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October 28, 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. 960847-TP

Dear Mrs. Bayo:

Enclosed for filing in the above referenced docket are an original and fifteen (15) copies of AT&T's Post-Hearing Brief.

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

Yours truly,

Tracy Hatch

- ACK \_\_\_\_\_
- AFA \_\_\_\_\_
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11449 OCT 28 96

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**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by AT&T	)	
COMMUNICATIONS OF	)	
THE SOUTHERN	)	
STATES, INC., MCI	)	
Telecommunications Corporation	)	
and MCI Metro Access	)	DOCKET NO. 960847-TP
Transmission Services, Inc. for	)	
arbitration of certain terms and	)	FILED: October 28, 1996
conditions of a proposed agreement	)	
with GTE FLORIDA	)	
INCORPORATED concerning	)	
interconnection and resale under the	)	
Telecommunicaitons Act of 1996.	)	
_____	)	

**AT&T'S POST-HEARING BRIEF**

AT&T Communications of the Southern States, Inc. ("AT&T") hereby submits its Post-hearing Brief in the above-captioned docket.

**INTRODUCTION**

This Commission has an historic opportunity to structure local telephone exchange competition in the GTE Florida Incorporated ("GTE") region of Florida -- to provide consumers with choices that heretofore did not exist. Pursuant to the Telecommunications Act of 1996, AT&T and other new market entrants are asking the Commission to set the rates, terms and conditions by which carriers such as AT&T will compete directly against incumbent local exchange companies such as GTE. The Commission should define the playing field so that the laws of fair competition control the choices available to consumers. Congress' motivation in passing the Act is the same as AT&T's in this arbitration: to insure that Florida consumers will benefit from increased choices, lower costs and increased value that competition will bring to the local exchange market.

The Act creates the foundation for effective competition by requiring incumbent local exchange carriers ("LECs") such as GTE to make available the tools which new market entrants need to participate in a competitive marketplace. See 47 U.S.C.A. §§ 251(c), (h), 252(j) (West Supp. May

1996). In particular, the Act requires incumbent LECs: (1) to provide facilities, equipment and services for interconnection at any technically feasible point, in a manner equal to that which the incumbent LEC provides to itself, and at prices based on cost; (2) to provide access to unbundled network elements of the incumbent LEC's local network at prices based on cost without reference to rate of return; and (3) to provide for resale, at wholesale rates, any telecommunications service the incumbent LEC provides to its retail customers. Id. § 251(c). The Act also requires that GTE provide each of these at "rates, terms and conditions" that are "just, reasonable, and nondiscriminatory." Id.

To accomplish these objectives, the Act places a duty on incumbent LECs to negotiate in good faith with other telecommunication carriers seeking to enter the local market. 47 U.S.C.A. §§ 251(c)(1), 252(a)-(b). If the incumbent LEC and the other carrier seeking entry are unable to reach a negotiated agreement, either party may petition the respective state utility commission to conduct a compulsory arbitration of the open and disputed issues. Id. § 252(b). The final agreement must be approved by the state commission. Id. § 252(e)(1).

Certain portions of the Act also require the FCC to participate in the Act's implementation. See, e.g., 47 U.S.C.A. §§ 251(b)(2), (d)(1), (e), 252(e)(5). On August 8, 1996, based on an extensive set of comments, the FCC released its First Report and Order. See FCC First Report and Order No. 96-235 ("FCC Order"); 61 Fed. Reg. 45476 (Aug. 29, 1996). The FCC Order addresses many of the Act's requirements, including: interconnection; access to unbundled network elements; methods of obtaining interconnection and access to unbundled network elements; pricing of interconnection and unbundled elements; and resale of local services.

This Commission, GTE, and several other incumbent LECs and state commissions challenged the FCC Order. On October 16, 1996, the Eighth Circuit issued a temporary partial stay of the FCC Order. The temporary stay was limited to the FCC Order's pricing provisions, and the "pick and choose" rule. See Iowa Util. Bd. v. Federal Communications Comm'n, 1996 WL 589204 (8th Cir. Oct. 15, 1996). The court did not stay any other provisions of the FCC Order which, therefore, remain in force.

Within this framework, AT&T is seeking to compete in the Florida local exchange market. By letter dated March 11, 1996, AT&T requested that GTE commence good faith interim negotiations

with AT&T. Unfortunately, despite AT&T's best efforts to negotiate in good faith with GTE, these negotiations did not yield an interconnection agreement with GTE. On August 16, 1996, AT&T therefore filed its request for arbitration under the Act. The Commission held the arbitration hearing during October 14-16, 1996.

During negotiations and at the arbitration hearing, GTE has maintained a consistent position of seeking to protect its dominant position in the local exchange market, and denying AT&T and other new entrants the tools they need to compete in Florida's local exchange market. In short, GTE's actions indicate it is quite happy with business as usual.

First, GTE refuses to provide certain retail services for resale to AT&T. This refusal is a clear violation of the Act. If GTE does not make all services available for resale, it will gain an unfair advantage because it will be able to offer more service choices than AT&T and other new entrants. Additionally, by reselling these services, AT&T and other new entrants could enter the market more quickly.

Second, GTE is not willing to provide AT&T access to unbundled elements of GTE's local network at any technically feasible point. If AT&T is to have a chance at competing effectively with GTE, AT&T must have the ability to purchase unbundled network elements from GTE and recombine them in any manner. Further, GTE must provide the unbundled elements with all of their features and functionalities. In addition, GTE must not be permitted to place anti-competitive restrictions on AT&T's ability to collocate equipment making it more difficult to offer services utilizing GTE's unbundled network elements. Unbundling will greatly enhance the choice of services available to Florida consumers, and will allow AT&T and other new entrants to enter the market much more quickly than would be the case if they had to build their own facilities.

Third, GTE refuses to provide services and network elements to AT&T at fair and reasonable rates. With regard to interconnection and unbundled network element costs, GTE's proposal is not in compliance with the Act and otherwise not justified. With regard to wholesale rates, GTE relies upon a plainly incorrect reading of the Act in arguing that only costs that it chooses to avoid should be excluded under the Act.

Finally, from the outset of negotiations, GTE has insisted on various unfair, unreasonable, or discriminatory terms and conditions of interconnection, access to unbundled network elements, and resale. The Act requires GTE to provide these at parity with what GTE provides itself for its customers. This means providing AT&T, in a nondiscriminatory and reasonable manner, with the capability to offer its customers the same range and quality of services that GTE offers to its customers. GTE takes the incredible position that "nondiscriminatory" means only that it will provide equal services to all new entrants, but does not require that these services be equal to what GTE provides to itself. If GTE is permitted to offer interconnection, access to unbundled elements or resale at levels of quality below parity, then competition surely will suffer to the detriment of Florida consumers.

Access to the local exchange market controlled by GTE is even more critical than access into the areas served by the Regional Bell Operating Companies ("RBOCs") because GTE obtained preferential treatment under the Telecommunications Act. GTE is the second largest local exchange telecommunications carrier in Florida, and Congress allowed GTE to enter the long distance marketplace without demonstrating achievement of effective local exchange competition. Thus, unlike AT&T and the RBOCs, GTE can offer a total telephone service package to consumers right now including both local and long distance services. The import of this competitive advantage is tremendous. At last report, GTE's long-distance affiliates were signing up on average 9,000 new long distance customers each day. GTE Corporation projects that it will serve 20% of the long distance market in two years. It took ten times as long for MCI to achieve that market share. GTE's huge success is not attributable to superior service offerings or better prices. The reason for GTE's rapid growth is evident: many consumers want the convenience of purchasing local and long distance service from the same provider. Thus, it is to GTE's great advantage to delay the day when other providers will be able to offer full service packages to Florida consumers.

The strong governmental action that afforded GTE and others rapid entry into the long distance market can be effective in promoting competition in the local exchange market. Access to the equivalent of network elements, rate discounts, branding, selective routing, and electronic interfaces, made it easier for providers to enter the long distance market. The results of increased competition in

long distance service are lower prices and better services for consumers. Similar opportunities must be made available to potential providers in the local exchange market to ensure its expansion as well.

The Act made available to new market entrants the tools they need in order to compete with GTE. GTE, not surprisingly, is seeking to keep those tools out of the hands of its competitors. Each of GTE's arguments, including its technical arguments, should be viewed as what they really are: an attempt to suppress competition.

GTE repeatedly states that it is not technically feasible to meet many of AT&T's requests, while at the same time, it agrees to provide the requested items so long as AT&T bears all of the costs. Thus, GTE's technical feasibility arguments are lame attempts to dress up what is merely a disagreement on price. There is no real dispute that AT&T's requests are technically feasible. Therefore, because costs are irrelevant to a determination of whether GTE must provide the access requested by AT&T, this Commission should order GTE to comply with the Act and give AT&T access to the services and facilities it wishes to purchase for resale or on an unbundled basis.

The longer GTE continues as the only full service provider in the market, the more entrenched its position will become, making it less attractive for potential competitors to enter the market and less likely that those who do enter the market will succeed. Thus, there is an urgent need to require GTE to comply with the Act now and make its services and facilities available to new entrants. Moreover, unlike the RBOCs, GTE has no incentive to achieve effective local competition because it is already in the long distance market.

Congress passed the Act with the goal of benefiting consumers by the earliest possible introduction of competition into the LEC market. Therefore, the Act mandates that incumbent LECs make their services and network elements available to new entrants. The Commission should rebuff GTE's every attempt to deny Florida consumers the benefits that only true competition can bring them - lower costs, increased value, increased choice and earlier introduction of new technologies.

**ISSUE 1:     **What services provided by GTE, if any, should be excluded from resale?****

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**AT&T:** The Act and the FCC Order require GTE to offer for resale at wholesale rates any telecommunications service that GTE provides at retail to subscribers who are not

telecommunications carriers. The Act and the FCC Order do not provide for any exceptions to GTE's obligation.

\* \* \* \* \*

The Commission should require GTE to offer for resale to AT&T all of GTE's retail telecommunications services. The Act requires that GTE offer for resale to AT&T at wholesale rates all telecommunications services which GTE provides at retail to non-carrier subscribers. 47 U.S.C.A. § 251(c)(4)(A). By ordering compliance with this statutory requirement, the Commission will ensure that all competitors can compete fairly with GTE, by being able to offer to their customers all of the services GTE offers to GTE's customers. The Commission also will be fostering competition in the local exchange market, which in turn will secure numerous benefits for Florida consumers. (Sather, Tr. 517.)

GTE refuses to offer for resale certain of its retail services for a variety of reasons, none of which are justified under the Act. GTE even makes the incredible claim that competition through resale will result in fewer choices for consumers. (Wellemeyer at 40-41.) As highlighted by this claim, the Commission should understand GTE's position for what it is: an attempt to delay competition by denigrating resale competition so it can continue to enjoy its entrenched position.<sup>1/</sup>

The time and costs needed for facilities-based competition is why resale is so important. Resale provides a quick method for competitors to enter the market. If new entrants are required to first build their own facilities prior to building a customer base through resale, GTE buys lots of time before competition will develop, and may even cause potential competitors to forego the market entirely. (Kaserman, Tr. 647-48.) Indeed, the history of the interexchange market proves that a comprehensive resale requirement provides the quickest avenue through which new players enter into the interexchange market. (Sather, Tr. 520.) Competition in the interexchange market did not start with full-scale facilities-based competition -- it started with resale competition. It is undisputed that resale

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<sup>1/</sup> Grandfathered and obsolete services are services that GTE offers to existing retail customers but not to new subscribers. GTE initially refused to resell these services. At the arbitration hearing GTE agreed to provide grandfathered or obsolete services for resale at wholesale prices. (McLeod, Tr. 1344-45; Wellemeyer, Tr. 1395, 1434.) By conceding this issue at the arbitration, after having previously opposing it, GTE only highlighted its desire to avoid competition.

forced interexchange carriers, including AT&T, to drop prices, add new services, and deploy new technologies. (Sather, Tr. 520-21.) Indeed, GTE was one of the major beneficiaries of the breakup of the long distance monopoly. Unlike the RBOCs, GTE is not subject to the federal consent decree restricting entry into the long distance market -- GTE already is there. (Sather Tr. 157.) GTE and only GTE can currently offer Florida consumers one stop shopping -- a single provider of local and long distance service. This is a huge competitive advantage. To put competitors on an equal footing by removing the need for significant up-front capital investment in facilities, the Commission should deny GTE's attempts to limit resale options. The longer GTE can delay long distance companies like AT&T from entering the local market, the more entrenched GTE becomes in all areas of the business.

To avoid immediate competition from resale, GTE totally refuses to provide the following services for resale: promotional offerings; "below cost" residential services; "in contact" services; and pay phone services. (Sather, Tr. 521-23.) Under the FCC Order, GTE may deny AT&T the right to purchase these services only if GTE can prove to this Commission that these withheld services are narrowly tailored, reasonable and non-discriminatory. FCC Order No. 96-325 ¶ 939.<sup>2/</sup> GTE fails to meet this burden. GTE cannot justify the anti-competitive impacts of its position, and its position squarely is counter to the requirements of the Act and the FCC Order. Therefore, this Commission should order GTE to make each of these services available to AT&T and other entrants on a resale basis.

- Promotions and Contract Service Arrangements -- Promotions involve offering a service at a special price. This special price could take the form of the waiver of a non-recurring fee, the offer of services as a gift in return for purchasing other services, or the offer of limited free services. Contract service arrangements ("CSAs") are similar, in that a carrier offers the customer a discounted, off-tariff pricing arrangement. The Commission should require that GTE offer promotions and CSAs for resale.

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<sup>2/</sup> As was noted in the Introduction, the Eighth Circuit stayed only the pricing provisions and "pick and choose" of the FCC Order. Unless otherwise indicated, provisions of the FCC Order relied upon by AT&T, including this one, have not been stayed, and therefore are in effect.



GTE, in an over-technical reading of the Act, argues that the Act only requires it to offer for resale services that it sells at retail prices which GTE reasons does not include promotions and CSAs because they are sold at rates discounted from the regular retail price.<sup>3/</sup> The Act, however, requires GTE to offer for resale all services it "provides at retail" whether or not the services are provided at retail at a discounted price. See 47 U.S.C.A. § 251(c)(4)(A); (Sather, Tr. 539-40.) The Act therefore clearly covers CSAs and promotions, because GTE "provides" them "at retail" to subscribers who are not telecommunications carriers.

GTE refuses to offer these services for resale because without them GTE's competitors would not be able to offer services at parity with GTE. Currently, GTE has the ability and the incentive to manipulate promotions and CSAs as a means to avoid competition in the resale market. For instance, by entering into CSAs with a certain category of customers -- such as medium sized businesses -- GTE would retain its monopoly with regard to those customers. CSA customers would not want to switch from GTE to a new entrant if the new entrant could not offer the same CSAs to these customers in the resale market. The end result would be a lack of parity in offerings: GTE continues its entrenched position, and competition is delayed.<sup>4/</sup>

- "Below Cost" Residential Services -- These are retail residential services that GTE offers at retail rates that are purportedly below the cost of providing that service. While GTE may cite the provisions of Section 364.161(2), Florida statutes in support of its position, the Act and its

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<sup>3/</sup> GTE has agreed to offer for resale new CSAs, but not existing CSAs. GTE's rationale for this distinction is that existing CSAs do not account for avoided costs. (McLeod, Tr. 1350.) As with "below cost" services, GTE's position makes no financial sense because offering existing CSAs for resale to AT&T at a wholesale price exclusive of avoided costs would earn GTE the same return as it would have made in selling directly to consumers. (See Sather, Tr. 530-31.)

<sup>4/</sup> The FCC Order provides that GTE must offer promotions for resale, except short-term promotional prices. FCC Order ¶ 949; 47 C.F.R. § 51,613(a)(2). Like AT&T, the FCC is concerned that an incumbent LEC could use promotions anti-competitively to avoid its wholesale obligations by offering promotional plans that new entrants could not resell. FCC Order No. 96-325 ¶¶ 949-51. Even though the FCC Order grants state commissions the discretion to allow incumbent LECs to offer ninety day or less promotional packages for resale at standard retail rates rather than wholesale rates, if the Commission decides to permit this practice, it should establish guidelines to ensure that GTE does not use this exception in an anti-competitive manner. (Sather, Tr. 522-23, 533-34.)

implementing regulations do not exempt services that are provided at "below cost" from GTE's duty to offer any retail telecommunications service for resale at wholesale rates. 47 U.S.C.A. § 251(c)(4)(A); 47 C.F.R. §§ 51.605(a), 51.613(a). The Act, therefore, pre-empts any bar placed by a Florida statute on the resale of "below cost" services because such a bar is in direct conflict with the requirements of the Act that GTE offer for resale *all* services "provided at retail" to non-telecommunications carriers. See Barnett Bank of Marion County, N.A. v. Nelson, \_\_\_ U.S. \_\_\_, 116 S.Ct. 1103, 1107-08 (1996) (ruling that Federal statute pre-empted state statute where requirement of state statute created an "irreconcilable conflict.")

GTE also asserts that if it were required to resell "below cost" services, GTE would be prevented from covering its total costs of these services. (Wellemeier, Tr. 1433-34, 1445.) Offering "below cost" offerings to AT&T for resale, however, has no financial effect on GTE since the rate for wholesale is the retail rate minus avoided costs. (Sather, Tr. 531-32.) Moreover, GTE's "below cost" services are not actually below cost because, by GTE's own admission, they receive contributions from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are prices above incremental cost. (Wellemeier, Tr. 1435.) Through these "add-ons," GTE makes a profit on the sale of its alleged "below cost" services, rendering them above cost and undermining GTE's empty argument that it would be prevented from covering its total costs of these services. GTE has advanced no credible arguments supporting the withholding of below cost services from resale; therefore, the Commission should require GTE to offer this service for resale.

- "In Contact" Services -- "In contact" services are retail services that utilize Advanced Intelligence Network ("AIN") triggers within GTE's switch to allow customized call handling. For example, this allows calls to be delivered to one location at specified times, and to another location at different times. (Sather, Tr. 523-24.) Through this service, a business person who splits days between two offices could have calls dialed to the same telephone number routed to the separate office on at a predetermined schedule. Although GTE has agreed to offer for resale AIN services that it currently provides, it refuses to offer any AIN services for resale that it introduces in the future. (Wellemeier, Tr. 1464.)

GTE's position is contrary to the Act. Neither the Act nor the FCC Order exempt "in contact" services that are first made available in the future. Like all other AIN services, these are retail offerings to customers who are not telecommunications carriers, the Act and the FCC Order therefore require GTE to offer them for resale at wholesale rates. 47 U.S.C.A. § 251(c)(4)(A); 47 C.F.R. §§ 51.605(a), 51.613(a). GTE's attempt to differentiate services currently offered and services to be offered in the future is a distinction without a difference. The Act applies to *all* retail services offered to non-telecommunications carriers. GTE's anti-competitive argument is nothing more than an attempt to circumvent the clear requirements of the Act.

Although GTE has agreed to provide pay phone services, discount calling plans and packages and nonrecurring charge services for resale, it refuses to provide them at wholesale rates. (Sather, Tr. 524-25.) GTE's position regarding these services is in direct contravention of the Act's requirement that GTE provide these services for resale at wholesale rates. 47 U.S.C.A. § 251(c)(4)(A).

- Pay Phone Services -- These are services for public, semi-public, and customer-owned, customer-operated telephones. GTE argues the Act does not require GTE to offer such services for resale at wholesale rates. (Wellemeier, Tr. 1464; Sather, Tr. 524; Lerma, Tr. 593-94.) Both the Act and the FCC Order, however, require that all incumbent LECs, including GTE, offer pay phone services for resale at wholesale rates because: these are services offered on a retail basis to subscribers that are not telecommunications carriers. 47 U.S.C.A. § 251(c)(4)(A); FCC Order No. 96-325 ¶¶ 871, 876.<sup>5/</sup>

- Discount Calling Plans and Packages -- GTE uses discount calling plans to enhance consumer usage of a particular service or package of services by offering them at a discount. GTE ostensibly is willing to provide these services for resale, but insists upon a severe restriction that makes its offer illusory. It contends the cost of these services reflects GTE's economic cost savings from

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<sup>5/</sup> This point is further bolstered by the FCC's express determination that the services that incumbent LECs provide to independent public payphone providers should be offered for resale at wholesale rates to telecommunications carriers because the incumbent LECs also provide these payphone services to subscribers who are not telecommunications providers. FCC Order No. 96-325 ¶ 876.

dealing in bulk, and that it therefore should not be required to price these services at wholesale rates. (Sather, Tr. 524.)

As with CSAs and promotions, GTE's position makes no financial sense because it will be as well off providing these services for resale at wholesale rates -- exclusive of avoided costs -- as selling them directly to consumers.<sup>6/</sup> The Act and the implementing regulations also do not exempt discount calling plans and packages from GTE's duty to offer any retail telecommunication service for resale at wholesale rates. See 47 U.S.C.A. § 251(c)(4)(A); 47 CFR §§ 51.605(a), 51.613(a). Merely creating a "discounted plan" for a certain category of customers does not give GTE license to circumvent the requirements of the Act and its main purpose -- to benefit Florida consumers. Instead, new market entrants like AT&T have a right under the Act to resale parity of service offerings with what GTE can offer Florida consumers. 47 U.S.C.A. § 251(c)(2)-(4). To achieve parity of service offerings, AT&T must have the opportunity to resell discount calling plans and packages at wholesale rates. (Sather, Tr. 539-40.)

- Nonrecurring Charge Services -- Nonrecurring service charges are incurred on a one time basis. For example, they are incurred for the ordering or installation activities associated with establishing or adding to a customer's service. These services are provided and billed on a nonrecurring basis. GTE agrees to provide these services for resale, but refuses to sell them at wholesale rates. (Wellemeier, Tr. 1480.) GTE argues that it does not avoid any costs in providing these services at wholesale. The Act and its implementing regulations require GTE to offer for resale at wholesale prices any telecommunication service "provided at retail" to subscribers who are not telecommunications carriers. See 47 U.S.C.A. § 251(c)(4)(A); 47 CFR §§ 51.605(a), 51.613(a). Nonrecurring charges are provided to non-telecommunications carriers at retail.. Consequently, GTE clearly must offer such services for resale at wholesale rates. Whether GTE avoids no cost in reselling these services is a wholesale pricing issue, and not a justification for a refusing to resell these service at wholesale rates.

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<sup>6/</sup> See discussion under Issue 3.

**ISSUE 2: Should GTE be prohibited from imposing restrictions on the resale of GTE services?**

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**AT&T:** The Act and the FCC Order prohibit incumbent LECs from imposing unreasonable or discriminatory conditions or limitations upon the resale of telecommunications services. The FCC Order provides that resale restrictions are preemptively unreasonable except as specified in the Order.

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The Commission should order GTE not to restrict resale of GTE services in any way.

Precluding GTE from placing restrictions on the resale of its services to AT&T and other new entrants will help new entrants achieve parity of offerings. Without parity of offerings, new entrants such as AT&T could offer these services only with strings attached. The only use and user restriction that GTE should be permitted to maintain are cross class restrictions by which a provider precludes businesses from receiving residential rates.

Use and user restrictions are anti-competitive on their face. Historically, GTE has imposed these restraints to maintain artificially low rates for local residential services, while imposing artificially setting rates among other classes of customers in order to maintain adequate revenues, pursuant to rate of return regulation. (Sather, Tr. 527.) In Florida, GTE is now subject to price regulation. (Kaserman, Tr. 670.) Nevertheless, GTE is attempting to perpetuate these outdated pricing structures of the regulated market that were brought about by use and user restrictions. (Sather, Tr. 527.)

Under rate of return regulation, GTE maintained low local residential services rates by offering at rates that were purported to be below cost and then making up the difference in other classes of services. To mollify complaints by large volume business customers, GTE in turn created cut rate offerings for them. GTE then had to impose use and user restrictions on these services to keep small volume business customers from taking advantage of these large volume business offerings. In the resulting scheme, residential and large volume business rates were kept low, and small volume businesses made up the difference. (Sather, Tr. 527.)

This entire pricing scheme of use and user regulations is obsolete because GTE no longer is subject to rate of return regulation. The relationship between costs and revenues to pricing local

exchange services has changed from what it was under rate of return regulation because of declining costs and capped local exchange rates. Now, these restrictions serve no legitimate purpose and they limit competition. (Sather, Tr. 528.) Accordingly, this Commission should prohibit GTE from perpetuating rate of return regulation in the competitive resale market.

