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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 961537-TP

REBUTTAL TESTIMONY

OF

RICHARD ROBERTSON

ON BEHALF OF

AMERICAN COMMUNICATIONS SERVICES, INC.

February 7, 1997

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

REBUTTAL TESTIMONY OF  
RICHARD ROBERTSON

1

2 Q. PLEASE STATE YOUR NAME.

3 A. My name is Richard Robertson.

4 Q. ARE YOU THE SAME RICHARD ROBERTSON THAT EARLIER PREPARED  
5 DIRECT TESTIMONY THAT WAS FILED ON BEHALF OF AMERICAN  
6 COMMUNICATIONS SERVICES, INC.?

7 A. Yes.

8 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

9 A. In this rebuttal testimony, I am responding to the issues raised in the Direct Testimony  
10 of several witnesses on behalf of GTE Florida, Inc. ("GTE"). Specifically, my testimony  
11 will address the following topics: (1) ACSI's request for a "most favored nation" clause  
12 in its agreement, (2) compensation arrangements for mutual traffic exchange, and (3)  
13 collocation arrangements.

MOST FAVORED NATION CLAUSE

1  
2 Q. MR. MCLEOD STATES IN HIS DIRECT TESTIMONY (P. 11) THAT ACSI  
3 REQUESTED A MOST FAVORED NATION CLAUSE IN ORDER TO OBTAIN  
4 A BETTER DEAL THAN ANY OTHER CLEC. IS THIS TRUE?

5 A. No. Quite the contrary. ACSI has requested a most favored nation provision in its  
6 interconnection agreement in order to ensure that it receives non-discriminatory treatment  
7 with respect to all rates, terms, and conditions contained in its agreement. The  
8 Telecommunications Act of 1996 requires GTE to offer interconnection, unbundled  
9 elements, and collocation on terms that are non-discriminatory. A "most favored nation"  
10 clause protects ACSI against such discrimination by allowing it to take these elements  
11 pursuant to the same terms and conditions that GTE offers them to another CLEC.  
12 Importantly, if GTE is willing to treat ACSI in the same manner that it treats other  
13 CLECs, then inclusion of a most favored nation clause should not cause any detriment to  
14 GTE at all.

15 A most favored nation clause also makes good business sense for several reasons.  
16 First, in Florida and in other states, ACSI is one of the first CLECs to request  
17 interconnection. An arrangement of the type ACSI requests presents many novel issues,  
18 and the initial attempts to resolve those issues necessarily will be a trial and error process.  
19 A most favored nation clause allows ACSI to learn from the experience of others, just as  
20 those who follow ACSI will learn from ACSI's agreement. Second, ACSI is competing  
21 with several other carriers to make this business work. As a smaller competitor, it does

1 not have the same bargaining power as carriers such as AT&T and MCI might. ACSI is  
2 worried that it will be placed at a competitive disadvantage vis a vis other CLECs if it is  
3 not able to receive unbundled elements and interconnection arrangements on the same  
4 terms as its larger competitors receive them. Third, a most favored nation clause will  
5 save time in the negotiation process and will promote speedy entry by CLECs into the  
6 local exchange market. As a practical matter, ACSI has to have an interconnection  
7 agreement with GTE before it can enter the local service market in Florida. The longer  
8 negotiations take, the longer competition is delayed. Without a most favored nation  
9 clause, ACSI would have to obtain detailed information about the interconnection  
10 arrangements GTE has finalized and about the current state of discussions between GTE  
11 and other CLECs. Not only would this information be exceptionally difficult to come by,  
12 but the lack of this information would tend to slow down the negotiations process.  
13 Indeed, without such a clause, ACSI would have an incentive not to reach agreement  
14 quickly, so as to maximize the information available to it regarding other interconnection  
15 arrangements. If ACSI is not allowed a most favored nation clause, it will effectively be  
16 penalized for entering the market ahead of others.

17 **Q. WHAT IS YOUR REACTION TO MR. MCLEOD'S ASSERTION (P. 12) THAT**  
18 **"ANY CUSTOMARY, SOUND BUSINESS CONTRACTS WOULD NOT INCLUDE**  
19 **A 'MOST FAVORED NATION' CLAUSE"?**

20 **A.** I disagree completely. As explained above, there are several business reasons why the  
21 parties would want to include a most favored nation clause. In fact, it is my experience

1 that many carriers' contracts with large business customers contain, in one form or  
2 another, a clause giving the customer the ability to select rates that subsequently are  
3 offered to other customers. Most LECs, including, to my knowledge, GTE, regularly  
4 include such clauses in their contracts with large Centrex customers. Thus, such clauses  
5 are quite common in the business world in general and in the telecommunications industry  
6 in particular.

