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July 24, 1996

Ms. Blanca S. Bayo, Director  
Division of Records & Reporting  
Florida Public Service Commission  
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- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP 1 \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU 1 \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- LIN 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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 GTE Florida Incorporated's Motion for Stay of Order Pending Judicial Review in the above matter. Also enclosed is a diskette with a copy of the Motion 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.

Very truly yours,

Anthony P. Gillman  
APG:tas  
Enclosures

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A part of GTE Corporation

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FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Resolution of petition(s) to establish )  
nondiscriminatory rates, terms and conditions ) Docket No. 950984-TP  
for resale involving local exchange companies ) Filed: July 24, 1996  
and alternative local exchange companies )  
pursuant to Section 364.161, Florida Statutes )  
\_\_\_\_\_)

**GTE FLORIDA INCORPORATED'S  
MOTION FOR STAY OF ORDER  
PENDING JUDICIAL REVIEW**

GTE Florida Incorporated (GTEFL), pursuant to F.P.S.C. Rule No. 25-22.061(1)(a), seeks a stay of the Florida Public Service Commission's Order No. PSC-96-0811-FOF-TP (Order) pending judicial review. In support of this motion, GTEFL states as follows:

**I. Background**

1. Under the 1995 revisions to Chapter 364 of the Florida Statutes, incumbent local exchange carriers (LECs) were required to unbundle their network features, functions and capabilities and offer them for resale to the extent it is technically and economically feasible to do so. Fla. Stat. §364.161(1). Alternative local exchange carriers (ALECS) were required to negotiate with LECs to establish rates, terms and conditions for such unbundled elements. After entering negotiations with GTEFL, Metropolitan Fiber Systems of Florida, Inc. (MFS) reached a partial agreement on certain issues. However, the parties reached an impasse on the compensation arrangements for the unbundled elements. Unable to reach an agreement, MFS filed a petition with the Commission to arbitrate their dispute. Fla. Stat. §364.161(1).

2. As part of its unbundling proposal, GTEFL agreed to provide unbundled loops and ports. Although GTEFL proposed new rates for the ports, the rates for loops were already tariffed. As such, GTEFL proposed to charge its currently tariffed rates for those loops. As noted by GTEFL witness Dennis Trimble, “[u]nbundled loop prices are already available today in GTEFL’s Facilities for Intrastate Access tariff.” (Trimble Direct, p. 4).

The tariffed loop prices are noted below:

	<u>Unbundled Loop</u>	<u>Existing Tariffed Rate</u>
a.	2-wire analog voice grade loop;	\$23.00
b.	4-wire analog voice grade loop;	\$33.00
c.	2-wire ISDN digital grade loop;	\$23.00
d.	4-wire ISDN digital grade loop;	\$250 1st System \$154.00 Add'l System

3. Although GTEFL proposed to charge its existing tariffed rates, the Company acknowledged that these rates alone were not sufficient to recover the contribution to joint and common costs provided by services carried over the local loop. Presently, the local loop provided to GTEFL’s customers serves as the platform for many other services such as toll and discretionary services. The rates for these services have been set by the Commission at artificially high levels in order to subsidize the below-cost residential service provided by GTEFL throughout its operating territory. GTEFL argued that this existing subsidy flow should be addressed and replaced with a new mechanism. Otherwise, the Commission would be confiscating GTEFL’s property.

4. On June 24, 1996, the Commission issued its Order, adopting rates which were (except for 4-wire ISDN digital grade loop) lower than the existing tariffed rates noted above. The Commission lowered the rates to the TSLRIC levels, thereby removing all existing contribution to joint and common costs. In addition to lowering those rates, the Commission also rejected GTEFL's request to replace the existing subsidy mechanism with some other mechanism. By refusing to implement another mechanism, the Commission effectively eliminated the existing subsidy entirely.

5. GTEFL has appealed the Commission's decision to the Florida Supreme Court. The notice of appeal, a copy of which is attached hereto, was filed on July 22, 1996.

6. The Order requires GTEFL and United/Centel to file tariffs within 30 days of the date of the Order. Under that provision, GTEFL must file its tariffs by July 24, 1996 to be effective fifteen days later, August 8, 1996. Although GTEFL is filing the tariffs today as required by the Order, GTEFL seeks a stay of their effective date as part of its overall motion to stay the Order in question.

## **II. Order Involves a Decrease in Rates**

7. GTEFL seeks a stay pursuant to Rule No. 25-22.061(1)(a) which requires that a stay be granted pending judicial review when the Order involves a "decrease in rates" charged to GTEFL's customers. In these instances, it is not necessary for GTEFL to show that it is likely to prevail on the merits, that it has suffered irreparable harm or that the stay is not contrary to the public interest.

8. There is no question in this case that the Order decreases the rates presently charged by GTEFL to its carriers and end user customers.