Moreover, the Act dictates this result because these restrictions constitute unreasonable and discriminatory conditions under the Act. 47 U.S.C.A. § 251(c)(4)(B). The FCC also concluded that restrictions on resale, other than certain enumerated exceptions. FCC Order ¶¶ 949, 962, 968.<sup>7/</sup> If allowed to continue, these restrictions will inhibit the emergence of competition in the local markets that GTE currently controls. On the other hand, if a competitive market is allowed to develop, it will drive prices for all classes of services offered to Florida consumers to the lowest levels possible, which will benefit both residential and business consumers. In short, use and user restrictions are yet another tool GTE plans to use to prevent competition from flourishing in Florida. (Sather, Tr. 528.)

**ISSUE 3:      What are the appropriate wholesale rates for GTE to charge when AT&T purchases GTE's retail services for resale?**

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**AT&T:** The appropriate wholesale rates for local service resale should equal the retail rate charged to subscribers less the portion attributable to costs that will be avoided by GTEFL. This equates to GTEFL's retail rates less 36.15%. This reduction shall apply to all services, including both recurring and non-recurring service charges.

\* \* \* \* \*

The Act requires wholesale rates to exclude the costs of "marketing, billing, collection and other costs that will be avoided." 47 U.S.C.A. § 252(d)(3). AT&T's cost study complies with the requirements of the Act and identifies all retail costs that will be avoided by GTE. (Ex. 14; see also Lerma, Tr. 568-569, 590-592.) Thus, the Commission should adopt the permanent wholesale discount of 36.15%, applicable to all of GTE's retail, toll, and private line service rates, identified in AT&T's study. In contrast to AT&T's avoided cost study, GTE's studies do not comply with the Act and should be rejected.

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<sup>7/</sup> AT&T agrees with the FCC's conclusion that residential services should not be resold to non-residential end-users. FCC Order No. 96-325 ¶ 962.

The study that GTE offers to this Commission for determining wholesale prices reflects an "actually avoided" standard and also would require that AT&T pay GTE for revenues GTE might lose due to competition. Obviously, if AT&T must pay GTE's retail costs, pay GTE for "lost" revenue due to competition and pay AT&T's own retail costs, AT&T will be unable to offer competitive prices to Florida's consumers. The end result would be Floridian consumers never enjoying the benefits of competition in the resold services market. Even if somehow AT&T managed to offer competitive retail prices, AT&T and other new market entrants still would be subsidizing GTE's retail costs and providing a revenue stream for retail services GTE would not even be providing. Thus, GTE would retain an unfair advantage and be able to preclude efficient competition.

GTE provides what it identifies as an FCC compliant study. That study, however, does not comply with either the Act or the FCC requirements and should be rejected because it fails to identify all appropriate costs that will be avoided.

**A. The Commission Should Reject The Study That GTE Offers To This Commission or Determining Wholesale Rates**

The Act imposes on all local exchange carriers the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C.A. § 251(c)(4). The Act further provides that the States "shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C.A. § 252(d)(3). Without any legal basis, GTE seeks to recover revenue lost due solely to competition. Based upon an incorrect reading of the Act, it also seeks to recover retail-related costs. As a result, its proposed wholesale rates should be rejected.

Under the Act, all marketing, billing and collection costs must be considered as costs that will be avoided. Regarding "other costs," the Act requires an analysis of what costs will be avoided. That analysis must use an objective standard based on what costs a reasonable business would not incur if it did not sell at retail. Congress would have not have provided for a subjective standard based on what an ILEC might choose to avoid. Such a subjective standard would allow the ILEC to determine proper

wholesale prices, and, thus, determine the penetration into its market by resellers; i.e., it would allow the ILEC to preclude any meaningful resale. Finally, the Act focuses on costs for purposes of determining the proper wholesale rate, wholesale prices may not be determined based on non-cost factors.

**1. GTE's Inclusion Of Lost Revenue In Its Proposed Wholesale Discount Is Contrary To The Act, Would Inhibit Competition and Should Be Rejected**

GTE's version of competition under the Act requires that a reseller, such as AT&T, reimburse GTE for revenues it might lose due to that competition. GTE witness Douglas Wellemeyer testified that in the case of basic local exchange services GTE seeks to add to (not deduct from) retail rates what he termed "toll opportunity cost[s]." (Wellemeyer, Tr. 1424.) As Mr. Wellemeyer admitted on cross examination, these "toll opportunity costs" are not costs at all, but are simply revenues that might be lost because of competition for basic local service. The Act, however, requires that wholesale prices reflect the retail price for a service reduced by retail costs that will be avoided. Thus, GTE's methodology violates the Act. In short, GTE is insisting on a premium payment for no other reason than it is an incumbent LEC.

GTE's stated justification for the incredibly anti-competitive factor apparently is that these lost revenues otherwise would subsidize other services which GTE purportedly prices below cost. (Wellemeyer, Tr. 1465.) GTE's real motivation, however, is solidification of GTE's entrenched position by precluding market entry by competition through resale. Importantly, resale is the quickest means to obtain local service competition; in the context of GTE, the rapid development of competition is particularly important. For the past half year, GTE has been the only telecommunications carrier permitted to service both local and long distance markets. This has allowed GTE to offer what no other telephone company can offer currently -- "one stop shopping." The significance of this capability should not be underestimated. In the absence of any competition, GTE is poised to achieve in less than twenty months what it took MCI twenty years to achieve -- i.e. a 20% share of the long distance market. (Gillan, Tr. 55.) Moreover, GTE is acting to ensure that it maintains its current advantage by signing new customers to contracts as long as three years. These contracts prohibit GTE customers from switching service or otherwise receiving the benefits of future



competition during that time. (Gillan, Tr. 55.) Given GTE's unique position, and its aggressively anticompetitive factors, this Commission should not adopt wholesale rates that place market entrants at an even greater competitive disadvantage. (Gillan, Tr. 71.)<sup>8/</sup>

To the extent that diminished revenues through loss of market share have any relevance, it is only as a possible basis for separate universal service and access reform proceedings. As stated by this Commission in the context of a proceeding to establish rates for unbundled network elements, "the mere possibility [of revenue loss] would not give rise to an immediate rate increase." Florida Public Service Commission, Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, June 24, 1996, at 22 (Order No. 96-0811). The Commission should not countenance GTE's attempt to maintain ultra-high levels of profit on services that now might be provided by *other* carriers at the expense of Florida consumers. For this reason alone, this Commission should reject the study that GTE believes this Commission should adopt.

**2. GTE's Failure To Exclude Costs That Will Be Avoided From Its Proposed Wholesale Prices Is Contrary The Act, Would Inhibit Competition, And Should Be Rejected**

GTE asks this Commission to adopt a study that not only includes "lost revenues," but it is based upon an actual avoidance standard. Arbitration Brief of GTE Florida Inc., Docket No. 960847-TP, September 10, 1996, at 22. ("GTE Arbitration Brief")<sup>9/</sup> As explained above, that standard violates the Act. In fact, every state which has adjudicated the wholesale discount where an ILEC has

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<sup>8/</sup> GTE also attempts to *increase* its wholesale rates by costs GTE states that it does not now but would incur as a wholesaler. As discussed below, the Act makes no provision for the incurrence of additional costs, let alone speculative and subjective costs. GTE articulates no basis, and provides no documentation, justifying inclusion of the proposed costs. Without any legitimate reference point from which to calculate the "additional" wholesale costs of basis services, GTE simply substitutes unexplained proxy costs based in some form or the other on its provision of special access service. Neither AT&T, nor the Commission, nor GTE for that matter, can demonstrate the validity of these proposed costs. Accordingly, the Commission should reject GTE's proposed inclusion of these amounts.

<sup>9/</sup> GTE also prepared a cost study which it contends to be compliant with the FCC Order. (See Ex. 35, DEW-1.) This other cost study produces larger discount rates, and therefore lower wholesale prices, than does GTE's cost study which applies the actually avoided subjective standard. As explained below, the Commission also should reject GTE's supposedly FCC compliant cost study because that study contains inadequate or no justifications.

put forth an actual avoidance has rejected that standard. The state commissions of California, Illinois, Ohio and Colorado have interpreted the Act consistent with the AT&T's approach and have rejected an actual avoidance standard. See FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). Further, Georgia, Kentucky and Louisiana more recently have rejected the same type of cost study methodology, which GTE now proposes to this Commission, after proceedings in which BellSouth proposed such a methodology.<sup>10/</sup> Georgia found the "actually avoided" methodology a "narrow, constrained view of the avoided cost approach." Georgia Public Service Commission, Docket No. 6352-U, June 12, 1996.<sup>11/</sup> Kentucky found that the "actually avoided" approach is "too simplistic." Commonwealth of Kentucky Before the Public Service Commission, Admin. Case No. 355, September 26, 1996. Most recently, Louisiana also rejected this methodology characterizing the actually avoided standard as "unduly restrictive." Recommendation of Administrative Law Judge, Louisiana Public Service Commission, Docket No. U-22020, May 9, 1996<sup>12/</sup>

Based upon state commission decisions, the FCC also has rejected an actual avoidance standard. The FCC Order calls for states to determine which costs are "reasonably avoidable" when an incumbent LEC sells its services wholesale. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). The Order specifically recognizes that wholesale prices which include retail costs are artificially high. Reflecting the Act's objectives of efficient, rapid entry into the local market, the FCC Order requires that the wholesale discount exclude all costs that an incumbent LEC incurs in maintaining a retail, as opposed to a wholesale, business. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). In rejecting the actual avoidance standard, the FCC stated: "We do not believe that Congress intended to allow

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10/ Although these dockets involved positions taken by BellSouth before the Georgia, Kentucky, and Louisiana Commissions, the positions taken on avoidable versus avoided costs are identical to the positions now being taken by GTE before this Commission.

11/ The Superior Court of Fulton County, Georgia recently rejected the appeal of this decision. (BellSouth Telecommunications, Inc. v. Georgia Public Service Commission, et al., Civil Action No. E-49835 (Oct. 8, 1996).)

12/ The Recommendation of the Administrative Law Judge was accepted by the Louisiana Commission in open hearing on October 16, 1996.

incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable." (Id.)

The logic of the state commission's decision and the FCC's rule is sound. By calculating a discount rate based only those costs which GTE chooses to avoid, all of GTE's inefficiencies, losses and bad business decisions will remain in its wholesale prices and will be paid for by its competitors. Its competitors either will have to pass those costs on to the consumers or not enter the resale market, depriving consumers of effective competition in either circumstance.

In addition, by inserting "actually" into the "will be avoided" standard established by the Act, GTE seeks to insure that it, and not this Commission, dictates entry or non-entry of telecommunications carriers into the Florida resale market. Under its interpretation, GTE is free "actually" to incur any and all expenses that benefit its own retail operations, raise wholesale prices on the basis of these costs, and keep doing so until new market entrants cannot afford to remain in the market.<sup>13/</sup> GTE's subjective, rather than objective standard, leaves GTE in total control of the keys to market entrance in Florida through resale. It is a concept that clearly puts competition and Florida consumers at risk. As a result, if GTE chooses not to avoid these costs which are unrelated to its wholesale activities, then GTE should bear those costs; its competitors should not be forced to shoulder the burden of paying for GTE's business decisions.

For example, GTE asserts that it would at least maintain its existing level of advertising expenses and other customer support expenses. GTE Arbitration Brief, at 23. Whether it does nor not is beside the point. In establishing wholesale rates, the point is that the Act prohibits GTE from passing these costs onto to Florida consumers through its wholesale rates. It is not logical to permit GTE to include these costs in its wholesale rates so that competition in the resale area will not occur and Florida consumers will be damaged.

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<sup>13/</sup> The criticality of preserving a satisfactory margin between wholesale rates and market prices has been well documented in the so called Rochester Experiment. (See Gillan, Tr. 133.) There, AT&T was forced to cease marketing resale services because the wholesale discount could not support AT&T's resale-related costs.

Potential entrants must decide whether to enter the retail market through resale or through other possible avenues. In making that decision, a potential entrant will consider the wholesale discount rate. If that rate is small, because avoided costs improperly are understated, then the potential competitor is unlikely to enter the resale market. (See Kaserman, Tr. 673-674.) Thus, GTE has proposed a cost study that does not comply with the Act, is designed to limit competition in the local market to the detriment of Florida consumers, and should be rejected by this Commission.

**B. AT&T's Cost Study Is Justified While GTE's Supposedly FCC Compliant Study Is Not**

AT&T has submitted to this Commission a cost study that complies with the Act because it identifies costs that reasonably will be avoided in a wholesale environment. The Commission should adopt AT&T's study for the reasons discussed below. AT&T's study contrasts sharply with the GTE study discussed above. AT&T's study also contrasts sharply with the other study that GTE submitted to this Commission which GTE argues is FCC compliant. (Ex. 35, DEW-1.)

A comparison of AT&T's cost study with GTE's supposedly FCC compliant study shows that GTE's study does not comply with the Act. AT&T maintains that all or portions of certain costs will be avoided when GTE sells services wholesale and has provided a rational basis for this conclusion.<sup>14/</sup> GTE maintains that it does not intend to avoid many of these costs, but provides either an inadequate justification or, in many instances, no justification whatsoever as to why it will not avoid many of these

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<sup>14/</sup> If the Commission was to determine that AT&T's proposed rate is not in accordance with the Act, the Commission should order an interim wholesale discount rate of 25%. This percentage is reasonable and within the temporary default range of 17%-25% suggested by the FCC Order 96-325 after consideration of input from multiple industry participants. This percentage would be a highly conservative estimate given the costs reflected in AT&T's Simplified Avoided Cost Study. (See Ex. 14.) In such a case, GTE also should be ordered to produce a detailed avoided cost study compliant with the Act and the FCC's regulations, in order for the Commission to establish a permanent wholesale rate.

Although this portion of the FCC Order has been stayed, the Commission nonetheless is entitled to use the order as guidance, especially given the extensive data which the FCC developed and used in developing the default ranges. The Hawaii Public Utilities Commission has recognized the FCC default ranges as an alternative for consideration by the Commission, and has characterized foreclosure of any available option as "premature and imprudent." Hawaii Public Service Commission, Docket No. 96-0329, Order No. 15040 (September 30, 1996).

costs. The Commission should accept AT&T's cost study because it comports with the Act, is based on sound accounting principles, and offers a reasonable and logical rationale for its conclusions. A summary of AT&T's cost study and the primary flaws in GTE's "FCC compliant" study, is set forth below.

**1. Directly Avoided Costs**

AT&T's cost study uses information GTE reported in its 1995 ARMIS Report Nos. 43-03 and 43-04. (Lerma, Tr. 552-553.) AT&T identified the costs in six USOA accounts as directly avoided retail costs which are unrelated to the provision of wholesale services. AT&T's identification of costs in these accounts as directly avoided complies with the requirement of the Act to identify all retail costs which will be avoided and is consistent with the reasoning underlying the FCC conclusion that costs in these categories are presumptively avoidable. See FCC Order 96-325 ¶ 917 (61 Fed. Reg. 45566 (¶ 607)). GTE proposes to treat a lesser amount of these costs as avoided, but does not justify its position.

**a. 6610 (marketing) and 6620 (service expenses)**

AT&T's cost study includes as directly avoided all of the costs in two USOA accounts:

- 6610 (marketing), which includes subsidiary USOA accounts 6611 (product management), 6612 (sales), and 6613 (product advertising)
- 6620 (service expenses), which includes subsidiary USOA accounts 6621 (call completion), 6622 (number services), and 6623 (customer services)

These all are retail-related costs, and thus reasonably will be avoided when GTE provides wholesale services to AT&T. Should GTE be permitted to include these costs in its wholesale rates, AT&T will not be able to offer competitive prices to Florida consumers, because AT&T necessarily must incur these very same costs in conducting its own retail operations.

GTE proposes to treat many of these costs as not avoided. For example, its supposedly FCC-compliant cost study treats as avoided costs: 95.10% of GTE's product advertising costs; 64.23% of its sales costs; 41.45% of its customer service expenses; 1.76% of product management costs; and none of the call completion costs. (Ex. 35, DEW-1.) All of these costs are retail-related, having been incurred

in a nearly 100% retail context. Because it is logical they will reasonably be avoided, the FCC presumed 100% of these costs will be avoided. GTE provides no documentation supporting its assertion that it would avoid less than 100% of these retail-related costs. As a result, its so-called FCC compliant study should not be accepted as to these costs.

GTE provides multiple spreadsheets supposedly evaluating customer service avoided costs by Work Center. (Ex. 36, Tab 20.) These data, like GTE's other avoided cost figures, however, are nothing more than entries on a spreadsheet. GTE provides no explanation why customer service costs will not be avoided, and, indeed, because these cost accounts contain retail-related costs for retail-related services for GTE's retail business, it is hard to imagine that these numbers are derived from anything other than GTE's desire to establish and maintain artificially high wholesale rates.<sup>15/</sup> This is borne out with respect to account 6621--call completion, for example. GTE alleges that it will avoid none of these retail costs when providing wholesale services, but provides absolutely no support for this assertion.

In short, the supporting spreadsheet data in Exhibit 36 provide no insight into, no rationale for, no validation of, and no support for GTE's alleged Work Center analysis. All GTE has done in this analysis is look at a subset of the USOA cost accounts, and make unverifiable assertions as to whether or not GTE will avoid such costs. Thus, GTE again is applying a subjective standard whereby GTE and GTE alone determines wholesale price levels and so controls entry into the local exchange market.

**b. 6220 (operator systems)**

AT&T deducted all of the costs in two additional cost accounts as directly avoided:

- 6220 (operator systems)
- 6560 (depreciation/amortization of operator systems)

GTE will avoid these costs to the extent that AT&T provides its own operator services. The logic of this is clear: if AT&T provides (and pays for) its own operator systems when reselling services, then GTE will not have to provide (and pay for) these systems. The FCC used this same logic in deciding

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<sup>15/</sup> Validation of GTE's data is impossible due to the fact that GTE's modified cost study uses 1995 national-level costs which have no discernible relationship to costs GTE incurred in relation to its Florida operations.

that accounts 6621 (call completion) and 6622 (number services) are presumed to be avoided, "because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties." FCC Order 96-325 ¶ 917 (61 Fed. Reg. 45566 (¶ 607)). Likewise, because GTE avoids operator systems equipment costs, then it also avoids the depreciation expenses associated with that equipment (account 6560). (Lerma, Tr. 575.)

GTE's argument is that operator services costs are not avoided because operator services provide their own revenue stream, separate and apart from wholesale services. GTE's argument is irrelevant because GTE operator services are, by its own admission, solely retail functions and not related to the provision of wholesale services to AT&T. (Wellemeier, Tr. 1432.) GTE's "revenue stream" argument is nothing more than a plea not to reduce GTE's revenues, even though resellers will provide their own operators.

GTE's position is anti-competitive and contrary to the purpose of the Act to the extent that it requires AT&T pay the salaries of GTE operators and the cost of GTE operator systems, even though AT&T will not use these services. If the costs of operator services are included in GTE's wholesale rates, resellers who provide their own operator services will pay for those services twice: once in the actual cost of providing these services themselves, and once again in the wholesale discount rate. Simply put, GTE wants AT&T and other new market entrants to subsidize GTE's retail costs.

**c. 6533 (testing) and 6534 (plant administration)**

AT&T deducted 20% of the costs in two cost accounts as directly avoided:

- 6533 (testing)
- 6534 (plant administration)

As discussed in Issue 6(a), AT&T has requested electronic interfaces with GTE's Service Trouble Reporting database. Using these interfaces, AT&T will be able to conduct trouble shooting in response to customer issues, instead of GTE having to do this. Accordingly, some portion of GTE's testing and plant administration costs will be avoided.

AT&T estimates that approximately 50% of its own overall Testing and Plant Administration costs involve end-user testing and trouble-shooting. (Lerma, Tr. 576.) Accordingly, as much as 50%

of GTE's Testing and Plant Administration costs are likely to be retail-type costs that GTE will avoid in a wholesale context. AT&T accounted for potential differences between its own costs and those of GTE by conservatively discounting its own costs from 50% to 20%. (Lerma, Tr. 611.) GTE has provided no evidence that AT&T's estimates are unreasonable. Because the Plant Administration costs related to facilities that support retail customer testing functions are proportionally affected, GTE also will avoid at least 20% of these costs as well. (Lerma, Tr. 576.)

GTE has identified 0.0% of its testing and plant administration costs as avoidable in a wholesale environment. (Ex. 36, at A-462.) GTE does not, however, respond to AT&T's assertion that these costs are at least 20% avoided due to AT&T's provision of retail testing and plant administration services. In fact, GTE cannot answer AT&T's assessment. GTE's FCC-compliant avoided cost study permits each work center to assign only 100% or 0% to identify avoided costs levels at that work center. GTE made no provision for other than complete elimination of work center cost incurrence. GTE offers no rationale for this "all-or-none" constraint, nor any information as to the manner in which work centers were instructed to assign either value.<sup>16/</sup> GTE's bottom line position is simply that AT&T should pay twice for performing testing on behalf of its retail customers: once when AT&T does the testing, and once again even though GTE does not perform testing. Because GTE's cost

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<sup>16/</sup> GTE's allocation of work center costs is inherently inaccurate. As admitted by GTE witness Wellemeyer on cross examination, GTE does not even collect work center costs by service. Rather, GTE spreads the work center costs in proportion to service revenues. Revenues, however, are unrelated to costs; in fact, GTE has argued that some services are priced below cost -- in doing so GTE admits, in essence, that its proposed wholesale prices are distorted. (Wellemeyer, Tr. 1488; see also Trimble, Tr. 1837, 1854.)



model cannot identify avoided cost percentages between 0% and 100%, its cost study is inherently invalid and should be rejected.<sup>17/</sup>

## 2. Indirectly Avoided Costs

In its cost study, AT&T also excluded a portion of GTE's indirect costs. Indirect costs also are often referred to as overhead, or general and administrative costs. By definition, indirect costs are associated with direct costs. The cost of a human resources department, for example, is an indirect cost. That indirect cost is allocated to direct costs, to yield a total cost for a particular function. Thus, the total cost of operator services includes the direct costs of that function (salaries of operators), and the allocable indirect costs (such as a portion of the costs of a human resources department).

When GTE reasonably avoids a direct cost in its role as a wholesaler, it is logical, indeed necessary, to treat the allocable indirect costs as reasonably avoided. AT&T's avoided cost study indicates GTE will avoid 24.7% of its indirect costs.<sup>18/</sup> (Lerma, Tr. 577.) These indirect costs include costs associated with executive, planning, accounting, finance, human resources, legal, uncollectibles, furniture, artwork, and other similar items and functions.

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<sup>17/</sup> The deficiencies in GTE's all or none methodology are further demonstrated by its failure to identify any costs avoided by its National Customer Quality Assurance Center. According to GTE, the center is "responsible for contacting consumer customers regarding recent new orders placed by the consumer." (Ex. 36, Tab 20.) GTE's rationale for identifying 0% of the costs of this center as avoided is that "similar activities" would be undertaken with regard to local exchange carriers purchasing wholesale services. (Wellemeier, Tr. 1477.) GTE's model, however, cannot accommodate the possibility that the volume of these "similar activities" almost certainly would result in less than 100% GTE's retail-related costs in this area.

Similarly, GTE's study treated as avoided none of the costs in the Customer Services (account 6623) area of service ordering. (Ex. 36) On cross examination, GTE witness Wellemeier admitted that service ordering is in fact a customer interface activity. (Wellemeier, Tr. 1482.) Nevertheless, GTE's cost study assumes it would incur wholesale costs of at the same high retail levels because wholesaling would require identical activities in identical volumes. In reality, at the very least, the orders of other telecommunications carriers likely would be "in bulk" therefore reducing the level of required customer interface. Moreover, Mr. Wellemeier admitted that GTE's rationale was without merit in the context of the ordering system electronic interfaces requested by AT&T and required by the Act.

<sup>18/</sup> AT&T's cost studies calculate avoided indirect costs in proportion to the avoided direct costs. See FCC Order 96-325 ¶ 918 (61 Fed. Reg. 45566 (¶ 608)).