7 **Q. MR. MCLEOD ASSERTS (P. 13) THAT ACSI'S POSITION WOULD HINDER**  
8 **THE NEGOTIATION PROCESS BY ELIMINATING ALL INCENTIVES TO**  
9 **COMPROMISE. HAS THAT BEEN YOUR EXPERIENCE IN NEGOTIATING**  
10 **INTERCONNECTION AGREEMENTS WITH OTHER ILECS?**

11 **A.** No, it has not. To the contrary, ACSI has requested inclusion of a most favored nation  
12 clause in all of its interconnection agreements, and the parties thus far have been able to  
13 work out most (and in some cases, all) of their differences through negotiation and  
14 compromise. BellSouth, for example, agreed to a most favored nation clause in its  
15 Florida agreement with ACSI, and ACSI and BellSouth ultimately were able to resolve  
16 all of their differences without arbitration. This has also been our experience in  
17 negotiations with Southwestern Bell (SWBT) in its region. SWBT has agreed to a most  
18 favored nation clause like that ACSI has requested here, and negotiations have not been  
19 adversely affected by the clause.

20 Indeed, in all of our negotiations, GTE is the only ILEC that has refused to include  
21 a most favored nation clause. GTE's refusal has, in my opinion, been a major

1 contributing factor to the parties' inability to reach agreement on the wide range of issues  
2 that have been submitted to the Commission for arbitration.

### 4 MUTUAL TRAFFIC EXCHANGE

5 Q. PLEASE SUMMARIZE ACSI'S POSITION ON THE PARTIES' EXCHANGE OF  
6 LOCAL SERVICE TRAFFIC.

7 A. It is in the mutual interest of ACSI and GTE that the local service customers of one  
8 provider be able to complete calls to customers of the other. Therefore, both parties wish  
9 to have arrangements to exchange traffic for termination on the other's network. ACSI  
10 has proposed that compensation for this exchange initially be in the form of mutual  
11 termination of traffic originating on the other's network, an arrangement which has  
12 historically been described as a "bill and keep" or "mutual traffic exchange" method of  
13 compensation. ACSI proposes that mutual traffic exchange be in place for the first twelve  
14 (12) months of the interconnection arrangement, with provision for cash compensation in  
15 instances where the volume of traffic exchanged is not roughly in balance. Specifically,  
16 ACSI proposes that mutual traffic exchange apply unless (a) the amount of traffic  
17 exchanged is out of balance by 10 percent or more (measured in minutes of traffic  
18 exchanged), and (b) the amount of compensation owed by one carrier or another on that  
19 volume of traffic would exceed \$10,000. If these two criteria are met, then ACSI  
20 proposes that the parties assess each other an equal per-minute of use charge for the  
21 exchange of local traffic.

1 Q. WHAT IS GTE'S POSITION REGARDING SUCH TRAFFIC EXCHANGE?

2 A. It is my understanding that GTE agrees with all of the above, except that it would propose  
3 per-minute compensation whenever the traffic exchanged was out of balance by 10  
4 percent or more, regardless of the dollar amount of compensation that might be owed.  
5 In addition, it appears that GTE contends that it should be able to charge ACSI more than  
6 it would itself pay to ACSI for similar termination services.

7 Q. PLEASE EXPLAIN WHY A \$10,000 THRESHOLD IS APPROPRIATE FOR  
8 TERMINATION OF BILL AND KEEP COMPENSATION.

9 A. Bill and keep, or mutual traffic exchange, is a compensation mechanism commonly used  
10 when cash compensation is infeasible due to its high administrative costs. The  
11 administrative costs of cash compensation could be excessive in one of two situations.

12 First, as GTE appears to agree, if the volume of traffic exchanged between the  
13 parties is roughly in balance, then the costs of administering cash compensation outweigh  
14 its benefits. In essence, both parties would be required to expend resources to track and  
15 administer compensation (including audits of each others' tracking mechanisms), when  
16 the expectation is that very little compensation actually would be paid.

