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October 23, 1996

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

Docket No. 950984-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Response in Opposition to GTE Florida Incorporated's Motion For Stay Pending Appeal.

Copies of the foregoing are being served on all parties of record in accordance with the attached Certificate of Service.

Yours truly,

*Michael W. Tye*  
Michael W. Tye

- ACK
- AFA \_\_\_\_\_
- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMU  Chase
- CTR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG 2
- LIN 5
- DPC \_\_\_\_\_
- RCH \_\_\_\_\_
- SEC 1
- VAS \_\_\_\_\_
- YTH \_\_\_\_\_

Attachments

cc: Parties of Record

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DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution of Petition(s) to Establish )  
Nondiscriminatory Rates, Terms, and ) Docket No. 950984-TP  
Conditions for Resale Involving Local Exchange )  
Companies Pursuant to Section 364.161, Florida ) Filed: October 23, 1996  
Statutes )  
\_\_\_\_\_ )

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S  
RESPONSE IN OPPOSITION  
TO GTE FLORIDA INCORPORATED'S MOTION FOR STAY  
PENDING APPEAL

Pursuant to Rule 25-22.037(3)(b), Florida Administrative Code, AT&T Communications of the Southern States, Inc. ("AT&T") files this Response in Opposition to GTE Florida Incorporated's ("GTEFL's") Motion to Stay Order No. PSC-96-0811-FOF-TP pending judicial review. AT&T submits that GTEFL's motion is not supported by the Commission's rules and is contrary to the public interest, and therefore respectfully requests that such motion be denied. In support of its request, AT&T shows as follows:

1. GTEFL states that it is entitled to an automatic stay pursuant to Rule 25-22.061(1)(a), Florida Administrative Code, which provides in part as follows:

When the order being appealed involves the refund of moneys to customers or a decrease in rates charged to customers, the Commission shall, upon motion filed by the utility or company affected, grant a stay pending judicial proceedings.

Thus, GTEFL is only entitled to a stay pending appeal if the Commission's order meets one of two conditions: the

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Commission must either have ordered a refund to customers or reduced the rates charged to customers. In this case the Commission did neither, so GTEFL is not entitled to a stay.

2. No existing rate in any of GTEFL's current tariffs has been reduced by the Commission's decision in Order No.PSC-96-0811-FOF-TP. GTEFL will not be required to amend any part of its existing tariffs to reduce rates, and none of GTEFL's customers will pay a lower rate for a current service as a result of the Commission's action in this docket. Instead, the Commission established an initial rate for a new service, to be provided to a new class of customer. GTEFL will experience no "decrease in rates charged to customers" and therefore the mandatory stay provisions of Rule 25-24.061 are inapplicable.

3. The instant proceeding was conducted pursuant to statutory directive in Section 364.161, Florida Statutes, to unbundle the local loop and to establish the appropriate price to be charged GTEFL's competitors for loop purchase. Neither prior to nor during this proceeding has GTEFL provided unbundled local loops for resale to competitive local exchange carriers to enable such carriers to provide switched local exchange service in competition with GTEFL. The rate set for unbundled loops by the Commission therefore is the initial rate for a new service pursuant to the Commission's legislative mandate to foster competition.

3. GTEFL attempts to equate unbundled local loops with special access, such that establishment of an initial

local loop price somehow translates into a decrease in the company's currently-tariffed special access line rates. This is simply not the case. GTEFL's special access line rates, found in its Special Access Tariff, are unaffected by the Commission's decision in this docket. The simple fact is that the Commission set the initial rate for unbundled loops consistent with the requirements of Section 364.161. Rates for special access were not addressed nor affected by the Commission's decision in this proceeding. Moreover, the Commission has consistently rejected the notion that unbundled loops should be priced the same as special access lines.

4. GTEFL also argues that because the Commission did not provide for a mechanism to insure that contribution levels embedded in the rates for special access services were also applied to unbundled loops, that somehow, GTEFL's "rates" have been reduced. This argument is simply a backhanded repetition of the argument that GTEFL's competitors should be required to fund GTEFL's existing contribution levels -- even in the prices charged for new services that competitors must obtain from GTEFL in order to enter the market in any sort of timely fashion. GTEFL argues that the Commission's failure to set local loop prices at the "artificially high levels" (GTEFL Motion at 3) of its special access services constitutes a taking of its property -- an argument this Commission consistently

has rejected. See Order No. PSC-96-0811-FOF-TP, PP. 20-25; and Order No. PSC-95-0918-FOF-TP, pp. 3-5.

5. GTEFL's argument confuses ``rates'' with revenue levels. GTEFL seems to suggest the Commission has an obligation to maintain GTEFL's current revenue levels in establishing the playing field for competition. This mistaken notion inappropriately places the onus of protecting GTEFL's interests on the Commission instead of where it rightfully belongs -- in the hands of GTEFL. Further, the argument does not meet the requirements of Rule 25-24.061, which specifies that the company is entitled to a stay only when its "rates charged to customers", rather than revenue levels, have been decreased.

6. Although GTEFL is not entitled to a stay under Rule 25-24.061(1), it could request such a stay under Rule 25024.061(2). It has not done so. Its Motion specifies that it seeks relief under the mandatory provisions of subsection (1) of the rule, and GTEFL makes no showing of any of the factors that the Commission would consider in determining whether to grant a permissive stay<sup>1</sup> -- and indeed, such factors are not present here.

7. GTEFL is no longer subject to rate-of-return regulation by the Commission. To the extent GTEFL believes

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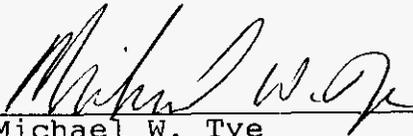
<sup>1</sup> These factors include likelihood that the petitioner will prevail upon appeal, whether the petitioner is likely to suffer irreparable harm, and whether delay will cause substantial harm or be contrary to the public interest.

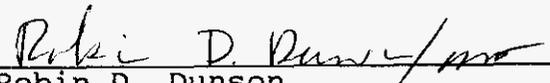
it has revenue problems, the Company has several revenue remedies available: 1) if subsidies are required, GTEFL can petition the Commission for universal service relief pursuant to Order No. PSC-95-1592-FOF-TP; 2) the Company can raise rates for nonbasic services pursuant to Section 364.051(6), Florida Statutes; and 3) the Company can raise rates for basic local exchange services upon a showing pursuant to Section 364.051(5), Florida Statutes. Having elected price regulation and the opportunity to jump into the competitive fray, GTEFL has elected to forego benevolent protection by the Commission. The Commission should decline to accept GTEFL's invitation for such protection here.

7. The Commission's decision in this case constitutes an important and significant step in the introduction of competition in the local exchange market. GTEFL's Motion fails to establish either of the conditions necessary to entitle it to a stay pursuant to Rule 25-22.061(1)(a). The Motion is nothing more than an attempt to delay the inevitable while depriving consumers of the benefits of competition which the Florida Legislature and the Commission have determined they deserve to have. Consequently, GTEFL's Motion for Stay should be denied.

**WHEREFORE**, AT&T respectfully requests that the Florida Public Service Commission deny GTEFL's Motion for Stay.

Respectfully submitted, this 23rd day of October,  
1996.

  
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**CERTIFICATE OF SERVICE**

**DOCKET NO. 950984-TP**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 23<sup>RD</sup> day of October, 1996:

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