Although AT&T's factor and GTE's are not dissimilar, application of GTE's factor to GTE's concept of the directly avoided cost pool results in dramatically different avoided indirect costs. This result emphasizes the need to eliminate all reasonably avoided direct costs, because failure to do is multiplied in the avoided indirect cost calculation and will result in wholesale rates incapable of sustaining competition and benefiting Florida's consumers.

AT&T's cost study applied this indirect cost factor to all of GTE's indirect costs. These included items such as depreciation, G&A and Executive & Planning. As to depreciation, for example, AT&T treats as avoided a portion of the depreciation costs (account 6560) related to general support assets. Id. These general support expenses include building, furniture, art work, office equipment and general purpose computers GTE uses to support its retail services. Id. To the extent those assets are used to support GTE's retail business, they are not required in their entirety for the provision of wholesale services and must be considered avoided costs pursuant to the terms of the Act. Id. 19/

### **3. Uncollectibles**

Finally, AT&T's calculation of its proposed permanent wholesale discount rate also deducts all uncollectibles costs (account 5301) as indirectly avoided costs. In a resale environment, the liability for all end-user uncollectibles transfers in total to the reseller. GTE's avoided cost study does not treat these uncollectibles as 100% avoided. Were the permanent wholesale percentage reduction rate permitted to include a portion of these uncollectibles costs, resellers would absorb not only the costs of their own uncollectibles but also a portion of the uncollectibles costs incurred by GTE in connection with its retail customers. Under such conditions, resellers could not hope to compete for entry into the local Florida market as intended by the Act.

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19/ Both AT&T's avoided cost study and GTE's "FCC-compliant" cost study also avoid rate-of-return and tax costs in accordance with their respective factors -- again avoidance of the proper costs in these areas requires proper calculation of avoided direct costs as contained in AT&T's avoided cost study.

**ISSUE 4(a): Should GTE be required to implement a process and standards that will ensure that AT&T receives services for resale, interconnection, and unbundled network elements that are at least equal in quality to those that GTE provides itself and its affiliates?**

\* \* \* \* \*

**AT&T:** Quality standards are necessary to ensure that GTE provides non-discriminatory levels of service for resale, interconnection, and unbundled network elements. The Act requires the quality of these services provided by GTE to AT&T must be at least equal to the quality of that which GTE provides to itself.

\* \* \* \* \*

The Act requires GTE to provide AT&T and other new market entrants with the capability to offer services at parity with GTE. This means providing AT&T, in a nondiscriminatory and reasonable manner, with the capability to offer its customers the same range and quality of services that GTE offers to its customers, 47 U.S.C.A. § 251(c)(2)-(4); (Shurter, Tr. 231.) Because GTE has enjoyed a monopoly for decades, providing parity of offerings is an essential step to making full and fair competition possible. (Shurter, Tr. 202.)

Parity fosters real competition by enabling new entrants to offer services over GTE's network at least comparable to what GTE can offer. Competition will directly benefit Florida consumers. If AT&T is to become a true competitor to GTE and offer Florida consumers choices they currently do not have, the Commission must ensure that GTE initially offers AT&T and other new entrants services at parity with GTE. (Shurter, Tr. 203, 231.) By requiring GTE to provide AT&T with services for resale, interconnection, and unbundled network elements that are at least equal in quality to those that GTE provides itself and to other competitors, the Commission will assure that AT&T will have reasonable opportunity to attract the customers needed to move to begin offering new and unique services.

Simply put, parity is needed if Florida consumers are realistically going to consider changing from an incumbent service provider, such as GTE, to a new market entrant. As a matter of common sense, a Florida consumer is not going to select a different provider if that one offers fewer services, less convenient services, or lower quality services than does GTE. The Commission should view all of GTE's arguments in this context. GTE raises many technical arguments, and even takes plainly

insupportable positions, but not once does it dispute that its position, reduced to its essence, is to ensure its competitors do not achieve parity.

AT&T and GTE have agreed to work together to develop and deploy standards and procedures that would verify that AT&T is, in fact, receiving services, unbundled network elements, and interconnection at least at parity with GTE. (Shurter, Tr. 210.) But, this agreement to agree has not yielded a concrete agreement because GTE is adopting a definition of parity completely at odds with the Act. As discussed above, parity means providing AT&T with the capability to offer its customers the same range and quality of services that GTE offers to its customers. GTE maintains that the Act only requires parity among new entrants. (Shurter, Tr. 209.)

Under its stilted concept of parity, GTE claims it is not obligated to provide new entrants with the same level of quality that GTE provides to itself. (Shurter, Tr. 209-10.) This position is yet one more example of GTE's attempt to stifle competition altogether: GTE offers to provide all new entrants with one level of "quality," while protecting its entrenched position by reserving to itself a higher level of quality. GTE's position would ensure that GTE remains dominant in the local exchange market where GTE is the incumbent. This result clearly is contrary to the intent of the Act. Therefore, quality standards are necessary to ensure that GTE complies with the Act and provides AT&T with the same quality of interconnection, unbundling or resale services that it provides itself. (Shurter, Tr. 210-11.) This Commission therefore should require GTE to submit monthly management reports to AT&T that measure GTE's performance against Direct Measures of Quality ("DMOQs") and provide AT&T with credits when it fails to meet the DMOQs. Examples of DMOQs are a due date for installation or a time frame for a repair. (Shurter, Tr. 303-04.)

Establishing DMOQs will help AT&T hold GTE accountable if the quality of its resold services, interconnections or unbundled network elements are deficient. (Shurter, Tr. 211.) This is consistent with the Act and FCC Order, which requires that GTE provide resold services, interconnection and unbundled network elements at a level of quality at least equal to the highest level of quality that GTE provides itself, any related entity or other party, including end users. 47 U.S.C.A. § 251(c)(2)-(4); 47 C.F.R. §§ 51.305(a), 51.311(b); FCC Order No. 96-325 ¶¶ 224, 314, 970; (Shurter, Tr. 211.) Having DMOQs would reduce or eliminate the need for new market entrants to seek relief

from the Commission in the event GTE refuses to provide them with an equal quality of service. Through the use of DMOQs with appropriate third-party arbitration clauses, the Commission would not be bothered by disputes over the quality of resold services, interconnection or unbundled network elements that GTE provides AT&T in the future. (Shurter, Tr. 304.)

**ISSUE 4(b): Should GTE be required to provide AT&T loop testing information prior to the establishment of service to an AT&T customer?**

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**AT&T:** Yes. Access to loop testing information will permit AT&T to ensure that local service purchased from GTE and resold to an AT&T customer is operational and that the service quality is at least equal to that which GTE provides to itself.

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The Commission should require GTE to provide to AT&T the loop testing information GTE provides to itself. Only in this way can AT&T verify that the end-to-end service meets quality standards before AT&T initiates services with its customers. If GTE tests local loops during installation or maintenance and repair, then parity requires that GTE should provide the results from these tests, if documented, to AT&T. (Shurter, Tr. 288.) Access to GTE's documented loop testing information will provide AT&T with the same ability as GTE currently has to ascertain the quality of any given loop before initiating service to Florida consumers. (Shurter, Tr. 221.)

GTE refuses to provide loop testing information to AT&T on the grounds that AT&T's request is unreasonable. (Hartshorn, Tr. 1146.) GTE claims that it will provide the same quality service to AT&T that it provides to its own customers or other new entrants, and that it should not be required to conduct loop testing upon AT&T's request. (Id.) GTE overstates AT&T's position, however, because AT&T only requests that GTE provide AT&T with Loop testing information when GTE has conducted *and* documented loop testing that it independently has initiated. (Shurter, Tr. 288.) As a matter of parity, if GTE has such documented loop testing information, it should provide it to AT&T. (Id.) This will enhance competition by placing AT&T on an equal footing with GTE as to critical information about loop quality that affects the quality of services AT&T can provide Florida consumers. (Shurter, Tr. 221.)

**ISSUE 5: What are the appropriate contractual provisions for liability and indemnification for failure to provide service in accordance with the terms of the arbitrated agreement?**

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**AT&T:** GTE is the only party in a position to prevent the errors that lead to unbillable or uncollectible revenues. Thus, GTE should compensate AT&T for revenue losses caused by GTE errors.

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The Commission should order that GTE be held financially responsible for its own actions or lack of actions that result in unbillable or uncollectible AT&T revenues in connection with services that AT&T buys from GTE and then resells to AT&T customers. (Shurter, Tr. 212.) When AT&T purchases services for resale, GTE has sole responsibility for the personnel involved with and the equipment used in providing the services. (Id.) Thus, GTE should be responsible for any of its own work errors that result in unbillable or uncollectible AT&T revenues, and should compensate AT&T for any losses caused by GTE's errors. (Id. at 211-12.)

Amazingly, GTE refuses to accept liability for its own errors. It complains that holding it liable for its actions "amounts to strict liability," and that AT&T should pay for indemnification. (McLeod Tr. 1282-83.) The indemnity clause AT&T proposed, however, only covered negligent acts by GTE and, therefore, is entirely reasonable. (Shurter, Tr. 235-38.) All AT&T is seeking is for GTE to take responsibility for its negligent mistakes. By contrast, GTE wants AT&T to absorb the cost of GTE's mistakes. Such a position would be unheard of in the competitive market. But GTE does not want a competitive market. Here again, its position illustrates the lengths it will go in order to retain its monopoly position.

To ensure parity of offerings, both the Act and the FCC Order require GTE to provide services for resale that are at least equal in quality to what GTE provides itself. 47 U.S.C.A. § 251(c)(2)-(4); FCC Order No. 96-325 ¶¶ 224, 313, 970. The most effective way for the Commission to ensure that GTE provides services available for resale that are equal in quality is to ensure that GTE is financially responsible for unbillable or uncollectible services caused by GTE's mistakes. GTE must accept responsibility for its actions and inactions which cause AT&T not to be able to collect from its customers. Otherwise, GTE will have no incentive to prevent them.

**ISSUE 6(a): Should GTE be required to provide real-time and interactive access via electronic interfaces to perform the following:**

**Pre-Service Ordering; Maintenance/Repair; Service Order Processing and Provisioning; Customer Usage Data Transfer; Local Account Maintenance**

\* \* \* \* \*

**AT&T:** The Act requires GTE to provide AT&T with non-discriminatory access to systems and functions that AT&T has requested by January 1, 1997. AT&T must have real time and interactive access to GTE's systems to perform preordering, ordering, provisioning, maintenance and billing at the same level of service GTE provides to its customers.

\* \* \* \* \*

AT&T and GTE have agreed in principle that GTE will provide AT&T with direct access to GTE's electronic interfaces with respect to both total service resale and unbundled network elements. (Shurter, Tr. 309.) The remaining issue is *when and in what form* will GTE provide AT&T with the real-time and interactive access via electronic interfaces it needs to support AT&T's market entry in 1997. (Shurter, Tr. 309.) AT&T and GTE also have agreed to an interim solution for resold services, whereby interfaces will take the form of manual and electronic processes and then will transition into full electronic bonding. (*Id.* at 308-09.) GTE, however, refuses to enter into an interim agreement with respect to unbundled network elements. (*Id.* at 309.)

GTE's approach to implementation has been one of delay. (Shurter, Tr. 191.) Instead of agreeing to an appropriately aggressive schedule for achieving full electronic bonding, GTE advocates a gradual "trickle down" approach that will inhibit AT&T's competitive potential in the Florida local exchange market. (Shurter, Tr. 191-92.) The Commission should reject this attempt to delay the introduction of full competition and require GTE to provide full electronic bonding for operational support systems ("OSS") by a date certain in 1997. The Commission should also require GTE to provide interim access to OSS for both unbundled network elements and resale at levels that are technically feasible and will plausibly enable GTE timely to reach the date the Commission sets for when GTE must implement full electronic bonding.

GTE mischaracterizes AT&T's position and asserts that AT&T is pushing for "immediate" electronic bonding which GTE claims "cannot be developed for some time." (Drew, Tr. 2012, 2014.) First, AT&T has never requested "immediate" electronic interfaces. To the contrary, AT&T has only

requested that GTE provide the electronic interfaces required by the Act "at the earliest practicable date in 1997." (Shurter, Tr. 193.) Second, the Commission should reject GTE's indefinite position as a posture adopted for purposes of delaying the date when new entrants will have the full capability to compete.

AT&T recommends the Commission require GTE to adhere to the following three phase plan in implementing electronic interfaces. In Phase I, GTE should be required by December 1996, January 1997 time frame to provide the following: telephone number and due date assignment via "800" number; street address guide via magnetic tape; ordering firm order confirmation through network datamover ("NDM") transport; jeopardies and service activation by facsimile or E-Mail, maintenance via "800" number; and billing and usage data via "800" number. (Shurter, Ex. RSR-2.) In Phase II, GTE should be required by April 1997 to create up and running interfaces for the following: telephone and due date assignment; street address guide; jeopardies and service activation; and, features and services recap. (Id.) In Phase III, GTE should have operational by the earliest practicable date in 1997 real time interactive interfaces that will provide the following: access through a nationally standardized gateway to GTE systems for pre-ordering and provisioning and maintenance; input through a nationally standardized gateway to GTE systems for ordering, provisioning and maintenance; automated notification by GTE to AT&T for ordering, provisioning and maintenance; billing usage data via electronic data interfaces; and wholesale billing in Carrier Access Billing System ("CABS") format. (Id.)

Interactive electronic interface arrangements are essential to new entrants' successful entry into the local market. (Shurter, Tr. 181.) The operational support systems for which AT&T requires electronic interactive interfaces are the following. Through pre-ordering, a LEC provides a potential customer with various types of important information, such as the types of services available at that customer's address. Ordering is the method by which the local provider orders a particular service for a customer, such as touch-tone dialing, and then receives confirmation that the order has been completed. To conduct maintenance and repair a provider must perform testing functions after receiving a customer complaint, find the status of the responsive repair actions, and confirm when a repair has



been completed. AT&T must have the capability to conduct all of these functions at the soonest possible date in order to compete effectively against GTE.

Given the obvious importance of electronic interfaces, several states including, Georgia, California, Illinois, Ohio and New York, have recognized that electronic interfaces are essential to competition in the local exchange. (Shurter, Tr. 180, 206-08.) AT&T has attempted to negotiate with GTE a workplan that will permit gradual implementation of electronic interactive interfaces. GTE stymied those negotiations by a series of irrelevant and ultimately anti-competitive road blocks. For example, it asserts providing interfaces is too costly and that AT&T is requesting more than GTE provides itself. (Shurter, Tr. 181.) It refuses to agree to a workplan to implement permanent electronic interfaces until the parties reach agreement on prices for services offered to resale, unbundled network elements and interconnection. GTE also refuses to agree on an interim solution until the parties reach agreement on pricing issues.

GTE also has taken the position that the Act does not require GTE to provide AT&T with direct access to its database via electronic interfaces or any other means. (Drew, Tr. 2036.) One justification that GTE advances for its position with regard to direct access is that it must preserve the confidentiality of its customers' proprietary network information ("CPNI"). (Drew, Tr. 2037.) GTE's confidentiality argument, however, is a smokescreen for what GTE really wants, which is to deny AT&T and other new market entrants parity with regards access to operational and support system information. (Shurter, Tr. 194.) Once again, its concept of parity is totally at odds with the Act, which expressly requires GTE to provide to AT&T services equal to those which GTE provides to itself and its affiliates. 47 U.S.C.A. § 251(c)(2)(C).

In addition, the Act specifically requires that GTE provide interconnection and unbundled access "at any technically feasible point" on "terms and conditions that are just, reasonable, and nondiscriminatory." *Id.* § 251(c)(2)-(3). GTE also may not impose discriminatory limitations on resale. *Id.* § 251(c)(4). The FCC Order also specifically requires GTE to provide nondiscriminatory access to operations support systems, and any relevant internal gateway access, in the same time and manner in which GTE provides such functions to itself. 47 C.F.R. § 51.313(c); FCC Order No. 96-325 ¶¶ 517-528. According to the FCC, this is "vitally important to the ability to broadly compete with the

incumbent." FCC Order No. 96-325 ¶ 521. In addition, AT&T is permitted to request more from GTE than what it provides for itself so long as AT&T pays the appropriate price. Therefore, GTE has no valid basis for denying AT&T's request for access to electronic interfaces. (Shurter, Tr. 193.) GTE simply is attempting to hold hostage access to the market in order to exact higher prices from AT&T to the detriment of Florida consumers.

**ISSUE 6(b): If this process requires the development of additional capabilities, in what time frame should they be deployed?**

\* \* \* \* \*

**AT&T:** Any processes and procedures needed should be developed and put into place as soon as practicable.

\* \* \* \* \*

The Act requires GTE to provide AT&T with nondiscriminatory access to systems and functions that AT&T has requested by January 1, 1997. If the Commission determines that it is impossible to provide such access by January 1, 1997, an interim solution should be employed and the Commission should require GTE to put a permanent arrangement in place as soon as possible.

**ISSUE 6(c): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** The costs of providing such interfaces should be based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from these interfaces in a competitively neutral fashion.

\* \* \* \* \*

The costs of providing real time electronic interfaces should be based on TELRIC studies in accordance with the rates set for network elements, capabilities or functions, shared by all local service providers, including GTE, who benefit from such services in a completely neutral fashion. A detailed discussion of the TELRIC studies is contained in Issue 13(b). AT&T has stated that it is willing to pay its fair share of the cost of creating electronic bonding. (Shurter, Tr. 254.) GTE has admitted that it is willing to contribute its fair share of the cost of any benefits it receives from enhancements to its operational service systems. (McLeod, Tr. 1378-79.) Because the numerous upgrades and enhancements to GTE's systems needed to achieve electronic bonding will benefit GTE, the Commission should require GTE to pay its fair share. (Shurter, Tr. 254.)

**ISSUE 7(a): When AT&T resells GTE's local exchange service, or purchases unbundled local switching, is it technically feasible: 1) to route 0+ and 0- calls to an operator other than GTE's; 2) to route 411 and 555-1212 directory assistance calls to an operator other than GTE's; or 3) to route 611 repair calls to a repair center other than GTE's?**

\* \* \* \* \*

**AT&T:** Customized routing of Operator Services, Directory Assistance, and Repair calls from AT&T local customers to AT&T's platforms is technically feasible. The FCC Order requires unbundling of operator and directory assistance services. GTE is required to unbundle these services from Local Switching.

\* \* \* \* \*

The Commission should order GTE to route directly to an AT&T service platform those AT&T customers calling for Operator and Directory Assistance services. Direct routing is the capability for all consumers to dial the same Operator and Directory Assistance number, but have their calls routed to the service platform of their chosen local service provider. For example, an AT&T customer dialing "411" should be connected with an AT&T operator and not a GTE operator. (Shurter, Tr. 223.) Direct routing is necessary to meet Florida consumers' desire for convenient access to their chosen local service provider, and to enhance competition in the local exchange market. (Shurter, Tr. 224.)

GTE acknowledges that direct routing is technically feasible, but nonetheless refuses to provide it to AT&T. (Shurter, Tr. 223-24.) Instead, GTE proposed to "unbrand" calls from AT&T customers for Operator and Directory Assistance services while it continues to brand calls from GTE's customers for these services. (McLeod, Tr. 1361.) GTE's position further verifies the technical feasibility of branding calls from AT&T's customers to AT&T. GTE would have to be able to identify an incoming caller as an AT&T customer as opposed to a GTE customer to unbrand the former while branding the latter.

GTE's decision to "unbrand" calls for Operator and Directory Assistance services by AT&T customers and not GTE customers is nothing more than a ploy by GTE to ensure that AT&T's customer cannot access AT&T service platforms while GTE builds customer loyalty with every call that they hear the GTE brand. (*Id.*) To reach AT&T's platform, AT&T customers would have to dial long and unfamiliar telephone numbers, instead of the traditional and familiar numbers for operator and

directory assistance services. The Commission should not allow GTE to inconvenience consumers solely because GTE wants to keep its competitive advantage over new entrants. (Id.)

Direct routing would foster competition by allowing new entrants, like AT&T, to distinguish themselves from the competition and strengthen customer relationships. (Id. at 225.) Operator and Directory Assistance services represent several of the relatively few instances where a local services provider interfaces directly with the customer. These services, therefore, provide an excellent opportunity for a new market entrant to demonstrate its strengths to its customers directly. By providing quality and innovative Operator and Directory Assistance services, a carrier could distinguish itself from its competitors and build customer loyalty. (Shurter, Tr. 224-25.) GTE fully understand this, and so proposes to "unbrand" calls from AT&T customers for Operator and Directory Assistance services, while branding calls from its customers to GTE, in order to impede AT&T's ability -- while enhancing its own ability -- to build customer loyalty, and in turn, market share. (McLeod, Tr. 1361.)

**ISSUE 7(b): If this process requires the development of additional capabilities, in what time frame should they be deployed?**

\* \* \* \* \*

**AT&T:** Any processes and procedures needed should be developed and put into place as soon as practicable.

\* \* \* \* \*

The capability to perform customized routing to Operator and Directory Assistance Services already exists. See discussion under Section D, Issue 13(a). To the extent GTE intends to provide such routing through an alternative method, the Commission should order that any additional processes and procedures be developed and put in place as soon as possible.

**ISSUE 7(c): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** TSLRIC or TELRIC provide the appropriate methods for establishing such statutorily required cost-based rates. In the absence of detailed TSLRIC or TELRIC cost studies, rates should be determined using the Hatfield Model where appropriate data are available. Interim prices should reflect any appropriate FCC default prices.

\* \* \* \* \*

The costs of providing customized routing to Operator and Directory Assistance Services or repair calls should be based on TSLRIC or TELRIC methods because these are unbundled network elements. In the absence of TSLRIC or TELRIC cost studies, rates should be determined using the Hatfield model where appropriate data is available. Interim prices should reflect appropriate FCC default prices. A detailed discussion of these pricing issues is contained in Issue 13(b).

**ISSUE 8(a): Should GTE be required to provide AT&T with the billing and usage recording services that AT&T requested?**

\* \* \* \* \*

**AT&T:** GTE should use the carrier access billing system and assign a separate billing code to each local service and unbundled network element or combination purchased by AT&T. GTE should also provide AT&T monthly bills separately for local service and unbundled network elements including charges, credits and/or adjustment.

\* \* \* \* \*

The Commission should require GTE to implement the carrier access billing system ("CABS") for all local carrier resale and access bills as soon as practicable. GTE is currently investigating the use of CABS for both carrier and access bills, but has not completed its study. (Drew, Tr. 2090.) CABS is a nationally used access billing system and is therefore the appropriate choice for local carrier billing. (Shurter, Tr. 283.)

The Commission also should require GTE to record and bill all charges AT&T incurs for purchasing wholesale local services for resale and unbundled network elements and combinations, and follow appropriate billing procedures when AT&T is interconnected to GTE's network. In order for AT&T to bill its local service customers efficiently, GTE must assign a separate and unique billing code to each local service and unbundled network element (or combination) purchased by AT&T. GTE then must provide AT&T a monthly local service bill that includes all local service charges incurred by and credits and/or adjustments due to AT&T. GTE also must provide AT&T with a monthly unbundled network element bill that includes all unbundled network element charges incurred by and credits and/or adjustments due to AT&T for those elements or combinations thereof. (AT&T Petition, Attachment 2.) If AT&T is to have the ability to compete effectively against GTE, GTE must

provide billing information to AT&T in the manner outlined above so that AT&T can build a billing database upon which to base business decisions on such important matters as marketing.

GTE has agreed in theory to provide the requested wholesale billing and usage recording services. Once again, however, GTE's "agreement" is illusory because of the strings it insists on attaching. In particular, GTE has conditioned its agreement on AT&T's agreement to bear the entire cost of GTE's systems development and operations for billing and recording. (Drew, Tr. 2043; Shurter, Tr. 222.) AT&T proposed that GTE recover these costs and other costs in a competitively neutral manner through operational efficiencies, service charges, or comparable charges which would allocate the costs across all carriers, including GTE and AT&T, that benefit from systems development and operation. It is unreasonable and discriminatory for GTE to require that AT&T bear all the costs for the systems development and operation that will benefit GTE and other telecommunications carriers. (Shurter, Tr. 222.)

**ISSUE 8(b): If this process requires the development of additional capabilities, in what time frame should they be deployed?**

\* \* \* \* \*

**AT&T:** AT&T believes the development of any additional capabilities should be required that one year from the initiation of an agreement or when local service billing standards are adopted by the Open Billing Forum.