17 Second, the administrative costs of cash compensation also would be excessive if the  
18 amount of traffic exchanged is too small, regardless of whether traffic was in balance or  
19 out of balance. For example, at the proxy rates adopted in the FCC's Interconnection  
20 Order, local traffic exchange could be up to approximately \$0.009 per minute (0.9  
21 cents/minute). At this rate, an imbalance of 500,000 minutes would result in

1 compensation of only \$4,500. However, in order to exchange this \$4,500 both parties  
2 would need to expend considerable resources in administering compensation. In  
3 particular, for a start-up like ACSI, these expenses would include significant expenditures  
4 to add capabilities which presently are not provided for in the carrier's operations, such  
5 as accounting procedures to record and process bills for traffic exchange, auditing  
6 procedures to test the validity of such bills, and personnel and supervisory staff to perform  
7 these and similar functions. ACSI believes that these expenditures, which could exceed  
8 \$100,000, are not justified in relation to compensation if the dollar amount that actually  
9 will be paid is too small. The \$10,000 threshold is intended to identify a point at which  
10 it makes economic sense for both parties to spend the resources necessary to establish a  
11 cash compensation mechanism.

12 **Q. DO YOU HAVE ANY REASON TO BELIEVE THAT THE VOLUME OF**  
13 **TRAFFIC WILL NOT BE APPROXIMATELY IN BALANCE?**

14 **A.** No, I am not aware of any reasons why one would expect there to be a significant  
15 imbalance in the volume of traffic exchanged between ACSI and GTE, nor have I seen  
16 any traffic studies which would lead me to expect traffic to be out of balance.

17 **Q. HAS THE FLORIDA PUBLIC SERVICE COMMISSION FOUND THE MUTUAL**  
18 **TRAFFIC EXCHANGE METHOD OF COMPENSATION CONSISTENT WITH**  
19 **THE PUBLIC INTEREST?**

20 **A.** Yes. Moreover, other states, such as California, Arizona, Texas and Washington, have  
21 ordered bill and keep compensation for at least an initial period. In addition, BellSouth



1 has agreed initially to use a bill and keep system for traffic exchanged in Florida.  
2

3 **COLLOCATION OF ACSI EQUIPMENT**

4 **Q. IN HIS DISCUSSION OF THE COLLOCATION ARRANGEMENTS GTE IS**  
5 **WILLING TO MAKE AVAILABLE, MR. MCLEOD REFERS (P. 16) TO A**  
6 **"LOOP/PORT CONNECTOR" THAT GTE WILL PROVIDE. WHAT IS YOUR**  
7 **REACTION TO THIS TESTIMONY?**

8 **A.** I'm not sure precisely what Mr. McLeod is referring to. A "loop/port connector" is not  
9 a term I ordinarily associate either with collocation or the purchase of unbundled  
10 elements. Thus, it does not appear appropriate for GTE to insist that ACSI secure  
11 something called a "loop/port connector," unless this term refers to a connection that  
12 already is provided as part of ACSI's collocation arrangements.

13 **Q. PLEASE EXPLAIN WHAT CONNECTIONS ACSI REQUIRES WHEN IT**  
14 **REQUESTS COLLOCATION IN GTE FACILITIES.**

15 **A.** When ACSI pays for collocation of its equipment, it pays not only for the privilege of  
16 housing its equipment in a GTE facility, but also for any necessary connections to link  
17 its equipment to elements or services ACSI obtains from GTE. That is, "collocation" is  
18 not merely the sub-leasing of space at GTE facilities, but rather is a method of  
19 interconnecting to the GTE network. Therefore, "collocation" must by necessity include  
20 whatever is necessary to connect ACSI's equipment -- which may be located at any place  
21 in a GTE central office -- to GTE's distribution frame or similar equipment for purposes

1 of obtaining access to unbundled elements of GTE's network.

2 To illustrate, I attach to my testimony a simple diagram (Figure 1) showing the  
3 connection of an unbundled loop at a GTE central office. When GTE is the provider of  
4 local service to the customer, signals pass through the steps labelled 1, 2 and 3 to reach  
5 GTE's switch for call routing purposes. When ACSI purchases an unbundled loop from  
6 GTE, however, it purchases the feeder and distribution facilities of the loop (number 1  
7 on the diagram), as well as any connection necessary at the distribution frame to route the  
8 call to ACSI (item 4). Item 5 -- which may be what Mr. McLeod is referring to as a  
9 "loop/port connector" -- is a connection necessary to connect ACSI's collocation space  
10 with the distribution frame so that ACSI may obtain the elements it has purchased. The  
11 connection labelled number 5, therefore, is an inherent part of the collocation which GTE  
12 offers to ACSI. Its costs, if any, already are included in the collocation arrangement  
13 ACSI purchases from GTE, and GTE should not be permitted to charge for the same  
14 function a second time. As is plain from Figure 1, collocation is impossible without Item  
15 5.

