for unbundled features. GTEFL, too, believes the Order's ratesetting approach is wrong, but for entirely different reasons than MFS does. This reply to MFS' motion in no way endorses or defends the Commission's Order. Rather, it explains why the specific modifications MFS proposes are unjustified.

A. There Is No Evidence to Support MFS' New Efficient Provider Costing Notion.

MFS' arguments about costing requirements can be divided into two categories--those that have not been raised before in this case and those that have been raised and rejected. MFS' lead argument is new. It contends that incremental cost estimates should reflect the costs of "an efficient entrant using forward-looking technology rather than the costs of the incumbent provider." (Motion at 6.) MFS asserts that both the Florida Statutes and the new federal Telecommunications Act require use of the so-called efficient provider's costs. (Motion at 7-11.)

This argument does not appear anywhere in the prefiled testimony and was not advanced at the hearing or in the briefs. In fact, MFS' new costing theory contradicts all of its testimony and previous argument in this proceeding. At every stage of this proceeding, MFS argued that unbundled rates should be set at the incumbent provider's incremental costs: "the Commission should adopt pricing guidelines for unbundled loops that are premised on GTE's cost in providing the service" (Devine Direct Testimony (DT) at 22; Devine Rebuttal Testimony (RT) at 5); "GTE's Long Run Incremental Costs ("LRIC") should serve as the target price and cap for unbundled loops" (Devine DT at 22 and Devine RT at 4); "MFS recommends that GTE and Sprint's Long Run Incremental Cost ("LRIC") should serve as the target price and cap for Sprint and GTE's unbundled loops" (MFS Posthearing Brief at 6, citing hearing testimony of its witness Devine at Tr. 41-43 and 89-90); "MFS urges the Commission to set interim rates for unbundled loops at the "LRIC" costs provided by Sprint and GTE" (MFS Posthearing Brief at 6); "Sprint and GTE's LRICs

are the appropriate prices for unbundled loops, ports and other elements." (MFS Posthearing Brief at 17); see also MFS Posthearing Brief at 18-22, 27, 31.

Further, contrary to MFS' new legal interpretation, it believed until now that the incumbent provider's LRIC was the standard required under Florida and federal law. After spending pages of its Posthearing Brief advocating rates set at the specific, respective costs of GTE and Sprint, MFS concludes that both "the Federal Act and the Florida Statutes are consistent by supporting unbundled bottleneck network elements priced at LRIC." (MFS Posthearing Brief at 22.) It is clear that MFS advocated carrier-specific LRIC as the legally sufficient standard, rather than some hypothetical cost standard based on an efficient provider.

The Commission cannot accept MFS' new efficient provider costing recommendation. No party raised it in the record before now. There is no evidence to support MFS' theory and no way the Commission can set specific rates based on a hypothetical provider for which no costs have been introduced. Indeed, MFS' boldness in raising its efficient provider costing argument at this point is astonishing, given the fact that it contradicts the earlier sworn testimony of its own witness.

MFS has not brought to the Commission's attention any evidence it overlooked or failed to consider, as it would have to in order to obtain reconsideration. See, e.g., Diamond Cab Co. v. King, 146 So. 2d 889 (1962). It is, of course, impossible to overlook or fail to consider evidence that was not even introduced. There is thus no basis for the agency to modify its Order to comport with MFS' efficient provider costing notion.

Likewise, there is no evidence to support MFS' view that the unbundled rates for

both GTE and United should be comparable to the unbundled rates ordered for BellSouth in an earlier phase of this docket. (Motion at 19-20.) This argument, which MFS raises for the first time here, is simply a corollary to its efficient provider costing theory. MFS takes issue with the different interim loop prices set for the largest three Florida LECs. MFS then assumes, without any evidentiary support, that BellSouth's, GTEFL's, and United's costs of service should be about the same. Based on this wild assumption, MFS again asserts that its efficient provider costing theory is appropriate because it would eliminate the carrier-specific loop rates the Commission has ordered. This ancillary argument differs from the main argument, discussed above, only in that it would apply the efficient provider costing concept to BellSouth's unbundled rates, as well as those of GTEFL and United. Thus, aside from its lack of evidentiary support (discussed above), this argument fails for the additional reason that it effectively asks the Commission to change the rates earlier set for BellSouth. BellSouth's rates are, of course, not a proper subject for reconsideration in this phase of the docket dealing only with United's and GTEFL's rates.

Finally, GTEFL strongly disagrees with the substance of MFS' new arguments advocating the so-called efficient provider costing theory. It is unnecessary, however, for GTEFL (or the Commission) to engage in a detailed rebuttal of these arguments, because they are so plainly improperly presented at this stage in the proceeding. The Commission can and should deny MFS' suggested modifications because their utter lack of support in the record prevents the Motion from satisfying the above-noted standard for the reconsideration.

B. The Commission Considered and Rejected MFS' Other Costing Recommendations.

Aside from the change in the incremental cost standard the Commission ordered, MFS advocates geographical deaveraging of loop costs and resulting rates; exclusion of billing and collection and marketing costs from the incremental cost estimates used to set unbundled loop prices; and modification of the termination liability charges granted for loop conversions. MFS' proposals in this area have already been considered and rejected by the Commission. There is no basis for finding the Commission overlooked or failed to consider any relevant point of law or fact with regard to these matters. MFS simply disagrees with the Commission's decision in these areas. Disagreement with a Commission order is not a legally sufficient basis for its reconsideration.

