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October 21, 1996

**VIA FEDERAL EXPRESS**

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

**Re: Opposition of Metropolitan Fiber Systems of Florida, Inc., to GTE of Florida, Inc.'s Motion for Stay of Order Pending Judicial Review, Docket No. 950984-TP**

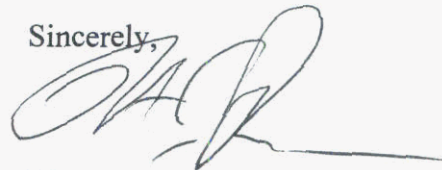
Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is an original and fifteen (15) copies of the Opposition of Metropolitan Fiber Systems of Florida, Inc., to GTE of Florida, Inc.'s Motion for Stay of Order Pending Judicial Review, in the above-referenced proceeding.

Please date stamp the extra copy, and return it in the enclosed self-addressed, pre-paid envelope.

If there are any questions concerning this matter, please contact me.

Sincerely,



Morton J. Posner

ACK \_\_\_\_\_

AFA \_\_\_\_\_

APP *Smith*

CAF \_\_\_\_\_ cc:

Timothy T. Devine (w/enc.)

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Richard M. Rindler, Esq.

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LEG *1*

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FPSC-RECORDS/REPORTING

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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

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

**OPPOSITION OF  
METROPOLITAN FIBER SYSTEMS OF FLORIDA, INC.  
TO GTE OF FLORIDA INCORPORATED'S  
MOTION FOR STAY OF ORDER PENDING JUDICIAL REVIEW**

Metropolitan Fiber Systems of Florida, Inc. ("MFS"), by its undersigned attorneys, hereby opposes GTE of Florida Incorporated's ("GTEFL") October 11, 1996 Motion for Stay of Orders PSC-96-0811-FOF-TP and PSC-96-1160-FOF-TP in the captioned docket.

**I. INTRODUCTION**

GTEFL seeks a stay of Commission orders directing it to file unbundled local loop resale tariff rates reflecting Total Service Long Run Incremental Cost ("TSLRIC"). GTEFL argues that since the Commission's mandatory TSLRIC rates are lower than loop rates GTEFL had set in its Facilities for Intrastate Access tariff, it is entitled to a stay pending judicial review. GTEFL's theory is that the difference between the tariffed access rates and the TSLRIC unbundled loop rates constitutes a "decrease in rates charged to customers" under Fla. Admin. Code Ann. § 25-22.061(1)(a) and that it is entitled to a mandatory stay under that Commission rule.<sup>1/</sup> MFS believes

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<sup>1/</sup> When the Commission reduces a carrier's rates, the rule states that "the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings."

GTEFL has wholly mischaracterized the Commission's orders, its tariff filing, and MFS' position regarding the Commission's orders. GTEFL's Motion is meritless and should be denied.

**II. THE COMMISSION DID NOT ORDER GTEFL TO REDUCE RATES WITHIN THE MEANING OF ITS RULES AND GTEFL IS NOT ENTITLED TO A MANDATORY STAY**

In order to justify a stay, GTEFL claims the Commission ordered it to reduce its rates. Under this theory, GTEFL asserts the Commission's rules entitle it to a mandatory stay of the effectiveness of its unbundled loop rates. GTEFL's argument strains the Commission's rules to fit its theory.

Prior to the hearing, MFS contested GTEFL's position that tariffed access lines were a satisfactory substitute for unbundled loops. Subsequently, GTEFL and MFS executed a partial co-carrier agreement, which the Commission approved, stating in relevant part:

GTE shall unbundle all its Exchange Services into three separate packages: (1) link element; (2) port element; and (3) cross-connect element. The following link . . . categories shall be provided:

Link Categories

2/4 wire analog voice grade  
2 wire ISDN digital grade  
4 wire DS-1 digital grade

GTE shall unbundle and separately price and offer these elements such that MFS will be able to lease and interconnect to whichever of these unbundled elements GTE requires . . .