16 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

17 **A. Yes.**

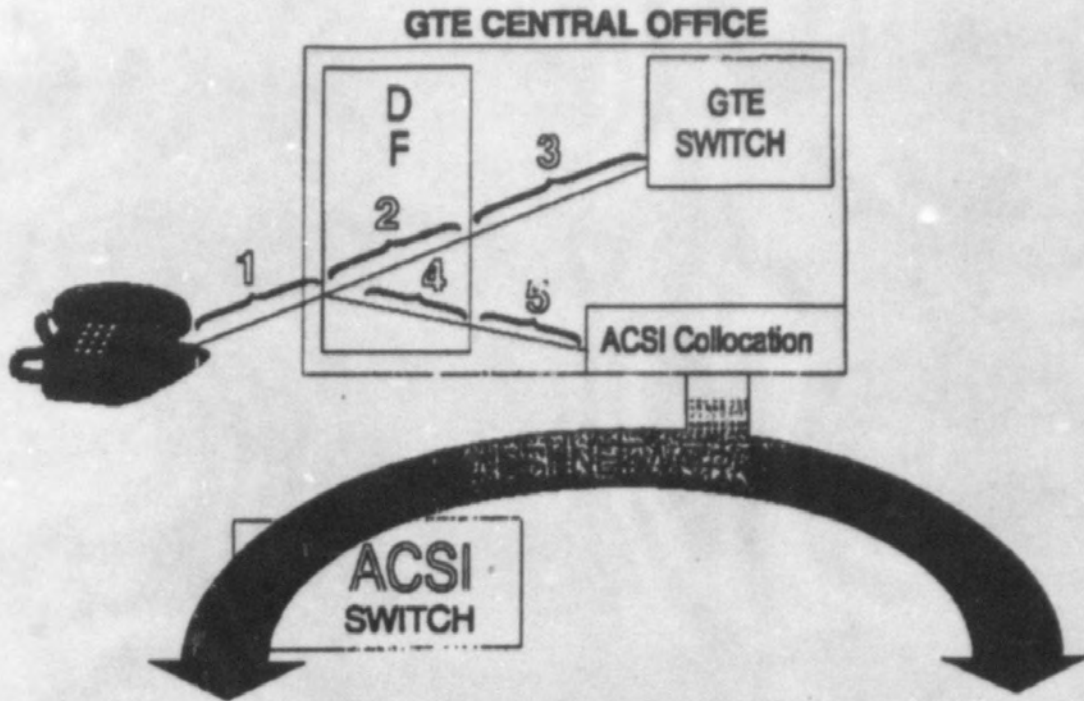


Figure 1. ACSI Collocation At GTE Central Office

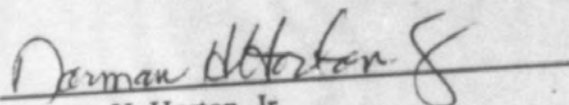
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Rebuttal Testimony of Richard Robertson on behalf of American Communications Services, Inc. in Docket No. 961537-TP has been furnished by Hand Delivery (\*) and/or Overnight Delivery (\*\*) on this 7th day of February, 1997 to the following parties of record:

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February 7, 1997

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Division of Records and Reporting  
Room 110, Easley Building  
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2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

BY HAND DELIVERY

Re: Docket No. 961537-TP

Dear Ms. Bayo:

Enclosed for filing is an original and fifteen copies of the Rebuttal Testimony of Dr. Marvin H. Kahn, the Rebuttal Testimony of C. William Stipe, III and the Rebuttal Testimony of Richard Robertson on behalf of American Communications Services, Inc. in the referenced docket.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter.

Thank you for your assistance in this matter.

Sincerely,

*Norman H. Horton, Jr.*  
Norman H. Horton, Jr.

NHH:amb  
Enclosures

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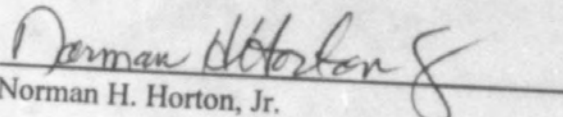
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