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**GTE Telephone Operations**

One Tampa City Center  
Post Office Box 110, FLTC0007  
Tampa, Florida 33601  
813-224-4001  
813-228-5257 (Facsimile)

Marcell Morrell\*\*  
Vice President & General Counsel - Florida

Associate General Counsel  
Anthony P. Gillman\*\*  
Leslie Reicin Stein\*

Attorneys\*  
Kimberly Caswell  
M. Eric Edgington  
Ernesto Mayor, Jr.

\* Licensed in Florida  
\*\* Certified in Florida as Authorized House Counsel

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

January 31, 1997

Re: Docket No. 961537-TP  
Petition by American Communications Services, Inc., and its local exchange  
operating subsidiaries, for Arbitration with GTE Florida Incorporated pursuant to  
the Telecommunications Act of 1996

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of GTE Florida  
Incorporated's Comments on Contested Issue in the above matter. Service has been  
made as indicated on the Certificate of Service. If there are any questions regarding  
this matter, please contact me at (813) 483-2617.

ACK  Very truly yours,

AFA \_\_\_\_\_

APP *Kimberly Caswell/dm*

CAF \_\_\_\_\_  
Kimberly Caswell

CMU *Green*

CTR \_\_\_\_\_ KC:tas

EAG \_\_\_\_\_ Enclosures

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A part of GTE Corporation

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FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by American Communications Services, Inc. and its local exchange operating subsidiaries, for Arbitration with GTE Florida Incorporated Pursuant to the Telecommunications Act of 1996 )  
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Docket No. 961537-TP  
Filed: January 31, 1997

**GTE FLORIDA'S COMMENTS ON CONTESTED ISSUE**

At the January 29 issues identification workshop in this arbitration, GTE Florida Incorporated (GTEFL) and American Communications Services, Inc. (ACSI) could not agree on the inclusion of the most-favored nations (MFN) issue proposed by ACSI. The parties understand that the prehearing officer is to settle such disputes on contested issues.

GTE had planned to file a motion to dismiss the part of ACSI's case that concerns the contested issue, and ACSI would have the right to reply to GTEFL's motion. Under the Commission's rules of practice and procedure, the motion's resolution would take weeks. Given the expedited nature of this arbitration, the customary motion process would not give the parties a meaningful opportunity to be heard on this matter. As such, the parties and the Staff agreed that comments on whether to include ACSI's proposed issue would be the fairest and most efficient means for both GTEFL and ACSI to present their positions in time for the prehearing officer's consideration of the contested issue. GTEFL hopes these comments will help to inform that decision.

The specific issue ACSI has proposed is: "What restrictions, if any, apply to the availability of individual provisions contained in those interconnection agreements GTE

has with other carriers?" ("ACSI's Proposed Issues," no. 8a.) This is not a proper or necessary issue for resolution in this arbitration.

The Commission agrees with GTEFL. Sprint raised the same MFN issue in its arbitrations with GTEFL and BellSouth. ACSI, like Sprint, asked this Commission to give ALECs the right to "pick and choose" particular provisions from GTEFL's other interconnection contracts. In the Sprint arbitrations, the Commission decided that it is not required to interpret section 252(i) of the Telecommunications Act, which ACSI and others have attempted to use to ground a right to an MFN clause with regard to individual contract provisions. To this end, the Staff recommendations the Commission approved in the BellSouth/Sprint and GTEFL/Sprint Staff arbitrations stated that "staff does not believe that a Most Favored Nations clause is a matter to be arbitrated, nor that resolution of this issue is necessary to the implementation of an arbitrated agreement." (BellSouth/Sprint Rec., issued Jan. 7, 1997 in Docket no. 961150-TP, at 28; GTEFL/Sprint Rec., issued Jan. 13, 1997 in Docket no. 961173-TP, at 79.) Staff noted further that "It is not necessary for the Commission to vote on this issue." (GTEFL/Sprint Rec. at 77.)

The Commission's logic in the Sprint cases applies equally here, where ACSI is asking for the same MFN provision. As the Commission found in those proceedings, section 252(c) of the Act ("Standards for Arbitration") does not require the Commission to interpret section 252(i) to fulfill its arbitration responsibilities. The Commission further recognized that a decision is pending in the ongoing appeal of the FCC's interconnection order in the Eighth Circuit Court of Appeals. (GTEFL/Sprint Staff Rec. at 79-80; BellSouth Sprint Rec. at 28-29.) As the Commission knows, the Eighth Circuit has stayed the FCC's

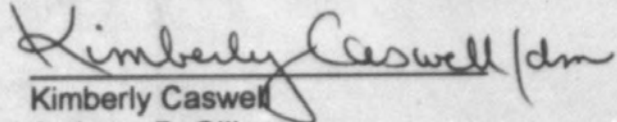
"pick and choose" provision--the same provision that ACSI is asking the Commission to order in this case--thereby affirming GTE's and others' arguments that a pick-and-choose interpretation will undermine Congress' preference for negotiated agreements and destabilize the whole methodology for negotiated and arbitrated agreements. Iowa Util. Board et al. v. F.C.C., Nos. 96-3321 etc., slip op. at 12, 17-18 (8th Cir. Oct. 15, 1996).

The Act establishes tight timetables for resolution of the numerous arbitrations that have been filed at this Commission. These expedited proceedings have severely taxed the Commission's (and GTEFL's) resources. Particularly under these circumstances, it makes no sense to add ACSI's MFN issue, which the Commission has already decided is not a proper matter for arbitration. Otherwise, the parties will have to submit, and the Commission will have to hear, testimony and argument that is moot.

Although GTEFL did not contest addition of the MFN issue in the Sprint arbitration, it probably should have. GTEFL believes that each successive arbitration is a learning experience for the parties and the Commission. Given the Commission's interpretation of the Act in the Sprint arbitrations, there is no need for the parties and the Commission to conduct the fruitless exercise of litigating an issue that is not proper for arbitration and not necessary for implementation of the interconnection agreement between ACSI and GTEFL.

Respectfully submitted on January 31, 1997.

By:

Handwritten signature of Kimberly Caswell in cursive script, followed by the initials "dm" in parentheses.

Kimberly Caswell

Anthony P. Gillman

Post Office Box 110, FLTC0007

Tampa, Florida 33601

Telephone: 813-483-2617

Attorneys for GTE Florida Incorporated

**CERTIFICATE OF SERVICE**

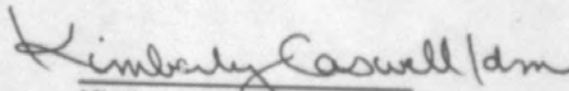
I HEREBY CERTIFY that copies of GTE Florida Incorporated's Comments on Contested Issue in Docket No. 961537-TP were hand delivered(\*) or sent via U.S. mail(\*\*) on January 31, 1997, to the parties listed below.

Monica Barone(\*)  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Floyd R. Self (\*\*)  
Norman H. Horton, Jr.  
Messer, Caparello, Metz, Maida & Self, P.A.  
215 S. Monroe Street, Suite 701  
Tallahassee, FL 32302-1876

James F. Falvey, Esq.(\*\*)  
American Communications Services, Inc.  
131 National Business Parkway, Suite 100  
Annapolis Junction, MD 20701

Brad E. Mutschelknaus, Esq.(\*\*)  
Kelley Drye & Warren, L.L.P.  
1200 19th Street, N.W., Suite 500  
Washington, DC 20036

  
Kimberly Caswell