Order No. PSC-96-0811-FOF-TP, at 55 (emphasis added). According to GTEFL's July 24, 1996 letter transmitting its tariff to the Commission, "GTEFL's Unbundled Local Network Access

[tariff] is a new tariff, not previously filed with the [Commission].”<sup>2/</sup> Section 1.1 of that tariff states that it is applicable to:

the unbundled local network and ancillary services provided to Alternative Local Exchange Carriers (ALEC) who have a Certificate of Public Convenience and Necessity (CPCN) authorizing them to operate in the State of Florida. The arrangements in this tariff schedule are only available to those ALECs that have a CPCN.

“Unbundled Local Network Access” is a distinct service offering which did not previously exist. GTEFL agreed to unbundle and separately price local loops. Common sense dictates that the Commission cannot reduce rates for a service (and in a tariff) which did not exist before and which GTEFL agreed to initiate. Accordingly, the Commission did not order a rate reduction within the meaning of Rule 25-22.061(1)(a) and GTEFL is not entitled to a stay. Similarly, the Commission must also reject GTEFL’s argument that the Commission’s orders effectively eliminate GTEFL’s subsidy to its other services, decreasing the rates GTEFL charges to its end users and interexchange carriers. The newly tariffed rates are for services which did not exist before. The lack of a subsidy inherent in new rates cannot constitute a rate reduction within the meaning of the Commission’s rule.

### **III. GTEFL HAS MISCHARACTERIZED MFS’ POSITION CONCERNING THE COMMISSION’S ORDERS**

Although irrelevant to grant of a Rule 25-22.061(1)(a) stay, GTEFL alleges that “MFS will not be prejudiced by this stay because MFS also dislikes the Initial Order.” Motion at 6. GTEFL mischaracterizes MFS’ position. MFS did seek reconsideration of the Commission’s initial order, which the Commission denied. The basis of MFS’ request was that the Commission

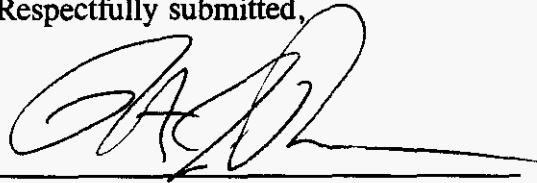
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<sup>2/</sup> Letter of Beverly Y. Menard to Walter D’Haeseleer dated July 24, 1996 transmitting Unbundled Local Network Access Tariff, T-96-616 (emphasis in the original).

should have geographically deaveraged the loop rates, adopted a slightly refined costing standard, and offered consumers the opportunity to opt out of long term service contracts without penalty under the new competitive environment. MFS did not oppose the underlying basis of the Commission's order, and certainly did not oppose the provisions of the partial co-carrier agreement that MFS and GTEFL freely negotiated. GTEFL's assertion that MFS will not suffer prejudice if a stay is granted because it sought reconsideration of Commission orders is inaccurate.<sup>3/</sup>

For the above reasons, MFS respectfully submits that GTEFL is not entitled to a stay under Rule 25-22.061(1)(a) and that its Motion must be denied.

Respectfully submitted,



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October 21, 1996

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<sup>3/</sup> GTEFL only seeks a stay under Rule 25-22.061(1)(a). Motion at 4. GTEFL has not made any showing under any other part of Rule 25-22.061 that it is entitled to a stay. Accordingly, the Commission has no record to consider GTEFL's motion on any basis other than Rule 25-22.061(1)(a). Without conceding the point, the issue of whether or not MFS would suffer harm if a stay is granted is not now before the Commission.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of October, 1996 a copy of the foregoing **Opposition of Metropolitan Fiber Systems of Florida, Inc., to GTE of Florida, Inc.'s Motion for Stay of Order Pending Judicial Review**, Docket No. 950984-TP, was served, via First Class Mail, postage prepaid, to each of the following list.

A handwritten signature in black ink, appearing to read 'M. Posner', written over a horizontal line.

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