\* \* \* \* \*

The Commission should require GTE to develop additional capabilities required to provide the billing and usage recording services AT&T has requested within one year of the initiation of an agreement, or when local service billing standards are adopted by the Order and Billing Forum, whichever is earlier.

**ISSUE 8(c): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** The costs of providing such service should be based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from this access.

\* \* \* \* \*

Billing and usage recording services fall into the category of Operator Support Systems, which is a network element. This element is discussed in detail in Issues 6(a) and 13(a)(G). Therefore, the Commission should order GTE to provide the requested services at costs based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from this access. A detailed discussion of the TELRIC pricing is contained in Issue 13(b).

**ISSUE 9: What type of customer authorization is required for access to customer account information and transfer of existing services?**

\* \* \* \* \*

**AT&T:** GTE should transfer the customer's service features and functionality "as is" to AT&T upon customer request. The Act permits the use of a blanket letter of authorization procedure without further customer approval and permits access to customer proprietary data to initiate, render, bill and collect for telecommunications services.

\* \* \* \* \*

When a Florida consumer wants to change local service providers, while retaining the same service package, the most efficient way to make this change is for GTE to execute a "change as is" service order, and then forward that order to AT&T pursuant to a blanket letter of authorization. (Shurter, Tr. 175.) This blanket authorization would give AT&T the authority to act on behalf of any Florida consumer requesting identical services from AT&T. Without such authorization, AT&T would be required to collect the information from the consumer, adding time and inconvenience for the consumer requesting the change. The process AT&T proposes is consistent with the process currently used in the long distance market and is the sensible business approach. (Shurter, Tr. 194.) Therefore, the Commission should require GTE to execute a "change as is" service order when a GTE customer requests to switch from GTE to AT&T local service on an "as is" basis.

GTE does not dispute that the blanket authorization procedure is efficient and makes sense for all parties. Moreover, the Act specifically permits an LEC to use, disclose, or permit access to Customer Proprietary Network Information ("CPNI") for the purpose of initiating new service for the customer. 47 U.S.C.A. § 222(d)(1). In refusing AT&T's request, however, GTE claims that this statutory provision permits it to use such information for serving its own customers, but prohibits it from releasing the information to another carrier. (Drew, Tr. 2053.) GTE's interpretation of the Act is

nonsensical. It reads § 222(d)(1) as only permitting GTE to disclose CPNI to itself. Apart from the fact that GTE's interpretation is patently wrong, the Act specifically mentions exchange of CPNI between carriers for the purposes of providing telecommunications services. 47 U.S.C.A. § 222(b). GTE's refusal to cooperate with AT&T on this common sense issue is simply another attempt to make it more difficult for a GTE customer to switch to AT&T.

**ISSUE 10: What are the appropriate rates, terms, and conditions, if any, for call guide pages, directory distribution, and inclusion of AT&T's logos on the directory cover?**

\* \* \* \* \*

**AT&T:** GTE must include in each directory the same amount of space for information AT&T provides for the directory as GTE provides itself, at a rate based on cost. GTE should be required to distribute directories at the primary and secondary level for free as it does for its own customers.

\* \* \* \* \*

The Commission should order that: (1) GTE provide AT&T the same amount and type of space in the GTE directory that GTE provides itself; and (2) GTE provide secondary delivery of directories (white page listings) at no additional charge to AT&T or its customers. If AT&T and other new market entrants and to compete effectively against GTE, AT&T must have the ability to provide all services at parity with what GTE provides its customers -- including telephone directory services. The Act prohibits GTE from placing discriminatory or unreasonable conditions on the resale of telecommunications services such as telephone directory services. 47 U.S.C.A § 251(c)(4)(B). The Commission, therefore, should not permit GTE to elevate the quality with which its logo, or its product information is presented in the telephone directories, which are the age-old icons of the industry. GTE must provide AT&T with the ability to provide the same types of telephone directory services, such as detailed information in the Customer Service Guide and free directory delivery, that GTE provides its customers. Parity in telephone directory offerings will benefit Florida consumers by providing convenient access to product information AT&T and other new entrants. Moreover, parity in telephone directory offerings is imperative to nurture the growth of competition in the Florida local exchange market. (Shurter, Tr. 227.)



GTE has agreed to include AT&T's logo in its directory, but only if AT&T agrees to manifestly unfair terms. For example, GTE proposes providing only a single page in the customer guide section to each new entrant, and will prohibit inclusion of any product information. (Shurter, Tr. 226.) GTE does not impose these restrictions on itself. Florida consumers would benefit if AT&T is allowed to include product information in the telephone directory. AT&T's Florida customers should not be inconvenienced and should be able to find in the telephone directory such detailed information in the Customer Service Guide and free directory delivery that GTE provides to its customers.

Secondary delivery is a delivery that does not occur during the regular annual delivery period. GTE wants to charge AT&T to pay for secondary delivery of a directory to an AT&T customer, even though GTE does not require its customers to pay for secondary deliveries. (Shurter, Tr. 226.) Therefore, parity requires that AT&T should not be subject to an additional cost for secondary delivery of telephone directories to AT&T's customers when GTE makes such deliveries free to its customers. (Shurter, Tr. 289.)

**ISSUE 11(a): Should GTE be required to provide AT&T access to GTE's directory assistance database?**

\* \* \* \* \*

**AT&T:** Yes, GTE is required under the Act to provide AT&T access to its Directory Assistance Database. Under the Act and the FCC Order, Directory Assistance databases are considered to be network elements, and it is technically feasible to unbundle this element.

\* \* \* \* \*

The Commission should order GTE to provide AT&T with access to GTE's directory assistance database. AT&T requires this access in order to provide directory assistance services to AT&T's customers. (Shurter, Tr. 218.) It is obvious that consumers will view new entrants who cannot provide directory assistance services as inferior to GTE. (Shurter, Tr. 219.) GTE argues that AT&T does not need access to GTE's directory assistance data because AT&T customers can access GTE's directory assistance. (Shurter, Tr. 218.) Thus, GTE will not even concede the right of AT&T's customers to obtain directory assistance information through an AT&T operator.

Apart from being yet another anti-competitive position, GTE's position also is contrary to the Act and its implementing regulations. The Act defines network elements to include databases and information used in the provision of telecommunications services, see 47 U.S.C.A. § 153(29). The FCC likewise has determined that operator systems, including directory services, are network elements. FCC Order No. 96-325 ¶ 534. The Act requires incumbent ILEC, such as GTE, to provide access to unbundled network elements in a non-discriminatory manner. 47 U.S.C.A. § 251(c)(3). Therefore, GTE must provide AT&T access to that database. FCC Order No. 96-325 ¶ 535; 47 C.F.R. §§ 51.5, 51.319(g); (Shurter, Tr. 219.) GTE must also provide AT&T access that is at "lease equal in quality" to the access that GTE provides itself.

**ISSUE 11(b): If this process requires the development of additional capabilities, in what time frame should they be deployed?**

\* \* \* \* \*

**AT&T:** Any processes and procedures needed should be developed and put into place as soon as practicable.

\* \* \* \* \*

The option to purchase database information does not require development of additional capabilities and should be available immediately. Access via a real-time electronic interface should be made available as soon as possible. 47 C.F.R. § 51.311(b).

**ISSUE 11(c): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** The costs of providing such access should be based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from this access.

\* \* \* \* \*

Directory Assistance is a network element and costs should be based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from access. The TELRIC pricing issue is discussed in detail under Issue 13(b).

**ISSUE 12: How should PIC changes be made for AT&T's local customers?**

\* \* \* \* \*

**AT&T:** AT&T is entitled to be the contact point for PIC change requests by AT&T local customers. GTE should reject any PIC change request from another local carrier and notify the carrier to submit the request to AT&T. This practice complies with industry standards on billing and ordering.

\* \* \* \* \*

PIC changes are requests made by a consumer to change its long distance carrier. The Commission should be aware that it has always been the responsibility of the customer's local exchange carrier to process PIC changes. GTE's position, however, would distort this relationship in a resale environment. There can only be two reasons for GTE's position. Either it wishes to confuse consumers or it wishes to leverage its own long distance operations through its control of local exchange facilities. Both of these reasons are anti-competitive and contrary to the requirements of the Act. GTE has refused to refer requests for PIC changes to AT&T; instead GTE plans to require changes for AT&T local exchange customers to be made directly through GTE. (Drew, Tr. 2034.) Only AT&T, however, will have the most current customer account information for Florida consumers which have selected AT&T as their local service provider, which could include restrictions on PIC changes. (Shurter, Tr. 220.) Therefore, allowing GTE to process PIC change requests for AT&T customers will diminish AT&T's ability to provide quality services to its customers. (*Id.*) Finally, GTE would gain a competitive advantage. GTE customers who request PIC changes will receive better service, because GTE presumably will have more accurate and up-to-date information on its own customers than on AT&T's customers.

Despite the detrimental effect on competition and the concomitant effect on the price and quality of services, GTE intends to handle PIC change requests for the customers of all resellers. (Drew, Tr. 2014.) The reason is obvious -- the more control GTE can assert between AT&T and other new entrants and their customers, the better for GTE. It is AT&T's right and responsibility to care for its local customers. It is neither necessary nor appropriate for GTE, the incumbent LEC, to come between AT&T and its customers. (Shurter, Tr. 195.)

**ISSUE 13(a): Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for GTE to provide AT&T with these elements?**

**Network Interface Device; Loop Distribution; Local Switching; Operator Systems; Dedicated Transport; Common Transport; Tandem Switching; Signaling Link Transport; Signal Transfer Points; Service Control Points/Databases; Loop Concentrator/Multiplexer (AT&T only); Loop Feeder (AT&T only); DA Service; 911 Service; AIN Capabilities; Operations Support Systems**

\* \* \* \* \*

**AT&T:** GTE has a statutory obligation under the Act to offer network elements to new market entrants on an unbundled basis and at rates, terms and conditions that are just, reasonable, and non-discriminatory. All items listed above are network elements, and all items are technically feasibility to provide.

\* \* \* \* \*

The Commission should order GTE to provide AT&T with access to the following unbundled network elements, including all the features, functions and capabilities of each element: Network Interface Device, Loop Distribution, Loop Concentrator/Multiplexer, Loop Feeder, Local Switching, Operator Systems/Directory/Assistance/911 Service, Dedicated Transport, Common Transport, Tandem Switching, Signaling Link Transport, Signal Transfer Points, Service Control Points/Databases (including AIN capabilities), and Operations Support Systems.

GTE refuses to provide these elements on an unbundled basis. Unbundling refers to the offering of discrete elements of the incumbent's network as generic functionalities rather than as retail services. (Gillan, Tr. 75.) If adopted, GTE's position will delay the onset of competition based upon the use of unbundled network elements. Accordingly, the Commission should order the unbundling of network elements in a manner that satisfies AT&T's requirements, even if GTE may have to change its existing network. To facilitate the Commission's consideration of this issue, AT&T is providing an overview of the network elements and the reasons why unbundling these elements is key to competition. AT&T then addresses each of the elements in detail.

When a customer picks up a phone and dials a number, a signal is passed into the Local Loop Facility. This network element is the transmission pathway between the subscriber's premises and his or her local switch. The Local Loop Facility consists of four sub-loop elements. (Crafton, Tr. 323.) First, the signal enters the Network Interface Device ("NID"), which is physically attached to the

customer's premises. The NID connects with the second sub-loop element, the Loop Distribution wire. The Loop Distribution wire carries the call between the NID and either the Feeder Distribution Interface ("FDI"), or the Loop Concentrator/ Multiplexer, depending upon the configuration of the particular loop. (Crafton, Tr. 324-325.) The FDI is a device that simply connects the Loop Distribution wire to the Loop Feeder.

The third subloop element, the Loop Concentrator/Multiplexer, provides several functions, including conversion of signals from analog to digital, and concentration of lines and signals. (Crafton, Tr. 325-326.) After passing through the Loop Concentrator/Multiplexer or the FDI, the call continues to the last of the four subloop elements, the Loop Feeder. The Loop Feeder connects customer lines from the Concentrator/Multiplexer on the FDI to the Local Switch, thus completing the transmission from the caller's phone to the local telephone company central office, where the Local Switch is located. (Crafton, Tr. 326-327.)

The Local Switch is the network element that provides many key features, including provision of dial-tone; proper routing of a call; access to Advanced Intelligent Network ("AIN"); and compilation of data required for billing. (Crafton, Tr. 327.) The Local Switch also provides access to other network elements, including Operator Systems, Transport Elements, and the Signaling System.

The Local Switch can route the call to the Operator Systems element. This element includes operator and automated call handling and billing, special services such as directory assistance, and optional call completion services. (Crafton, Tr. 328.) When a customer has dialed one of these services, the Local Switch has the capability to route the call to the operator platform belonging either to the incumbent LEC or the new entrant. (Crafton, Tr. 329.)

The main function of the Local Switch is to feed a call into the appropriate transport element to carry it to its destination. Dedicated and Common Transport provide interoffice transmission between designated locations. (Crafton, Tr. 330.) Dedicated Transport carries the traffic of one provider exclusively, while Common Transport carries the traffic of various providers. (Id.) Tandem Switching is utilized to establish a communications path between two switching offices "A" and "B" through a third switching office where it is either impractical or uneconomical to connect "A" and "B" directly to one another. (Id.)

The Local Switch also accesses the Signaling System, which passes information on the routing and billing of calls within a carrier's network and between carriers. (Crafton, Tr. 331.) The Signaling System also enables carriers to create and provide AIN services that permit access to a variety of innovative and competitive advanced features. (Id.) Network signaling is provided through three separate network elements. (Id.) First, Signaling Links are sets of dedicated transmission paths that carry signaling messages between carriers' switches and signaling networks. (Crafton, Tr. 332.) Second, the Signal Transfer Points are signaling message switches that interconnect Signaling Links to route signaling messages between switches and databases. (Id.) Third, a Service Control Point is a database containing customer and/or carrier-specific routing, billing, or service instructions. (Id.)

Finally, a network may employ electronic interfaces. These are additional network elements that permit real-time, interactive access between the operations support systems of new entrant and an incumbent LEC, so as to facilitate pre-ordering, ordering, provisioning, maintenance/repair and billing, as was discussed above in Issue 6(a). (Shurter Tr. 212.)

The Act requires GTE to provide nondiscriminatory access to all unbundled network elements that AT&T requests, at any technically feasible point. 47 U.S.C.A. § 251(c)(3).<sup>20/</sup> Each of the items AT&T has requested is a network element. The Act defines a network element as "a facility or equipment used in the provision of a telecommunications service," including the "features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C.A. § 153(29).

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<sup>20/</sup> The FCC Order requires GTE to provide a minimum of seven unbundled network element categories and allows this Commission to require additional unbundling, unless GTE proves that unbundling is not technically feasible. These categories identified in the FCC Order are: the NID, Local Loop (including the three subloop elements requested by AT&T), Switching Capability (including both Local Switching and Tandem Switching), Operator Systems, Interoffice Transmission (including Dedicated and Common Transport), Signaling and Call-Related Databases (including signaling elements and AIN services), and Operations Support Systems. 47 C.F.R. §§ 51.319, 51.317; FCC Order No. 96-325 ¶¶ 366, 244. All of the network elements requested by AT&T fit into the seven categories of elements identified by the FCC Order.

Once a network element has been unbundled from the local exchange network, it can be combined with other elements in such a way as to provide service offerings. (Crafton, Tr. 321-322.) As the Commission will recall, Mr. Gillan likened unbundled network elements to the ingredients in the kitchen of a Chinese restaurant. (Gillan, Tr. 75.) The menu provided to the customer has a long list of choices, yet the ingredients in the kitchen are fairly basic. The chef merely combines the ingredients in many variations to create different dishes. Likewise, AT&T intends to provide its Florida customers with a long menu of service packages. But in order to be able to offer these variations, the network elements must be unbundled so that AT&T can combine these ingredients in its own services.

Unbundling of network elements will promote competition and benefit consumers in a number of ways. First, unbundling enables new entrants to become competitive more quickly than otherwise would be possible. (Gillan, Tr. 76.) Unbundling allows a carrier to establish services and attract consumers almost immediately, while developing a better understanding of these elements over a period of time. It plainly will take time for any new entrant to understand the nuances of how the network elements work together and to develop its own facilities. Thus, unbundling allows competition to develop more rapidly than would be the case if each new entrant had to develop its own facilities prior to entering the market. (Id.)

Second, unbundling network elements into a menu of generic ingredients allows new entrants to put together service packages which GTE does not currently offer. (Gillan, Tr. 76.) Consumers will benefit directly because they have more service choices, and a new entrant can become immediately competitive by differentiating itself from other providers. In this way, unbundling provides consumers benefits that cannot be developed from the mere resale of existing GTE services, where the new entrant has little opportunity to change the basic structure of resold service. (Gillan, Tr. 76-77.)

Third, unbundling will result in greater consumer choices over the long run. This is because new entrants will be able to expend their capital on developing new services and applications, rather than having to use their capital for the development of network facilities that essentially replicate the existing facilities of the incumbent LECs. (Id.)

GTE refuses to unbundle all of the network elements that AT&T has requested. GTE argues it is not technically feasible to provide such access or that unbundling is not required for the elements requested. As explained below, each of the elements which AT&T has requested is an element which the Act requires to be unbundled, and it is technically feasible to provide the elements AT&T has requested. Thus, GTE is adopting a position that is aimed at stifling and not promoting competition. GTE's motivations for taking this approach are obvious. Like all the other incumbent LECs, GTE knows full well how expensive, and how long it will take, for AT&T and others to build duplicative networks. GTE therefore seeks to delay competition by restricting or barring access to its unbundled network elements.

The FCC Order discusses the appropriate definition of "technical feasibility" at some length. FCC Order No. 96-325 ¶¶ 192-206. First, the FCC concluded that "technically feasible" refers solely to technical or operational concerns and *not economic, space or site considerations*. 47 C.F.R. § 51.5; FCC Order No. 96-325 ¶ 198. Congress' intent is clear because it dropped the explicit language "economically reasonable" from the final version of the bill, for the simple reason that such language may result in certain elements not being made available. H. Rep. 104-204, 71 (1995). Second, the FCC interpreted the Act to impose an obligation to modify the existing facilities of the incumbent local telephone company where necessary to accommodate access to unbundled network elements. FCC Order No. 96-325 ¶ 202. Third, the FCC found that a pre-existing access at a particular point was evidence of the feasibility of access at any substantially similar point. FCC Order No. 96-325 ¶ 204. Thus, where GTE already is providing tariffed services or facilities, this is evidence that unbundling is technically feasible. Finally, the FCC placed upon the incumbent provider the burden of proving that unbundling is not technically feasible. FCC Order No. 96-325 ¶ 198. GTE has failed to meet this burden with respect to the unbundled network elements that AT&T has requested.

**A. Network Interface Device**

The NID is the physical point of connection between the local telephone company and the customer's premises. (Crafton, Tr. 323-324.) In the residential context, the NID is a box on the side of the customer's house, containing chambers in which the wire from the local telephone company and the wire from the customer's premises are connected. The Commission should require GTE to allow



AT&T to attach its wire directly to the existing NID, either by utilizing excess capacity in the NID, or if no excess capacity exists, by disconnecting and grounding the GTE wire and attaching the AT&T wire.

GTE does not seriously contend that it is not technically feasible to allow AT&T to connect its wire directly to GTE's NID. GTE admits that the FCC's Order definition of technical feasibility demonstrates it is technically feasible to allow AT&T to access the customer's wire. (Hartshorn, Tr. 1119-1120.) GTE has agreed to allow AT&T to connect its wire to GTE's NID. (Hartshorn, Tr. 1126.)

GTE has agreed to unbundle the NID, but only if AT&T consents to certain conditions. For example, it raises purported "reliability" and "security" problems. However, the issues of reliability and security are not a great concern, and GTE raises it only to stall competition. AT&T's well-trained personnel already maintain a comprehensive national telephone network. They are aware of the need to ground wires properly and have the expertise to do so. In fact, if AT&T is forced to attach its own NID to the customer's premises and attach it to GTE's NID, this could result in service problems because exposed wires are susceptible to damage from the weather environment or could be inadvertently broken.

GTE also imposes another condition in its agreement, this one being plainly unreasonable. In particular, GTE insists that AT&T must pay all of its costs associated with unbundling the NID, and that GTE must receive "just and reasonable" compensation from AT&T for the unbundled NID. (Hartshorn, Tr. 1128.) GTE seeks to delay competition by attempting to place the entire financial burden of providing access on new entrants. This is a recurring theme in GTE's arguments in many of the issues before the Commission in this hearing. GTE repeatedly makes weak, unsupported assertions that it is not technically feasible to provide what AT&T has requested. When the fallacy of its position is established, GTE then reveals its true colors by saying it is unwilling to bear any costs of providing AT&T the access required by the Act. AT&T is willing to bear its share of the costs of gaining access to GTE's network as required by the Act. But costs are simply irrelevant to the question of whether or not GTE is required to provide access to its network. These attempts to couch arguments about price in terms of technical feasibility should be seen for what they are: an attempt by GTE to hinder the efforts of new entrants to compete.

**B. Local Loop Facility**

The Local Loop Facility provides a transmission pathway between the local subscriber's premises and his or her Local Switch. (Crafton, Tr. 323.) AT&T requests access to the Local Loop Facility as a whole and also the subloop elements on an unbundled basis. The Loop Facility is a network element that consists of three subloop elements: Loop Distribution, the Loop Concentrator/Multiplexer, and the Loop Feeder. (Crafton, Tr. 323.)<sup>21/</sup> GTE refuses to provide unbundled access to each of the subloop elements, and GTE refuses to provide unbundled access to Local Loop Facilities where Integrated Digital Loop Carriers ("IDLCs") are employed.

First, GTE refuses to provide unbundled access to the Loop Distribution, Loop Concentrator/Multiplexer and Loop Feeder.<sup>22/</sup> Loop Distribution is the network element that connects the customer to the local network by connecting the customer's NID to either the Feeder Distribution Interface or a Loop Concentrator/Multiplexer. (Crafton, Tr. 324.) AT&T requires unbundling of Loop Distribution, for example, where AT&T deploys local fiber rings and its own switches, but does not own the facilities to span the "last mile" to the customer premises. In this situation, AT&T could use its fiber rings to transport traffic between its central office and GTE's Loop Distribution, in conjunction with a Loop Concentrator/Multiplexer belonging to AT&T or a third party, to deliver traffic between AT&T's central office and the customer premises. (Crafton, Tr. 325.)

The Loop Concentrator/Multiplexer provides several functions needed to transmit calls across the network. It converts analog signals coming in from customers to digital signals sent across the network. It also concentrates the traffic from many lines coming in from end-users to fewer lines going out to the central office. Finally, to accommodate large volumes of traffic using fewer facilities, the Loop Concentrator/Multiplexer intersperses the digital signals from multiple calls into one high speed

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<sup>21</sup> The NID sometimes is regarded as a part of the Local Loop Facility discussed below. The FCC Order, however, lists the NID and the Local Loop as two separate network elements. 47 C.F.R. § 1.319; FCC Order No. 96-325 ¶ 366.

<sup>22</sup> While AT&T was able to resolve this issue in its negotiations with BellSouth through a "bona fide request" procedure, GTE has refused to accommodate such a procedure. GTE's refusal is not surprising since its intent in this proceeding appears to be to stifle all local exchange competition while it uses its position as an entrenched local exchange services provider to its competitive advantage in the long distance market.

digital signal. (Crafton, Tr. 325-326.) In some settings, particularly apartment developments and office buildings, the Loop Concentrator/Multiplexer is located in the building itself. The use of GTE's Loop Concentrator/Multiplexer and Loop Distribution elements may be the most efficient way for AT&T to reach individual customers in these situations. (Crafton, Tr. 325.)

The Loop Feeder connects the customer lines at the Feeder Distribution Interface, or the Loop Concentrator/Multiplexer if one is in place, with the local central office. (Crafton, Tr. 326-327.) Unbundling this element will allow AT&T to gain access to its customers where it has deployed its own Loop Distribution or has purchased that functionality from another vendor, but will use GTE's Loop Feeder to transport traffic to and from GTE's central office. For example, when AT&T wires a new housing subdivision, but does not have its own switch, it requires access to the unbundled Loop Feeder. (Crafton, Tr. 327.)

