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September 27, 1996

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

960842-TP

Re: Docket No. 960980-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation in the above docket are the original and 15 copies of MCI's Response to GTE's Motion to Dismiss Request of AT&T and MCI to Establish the FCC's Default Proxy Rates.

By copy of this letter this document has been provided to the parties on the attached service list.

Very truly yours,

*R.D.M.*

Richard D. Melson

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
- APP \_\_\_\_\_ RDM/cc
- CAF \_\_\_\_\_ Enclosures
- CAF \_\_\_\_\_ cc: Parties of Record
- CMU \_\_\_\_\_
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2 \_\_\_\_\_
- LIN 5 \_\_\_\_\_
- OPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1 \_\_\_\_\_ 81436.1
- WAS \_\_\_\_\_
- OTH \_\_\_\_\_

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

10420 SEP 27 96

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FILE COPY

In re: Petitions by AT&T )  
Communications of the Southern )  
States, Inc., MCI )  
Telecommunications Corporation, )  
MCI Metro Access Transmission )  
Services, Inc., )  
for arbitration of certain terms )  
and conditions of a proposed )  
agreement with GTE Florida )  
Incorporated )  
concerning interconnection and )  
resale under the )  
Telecommunications Act of 1996. )  
\_\_\_\_\_ )

Docket No. 960847-TP  
Docket No. 960980-TP

Filed: September 27, 1996

**MCI'S RESPONSE IN OPPOSITION TO  
GTE'S MOTION TO DISMISS REQUEST OF AT&T AND MCI TO ESTABLISH  
THE FCC'S DEFAULT PROXY RATES AND TO STRIKE TESTIMONY**

MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively, MCI) hereby file their response in opposition to GTE Florida Incorporated's (GTEFL's) motion to dismiss the request of AT&T and MCI to establish the FCC's default proxy rates and to strike testimony. As set forth below, GTE's motion is without merit. MCI will respond briefly to each of the major arguments put forth by GTEFL:

**INTRODUCTION**

1. MCI notes at the outset that it agrees with GTEFL that the Commission should not use the FCC's default proxy rates. Instead, the Commission should use the rates for unbundled network elements calculated by the Hatfield Model and contained in the testimony of Mr. Wood, and should base the prices for resold services on the avoided cost calculation set forth in the

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Avoided Cost Study sponsored by Mr. Price. The record in this case will show that these studies produce results that are consistent with economic principles and that comply with both the Telecommunications Act of 1996 ("Act") and the FCC Rules. MCI nevertheless recognizes that if the Commission rejects these studies, and any studies presented by GTEFL in this proceeding, it has the authority under the FCC Rules to adopt default proxy rates pending the submission and review of studies that do comply with the pricing principles set forth in the FCC Rules and the Act.

**RESPONSE TO GTEFL'S CONTENTION THAT THE PROXY RATES WERE UNLAWFULLY PROMULGATED BY THE FCC**

2. MCI disagrees with GTEFL's assertion that the FCC lacks the statutory authority to establish default proxy rates. This issue is not within the Commission's jurisdiction to decide, however, and MCI therefore declines to engage in gratuitous briefing of the issue. Suffice it to say that the question of the FCC's statutory authority will be decided by the Eight Circuit Court of Appeals, after MCI, GTEFL, and other parties -- including the Commission -- have had the opportunity to fully brief and argue the issue.

**RESPONSE TO GTEFL'S CONTENTION THAT THE DEFAULT RATES ARE CONSTITUTIONALLY AND STATUTORILY DEFECTIVE BECAUSE THEY DO NOT PROPERLY REFLECT GTE'S COSTS**

3. MCI disagrees with GTEFL's assertion that the FCC's default rates are statutorily and constitutionally defective.

MCI will present evidence in this proceeding which demonstrates that, under the Act, the appropriate price level for GTEFL's resold services falls within the FCC's default range and that the appropriate price levels for the unbundled network elements for which the FCC established default ceilings are below such ceilings. GTEFL obviously believes that the evidence it intends to produce will demonstrate a contrary result. In any event, the appropriate price for these elements and services under the Act is a matter that can be determined by the Commission only after a hearing on the merits. If the Commission determines that no party has submitted a study that meets the requirements of the FCC Rules, it is permitted by those rules to establish a default rate on an interim basis, pending the submission of studies that comply with the pricing principles in the Act. The fact that GTEFL believes that it will prevail on the merits does not provide a legal basis to dismiss, prior to hearing, any claim regarding the appropriateness or inappropriateness of the default proxy rates.

**RESPONSE TO GTE'S CONTENTION THAT THE PSC WOULD UNCONSTITUTIONALLY TAKE GTEFL'S PROPERTY BY IMPOSING DEFAULT PROXY RATES**

4. While MCI does not advocate the imposition of default proxy rates, MCI disagrees with GTEFL's contention that the imposition of such rates would constitute an unlawful taking of GTEFL's property. MCI believes that the evidence will show that the use of proxy rates would not constitute a taking of GTEFL's

property but, on the contrary, would likely provide excessive compensation for GTEFL when measured by the standards of the Act. In any event, GTEFL's claim hinges on disputed issues of fact that must be resolved at a hearing on the merits, not on a motion to dismiss.

**RESPONSE TO GTEFL'S CONTENTION THAT CONSIDERATION OF THE PROXY RATES WILL UNDERMINE THE PSC'S MOTION FOR STAY OF THE FCC'S ORDER**

5. As the Commission is aware, MCI intends to oppose the motions by the Commission and others for a stay pending appeal of the FCC's Order. Like the validity of the FCC Rules, the question of whether a stay will be granted will be decided by the Eight Circuit Court of Appeals, not by the Commission. If the Court grants a stay, the Commission would not be obligated to apply default proxy rates in any circumstances, although MCI has not yet considered whether it would be permitted to do so. If the Court denies a stay, the Commission will be bound to follow the FCC Rules during the pendency of the appeal, and could use the proxy rates in the situations in which the FCC Rules permit their application. The possible effect on its motion for stay of applying the FCC Rules is not a permissible consideration for the Commission. While the FCC Rules are in effect, and unstayed, the Commission is obligated to apply them by Section 252(d) of the Act. In any event, since the Court will likely rule on the motion for stay well before the Commission's scheduled vote in this docket, there is no possible way that the Commission's action would prejudice its position vis-a-vis the stay.

**SUMMARY**

6. GTEFL's motion is nothing more than an attempt, in the guise of a motion to dismiss, to get the Commission to prejudge this case in advance of a hearing on the merits. That motion should be rejected outright.

RESPECTFULLY SUBMITTED this 27th day of September, 1996.

HOPPING GREEN SAMS & SMITH, P.A.

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ATTORNEYS FOR MCI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 27th day of September, 1996.

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Florida Public Service Commission  
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Attorney