Geographic deaveraging was a key point of contention in this proceeding. MFS witness Devine advocated deaveraging in both prefiled (RT at 10-12) and oral testimony (Tr.191-92), and the LEC witnesses were cross-examined on this point (Trimble, Tr. 432-33). The Commission devoted more than a page of its Order to the deaveraging proposal, specifically noting MFS' argument. Order at 19-20. It is clear the Commission thoroughly considered the ALECs' arguments about deaveraging before rejecting them.

Nevertheless, MFS attempts to frame its policy disagreement with the Commission in terms of legal requirements. It claims that Florida law--specifically, Florida Statutes section 364.3381--requires the Commission to geographically deaverage loop rates because the Commission has "continuing jurisdiction over cross-subsidization issues and the authority to investigate allegations of such practices." (Motion at 15-16.) MFS

contends that an averaged loop rate impermissibly sanctions "cross-subsidization" between high and low cost areas.

The Commission's authority to police cross-subsidization in no way compels it to order deaveraged rates. The concept of cross-subsidization, as reflected in section 364.3381, refers to subsidies flowing from one service to another, rather than from one area to another. MFS' broad cross-subsidy concept has no grounding in the law, or, as far as GTEFL knows, economic theory in the telecommunications area. Because MFS' reading of the statute is wrong, there is no basis for the Commission to now accept the deaveraging proposal it considered and rejected in its Order.

MFS' continued arguments that billing and collection, customer contact, and other marketing costs should be excluded from incremental cost estimates similarly offer no basis for reconsideration. MFS essentially reiterates points it made during the proceeding and which were recounted and rejected in the Order. (Order at 12.) Again, a disagreement over a policy decision does not justify reconsideration. And MFS' request is improper for the further reason that it relies on the implication that GTEFL's marketing and customer support costs are inflated. (Motion at 12-13.) There is absolutely no evidence to support such an assumption.

Finally, having lost its argument that the Commission should disallow any termination charges or other charges associated with conversion to unbundled service, MFS now asks that such charges be set at cost, rather than tariffed rates. MFS argues

that the termination charges the Commission has allowed frustrate the pro-competitive intent of the Florida Statutes and the Telecommunications Act. Such an argument is without merit. The Commission specifically found that GTEFL will incur costs when making such conversions and that GTEFL is entitled to recover those costs. (Order at 29). GTEFL presently recovers those costs under its existing tariffed rates. Although MFS objects to the use of tariffed rates now, it introduced no evidence that GTEFL's existing tariff rates were too high or otherwise inadequate at the hearing.

The fact that there is no record evidence for MFS' new position on conversion or termination liability charges is reason enough to reject this proposal. In addition, MFS is incorrect in stating that the termination charges such as the Commission has sanctioned are anticompetitive. To the contrary, they are customary features of contracts in competitive markets. Charges for early termination of contracts enhance, rather than undermine, the efficiency of competitive markets. GTEFL expects that MFS' own contracts include termination charges based on the typical standard of time remaining on the contract. There is no reason to deny only some competitors' the use of these charges; MFS' proposal is a naked attempt to gain an unfair advantage over GTEFL.

II. The Commission Should Reject MFS' "Fresh Look" Proposal.

MFS argues that the Commission should permit customers a "fresh look" at their contracts with LECs in light of the transition to a more competitive market. MFS' fresh look discussion is nothing more than its old argument against termination penalties with a different name. MFS raised, and the Commission explicitly rejected, MFS' arguments

concerning termination charges in this proceeding. (Order at 29-30.) In fact, even MFS admits that the Commission "acknowledged" MFS' relevant testimony. (Motion at 22.) The fact that the Commission simply did not accept MFS' position is not grounds for reconsideration. It would, moreover, be improper to rely on the record in the BellSouth phase of this docket as justification for MFS' fresh look policy, as MFS would apparently have the Commission do. (Motion at 21.) The Commission cannot use evidence adduced in one proceeding to ground conclusions in another. Finally, MFS is wrong in stating that the Commission did not distinguish between conversion and termination liability charges. The Order shows that the Commission clearly understands the difference between the two. (See Order at 30, 33.)

In short, MFS has again failed to bring to the Commission's attention anything it overlooked or failed to consider that would now justify modification of the termination charges the Order permits. Simply repackaging the termination liability argument as a fresh look theory does not change this fact.

III. Conclusion

For all the reasons discussed in this filing, GTEFL asks the Commission to deny MFS' request for reconsideration and to reject the specific modifications MFS proposes. GTEFL emphasizes that its opposition to MFS' petition should not be construed as support

for the Commission's Order. GTEFL remains critical of the Commission's decision, but MFS' proposals will exacerbate, rather than ameliorate, the problems with the Order.

Respectfully submitted on July 22, 1996

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the Reply of GTE Florida Incorporated Opposing Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc. in Docket No. 950984-TP were sent via U.S. mail on July 22, 1996 to the parties on the attached list.

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