AT&T should not be required to purchase the entire Local Loop Facility when it only has a need for one or two sub-loop elements. For example, where AT&T buys Loop Distribution from a cable company, it will need to access GTE's Loop Concentrator/Multiplexer to connect to GTE's Loop Feeder. By having the option to purchase subloop elements separately, AT&T may be able to offer consumers better service and lower prices. (Crafton, Tr. 326.)

As to all of these subloop elements, GTE refuses to unbundle them solely on the grounds they are merely subloop elements and the Act does not require GTE to provide them on an unbundled basis. Each of these subloop elements meets the Act's definition of an unbundled network element, however, because they are "facilit[ies] or equipment used in the provision of telecommunications service." 47 U.S.C.A. § 153(29). The fact that they can be viewed as subelements of another network element does not change their character for purposes of the Act.

GTE now claims it is not technically feasible to provide access to these subloop elements in all circumstances. GTE initially had agreed with AT&T that it is technically feasible to provide the requested subloop elements. (Crafton, Tr. 341.) Equivocally, however, GTE then asserted that it would be very expensive to do so (although GTE provided no cost or proposed rates), and expressed its doubts that sufficient market justified the cost of providing these elements. GTE later flip flopped and asserted it is not technically feasible to provide unbundled access to the subloop elements. (Id.) GTE's

current position is that it will unbundle subloop elements on a case-by-case basis. (Crafton, Tr. 397.) The parties have yet to close the issue because GTE has not agreed to a Bona Fide Request Process procedure that would require GTE to respond within a set time frame to good faith requests by AT&T to unbundle subloop elements. (Crafton, Tr. 398.)

GTE also alleges that unbundling the subloop elements may cause security problems, necessitating security and reporting procedures to protect the network from physical damage, compromise of privacy, or increased toll fraud. (Hartshorn, Tr. 1133.) AT&T is confident that reasonable reporting procedures could be developed that do not unfairly or unreasonably restrict the use of the unbundled elements, while at the same time, protecting the network from physical damage, compromise of privacy, or increase toll fraud. (Crafton, Tr. 355.) Moreover, the potential for toll fraud and eavesdropping already exist in the Local Loop. GTE's network would be no more vulnerable than it is today if subloop elements are unbundled. (Id.) Because the Act requires unbundling subloop elements, and GTE has failed to prove that such unbundling poses a security risk to its network, the Commission should order GTE to unbundle these elements.

As a second general matter, although GTE generally has agreed to provide access to the unbundled Local Loop, GTE refuses to provide any access to those Local Loops using Integrated Digital Loop Carriers ("IDLCs"). (Hartshorn, Tr. 1130-1132.) GTE's refusal to provide unbundled access to any loop serviced by IDLCs reflects GTE's attempt to deny a significant number of Florida consumers choices in local markets. If GTE's position is adopted, all of GTE's Florida customers served by facilities employing IDLCs would remain relegated to GTE's ongoing attempts to continue its dominant position and not benefit from competition. Approximately 20% of GTE's customers are connected to GTE's central offices served by IDLCs. (Hartshorn, Tr. 1135.) Unbundling will permit those Florida consumers to see the benefits of facilities based competition in which new entrants such as AT&T can connect an unbundled IDLC loop to AT&T's switch. (Crafton, Tr. 356.) In particular, these customers will enjoy the benefits of service differentiation and lower cost afforded by AT&T's switch and its value-added features. (Id.) If AT&T cannot gain access to GTE's IDLC-delivered loops, then the customers served by these loops can be served only by GTE's switch. Competition in this segment of the market will be limited to resale of GTE services. (Id.) GTE's refusal will pose even

greater problems in the long run because all new loops will make use of IDLCs. Therefore, denying new entrants access to IDLC-delivered loops will deny an ever increasing number of consumers the benefits of competition.

GTE argues that it is not technically feasible to allow AT&T to utilize single unbundled loops that are integrated in IDLC arrangements. (Hartshorn, Tr. 1130-31.) The FCC Order, however, specifically found it is technically feasible to unbundle IDLC-delivered loops. 47 C.F.R. § 51.319(a); FCC Order No. 96-325 ¶ 384. In fact, the technical specifications for interconnecting with subloop elements are documented in various industry publications. (Crafton, Tr. 341.)

GTE's primary argument is that even if it could unbundle IDLC-delivered loops, the costs could amount to "many millions of dollars." (Hartshorn, Tr. 1131-1132.) The costs of unbundling IDLC-delivered loops are driven by the frequency with which these systems have been deployed and by how often new entrants find it cost effective to use unbundled loops. (Crafton, Tr. 356.) AT&T has proposed at least three alternate, technically feasible and less expensive ways to unbundle the IDLC-delivered loops. (*Id.*) Moreover, as explained earlier, costs are irrelevant to the issue of technical feasibility. Thus, GTE again purports to make a technical argument, but its real goal is to make it as expensive as possible for AT&T to obtain the unbundled network elements that it needs to provide local service, thereby delaying the onset of real competition.

### **C. Local Switching**

The Commission should require GTE to unbundle its Local Switching from all other network elements. Local Switching provides dial-tone for each line; features such as call waiting and call forwarding; proper routing of a call; access to AIN triggers to customize call processing; and creation of data necessary for customer billing. Local Switching also provides the functionality to connect the appropriate originating lines or trunks wired to a desired terminating line, platform or trunk. In addition to voice transmission capability, Local Switching also provides a second capability -- data

switching. Thus, access to unbundled Local Switching includes the ability to buy either voice or data switching. (Crafton, Tr. 327.)<sup>23/</sup>

Local Switching is critical to widespread local competition for a number of reasons. First, using unbundled Local Switching allows Florida customers to change easily among local carriers who are using the incumbent LEC's unbundled Local Switching. If each provider were forced to use its own Local Switching, a customer's lines would need to be reconfigured to a different switch for service when changing providers, which would, in turn, deter Florida consumers from changing carriers. (Gillan, Tr. 86-87.) Second, access to the unbundled Local Switching element will allow new entrants to enter a market quickly, certainly more quickly than would be the case if new entrants had to build their own facilities. (Gillan, Tr. 86.) Third, AT&T and other new entrants could combine the unbundled Local Switching with other unbundled network elements, its own services and facilities, and/or the services and facilities of third parties. This would allow new entrants to provide innovations in services and differentiate themselves from competitors by offering a variety of service choices not currently available. (Gillan, Tr. 87; Crafton, Tr. 328.)

GTE refuses to unbundle Local Switching for two reasons. GTE's first "justification" for its refusal rests on an incorrect and misleading definition of unbundled Local Switching. According to GTE, Local Switching includes not just the switch, but also GTE operator services, directory assistance, repair service and inter-office transport. (GTE's "port" offering). (Crafton, Tr. 342; Hartshorn, Tr. 1116.) Local Switching, however, is an independent network element that is separate from these other elements that GTE insists must be appended to Local Switching. The Act explicitly requires that Local Switching be unbundled from "transport, local loop transmission, or other services." 47 U.S.C.A. § 271(c)(2)(B)(vi). GTE, therefore, incorrectly defines Local Switching.

Despite the clear requirements of the Act, GTE is urging this Commission to require AT&T to purchase more than it actually needs. AT&T already has developed certain of these systems and

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<sup>23/</sup> The FCC Order requires GTE to provide access to "Switching Capability," including many of the functionalities requested by AT&T. 47 C.F.R. § 51.319(c); FCC Order No. 96-325, ¶¶ 410-427. The FCC Order does not mandate the unbundling of Data Switching because the FCC stated it did not have sufficient information; however, the state commissions are free to make their own decision to unbundle this network element.

facilities, such as operator services. Accordingly, accepting GTE's position, increases AT&T's costs needlessly, provides GTE with additional unearned revenues, and puts AT&T in an unfairly disadvantaged position. Under no circumstances should AT&T be forced to purchase additional services that duplicate capabilities it already has developed.

Highlighting the extent to which it wants to stifle competition, GTE's "port" offering is not just overinclusive (in that it requires AT&T to purchase more services than it actually requires); but it also is underinclusive. This is because GTE also would require AT&T to purchase separately several features and capabilities which are included in GTE's Local Switching such as call forwarding, call waiting, or caller ID. (Crafton, Tr. 342.) These features and capabilities are provided by software that is resident in the Local Switch and thus, are a part of the functionality of Local Switching. (*Id.*) AT&T should not be required to purchase these features and capabilities separately when it is already paying to access the switch.

GTE's second "justification" for requiring competitors to purchase its entire port offering, and not just Local Switching, is that it is not technically feasible for its Local Switch to route calls to AT&T operator systems, transport facilities, and other AT&T facilities. According to GTE, its switches cannot perform "customized routing," which is the switch's ability to distinguish between customers for various purposes. (Hartshorn, Tr. 1136.)<sup>24/</sup>

In direct contrast to its assertion that customized routing is not technically feasible, GTE admits its switches are "capable" of routing calls to AT&T operator systems, transport facilities and other AT&T provided facilities. (Hartshorn, Tr. 1135-36.) Indeed, it even acknowledged the technical feasibility of customized routing in a telephone conversation with AT&T. (Crafton, Tr. 358-359; Ex. 7.)

This admission shows that GTE is not really arguing customized routing is not technically feasible. What it is arguing is that it would need to modify its switches in order to accomplish customized routing. The FCC anticipated that some modification to an incumbent's facilities would be

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<sup>24/</sup> Customized routing is sometimes also referred to as "selective routing," "direct routing" or "routing of operator/directory service requests to AT&T's platform."

necessary and explicitly stated that use of the term "feasible" in the Act "implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or *some modification* to incumbent LEC equipment." FCC Order No. 96-325 ¶ 202 (emphasis added). The cost of any required modification is irrelevant to a determination of technical feasibility. FCC Order No. 96-325 ¶ 199. Therefore, despite the fact that GTE may need to modify its equipment, customized routing is technically feasible as defined by the Act. Indeed, several state commissions including Georgia, Illinois and New York have found that customized routing is technically feasible. (Crafton, Tr. 358.)

GTE's true position, therefore, is that its switches lack the *capacity* to perform customized routing, not that its switches lack the *capability*. (Hartshorn, Tr. 1136.) Even its capacity argument is wrong, however, because GTE overstates the facts. Customized routing can be accomplished on an interim basis with Line Class Codes ("LCCs"). These are software indicators that provide information to route a particular customer's calls. For example, one LCC might be associated with all customers having basic dial-tone service plus call waiting, while another might be associated with all customers having basic dial-tone service plus call forwarding. (Crafton Tr. 439; Ex. 7.)

GTE admits its recent 5ESS switch is capable of supporting approximately 6000 LCCs and a future release of its DMS-100 switch will support 2,048 LCCs. (Ex. 62 at 23.) Lucent Technology has agreed that this capacity is adequate for customized routing. (Crafton, Tr. 439; Ex. 7.) GTE argues that it will be forced to expend significant time and money in order to upgrade its switches to handle AT&T's requirements for LCCs. This is irrelevant to the issue of technical feasibility. In addition, GTE has overstated the resources necessary to provide customized routing to AT&T. Most switches within a network have hundreds, sometimes thousands, of spare LCCs. (Crafton, Tr. 358.) Moreover, use of LCCs is not the only method of providing customized routing. AT&T has suggested other possible solutions to the supposed capacity problem, including the use of AIN. (Crafton, Tr. 375.) In fact, another local service provider, Bell Atlantic, has agreed to provide customized routing using AIN. (Crafton, Tr. 375.)

Once again, GTE's argument's is reduced to the claim that AT&T's proposal will result in significant costs to upgrade the existing switches to provide the capability of performing customized



routing. But GTE does not and cannot state with any credibility that customized routing is not technically feasible. This is the only test the Act imposes. Therefore, all of GTE's claims as to the details of upgrades and the costs of such upgrades are irrelevant to the question of whether it must provide unbundled access to Local Switching.

This Commission should direct GTE to provide customized routing immediately, using any technically feasible solution, and further direct GTE to work efficiently with the industry to develop a long-term solution by a date certain.

**D. Operator Systems**

The Commission should require GTE to unbundle Operator/Directory Systems and Directory Assistance ("Operator Systems") from Local Switching. Operator Systems provide the customer with operator and automated call handling and billing, special services, customer telephone listings and optional call completion services. (Crafton, Tr. 328.) Florida consumers will benefit from unbundling of Operator Systems because AT&T will be able to combine its world class operator services platform with GTE's local switches to create new services. For example, Florida consumers who have diverse multi-cultural and language characteristics, could receive immediate access to AT&T's foreign language dependent services and innovations based on voice recognition. (Crafton, Tr. 329.) These are services Florida consumers do not currently receive.

GTE refuses to unbundle its Operator Systems, and so again is putting GTE first, and consumers last. AT&T needs to have this element unbundled because it intends to use its own operator services, and not GTE's.<sup>25/</sup> By not unbundling this element, GTE would deprive consumers of new and enhanced operator systems features AT&T and other new entrants could provide. (Crafton Tr. 329.) GTE also would force all new entrants to pay for this feature whether they want it or not. Additionally, if GTE succeeds in stifling competition in the area of Operator Systems, then GTE will have no incentive to enhance its own Operator Systems.

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<sup>25/</sup> AT&T might need to purchase this element where customized call routing is unavailable, meaning those limited occasions when AT&T's customers may not be able to reach AT&T Operator Services platform.

Operator Systems clearly meet the definition of a network element as these services are capabilities used in the transmission, routing or other provision of a telecommunications system. 47 U.S.C.A. § 153 (29); (Crafton, Tr. 343.) The FCC Order explicitly requires that GTE unbundle Operator Systems. 47 C.F.R. § 51.319(g); FCC Order No. 96-325 ¶ 534-540.

GTE claims it is not technically feasible to unbundle Operator Systems. In particular it asserts it cannot route calls from AT&T customers to AT&T operators. As explained above with respect to Local Switching, customized routing to AT&T operator services is technically feasible, meaning it is technically feasible for GTE to unbundle its Operator Systems.<sup>26/</sup> In fact, Lucent Technologies acknowledged the feasibility of routing of AT&T customers to AT&T platforms in a telephone conversation with AT&T on September 19, 1996. (Ex. 7.)

GTE's arguments again are irrelevant to the question of technical feasibility. The FCC Order contemplates that incumbent LECs will need to make modifications to their networks in order to accommodate new entrants. FCC Order No. 96-325 ¶ 202. In addition, costs are irrelevant to the question of technical feasibility. FCC Order No. 96-325 ¶ 199. Therefore, GTE must provide the required access to Operator Systems.

**E. Transport Elements**

The Commission should require GTE to provide unbundled access to Dedicated and Common Transport and Tandem Switching. Transport elements provide the functionality to connect one location to another. This permits subscribers to reach each other, even if they are not served by the same local switch or the same carrier. (Crafton, Tr. 329.) Dedicated Transport is an interoffice transmission path which a single carrier uses exclusively for the transmission of its traffic. (Crafton, Tr. 330.) Common Transport is an interoffice transmission path that links together unbundled network elements and carries the traffic of more than one carrier. (*Id.*) Tandem Switching is the network element that establishes a communications path between two central offices through a third central office (the Tandem Switch). (Crafton, Tr. 330.) Tandem Switching is used when it is either

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<sup>26/</sup> The FCC found that Operator Systems is a network element that must be unbundled. 47 C.F.R. § 51.319(g); FCC Order No. 96-325 ¶¶ 534-540.

impractical or uneconomical to connect multiple central offices and/or points or presence directly to each other.

AT&T and other new entrants may use the various transport network elements to connect any two network components to one another, be they GTE's unbundled network elements, AT&T facilities, or third party facilities. (Crafton, Tr. 331.) AT&T must be permitted to make a choice between buying Dedicated Transport, Common Transport, or Tandem Switching based on the relative cost of the options and the amount of traffic that will be carried. (*Id.*) This will permit AT&T to offer service to Florida consumers in the most efficient manner possible at the lowest price possible, so that it can offer better service to Florida consumers.

By requiring GTE to unbundle transport elements, this Commission will facilitate competition by allowing new entrants to invest in network interconnections and facilities needed for exchange of traffic with other carriers in ways that make economic sense. (Crafton, Tr. 331.) For example, AT&T's initial traffic volumes might not justify the capital investment needed for AT&T to develop its own Dedicated Transport facilities. As a result, it should be able to purchase this network element from GTE and begin competing immediately, until it becomes practical for AT&T to invest in developing its own Dedicated Transport facilities. (*Id.*) Thus, unbundling these network elements will permit Florida consumers to enjoy the benefits of competition sooner than if a new entrant is forced to build its own Dedicated Transport.

GTE argues transport elements are not network elements subject to the Act's unbundling requirements. As a matter of law, GTE's position is wrong because the Act specifically requires that Local Switching be unbundled from transport. 47 U.S.C.A. § 271(c)(2)(B)(vi). Therefore, these transport elements must be provided to AT&T and other new entrants on an unbundled basis.

Although GTE has agreed to provide AT&T with Dedicated and Common Transport and Tandem Switching as part of its "port" offering, it refuses to provide access that will allow routing to AT&T's Operator Systems. GTE concedes its switches are capable of customized routing that will permit it to distinguish between customers, but claims it lacks the capacity to perform custom routing. Thus, the only issue GTE raises is that of customized routing, which was discussed above in regard to

Local Switching. As explained above, customized routing is technically feasible, notwithstanding GTE's capacity argument.

**F. Signaling Network Elements/AIN Services**

The Commission should direct GTE to unbundle its signaling network elements and provide unmediated access to AIN triggers. Signal System 7 ("SS7") signaling is part of the call set-up process that passes information on the routing and billing of calls within a carrier's network and among carriers. (Crafton, Tr. 331.) For example, Signaling Systems provide validation for calling cards and other operator services calls. Signaling Systems also route 800 number calls to the correct carrier and end user.

There are three signaling network elements: Signaling Links ("SLs")/Transport, Signal Transfer Points ("STPs"), and Service Control Points ("SCPs")/Databases. An SL is a set of dedicated transmission paths that carry signaling messages between carriers' central office switches and signaling network. It is essentially a digital private line. (Dellangelo, Tr. 1986.) STPs are the switches of the signaling system that route signaling messages between central office switches and databases. (Crafton, Tr. 332; Dellangelo, Tr. 1987.) Databases are the network elements that provide the functionality for storage of, and access to, information required to offer a particular basic telecommunications service and/or capability. (*Id.*) An SCP is a specific type of database that contains customer and/or carrier specific routing, billing, service instructions to be acted on by carrier's central office switches and operator systems. The SCP responds to signaling queries sent to it by a central office switch. SCPs also provide operational interfaces to allow for provisioning, administration, and maintenance of subscriber data and service application data (*e.g.*, an 800 database stores customer record data that provides information necessary to route 800 calls). (Crafton, Tr. 332-333.)

SS7 signaling is critical to modern telecommunication services because it enables different providers' networks to set up calls to one another, thereby allowing the customer of one provider's network to communicate with a customer of another provider's network. (Crafton, Tr. 333.) The unbundled signaling network elements are particularly important to consumers in the competitive local services market because they permit efficient interconnection and calling between networks without additional post dial delay. They also will enable AT&T to introduce innovative, competitive services

with shorter development and delivery time. (Id.) Finally, because of the high cost of deploying, maintaining, and interconnecting a signaling network, AT&T must have the option to purchase these elements either alone or in combination from GTE or other suppliers.

The unbundling of each of these signaling elements is technically feasible and must be allowed so that AT&T can obtain signaling network elements in an efficient and cost-effective manner. For example, AT&T already is interconnected to STP pairs belonging to local exchange carriers. Most of these interconnections were accomplished during the two year period beginning October 1991, coincident with the FCC's order on 800 number portability. (Crafton, Tr. 344.) In fact, AT&T connects to GTE's signaling system today. (Dellangelo, Tr. 1985-86.) Further establishing the technical feasibility of unbundling, signaling elements already are provided on an unbundled basis in Colorado, Michigan and Texas. (Crafton, Tr. 361.) Thus, the industry has had its considerable experience and success in unbundling signaling interconnection. (Crafton, Tr. 344.) Moreover, the FCC Order requires GTE to provide the requested unbundled signaling element. 47 C.F.R. § 51.319(e).

Signaling systems also enable carriers to create and provide AIN services efficiently, which will add calling features and increase choices for Florida consumers. GTE refuses to unbundle its access to its AIN triggers in such a way that AT&T can achieve parity in the creation and offering of AIN-based services. (Crafton, Tr. 351.) AIN will allow AT&T to offer Florida consumers a wide variety of innovative, competitive advanced features and services independent of GTE. (Dellangelo, Tr. 1987.) For example, access to AIN triggers would allow AT&T to offer Florida consumers voice recognition dialing, a feature Florida consumers currently do not enjoy. (Crafton, Tr. 351, 375-76.) Because access to GTE's AIN triggers will allow AT&T to customize offerings to Florida consumers without duplicating GTE's network, AT&T will be better able to provide competing services to its Florida customers now and in the future.

GTE proposes to provide AT&T access to GTE's AIN via a "gateway" or mediation device. (Crafton, Tr. 351.) GTE asserts that providing unmediated access to AIN is not technically feasible. (Dellangelo, Tr. 1979-80.) As an alternative, GTE states that it will work with AT&T to develop and

test AIN services that will execute on GTE's platforms, thus permitting AT&T "virtual" access to AIN capabilities. (Dellangelo, Tr. 1973-75.)

The use of a mediation device will cause AT&T consumers to experience an increase in post dial delay over that of a similar call made by a GTE customer. (Crafton, Tr. 333.) Post dial delay is the amount of time after entering the last digit of a telephone number before hearing a valid audible network response. A mediation device also will insert additional points of potential network failure, as well as increasing the cost and time of implementing services to customers. (Crafton, Tr. 420.) Because GTE will not interpose a mediation device on its own network, allowing it to impose a mediation requirement on new entrants will give GTE an unfair competitive advantage. (Crafton, Tr. 376.)

What makes GTE's insistence on a mediation device truly anti-competitive is that this additional inconvenience to Florida consumers is not necessary. GTE has admitted the STPs in the Signaling System provide mediation to adequately protect both the switch and database applications in the signaling network. (Morris, Tr. 1172.) There are several existing protections resident in STPs: various firewalls to protect one customer's service from another; the fact that GTE as the ultimate provisioner of the switch trigger has the final say in responding to a message; and AT&T's offer to do network validation testing with GTE. (Crafton, Tr. 421.) Indeed, AT&T and another local service provider, BellSouth, have conducted tests on AIN interconnection which demonstrate that unmediated access to the AIN through the SS7 signaling system is technically feasible, and that there will be no impact on network reliability and security without this mediation. (Crafton, Tr. 359; Ex. 8.)

GTE also asserts that AIN end office triggers cannot be shared by multiple providers. (Dellangelo, Tr. 1959.) While this may be true for a single customer, it is not true as to a single switch serving multiple customers. AIN standards expressly permit an AIN query for given subscribed trigger to be routed to a different AIN SCP database, depending on the customer subscribing to that trigger. (Crafton, Tr. 360.) Thus, AT&T customers served by a GTE switch can have their AIN queries routed to the AT&T AIN SCP database, while GTE customers on the same switch subscribing to the same triggers can have their AIN queries routed to the GTE AIN SCP database. In this sense, the AIN triggers within a GTE switch can be accessed by multiple providers. In AT&T-BellSouth AIN test

report dated November 1995, AT&T concluded that the sharing of subscribed triggers between multiple service providers is technically feasible. (Id.; Ex. 8.)

Florida consumers should not be forced to accept inferior services in order to obtain services from GTE's competitors. Therefore, the Commission should order GTE to provide unmediated access to its AIN triggers. However, should the Commission decide that mediation is required, it must be done on a nondiscriminatory basis to avoid giving the GTE an advantage over new entrants, which means GTE also should impose this requirement on its own customers' calls.<sup>27/</sup>

**G. Operations Support Systems**

The Commission should require GTE to provide AT&T with electronic interfaces to its Operations Support Systems in all situations, including those where AT&T is purchasing GTE retail services for resale, and those where AT&T is purchasing unbundled network elements, combining them, and then selling its own services to Florida consumers. Real-time and interactive access to Operations Support Systems via electronic interfaces will permit AT&T to respond to customer requests or inquiries on the spot. Without this access, Florida consumers who select AT&T will not enjoy the same quality of services that GTE offers its customers, thus hindering AT&T's ability to compete.<sup>28/</sup> GTE knows that a local service provider quite simply cannot operate without operations support systems, and therefore is trying to delay AT&T's access to these critical services. (Shurter, Tr. 191.) The FCC requires GTE to provide AT&T access to GTE's Operating Support Systems at parity with those GTE provides itself, unless it is not technically feasible. FCC Order No. 96-325 ¶¶ 521-24. Provision of these services is technically feasible as explained under Issue 6(a) above.