9. The Order effectively mandates a decrease in GTEFL's local loop rates charged to MFS and other carriers. As noted above, the unbundled loops in question, or their functional equivalents, are already tariffed. However, the rates approved by the Commission are lower than those tariffed rates, as shown below:

	<u>Unbundled Loop</u>	<u>Existing Rate</u>	<u>Commission Rate</u>
a.	2-wire analog voice grade loop;	\$23.00	\$20.00
b.	4-wire analog voice grade loop;	\$33.00	\$25.00
c.	2-wire ISDN digital grade loop;	\$23.00	\$20.00
d.	4-wire ISDN digital grade loop;	\$250 1st System \$154.00 Add'l System	same

10. As reflected above, GTEFL's current loop rates are being decreased. The same 2-wire loop that MFS could have purchased before at \$23.00 is now priced at \$20.00. Likewise, the same 4-wire loop which presently is priced at \$33.00 is now priced at \$25.00.

11. The Commission has also effectively decreased the rates GTEFL charges to its end users and interexchange carriers by eliminating the subsidy payment made through the provision of toll, access and other discretionary services. These services presently subsidize residential rates and are part and parcel of the local loop provided to the customer. By adopting a rate which provides no contribution to this subsidy and by refusing to replace this subsidy with a different mechanism, the Commission has

decreased the rates charged by GTEFL. In fact, the Commission has reduced the existing subsidy to zero.

### III. No Bond Should Be Required

12. Rule 25-22.061(1)(a) permits the Commission to require GTEFL to post a bond or issue some other corporate undertaking as a condition of the stay. GTEFL recommends that the bond should be set at zero. No bond is necessary because granting the stay will not prejudice MFS, the only party who petitioned the Commission to resolve a dispute between it and GTEFL.

13. MFS will not be prejudiced by this stay because MFS also dislikes the Order. MFS filed a motion of reconsideration of the Order, arguing that the rates approved by the Commission are too high. MFS contends that the Commission "ignored or misapplied the applicable law or failed to considered (sic) significant evidence presented in the hearing." *Motion for Reconsideration by Metropolitan Fiber Systems of Florida, Inc.* at 3. MFS cannot complain about a stay of an Order which it thinks was erroneously decided.

14. Moreover, on July 16, 1996, MFS filed a petition for arbitration with the Commission under the *Telecommunications Act of 1996*. In that petition, MFS has requested the Commission to arbitrate the same rates being appealed by GTEFL. (See *Petition for Arbitration of Interconnection Rates, Terms and Conditions of MFS Communications Company, Inc.* at 6-7).

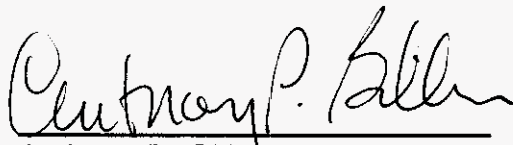
15. It is obvious from its motion for reconsideration and petition for arbitration that MFS feels strongly that the Commission erred in issuing the Order on unbundling. If MFS agrees with GTEFL that the Order is based upon error, then they cannot be prejudiced by

the fact that GTEFL is seeking a stay of that erroneous Order. Indeed, MFS may welcome such a stay.

16. Also, MFS has no need for unbundled loops as long as the Interconnection Order (See Order No. PSC-96-0688-FOF-TP) is pending before the Commission. MFS has alleged that interconnection is essential to entering the local exchange market. In the interconnection proceeding, tariffs need not be filed until sixty days after the motions for reconsideration are decided (Interconnection Order at 49). As such, a stay of the unbundling order will be largely immaterial to MFS until these tariffs are filed.

GTEFL respectfully requests the Commission to stay Order No. PSC-96-0811-FOF-TP and the effective date of GTEFL's tariffs filed pursuant to that Order until GTEFL's appeal of this Order is concluded.

Respectfully submitted on July 24, 1996.

By: 

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BEFORE THE FLORIDA PUBLIC  
SERVICE COMMISSION  
DOCKET NO. 950984-TP

GTE FLORIDA INCORPORATED, )  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 SUSAN F. CLARK, etc., et al., )  
 )  
 Appellee. )  
 \_\_\_\_\_ )

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that GTE Florida Incorporated, Appellant, appeals to the Supreme Court of Florida the Florida Public Service Commission Order number PSC-96-0811-FOF-TP, rendered June 24, 1996 in the above-cited docket. A conformed copy of the Order is attached in accordance with rule 9.110(d).

The Order being appealed is a final order rendered by the Florida Public Service Commission establishing the rates, terms and conditions for the resale of network elements and services provided by GTE Florida Incorporated.

Respectfully submitted on July 22, 1996.

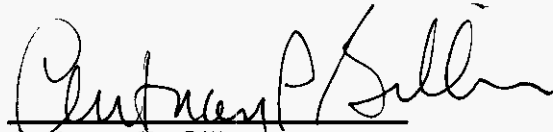


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Motion for Stay of Order Pending Judicial Review in Docket No. 950984-TP were sent via U.S. mail on July 24, 1996 to the parties on the attached list.

  
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