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<sup>27/</sup> The FCC Order concluded that access to AIN SCPs is technically feasible, but noted that such access may present a need for mediation mechanisms. FCC Order No. 96-325 ¶ 488. The FCC Order increases the burden of proof where an incumbent LEC raises reliability or security issues. GTE must prove by clear and convincing evidence that unbundling will have a specific and significant adverse effect on the network. FCC Order No. 96-325 ¶ 203. GTE did not meet this burden because the existing signaling network can maintain network integrity, thus eliminating the need for the gateway device. (Crafton Tr. 359.)

<sup>28/</sup> The FCC order requires GTE to provide access to its Operations Support Systems. 47 C.F.R. § 51.319(f); FCC Order No. 96-325 ¶¶ 516-528.

GTE seeks to divert attention from the technical feasibility issue by claiming that AT&T has not sought operations systems support as an unbundled network element. AT&T has consistently maintained that it requires these services and raised the issue in the context of parity. GTE then makes the outrageous claim that AT&T is attempting to get this element "for free." (Langley, Tr. 2043.) GTE's position is baseless. In fact, GTE now acknowledges that AT&T has indicated it will pay its fair share of the costs associated with providing electronic interfaces. (Drew, Tr. 2077.) AT&T never has stated it would not pay for Operational Support Systems. (Shurter, Tr. 191.) AT&T fully intends to pay its fair share of the costs associated with providing these services. GTE is seeking to delay AT&T's entry into the local market by denying access to these required services. Its argument regarding the manner in which AT&T raised the issue is simply a red herring. The bottom line is that access to unbundled Operations Support Systems is technically feasible and therefore required. GTE should be ordered to unbundle this element.

**ISSUE 13(b): What should be the price of each of the items considered to be network elements, capabilities, or functions?**

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**AT&T:** TELRIC provides the appropriate methodology for establishing the cost-based rates required by the Act. Those rates should equal TELRIC plus a reasonable share of joint and common costs. Rates should be determined using the Hatfield Model where appropriate data are available because GTE has not provided appropriate TELRIC studies. Absent appropriate data, interim prices may be based on any appropriate default prices including those established by the FCC Order.

\* \* \* \* \*

AT&T requests that the Commission establish unbundled network element prices at the rates generated by the Hatfield Model as set forth in Exhibit 11.<sup>29/</sup> AT&T's proposed rates are reasonable because they result from a verifiable methodology that measures economic costs, including an

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<sup>29/</sup> For operator systems and other similar elements not costed by the Hatfield model, the Commission should adopt interim proxy ranges resulting from the FCC Order. See FCC Order No. 96-325 ¶ 932. While the pricing provisions of the Order have been stayed due to jurisdictional considerations, these FCC ranges reasonably reflect the forward-looking costs typically incurred by telecommunications providers when placing network elements in service, and were established after consideration of data from multiple participants in the telecommunications industry, and are consistent with the record in this docket..



appropriate share of joint and common costs, and a reasonable profit as the Act provides. 47 U.S.C.A. § 252(c)(3) and (d)(1). Moreover, rates at levels proposed by AT&T are critical to ensure that open and efficient competition intended by the Act challenges GTE's current and growing market power in Florida.

AT&T's proposed rates are based on the Hatfield model methodology which has been open to public scrutiny and debate and which has received validation from numerous sources, including the recent decision of the Iowa Department of Commerce Utilities Board.<sup>30/</sup> To date, GTE has not provided cost-based rates which either satisfy the Act or permit meaningful competition to the benefit of Florida consumers. Instead, GTE's proposed rates reflect an aggressive and overreaching attempt to protect its monopoly revenues and preclude meaningful competition in GTE territory, contrary to the requirements of the Act. To the extent GTE has attempted to support these rates, this support demonstrates only the single-mindedness of its intent to stifle competition.

**A. Pricing of Unbundled Network Elements At TELRIC Plus Promotes Efficient Competition And Comports With The Act**

The Act requires that rates incumbent LECs charge to new entrants be just and reasonable. 47 U.S.C.A. § 252(c)(3) and (d)(1). The Act defines just and reasonable rates by requiring that rates for unbundled network elements shall be "based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element" and may include profit. 47 U.S.C.A. § 252(d)(1)(A)(i).

As this Commission has recognized, the appropriate pricing principles require that rates for unbundled network elements purchased by new entrants reflect economic -- not embedded -- costs plus a reasonable profit, when profit is appropriate. Florida Public Utilities Commission, Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, June 24, 1996, at 22 ("Order No. 96-0811") Setting unbundled network element rates at economic cost plus profit serves the stated intent of the Act to "promote competition . . . in order to secure lower prices and higher quality services for American

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<sup>30/</sup> Iowa Department of Commerce Utilities Board Preliminary Arbitration Decision, Docket Nos. ARB-96-1, ARB-96-2, October 18, 1996 (discussed below). Before the Iowa Board, AT&T proposed use of the Hatfield 2.2 model. The Iowa Board accepted this recommendation.

telecommunications consumers." See Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (introductory note); (see also Kaserman, Tr. 659.) Meaningful competition requires that the price of unbundled network elements be based on forward-looking incremental costs, because both buyers and sellers in a competitive market make economic decisions based on these types of costs. (Kaserman, Tr. 655-57.)

In a competitive market, the price Florida consumers will be willing to pay for a service relates directly to the incremental cost of producing that service. (Id. at 654.) Thus, new entrants into GTE markets will be unable to enter the market using unbundled network elements if the price for these network elements does not reflect GTE's incremental, economic costs. Similarly, knowledge of economic costs is critical to the decisions of potential market entrants, because these costs determine whether combining unbundled network elements is a viable form of entry into GTE markets, along with resale-based or facilities-based entry. (Id. at 662-63.) In Order No. PSC-96-0811, this Commission already has recognized the propriety, and pro-competitive effect, of pricing unbundled network elements at Total Services Long Run Incremental Cost ("TSLRIC") rather than providing the absolute revenue protection sought by GTE. Order No. PSC-96-0811, at 22. As noted by the Commission, competitive risk is to be borne by all providers of local services, including GTE.

The Commission should adopt AT&T's position that unbundled network element rates be set at Total Element Long Run Incremental Cost ("TELRIC") (which includes a reasonable profit), plus a reasonable allocation of forward-looking joint and common costs. TELRIC is a widely accepted methodology for measuring economic costs. It is identical to the TSLRIC methodology which this Commission adopted in Docket No. 950984-TP, except that TELRIC focuses on the incremental costs of a network element rather than the costs of a service. (Goodfriend, Tr. 728.) Both TELRIC and TSLRIC measure the relevant universe of costs by focusing on costs that are forward-looking and not embedded; long run, as opposed to short run; most efficient, that is, reflective of technology that is not outdated; and relating costs to their true causal factor. (See Kaserman, Tr. 658; Wood, Tr. 1600-1601) Importantly, both TELRIC and TSLRIC include profit. The ultimate difference between TELRIC and TSLRIC is that TELRIC includes the forward-looking incremental costs of shared facilities and operations assignable to a particular network element. (Gillan, Tr. 79.)

In addition to economic cost developed under TELRIC (which includes economic profit), AT&T proposes that unbundled network element prices include a reasonable proportion of joint and common costs not included with TELRIC costs. These joint and common costs should represent economic costs measured as described above and should be allocated to all unbundled network elements on a reasonable basis. A proper application of the TELRIC methodology should result in a minimal amount of joint and common costs. (Kaserman, Tr. 704; see also FCC Order No. 96-325 ¶ 695.) In summary, AT&T's proposed rates are appropriate under the Act and sound economics. Most importantly, these rates result in pro-competitive prices for local telephone services in Florida.

**B. GTE's Proposed Rates Eliminate The Possibility Of Efficient Competition and Should Be Rejected by the Commission**

GTE has proposed rates that attempt to recover "*at least all* of GTE's historic and forward-looking costs of unbundled elements or resold services, including a reasonable profit." Arbitration Brief of GTE Florida, Inc., Docket No. 960847-TP, September 10, 1996, at 14 ("GTE Arbitration Brief") (emphasis added). Remarkably, GTE's actual calculation of unbundled network element rates goes far beyond even the recovery of all historic costs of unbundled network element costs and seeks to include in the rates for these elements a portion of every inefficiency, investment in new markets, contribution, cross-subsidy and excess profit experienced by GTE and recoverable through GTE's massive revenue stream under monopolistic conditions. GTE witness Dennis Trimble testified on cross examination that GTE's method of calculating the "reasonable allocation" of joint and common costs "was to take 1995 revenues and basically subtract from them the sum of the TSLRICs and equate those to common costs."<sup>31/</sup> (Trimble, Tr. 1877.) This calculation is documented in Exhibit 49, DBT-2. The enormous implications of this calculation cannot be overstated -- GTE is

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<sup>31/</sup> Moreover, Mr. Dennis Trimble admitted on cross examination that GTE's "forward-looking" cost assumptions contemplated no reduction of joint and common costs in the face of increased competition. (Trimble, Tr. 1913-14.) His testimony is belied by the enormous writeoffs GTE is taking even now to reduce joint and common costs and improve competitive position. (Ex. 53, at 32.) His testimony also confirms GTE's objective -- maintain the status quo notwithstanding the Act's requirement that competition be permitted in local exchange markets.

asking for even more than they could have been awarded under the traditional rate-of-return type proceedings that characterized the now-discarded regulatory monopoly.<sup>32/</sup>

GTE's motives are crystal clear--*GTE wants it all*. The Telecommunications Act of 1996 has placed GTE in the unprecedented position of being an unregulated, vertically integrated telecommunications monopoly. Specifically, the Act has permitted GTE to enter the long distance market without requiring that it first take steps to open its own local exchange markets to competition. Within an hour of the signing of the Act, GTE executed a contract providing for its entry into the long distance market. (Gillan, Tr. 53.) So significant is the power conferred on GTE that in May 1996, Merrill Lynch stated within twelve months GTE expected to "gain 10% of its \$4.8 billion addressable market . . . with negligible cost to the bottom line." (Gillan, Tr. 54 (quoting Merrill Lynch).) What MCI achieved in two decades, GTE will achieve in less than two years. (Gillan, Tr. 55.)<sup>33/</sup>

Now, while GTE continues to lock more and more customers into contracts of one, two, and three years, (Gillan, Tr. 55), GTE seeks to impose rates for unbundled network elements which would have the dual effect of guaranteeing its present revenues, and maintaining rates high enough to preclude meaningful challenges from potential entrants into GTE markets. As indicated in the testimony of AT&T witness Mr. Gillan, "[t]he Commission cannot affect GTE's entry [into the interexchange market], it can only move to quickly establish the tools GTE's rivals need to provide consumers choice." (Gillan, Tr. 46.) Quick action by this Commission is essential to establishing competition for Florida local telephone services.

GTE has proposed a pricing methodology which denies competition: GTE formally describes its pricing methodology as the "Market" Efficient Component Pricing Rule ("M-ECPR"). This rule is

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<sup>32/</sup> Compare GTE's tariffed two-wire loop rate of \$20.00, identified at Trimble, Tr. 1842, with GTE's allegedly "pro-competition" proposed rate of \$33.08. (See Ex. 49.) A further indication of this overreaching is seen in GTE's correspondence with the FCC during the recent Implementation Docket. FCC Order No. 96-325 ¶ 831. There, GTE argued that its actual loop costs were \$8.00 higher than the Hatfield Model 2.2 estimated loop costs -- a number far beneath the \$33.08 figure advocated by GTE in this proceeding.

<sup>33/</sup> GTE's 1995 Annual Report indicates that total return to GTE shareholders in 1995 was 52.4%. (Exhibit 53, at 18.) Moreover, GTE's management expects GTE's extraordinary profitability to continue to grow for the "foreseeable future." (Gillan, Tr. 55.)

virtually identical to the discredited Efficient Component Pricing Rule ("ECPR").<sup>34</sup> The basic flaws of ECPR still remain. This rule uses "incremental costs" as inputs, and is therefore nominally based on these costs. In reality, GTE adds to these costs an additional factor, which is measured as its revenues less incremental costs. GTE uses various terms for this added factor -- including "joint and common cost." (Trimble, Tr. 1877.) These various terms are simplistic attempts to conceal the true nature of GTE's proposals; GTE is simply saying its rates should match its existing revenue. This, of course, produces the absolute revenue protection GTE desires. On cross examination, GTE witness Dennis Trimble admitted that, up to the price cap, application of the M-ECPR would leave GTE completely immune to competition generated by purchasers of unbundled network elements -- whether GTE were selling to an end user or a competitor, all monopoly revenues would be recovered through the price.<sup>35/</sup> (Trimble, Tr. 1919.)

This Commission already has considered and rejected the ECPR. In doing so, it stated:

A competitive market does not thrive on indifference. If a LEC is rendered indifferent by virtue of the pricing of its services as to whether it serves the customer or not, the reason for establishing competition is eliminated. There is no longer any incentive for the LEC to seek to attract customers, and the market is no longer driven by competition.

Order No. PSC-96-0811 at 17. The Commission should reject GTE's proposed rates as the antithesis of the pro-competition rates required for open, efficient competition.

At the same time that GTE urges this Commission to shield it from the negative effects of competition, GTE is preparing itself to fight for the rewards competition brings -- should GTE be unsuccessful in maintaining its monopoly. In the fourth quarter of 1995, for example, GTE took an

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34/ See FCC Order No. 96-325, ¶¶ 708-710. Industry analysts and the FCC have already considered and rejected ECPR as a means of measuring economic costs and setting competitive rates. *Id.* at ¶ 709 ("ECPR does not provide any mechanism for moving prices toward competitive levels; it simply takes prices as a given.") The only salient difference between the two formulations is that the M-ECPR eliminates only the most egregious outcomes of the rule by "capping" opportunity costs using a non-validated "market constraint." (Kaserman, Tr. 701-02; Goodfriend, Tr. 761-62.)

35/ On cross examination, Mr. Trimble acknowledged several revenue-enhancing markups of 42%, 1129%, and 3107% on 2-wire local loop costs, "transport facility per mile" costs, and "DS-1 facility per airline mile," respectively. (Trimble, Tr. 1929-30.) These markups are illustrative of GTE's "I want it all" approach. Obviously, to the extent GTE's proposed "cost-based" rates include these types of excessive profits, GTE's rates warrant close scrutiny.

after-tax extraordinary charge of \$4.6 billion dollars in order to reduce costs and increase future profits. (Ex. 53, at 32.) Even as it was attempting to foist onto new competitors and Florida consumers unbundled network element prices based on historic revenues, GTE was trying to unload these costs to widen even further its competitive advantage.

**C. GTE Does Not Provide Sufficient Data To Fully Develop Criticism Of Its Cost Model**

GTE has shrouded the derivation of its so-called "costs" in secrecy and through a lack of adequate documentation. For example, GTE witness Mr. Trimble admitted on cross examination that nonrecurring costs identified in Exhibit 49, DBT-3, could not be verified because they were dependent on "internal programs" unavailable to the Commission Staff, AT&T and MCI. (Trimble, Tr. 1884-85.) Moreover, GTE's entire COSTMOD cost model software is proprietary and unavailable for scrutiny by this Commission and the consumers of Florida. (Trimble, Tr. 1898-99.) Mr. Trimble also admitted on cross examination, that GTE provided no support for certain primary and secondary loop characteristics. (Trimble, Tr. 1891.)

For this Commission to fully comprehend the overreaching in GTE's cost studies, GTE must provide adequate cost data for a full assessment of its true economic costs. GTE should bear the burden of proving that its proposed prices comply with the Act and promote efficient competition because it has disproportionate access to data pertaining to its own economic costs. In addition, because GTE seeks to assign enormous amounts of joint or common costs to the prices of its network elements, GTE must produce studies accurately identifying its efficient, directly attributable forward-looking costs and forward-looking common costs.

In developing prices for Florida consumers, this Commission should rely on cost studies which are open, subject to independent evaluation and supportable by detail. GTE has acknowledged that in many cases it did not provide the detailed cost data necessary for this Commission to generate just and reasonable, pro-competitive prices for Florida consumers. It is readily apparent that AT&T's proposed rates, with its supporting data -- verifiable by all parties and supported by record evidence, should be adopted.

**D. The Commission Should Adopt AT&T's Recommended Rates For Unbundled Network Elements**

As indicated above, the Commission should establish unbundled network element prices at the rates proposed by AT&T in Exhibit 11. These rates are based on the forward-looking incremental costs of unbundled network elements and promote the efficient competition envisioned by the Act. AT&T used Version 2.2, Release 2 of the Hatfield Model to generate its proposed rates. This revision specifically contains the capability to estimate costs for unbundled network elements as well as universal service components. (Wood, Tr. 1597.)

The Hatfield Model produces rates compliant with the Act and this Commission's Order No. PSC-96-0811, because it calculates the price of unbundled network elements using the forward-looking incremental costs of these elements. The Hatfield Model assumes long run incremental costs. (Wood, Tr. 1600-01.) The Hatfield Model is forward-looking, utilizing existing wire locations in conjunction with the most efficient, currently available technologies for the provision of loop facilities, switching, interoffice transport and signaling. (*Id.* at 1601.) The Hatfield Model includes a forward-looking cost of capital in the cost being calculated. (*Id.*) Finally, the Hatfield Model attributes incremental costs of shared facilities and operations to specific network elements to the greatest extent possible. (*Id.* at 1604.)

Consistent with the Act and this Commission's Order No. PSC-96-0811, the Hatfield Model does not include embedded costs. (Wood, Tr. 1601-02.) Neither does the Model include universal service subsidies. (*Id.* at 1602.) As indicated by Order No. PSC-96-0811, these subsidies are properly addressed through Florida's universal service subsidy provisions. Order No. 96-0811, at 23.

In direct contrast to GTE's cost studies, the Hatfield Model and its results are subject to direct and straight-forward scrutiny. (Wood, Tr. 1599.) Complete and detailed documentation on the Hatfield Model is available, including documentation of its algorithms, inputs and assumptions. (*Id.*) Moreover, the Hatfield Model is publicly available and interactive. (*Id.*) Accordingly, all participants in these proceedings, and the industry as a whole, can access the Hatfield Model, vary the inputs to the Hatfield Model, ascertain its sensitivity to input changes, and validate its accuracy. (*Id.*) All of these characteristics are essential to any determination of the validity of a cost study, and the Hatfield Model has these characteristics.

Numerous telecommunications forums have accepted the Hatfield Model. Most interestingly, the Iowa Utilities Board recently agreed that the Hatfield Model was an appropriate vehicle for determining network element rates. The October 18, 1996 Preliminary Arbitration Decision of the Iowa Utilities Board, issued *after* the Eighth Circuit stay, specifically adopts AT&T's proposed Hatfield rates for unbundled network elements, noting that AT&T's Hatfield data are "supported by costs studies using a model that is publicly available and can be verified." Iowa Department of Commerce Utilities Board Preliminary Arbitration Decision, Docket Nos. ARB-96-1, ARB-96-2, October 18, 1996, at 4 (Attachment 1). The FCC Order, in turn, also recognizes that the Hatfield Model 2.2 "appear[s] to offer a method of estimating the cost of network elements on a forward-looking basis that is practical to implement and that allows state commissions the ability to examine the assumptions and parameters that go into the cost estimates." FCC Order No. 96-325 ¶ 835.

GTE tries to attack the Hatfield Model on several grounds, but all of these arguments collectively reflect GTE's only real complaint -- the Hatfield Model does not produce the revenue-protecting, competition-indifferent result sought by GTE -- and all are unwarranted. The Commission therefore should consider each of GTE's arguments in this context.

**Not All Hatfield Inputs Are "Florida Specific."** GTE complains that the Hatfield Model employs input data that are not Florida specific. The Hatfield Model uses seven categories of input data which permit reasonable estimates of unbundled network element costs. These input data include: Census Block Group ("CBG") data, business employee data, cable and installation cost data, wire center data, traffic data, expense data, and ARMIS-reported data on the number of residence and business lines. (Wood, Tr. 1609.)

GTE's argument is simply an overstatement. As GTE well knows, the Hatfield Model used ARMIS data, as well as the CBG, business, and geologic data, which are data specific to GTE Florida. Use of this data produces results that are highly tailored to Florida's specific telecommunications environment. Moreover, unlike GTE's cost studies, the Hatfield Model uses Florida CBG data which take into account not only the actual number of households in each CBG, but the actual CBG land area, the actual CBG position relative to the nearest wire center, and the actual geological factors relevant to that CBG. (See Wood, Tr. 1609.) Accordingly, the Hatfield Model is capable of producing, and has in



this instance produced, geographically deaveraged loop prices -- something which GTE has been either unwilling or unable to do -- which are highly tailored not only to Florida, but also to specific geographic regions within Florida. Finally, to the extent that default values are present in the Hatfield Model, these values were compared to existing conditions in Florida and adjusted where appropriate. (See e.g., Wood, Tr. 1703, 1707.) All values in the Hatfield Model are open to scrutiny and public debate.

**Model Improvements.** GTE has raised the issue that the Hatfield Model has experienced "constant changes." (Wood, Tr. 1639-42.) GTE is correct in that the Hatfield Model originally was used to produce TSLRIC-based estimates of local exchange service costs. (Wood, Tr. 1596.) A second version, Hatfield Model V.2.2, Release 1, was developed to estimate costs for unbundled network elements only. (*Id.* at 1596-97.) Improvements in the Hatfield Model have been incorporated into Version 2.2, Release 2, which was used to generate AT&T's proposed unbundled network element prices. (*Id.*) Far from suggesting that AT&T's proposed unbundled network element prices are somehow deficient, these improvements impart a higher degree of certainty to the results of the Model. Accordingly, GTE should welcome these changes.

**Shortcomings of "Related" Benchmark Model.** GTE attacks various aspects of the initial Benchmark Cost Model (BCM1). These attacks include elaborate criticisms relating to BCM1's calculation of loop plant investment costs and cable density assumptions. However, as GTE well knows, while earlier versions of the Hatfield Model were related in some aspects to the BCM1, the Hatfield Model 2.2 used to generate AT&T's proposed costs is not based on BCM1. Accordingly, whether valid or not, GTE's criticisms of BCM1 are irrelevant here. (Wood, Tr. 1621.)

**Model Results Do Not Replicate "Actual Costs."** GTE complains that the Hatfield Model does not replicate GTE's "actual costs." To the extent GTE is criticizing the Hatfield Model for failing to equate "costs" with monopoly revenues, as GTE attempts to do in its own cost study, GTE is correct. As previously indicated, the Hatfield Model calculates the costs that an efficient wholesale provider of unbundled network elements would incur on a forward-looking basis. These costs include estimates of forward-looking joint and common costs. Obviously, costs calculated in this manner will be lower than the historic, inefficient embedded costs of GTE. Inclusion of embedded joint and common costs

in the price of unbundled network elements, however, is inconsistent with the spirit and the letter of the Act.<sup>36/</sup> Accordingly, a model of the sort envisioned by GTE would not be appropriate in the context of these proceedings.

**"Unrealistically High" Fill Factor.** GTE complains that the Hatfield Model uses an "unrealistically high fill factor." Actually, the Hatfield Model uses different fill factors, which vary depending on the type of material or equipment being used within an element and the characteristics of the area in which it is placed. (Wood, Tr. 1623-24.) As indicated in the testimony of AT&T/MCI witness Mr. Don Wood, these factors are conservative in the context of a forward-looking cost study and are calculated to accommodate both growth over some intermediate period of time and short-term spikes in demand. (Wood, Tr. 1700-05.)

Moreover, GTE's representation that the excess capacity represented by a fill factor of less than 1.0 is a "current" economic cost is simply wrong. "Spare capacity" reflected in overly low fill factors may well, for example, reflect GTE's built-in capability to offer future competitive broad band services. (Wood, Tr. 1624.) While inclusion of forward-looking costs relating to administrative fill may be appropriate, inclusion of future strategic capacity is not. *Id.* GTE's position, however, is consistent with its attempts to pass on to new market entrants and Florida consumers the costs GTE incurs to gain a future competitive advantage.

**E. The TELRIC Methodology Will Not Result In a "Taking"**

GTE contends that the pricing rules adopted by the FCC constitute a taking under the Fifth Amendment of the Constitution. In particular, it complains that a TELRIC pricing methodology precludes it from recovering all of its costs, especially its embedded costs. This argument is nothing more than yet another attempt by GTE to achieve a pricing result which will stifle competition.

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<sup>36/</sup> Because GTE is privy to the actual costs of its unbundled network elements, it should feel free to demonstrate that costs such as its forward-looking joint and common costs exceed those captured by the Hatfield Model. To date it has not done so, and the record in this docket support use of the Hatfield results.

This Commission already has considered and rejected this argument, which was raised by GTE Florida. Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996. In rejecting GTE's takings argument, this Commission stated:

Implicit in GTEFL's arguments is the notion that this Commission owes GTEFL an increase in local rates to replace the company's potential losses of expected contribution and profit. GTEFL is asking that we look at potential revenue losses, albeit under the guise of alleged constitutional violations. Even if it could be predicted with certainty that there would be major losses GTEFL does not have a per se statutory right that it must recover profit and contribution as a result of unbundling and reselling services. Even under the rate-base regulation regime in Chapter 364, GTEFL was merely afforded the opportunity to earn a fair return on its investment, not a guarantee of a return. Further, under the new, price-regulated regime in Chapter 364 that GTEFL has elected, GTEFL is not guaranteed a specific return in this competitive environment. Moreover, even if the losses come to fruition, such losses, if necessary, can be addressed through appropriate Commission proceedings.

Id. at 21-22. This Commission correctly concluded that the arguments raised by GTE in that proceeding were invalid, and similarly should rule that such arguments raised by GTE in this proceeding are equally invalid.

The correctness of this Commission's decision is quite clear when relevant takings law is examined. As an initial matter, no taking claim can arise from the mere use of the TELRIC approach. It is the result of a methodology, and not the methodology itself, which could be the possible basis for a takings claim. As the Supreme Court explained in FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944), "it is not theory but the impact of the rate order which counts." Id. at 602. Rather, it is only necessary that the "end result" be just and reasonable. Id. at 603.

In considering the "end result," GTE ultimately must prove deep financial hardship of the type that threatens its continued operation or existence. The mere "fact that the value [of the utility's property] is reduced does not mean that the [rate] regulation is invalid." Hope, 320 U.S. at 601. No constitutional claim can be made unless the agency's chosen rate-making methodology produces rates as a whole which are so low that they "jeopardize the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital." Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989). The Supreme Court also has stated that the

end result is to be measured against the company's performance as a whole. The fact that a particular element of the company's business has become unprofitable does not establish a takings claim.

Baltimore & Ohio Railroad Co. v. United States, 345 U.S. 146 (1953); Fort Smith Light & Traction Co. v. Bourland, 267 U.S. 330, 332 (1925) (construing Brooks-Scanlon Co. v. Railroad Commission of Louisiana, 251 U.S. 396 (1920) as meaning that a "railway may be compelled to continue the service of a branch or part of a line, although the operation involves a loss.")

In trying to prove this serious financial impact, GTE must establish that it is the Commission's order imposing a TELRIC methodology, and not other events, which causes the serious loss that could be remedied by a takings claim. In this context, it is established that economic losses resulting from the introduction of competition do not give rise to a takings claim. The takings clause "has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces." Market St. Ry. Co. v. Railroad Comm'n of State of California, 324 U.S. 548, 567 (1945). The fact that the government exercises its power to aid the development of a claimant's competitors, and thus indirectly diminishes the claimant's value, does not affect the analysis. Id. at 567 (rate order reflecting diminished value of railroad resulting from competition with a municipal railway line does not give rise to a takings claim).

GTE also must show a serious economic loss based on the current value of its facilities, and not some historical value of its facilities. "[T]he due process clause never has been held . . . to require a commission to fix rates . . . on the historical valuation of property whose history and current financial statements showed the value no longer to exist." Market Street, 324 U.S. at 567. That is true even if the new methodology results in substantial revenue losses and unprofitability, because a "regulated utility has no constitutional right to a profit . . . and a company that is unable to survive without charging exploitative rates has no entitlement to such rates." Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission, 810 F.2d 1168, 1180-81 (D.C. Cir. 1987). As a result, GTE would have to take into account its recent actions in writing off assets in anticipation of competition. In 1995, for example, GTE wrote off \$4.6 billion to restructure its telephone operations in order to "redesign, consolidate and streamline." (Ex. 53, at 32.)

Moreover, the Act compensates GTE to offset any reduction of revenues. In particular, the Act permits GTE to compete in other market areas. GTE has embraced the concept of competition, and its attendant financial risks, because of the prospects of enhanced revenues from other markets. Accordingly, this type of regulatory scheme cannot effect a taking because it provides GTE the opportunity to earn a fair return on its business overall. See Hope, 320 U.S. at 602. See also Ruckelshaus v. Monsanto, 467 U.S. 986 (1984) (pesticide applicant's submission of data, ultimately released by government, in exchange for the economic advantages of a pesticide registration not a taking where investors were aware of the risks); Colorado Springs Production Credit Association v. Farm Credit Administration, 967 F.2d 648 (D.C. Cir. 1992) (forced contribution to assist crisis in Farm Credit System not a taking where association received substantial corresponding benefits from terms of Act, including expanded merger power).

Thus, the only constitutional question is whether a TELRIC approach jeopardizes GTE's financial integrity and ability to continue to attract capital. It is difficult, if not impossible, to conceive of a situation where this could happen. By definition, the TELRIC approach provides GTE the opportunity to recover all of its forward-looking costs, including the costs of attracting capital. For that reason, any disparities between TELRIC revenues and an incumbent LEC's more optimistic expectations based on the continuing existence of ratemaking approaches superseded by the 1996 Act, are simply irrelevant for constitutional purposes.

In Duquesne, for example, the Supreme Court rejected a utility's constitutional challenge to a change in rate methodology that prevented it from recovering more than \$35 million in prudent expenditures that were recoverable under the methodology in place when those expenditures were made. Recognizing that the "partly public, partly private status of utility property creates its own set of questions under the Takings Clause," the Court reasoned that regulators "must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests," including consumer interests. Duquesne, 488 U.S. at 307, 313-4 (quoting Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968)).

Even if revenues generated by a different methodology could be used to assess a possible takings claim, the revenue "shortfalls" of the types at issue here are wholly unobjectionable. As noted above, a TELRIC methodology focuses on the incumbent LEC's true economic costs of providing network elements. By contrast, the FCC's Part 69 revenue requirement rules for rate-base regulation reflect a backward-looking, fully distributed cost, rate-of-return rate methodology. As the FCC has recognized, rates based on such historical costs have "no claim to economic rationality," because "current or anticipated costs and revenues are generally the relevant factors influencing business decisions to enter markets and price products." Further Notice of Proposed Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers, 3 FCC Rcd. 3195, 3226-27 (1988).

Because rates based on historical costs lack economic rationality, TELRIC based rates properly exclude certain categories of "costs" that may appear in a rate-of-return revenue requirements. The Commission and the courts consistently have rejected takings claims premised on supposed rights to recover such costs, which the incumbent LECs were able to recover in past rates only by virtue of their monopoly power. In Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993), for example, Ameritech challenged as confiscatory a rate order that served to "exclude part of [an] original investment from the rate base." Id. at 1263. The D.C. Circuit rejected the challenge, noting that, even if the exclusion resulted in a loss of revenues, "[t]here simply has been no demonstration that the FCC's rate base policy threatens the financial integrity of [ILECs] or otherwise impedes their ability to attract capital." Id. (Commission has no obligation "to include in the rate base all actual costs for investments prudent when made").<sup>37/</sup>

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<sup>37/</sup> See also 3 FCC Rcd. at 3211 (1988) ("[a]ll of the Bell Operating Companies . . . agree that serious deficiencies in rate-of-return regulation necessitate consideration of an alternative regulatory system"); Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1486, 1503 (D.C. Cir. 1984) (utility has no entitlement to "creamy returns" that are the result of monopoly power); Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, 1996 FCC LEXIS 372, \* 47 (January 26, 1996) (rejecting takings challenge because rates "should not include costs resulting from any expectation of monopoly profits"); Southwestern Bell Tel. Co., 7 FCC Rcd. at 2906, 2913 ("even under rate of return regulation, there is no guarantee that rates can automatically be retargeted without an examination of costs").

Even if a TELRIC-based pricing requirement would somehow cause GTE to suffer the deep financial hardship envisioned in Hope, this end result would not necessarily amount to a taking. That is because the Court in Hope held that determining whether rates are "just and reasonable" -- and hence constitutional -- "involves a balancing of the investor and consumer interests." Hope, 320 U.S. at 603 (emphasis added). More recently, the Court reaffirmed what it called "a truism of rate regulation: '[r]egulation may, consistently with the Constitution limit stringently the return recovered on investment, for investors' interests provide only one of the variables in the constitutional calculus of reasonableness.'" FPC v. Texaco, Inc., 417 U.S. 380, 392 (1974) (emphasis added). Thus, "even where the sort of deep financial hardship described in Hope is present, the utility is entitled only to an 'end result' hearing, and is not entitled to any greater return on its investments unless it shows both that the rate was unreasonable and that a higher return would not exploit consumers." Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168, 1181 n.3 (D.C. Cir. 1987) (emphasis added). Accordingly, adoption of TELRIC-based pricing would still not constitute a taking even if it causes GTE to fail, if the interests of consumers in breaking up the local exchange monopolies is deemed to outweigh GTE's interests in preserving its viability.

As should be apparent then, GTE's takings argument is simply a ploy to maintain the revenue approach used during the regulated rate era. It wants to recover its embedded costs, but cannot do so when prices are determined on a forward looking basis. GTE is well aware that competition is a fact, and has been organizing itself financially to adapt to this competitive era. Recognizing a takings claim would only send the local telephone exchange market backwards, and not forwards.

**ISSUE 14: Should GTE be prohibited from placing any limitations on AT&T's ability to combine unbundled network elements with one another, or with resold services, or with AT&T's, MCI's or a third parties facilities, to provide telecommunications services to consumers in any manner AT&T chooses?**

\* \* \* \* \*

**AT&T:** Yes. AT&T has a statutory right under the Act to combine unbundled network elements in any manner, and at any location which is technically feasible, in order to provide its customers with telecommunications services. GTE may not limit or restrict AT&T's ability to combine, use, or resell unbundled network elements.

\* \* \* \* \*

The Commission should prohibit GTE from restricting AT&T's ability to combine GTE's unbundled network elements. The Act expressly requires GTE to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. § 251(c)(3). Notwithstanding this clear legal requirement, GTE refuses to provide AT&T with the unbundled Loop Facility and unbundled Local Switching, if AT&T plans to combine them and offer service to consumers using those elements. Instead, GTE maintains that AT&T's only "choice" is to buy GTE's existing port offering at a wholesale price and then resell it to AT&T's customers. (McLeod, Tr. 1279.) GTE's refusal to allow AT&T to use unbundled elements as building blocks to create AT&T's own basic service platform is an attempt to perpetuate GTE's current entrenched advantage on providing those services, either directly to its customers or to other providers for resale. The result is not only to inhibit competition, but to remove the incentive for new providers to develop their own facilities.

The Act aims at promoting competition by requiring incumbents to unbundle their network elements and allowing new entrants to combine these elements. This is typically referred to as the "platform configuration," whereby the new entrant combines an unbundled switch and an unbundled loop to form a basic exchange platform for local exchange services. (Gillan, Tr. 88.) The new entrant then can market this basic platform, or combine it with its own network elements, such as Operator Systems.

The platform configuration promotes competition and benefits the consumer in any number of ways. The ability of a new entrant to create its own platform drives down prices through head-to-head competition, because when a new entrant combines unbundled network elements to create a platform, customers easily can shift between local providers while continuing to receive the same services. (Gillan, Tr. 89-90.) By contrast, if a new entrant has access only to GTE's unbundled loop, the loop to the consumer must be reconfigured from GTE's local switch to a competitor's switch every time a consumer changes local service providers. (Gillan, Tr. 88). The platform configuration also solves the entry barrier problem of local number portability, because the new entrant's customers continue to be served by the incumbent's local switch. (Gillan, Tr. 90.) Finally, the platform configuration allows new entrants to offer new and different services or combinations of services. Florida consumers then



may select the service provider who has service most closely aligned with the consumer's needs. (Crafton, Tr. 336; Gillan, Tr. 90.)

As is apparent, GTE's refusal to provide unbundled loops and switches is not only anti-competitive, it is unlawful. It therefore makes perfectly good sense that the Act gives AT&T the legal right to purchase and then combine GTE's network elements. The Act is very clear in stating that GTE may not limit AT&T's right to combine unbundled network elements to provide telecommunications services. 47 U.S.C.A. § 251(c)(3). Consistent with the Act, the FCC Order states that an entrant may combine unbundled network elements in any way it chooses, including the recreation of existing services. 47 C.F.R. §§ 51.309(a), and 51.315(c); FCC Order No. 96-325 ¶¶ 292, 296.

Notwithstanding the explicit language in the Act and the FCC's Order, GTE persists in claiming that AT&T and other new entrants may not rebundle the Local Loop and Local Switching. (McLeod, Tr. 1277.) GTE contends that rebundling them would be the same as its current "port" offering. According to GTE, allowing new entrants to combine these two unbundled elements would render meaningless the resale provisions of the Act, because GTE could not resell its port offering. (*Id.*) The fundamental problem with GTE's position is that it is contrary to the Act's and the FCC's explicit provisions which allow AT&T to purchase and then combine network elements. The debate over the legality of purchasing unbundled elements and then recombining them is over, because Congress has spoken on the issue. Moreover, when you combine this argument with GTE's position that it cannot be required to resell basic residential service because it provides that service "below costs," GTE's effort to prevent any competitor from reaching most of its market becomes clear.

GTE's argument that new entrants will purchase unbundled network elements at TELRIC prices to avoid buying resale services at wholesale prices is too simplistic. There are many reasons why a new entrant would prefer to purchase a service at wholesale rates rather than create the same service with unbundled network elements. (Gillan, Tr. 155.) If an LEC simply resells services it need not have the product skills and marketing expertise required of a company selling rebundled network elements. (*Id.*) Thus, many new entrants may not wish to take on these additional tasks and additional risks associated with developing their own services with unbundled network elements, until they have developed the requisite expertise.

**ISSUE 15(a): Should GTE be required to provide AT&T with access to GTE's unused transmission media?**

\* \* \* \* \*

**AT&T:** Yes. Unused transmission media is a network element per the FCC definition. Unbundling unused transmission media is technically feasible, it is not proprietary, and denial of access would add to AT&T's costs.

\* \* \* \* \*

The Commission should order GTE to lease to AT&T GTE's unused transmission media, also known as "dark fiber." Dark fiber is a network element currently in GTE's possession which, if provided to new entrants would facilitate competition. AT&T seeks to lease GTE's dark fiber to speed up the development of AT&T's own network transmission facilities. (Crafton, Tr. 352.)

GTE has denied AT&T access to this media, knowing full well this will present another capital investment requirement for AT&T and other new entrants, thereby delaying the date by which they could become competitive with GTE. (Crafton, Tr. 352.) GTE's refusal is particularly disingenuous because GTE repeatedly has expressed concern over its ability to cover the costs of its network, yet here foregoes an opportunity to generate income from its unused facilities.

GTE has refused to allow AT&T access to this unused media on the grounds it is not an unbundled network element and therefore is not a telecommunications service to be resold. (Hartshorn, Tr. 1145.) GTE has no other reason to support its actions, and its stated reason is erroneous. Dark fiber clearly is a network element because it is "a facility or equipment used in the provision of a telecommunications service." 47 C.F.R. § 51.5. The fact that it is not currently in use does not change its character: its only use is the provision of a telecommunications service. Therefore, it is a network element currently in the possession of GTE, which, if provided to new market entrants, could facilitate competition.

GTE's refusal to permit AT&T access to "dark fiber" is particularly disingenuous in light of the fact that GTE has already entered into an agreement with Metropolitan Fiber Systems of Florida, Inc. ("MFS") permitting MFS to lease dark fiber facilities. Specifically, the agreement between MFS and GTE which was filed with this Commission for approval on August 27, 1996, in Docket No. 961090-TP provides for the lease of "dark fiber" facilities (if available) by MFS in paragraph III.C. Apparently, GTE simply wants to pick and choose which new entrants will be able to use its unused transmission

facilities to provide service. Such a situation is discriminatory, anticompetitive, and contrary to the provisions of the Act.

**ISSUE 15(b): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** The prices for such Unused Transmission Media should be priced as a separate element based on the TSLRIC or TELRIC of providing the facility.

\* \* \* \* \*

As explained in Issue 15(a) dark fiber is a network element because it is a facility or equipment used in the provision of a telecommunications service. Therefore, it should be priced as other network elements based on TSLRIC or TELRIC of providing the service. A detailed discussion of TELRIC pricing issues is contained in Issue 13(b).

**ISSUE 16: At what points should AT&T be permitted to interconnect with GTE?**

\* \* \* \* \*

**AT&T:** The Act requires that GTE must provide interconnection at any requested, technically feasible point.

\* \* \* \* \*

The Commission should order GTE to provide AT&T access to interconnect at any requested, technically feasible point. GTE states that AT&T may interconnect with GTE only at the minimum technically feasible points identified by the FCC. According to GTE, there should be no presumption that interconnection is technically feasible at additional points where GTE already has provided interconnection. (Munsell, Tr. 1556.) GTE's position is directly contradicted by the FCC Order, which states "preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points." FCC Order No. 96-325 ¶ 198. GTE ignores this express provision of the FCC Order and seeks to rely upon another paragraph of the FCC Order which states interconnection at a particular point using particular facilities is "substantial evidence" of technical feasibility at that point or at "substantially similar points in networks employing substantially similar facilities." FCC Order No. 96-325 ¶ 204. Incredibly, GTE argues that interconnection at a particular point is only substantial evidence of the technical feasibility of interconnection at that very

point, and that technical feasibility of interconnecting at that point should not be presumed. (Munsell, Tr. 1556-1557.)

If the points at which AT&T requests interconnection are the same points at which GTE is already providing access, it is nonsensical for GTE to argue that it is not technically feasible to allow interconnection at those points. GTE tries to avoid this obvious conclusion by stating that interconnection of another LEC may have been the results of lengthy negotiations in which the LEC agreed to pay the costs to make interconnection possible. (Munsell, Tr. 1557.) Again, costs are irrelevant to the issue of technical feasibility. GTE's refusal to agree to provide access at any technically feasible point is just more evidence of foot-dragging on GTE's part, aimed at delaying the start of competition.

**ISSUE 17(a): What access should be provided by GTE for its poles, ducts, conduits, and rights-of-way?**

\* \* \* \* \*

**AT&T:** GTE must provide AT&T non-discriminatory access to pole space, ducts, conduit, and rights-of-way on terms and conditions at a parity to that it provides to itself or other LECs. GTE should neither preclude or delay allocation because of potential needs nor satisfy its existing needs prior to providing access to others.

\* \* \* \* \*

The Commission should order GTE to provide AT&T access to rights of way, conduit, pole attachments, and any other pathways, on terms and conditions at parity to that provided by GTE to itself or any other party. GTE claims that it will provide access, but its proposal will not result in parity of offerings, because GTE insists on reserving for itself five years of capacity in a given facility. (Prehearing Order No. PSC-96-1275-PHO-TP p. 39). New entrants with immediate needs should not be turned away just because GTE arbitrarily has established for itself a need up to five years in the future. GTE's position is thus yet one more example of its attempts to continue its dominance in the local market.

The Act requires GTE to provide nondiscriminatory access to other providers. 47 U.S.C.A. § 251(c)(2) and (6). The FCC Order explicitly prohibits GTE from reserving rights-of-way capacity for its future needs at the expense of the needs of new entrants. FCC Order No. 96-325 ¶ 1170. The

reason is clear: unequal access is discriminatory, and nondiscriminatory access is required to promote competition. If GTE gets its way, only GTE will be able to reserve capacity.

GTE, however, maintains that the Act's requirement of nondiscriminatory access does not mean that GTE must grant access to everyone including itself in a nondiscriminatory manner. Rather, GTE states that it merely must treat all new entrants seeking access equally. (Bailey, Tr. 1204.) But nondiscriminatory access means everyone is treated the same, including GTE. GTE does not, and cannot, explain how "nondiscrimination" permits GTE to grant itself certain rights, while at the same time denying those rights to other providers.

GTE's reservation in advance of five years of capacity is unreasonable and will hinder the efforts of new entrants to compete and bring new services to Florida consumers. (Crafton, Tr. 346-347.) It will allow GTE to manipulate the development of competition by increasing its reserves to foreclose the use of pole and conduit capacity by its competitors. (Crafton, Tr. 325.) GTE will be able to restrict entry into the local exchange market by "reserving" capacity that it may never need. If another provider has immediate plans to serve consumers, GTE must not be permitted to thwart those plans simply by claiming it has an as yet undeveloped need for the capacity. There is only one winner in such a scenario -- GTE. Other providers, and ultimately, Florida consumers, are the losers in such a deal.

**ISSUE 17(b): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** When GTE incurs costs to add additional space to accommodate an AT&T request, AT&T will pay its proportionate share of the costs incurred, based on the TELRIC of providing the items. AT&T will pay an Attachment Fee for each GTE facility upon which AT&T obtains authorization to place an Attachment.

\* \* \* \* \*

When insufficient space exists to accommodate an AT&T requested attachment or occupancy, and when GTE incurs costs to add additional space, AT&T will reimburse GTE for its proportionate share of the actual costs incurred. These costs must be based on the TELRIC of provision the items. Consistent with the Act and the FCC's implementing regulations, AT&T will pay an Attachment Fee

for each GTE facility upon which AT&T obtains authorization to place an attachments. This fee should be determined according to the general methodology outlined by the FCC.

**ISSUE 18: Does the term "rights-of-way" in Section 224 of the Act include all possible pathways for communicating with the end user?**

\* \* \* \* \*

**AT&T:** Neither the Act nor the FCC rules define "poles, ducts, conduits, and rights-of-way. However, AT&T believes these terms are of general applicability and include all possible pathways to the customer which the incumbent LEC controls, in whatever physical form, otherwise, the incumbent LEC could effectively shut off access to particular customers.

\* \* \* \* \*

The Commission should require GTE to give AT&T access to all of its pathways to allow for effective competition. (Crafton, Tr. 345.) A "right-of-way" is the right to place poles, conduit, cables, or other equipment on the property of another, as well as to obtain physical access to that equipment. A right-of-way may run under, to, on, or above public or private property (including air space), and may include the right to use discrete spaces in buildings or at other locations. Pole attachments are the connection of facilities to a utility pole, such as mechanical hardware, grounding and transmission cable, and equipment boxes to a utility pole. Currently, GTE as the incumbent LEC, owns and maintains poles. In some cases, they are jointly owned by other utilities. (Id.) Conduit is protected tubing or piping used to house communications or electrical cables. It can be either above or below ground, and may contain one or more inner ducts. Conduit systems are found within buildings, under road and rail crossings, under rivers and streams, and in other locations where repeated excavation for maintenance or replacement of cable facilities is not desirable or where added protection for the cables is needed. (Id.)

As an entrenched provider, GTE has been able to obtain access to the public and private pathways necessary for its construction of key network facilities. In fact, it has had decades to accumulate these pathways. (Crafton, Tr. 345-346.) These pathways are a limited resource, because of the finite amount of space available, and because of the limited extent to which local governing authorities and residents are willing to tolerate the inconveniences and intrusions of constructing and accessing these pathways. (Id.)

For these reasons, AT&T often will have no alternative but to use GTE's pathways. For example, GTE owns and maintains riser-cabling (cables which connect floors and rooms inside a large building). By denying access to riser-cabling, GTE will make it literally impossible for AT&T to serve large blocks of customers except through resale of GTE's services. (Crafton, Tr. 346.) Similarly, GTE could deny AT&T access to customers located in condominium or apartment complexes, by refusing to provide AT&T space in the GTE equipment room located in the complex. (Id.) AT&T must be allowed to access all possible pathways to its customers, including entrance facilities, cable vaults, equipment rooms and telephone closets, all of which fall under the term "rights-of-way" in the Act. 47 U.S.C.A. § 224.

GTE states that such pathways are not rights-of-way, and that the Act therefore does not require GTE to provide access. It asserts that the term rights-of-way refers only to the legal right of a utility to place poles or conduit across public or private property, and claims that the FCC rejected an overly broad interpretation of the term rights-of-way. GTE also states the areas identified by AT&T as pathways are not part of the distribution network used to place GTE's facilities, and are instead the linking point between GTE's facilities and the customer's premises equipment. (Jernigan, Tr. 1198.) GTE, therefore, insists that AT&T make its own arrangement with the owners of the premises across which pathways are located in order to gain access to these pathways. (Jernigan, Tr. 1202.) While the FCC stated that the Act does not mandate "a utility to make space available on the roof of its corporate offices for the installation of a telecommunications carrier's transmission tower," it further stated that even this extreme imposition on an LEC may be required "pursuant to a request for interconnection or for access to unbundled network elements. . . ." FCC Order No. 95-325 ¶ 1185. The FCC further stated that Congress intended new entrants to be able to "piggyback" on the networks owned or controlled by LECs. (Id.)

At best, GTE's position would add another level of inconvenience to customers wishing to switch carriers. At worst, GTE's anti-competitive position would prevent AT&T from serving many Florida consumers. AT&T must be able to access all of the pathways to which GTE has access in order to compete effectively. GTE's suggestion that AT&T simply "make its own arrangements" is

contrary to the intent of the Act, which contains numerous provisions to avoid situations in which new entrants must reinvent the wheel.

**ISSUE 19: Should GTE be required to provide interim number portability solutions including remote call forwarding, flex-direct inward calling, route index portability hub, and local exchange route guide reassignment?**

\* \* \* \* \*

**AT&T:** Yes. Until the Local Number Portability database is implemented, local number portability must be done in the local switch. GTE should be required to support the following types of interim number portability:

- Remote Call Forwarding
- Directory Number-Route Index
- Route Indexing Portability Hub
- Local Exchange Routing Guide Reassignment

\* \* \* \* \*

The Commission should require GTE to provide four interim number portability solutions: remote call forwarding ("RCF"), Directory Number Route Indexing ("DN-RI"), Route Indexing Portability Hub, ("RI-PH") and Local Exchange Routing Guide ("LERG"). The FCC Order concluded that Congress intended that currently available number portability measures be provided until a long-term portability method is technically feasible and available. FCC Order 96-286 ¶ 112. The FCC Order therefore determined that incumbent LEC's, such as GTE, are required to offer interim number portability through RCF and Direct Inward Dialing/Flexible Direct Inward Dialing ("DID/Flex DID"), and other comparable methods, because these methods are currently available and technically feasible. FCC Order No. 96-286 ¶ 110.

Use of all of the options identified by AT&T is necessary to assure that AT&T customers are provided with efficient call routing when they choose to retain their local telephone number after changing carriers. (Crafton, Tr. 347.) AT&T has requested the additional options to permit interim number portability to be deployed more efficiently and to enable AT&T to meet its customer needs. (Crafton, Tr. 348.) Two of the options requested by AT&T --RI-PM and LERG -- have the fewest performance deficits of all options. (Crafton, Tr. 380.) In addition, certain options are necessary for different situations depending on the number of telephone numbers that need to be transferred and the number and type of call-related features a consumer needs to preserve when changing carriers.



GTE has agreed to provide only RCF and DID, and vaguely says it is investigating other options. (Crafton, Tr. 347-348.) GTE's position on Interim Number Portability, and its refusal to respond to AT&T's request for the other forms of Interim Number Portability places serious limitations on AT&T's ability to compete with GTE. (Crafton, Tr. 348.)

RCF poses serious limitations because it requires all calls placed to "ported" customers to be routed first to GTE's network, effectively keeping GTE in the path of calls to AT&T's customers. This severely constrains AT&T's ability to route and terminate calls efficiently because it will require additional transport over AT&T's GTE facilities, diminish network reliability, transmission quality, and network maintenance capabilities, and increase post-dial delay and costs of call completion. Additionally, because RCF relies on number translation, RCF typically disables many custom local area signaling services type features. (Id.) RCF's reliance on number translation also means that two North American numbering plan numbers are required for every ported customer, placing an undue strain on numbering resources, and exacerbating number exhaust. Finally, RCF is of limited utility to many business customers with call center applications because it limits the number of calls that may be placed simultaneously to a single ported number. (Id.)

DID/Flex DID limits AT&T's ability to compete in many of the same ways that RCF does. (Crafton, Tr. 348, 363-364.) DID/Flex DID requires that calls be routed through GTE's network, thereby similarly diminishing network reliability, transmission quality, network maintenance capabilities, and increasing post-dial delay and the cost of call completion. (Crafton, Tr. 348-349.) Indeed, because DID/Flex DID requires that AT&T switches supporting ported customers be directly trunked to GTE end offices, it constrains engineering of alternative carrier networks to an even greater degree than does RCF. Moreover, DID/Flex DID does not allow the calling party number to be delivered to AT&T switch, preventing AT&T from providing vertical features such as Caller ID to its customers. (Crafton, Tr. 349.)

GTE concedes that RCF is unfit for long-term portability. Nonetheless, it asserts that its flaws do not preclude the use of RCF for interim number portability. (Menard, Tr. 2113.) GTE does not argue that the options proposed by AT&T are not technically feasible. In fact, BellSouth has already agreed to provide RI-PM to AT&T in Florida. (Crafton, Tr. 364.) All of the options requested by GTE

are technically feasible, and GTE offers no reason why it should not provide them. Therefore, this Commission should require GTE to provide the additional options for interim number portability requested by AT&T.

**ISSUE 20: What should be the cost recovery mechanism to provide interim local number portability in light of the FCC's recent order?**

\* \* \* \* \*

**AT&T:** The Commission should adopt a mechanism which requires each carrier to pay its own costs of providing interim local number portability. In other words, the service should be provided as requested (of either the incumbent or the new entrant) at no charge.

\* \* \* \* \*

The Act expressly gives the FCC exclusive jurisdiction to determine the basis upon which all telecommunications carriers will bear the costs of establishing number portability. 47 U.S.C.A. § 251(e)(2). GTE states that it will be filing its testimony for hearings before the Commission on this issue set for November 25, 1996, in Docket No. 950737-TP. GTE also, however, acknowledges that the FCC Order released in Docket No. 95-116 potentially affects rates established for interim number portability. (Menard, Tr. 2097.)

In fact, the FCC Order on Number Portability prohibits the pricing approved by this Commission in Docket 950737-TP. In particular, the Order implements the requirement of § 251(e)(2) of the Act that costs of number portability be "borne by all telecommunications carriers on a competitively neutral basis." FCC Order No. 96-286 ¶ 126. The FCC specifically stated that imposition of even the incremental costs alone, on a new entrant, would violate the "competitively neutral" standard of the Act. Id. ¶ 138. Rather, the costs of number portability must be borne relative to the market share or revenues of the market participants. Id. ¶ 136. The Commission should adopt a cost recovery mechanism for interim number portability consistent with the terms of the Act and FCC Order No. 96-286. The rates for interim number portability should be established at the nominal levels required by that Order.

**ISSUE 21(a): Should GTE be prohibited from placing any limitations on interconnection between two carriers collocated on GTE's premises, or on the types of equipment**

**that can be collocated, or on the types of uses and availability of the collocated spaces?**

\* \* \* \* \*

**AT&T:** GTE should not be permitted to restrict the availability of collocated space, the type of equipment allowed in collocated space or the use of collocated space. Further, GTE should not be permitted to limit the efficient interconnection between AT&T and other new entrants within the Central Office.

\* \* \* \* \*

The Commission should prohibit GTE from placing restrictions on interconnection between collocated carriers, on the types of equipment that may be collocated, or the use of collocated space. Collocation is a method for implementing interconnection between carriers. Through physical collocation, an interconnecting carrier obtains dedicated space in GTE's premises, and places equipment in that space to interconnect with GTE's and other LECs' networks. (Crafton, Tr. 349.) GTE believes the Act only requires GTE to permit collocation for carriers that intend to interconnect with GTE, and that it does not require GTE to permit multiple collocators to interconnect with one another on its premises. GTE claims that such interconnections would have to be made using GTE's facilities, at GTE's access rates. (Hartshorn, Tr.1228.)

When AT&T and another non-GTE carrier happen to be collocated at the same GTE premises, it is likely they will want to interconnect with one another on those premises. (Crafton, Tr. 350.) In that circumstance, the most efficient way for the two carriers to interconnect is through trunks going directly from one carrier to the other. Such interconnections will facilitate competition because it gives carriers new options, thus mitigating GTE's dominant position in the market. (Crafton, Tr. 350.) If the space is available, and making the interconnection would not harm GTE's facilities or services, there should be no limitations on the non-GTE carriers interconnecting with one another on GTE's premises.

GTE's claim that AT&T is seeking to collocate more than equipment necessary for interconnection or access to unbundled network elements is wrong. (Hartshorn, Tr. 1229.) AT&T is seeking to collocate only the equipment necessary to interconnect with GTE and other collocated providers, and provide high quality service to consumers. (Crafton, Tr. 362.) This may sometimes require collocation of small amounts of switching equipment. For example, when AT&T wishes to connect a GTE unbundled loop serving one of these customers to an AT&T local switch, it usually will

require AT&T to haul that traffic over many miles. As a new entrant, AT&T likely will begin with few switches and a few customers scattered over a wide area. (Id.) Under one option, AT&T could deploy its own digital loop carrier systems to minimize line haul costs from the collocation cage back to the AT&T switch. However, this option is not satisfactory because use of an AT&T digital loop carrier system back-to-back with a GTE loop carrier system leads to a significant deterioration in transmission quality for that customer. (Id.) If, however, AT&T does not deploy its own digital loop carrier system, the cost of serving the customer is increased because each and every individual loop must be hauled back to the AT&T switch. (Id.) Therefore, this alternative option is also unsatisfactory. The best solution in these situations is to deploy a remote switch module, instead of a digital loop carrier system, and to switch the call at the collocation cage. This avoids both a deterioration in call quality and much of the backhaul costs. (Id.) Therefore, collocation of a small amount of switching equipment is required to permit AT&T to serve Florida consumers without deterioration of service quality or an increase in cost.

GTE also proposes to restrict the use of the collocated space to the interconnection of only switched or special transport services and connections to unbundled local loops. (Crafton, Tr. 350.) GTE has not explained why it believes these restrictions are appropriate or necessary. GTE is imposing these restrictions for no other reason than to make it more difficult for GTE's competitors to operate efficiently. The Commission should order GTE to allow collocation at all collocation facilities that house GTE network facilities, unless GTE makes an appropriate showing that it is not technically feasible to allow collocation at a given facility. By adopting this approach, the Commission will ensure the competition will not be stifled and consumers will benefit from reduced interconnection cost. (Crafton, Tr. 350-351, 362.)

**ISSUE 21(b): What are the costs incurred, and how should those costs be recovered?**

\* \* \* \* \*

**AT&T:** Costs associated with providing space and maintenance should be priced distinctly from other elements at TSLRIC or TELRIC.

\* \* \* \* \*

The costs associated with providing space and maintenance for collocation should be separately priced from other elements at TSLRIC or TELRIC. A detailed discussion of TELRIC pricing issues is contained under Issue 13(b).

**ISSUE 22: What should be the compensation mechanism for the exchange of local traffic between AT&T and GTE?**

\* \* \* \* \*

**AT&T:** The Commission should order that interconnection be priced at TELRIC and that GTE be ordered to develop TELRIC studies as promptly as possible. Until such studies are completed, the Commission should require a bill and keep arrangement for interconnection.

\* \* \* \* \*

The Commission should order that interconnection be priced at TELRIC. Efficient competition in the local exchange market will occur only if the price for call transport and termination is equal to the economic cost of the network elements which perform these functions. The TELRIC approach measures this economic cost. As previously discussed in Issue 13(b), both buyers and sellers in the competitive market make economic decisions based on economic costs. Until GTE produces information sufficient to permit the pricing of transport and termination at economic costs, the Commission should implement interim bill-and-keep provisions as permitted by the Act.

Under the Act, each local exchange carrier has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C.A. § 251(b)(5). The Act requires that the pricing for transport and termination provide for the recovery by each carrier of "cost associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C.A. § 252(d)(2)(A). The Act permits arrangements that provide "mutual recovery of costs through the offsetting of reciprocal obligations," to the extent that such arrangements permit the recovery of the related costs. 47 U.S.C.A. § 252(d)(2)(B). Further, the Act specifically identifies "bill-and-keep" arrangements as acceptable to the extent that each carrier recovers the cost of transport and termination. Id.<sup>38/</sup>

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<sup>38/</sup> The FCC Order identified TELRIC as the appropriate methodology for pricing transport and termination. FCC Order No. 96-325 ¶ 1055. The FCC Order also provides a proxy default range of 0.2-0.4 cents per minute, based on cost data from multiple jurisdictions, to be used where a particular

GTE has not provided TELRIC data for the exchange of local traffic. Instead, GTE has requested a compensation methodology based on the Efficient Component Pricing Rule ("ECPR"). (Munsell, Tr. 1553.) This Commission already has rejected the ECPR as a pricing methodology for unbundled network element rates on the grounds that it eliminates the incentive for competition. June 24, 1996 Order, at 17. The FCC, having received substantial input from multiple members of the telecommunications industry, also has rejected the use of ECPR. FCC Order 96-325 ¶¶ 707-710 ("ECPR does not provide any mechanism for moving prices towards competitive levels"). This Commission should not now use the ECPR to price transport and termination of local traffic.

Absent adequate TELRIC data, the Commission should establish an interim, mutual traffic exchange or reciprocal pricing arrangement ("bill-and-keep") as the appropriate compensation mechanism for the exchange of local traffic between local exchange carriers. This mechanism has met with acceptance from all parties and would permit the commission to establish rates until a further definition of the TELRIC pricing can be determined. Munsell 1564-65; Prehearing Order at 45.

Bill-and-keep arrangements compensate a carrier which terminates a call that originated with another carrier, by requiring the originating carrier, in turn, to transfer and terminate calls originating from the other carrier. Under a bill-and-keep arrangement, no money changes hands. As this Commission has recognized, bill-and-keep arrangements "appear[] to be the most efficient, least-cost method of interconnection and should provide the lowest barrier to [market] entry." Florida Public Service Commission, Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP, May 20, 1996, at 19 ("FPSC Order No. PSC-96-0668"); see also Florida Public Service Commission, Docket No. 950985-TP, Order No. PSC-96-1148-FOF-TP, September 12, 1996, at 115 ("FPSC Order No. PSC-96-1148").

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state commission does not have complete TELRIC studies before it. Id. Finally, the FCC Order provides that states may impose bill-and-keep arrangements if traffic is roughly balanced between the carriers and neither carrier has rebutted the presumption of symmetrical rates. Id. at ¶ 1111. Under the FCC Order, money would change hands only if traffic were "significantly out of balance." Id. at ¶ 1113.

Looking at the similarity of carriers' transport and termination costs within a given geographic area, the FCC Order also concludes that use of incumbent LEC's forward-looking cost for transport and termination as a proxy for the cost incurred by the interconnecting carriers satisfied the requirement of § 252(d)(2) of the Act requiring that cost be determined "on the basis of a reasonable approximation of the additional costs of terminating of such calls." FCC Order No. 96-325 ¶ 1085.

The Commission further found that to the extent future imbalances required that money in fact need change hands, the aggrieved carrier could petition the Commission at that time. FPSC Order No. PSC-96-1148, at 15.

Bill-and-keep provides carriers with the incentive to adopt an efficient network architecture so as to minimize the costs of terminating calls originated with another carrier. See Florida Public Service Commission, Docket No. 950985-TP, Order No. PSC-96-0445-FOF-TP, March 29, 1996, at 11. Accordingly, bill-and-keep will produce decreased costs and result in the lowest possible local exchange rates for Florida consumers. Id.

GTE has not provided TELRIC studies adequate for determination of the economic costs of transfer and termination. Accordingly, AT&T recommends that this Commission implement an interim bill-and-keep arrangement as permitted by the Act, and as previously established by the Commission.

**ISSUE 23: What intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase GTE's unbundled local switching element? How long should any transitional period last?**

\* \* \* \* \*

**AT&T:** No intrastate access charges should apply to a carrier routing local traffic through unbundled network elements it has purchased. TELRIC purchase prices replace access charges and are the proper measure of economic and competitive prices.

\* \* \* \* \*

Under the Act, new entrants purchasing unbundled network elements should be permitted to do so at economic rates -- that is, TELRIC plus a reasonable allocation of joint and common costs. 47 U.S.C.A. §§ 251(c)(2) and 252(d)(1). These are the appropriate pricing standards for carriers who purchase GTE unbundled local switches and *serve their own new customers*. (See Goodfriend, Tr. 742.) No access charges should be assessed by GTE for calls routed through a switch purchased by the new entrant and serving the new entrant's -- not GTE's -- customers. (Goodfriend, Tr. 753.)

For new entrants attempting to compete with GTE's overwhelming existing monopoly the addition of access charges -- essentially windfalls to the incumbent which do not relate to the incumbent's actual costs - will eliminate any meaningful near-term competition. (Gillan, T. 83.)

Competitors who purchase unbundled switches and other network elements from GTE at *prices fully covering GTE's economic costs* should not be handicapped by the application of additional surcharges which bear no relation to GTE's costs -- only to GTE's hoped-for revenue. (Goodfriend, Tr. 753; Gillan, Tr. 85.)<sup>39</sup>

**ISSUE 24: Should GTE be required to provide notice to its wholesale customers of changes to GTE's services? If so, in what manner and in what time frame?**

\* \* \* \* \*

**AT&T:** GTE should be required to provide notice in advance of its general public notice of changes to services.

\* \* \* \* \*

The Commission should require GTE to notify resellers in advance of the introduction of a new service or a price change to an existing service, service, at least 45 days prior to the effective date of the change, or concurrent with GTE's internal notification process, whichever is earlier. (Shurter, Tr. 305.) For significant changes in technology such as the deployment of SONET rings, an extended notification period would be required. (Shurter Tr. 306-307.)

Advance notice will allow time for AT&T to prepare its systems to support the changed services or price changes. (Shurter Tr. 305.) Without this advance notice, new entrants like AT&T cannot make the necessary preparations to resell services offerings which GTE intends to change by the effective date of GTE's proposed changes. (Id.) As a result, GTE would have an unfair competitive advantage because GTE always will be the first local telephone company to make the changed service

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<sup>39</sup> The FCC has recommended in its August 8, 1996 Order that a temporary application of limited CCLC and RIC charges be applied. 47 CFR 51.515. These temporary access charges were to cease by June 30, 1997. The Order's provision for application of transitional access charges has now been stayed, eliminating (depending on the resolution of the stay) such charges. However, the fundamental principle of the FCC Order -- pricing of these unbundled network elements based on economic costs -- has not been stayed. Accordingly, it is all the more appropriate that this Commission view these charges in light of the standards it set in its June 24, 1996 Order. Florida Public Service Commission, Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, at 32. These standards required the pricing of unbundled elements in a fashion which allows competitors to enter the market for Florida consumers more quickly and in a fashion which does not erect barriers to competitive entry. Id. at 9. Application of access charges would not accomplish this goal.



offerings available to Florida consumers. Such a competitive advantage will help GTE preserve its dominant position in the marketplace and deny Florida consumers the benefits of full competition.

Despite the obvious anti-competitive ramifications of this position, initially, GTE took the position that it will notify wholesale customers by filing applicable tariffs with this Commission. (McLeod, Tr. 1309.) GTE maintains that tariff filings serve as public notice (Id.) GTE now states it may consider notifying new entrants at parity with its internal notification procedures. (McLeod, Tr. 1332.) GTE has no valid reason to refuse to provide advance notice, and should be required to provide new entrants the same notice it provides to itself.

**ISSUE 25: What should be the term of the agreement?**

\* \* \* \* \*

**AT&T:** The term of an interconnection agreement must be at least five years to allow a firm foundation of competition prior to allowing GTE the ability to reassert its market dominance and renegotiate an agreement, to allow AT&T to make realistic market plans and to provide continuous support to its customers.

\* \* \* \* \*

The Commission should order that the term of the interconnection agreement be at least five years. In a market dominated by GTE, this is the minimum time required for AT&T to acquire, configure, service and market services and elements obtained from GTE. (Shurter, Tr. 189.) GTE argues that two years would be a sufficient time frame. (McLeod, Tr. 1282.) A two year period would be wholly inadequate. As GTE acknowledges, the Act and the issues it raises are of "unprecedented scope." The challenges and variables associated with AT&T's entry into the local market are enormous -- far beyond the challenge facing new entrants to the long distance market twenty years ago. Even in that receptive market, effective competition took time to root and grow to facilities based competition. (Id.) Five years is not an excessive period for interconnection and development of services by new entrants.

**ISSUE 26: Can the agreement be modified by subsequent tariff filings?**

\* \* \* \* \*

**AT&T:** GTE should not be permitted to modify the Agreement or to override the Agreement with subsequent tariff filings. AT&T's proposed interconnection agreement

includes language that would permit the parties to further negotiate resolution of new or open issues as necessary.

\* \* \* \* \*

GTE should not be permitted to modify the agreement through subsequent tariff filings. As the Commission knows, under the 1995 revisions of Chapter 364, Florida Statutes, the vast majority of GTE's tariff filings are presumptively valid, and, indeed, become effective on 15 days notice.<sup>40/</sup> Thus, if GTE were permitted to modify the terms of the interconnection agreement through subsequent tariff filings, it would be able to do so with little or no oversight from this Commission. GTE would simply be able to file a tariff modifying or eliminating essential services or elements on which competitive carriers have relied, and the competitive carriers would have no recourse other than to challenge the tariff through the complaint process. Moreover, because of the 15-day time period associated with such filings, it is likely that competitive carriers would not even know about the tariff revisions until after they had become effective. Such a process would frustrate the intent of the Act, which contemplates an interconnection agreement that defines a continued course of dealings between the parties by allowing GTE unilaterally to change the terms of the agreement. GTE's position on this issue is yet another attempt to control the market to the detriment of consumers and competitors.

**ISSUE 30: Should the agreement be approved pursuant to Section 252(e).**

\* \* \* \* \*

**AT&T:** Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e).

\* \* \* \* \*

The Act expressly requires this Commission to approve agreements entered into pursuant to the Act. 47 U.S.C.A. § 252(e)(1). Section 252(e)(1) provides that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission." Section 252(e)(1) also requires that "[a] State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies." Therefore, this Commission should approve the arbitrated agreement between the parties.

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<sup>40/</sup> See Section 364.051(6), Florida Statutes.

**ISSUE 31: What are the appropriate post-hearing procedures for submission and approval of final arbitrated agreement?**

\* \* \* \* \*

**AT&T:** The parties should file a comprehensive agreement 14 days after the Commission issues its decision. Each party should file proposed contractual language for unresolved issues 20 days after the issuance of the Order. The Commission should adopt, on an issue-by-issue basis, the language that best reflects its decisions.

\* \* \* \* \*

AT&T proposes that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order reflecting the Commission's decisions on the issues in this proceeding. If no agreement is reached, the parties then should file their respective proposed contractual language for each issue that remains unresolved within 20 days after the issuance of the Order. The Commission then should adopt on an issue-by-issue basis the proposed contractual language that best reflects the Commission's determinations in its Order.

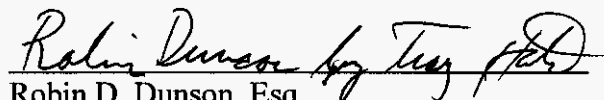
**CONCLUSION**

For the reasons set forth above, AT&T respectfully requests the Commission to enter an order in accordance with AT&T's position.

Respectfully submitted



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STATES, INC.

October 28, 1996

**CERTIFICATE OF SERVICE**

**DOCKET NOS. 960847-TP and 960980-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 28<sup>th</sup> day of October, 1996:

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