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February 17, 1997

BY HAND DELIVERY

Ms. Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: MCI/GTEFL Arbitration
Docket Nos. 960847-TP, 960980-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Access Transmission Services, Inc. and MCI Telecommunications Corporation are the original and fifteen copies of the "Comments of MCImetro In Support of Its Version of Disputed Language in Proposed Interconnection Agreement."

By copy of this letter, this document has been furnished to the parties on the attached service list.

Very truly yours,

Richard D. Melson

ACK
AFA
APP
CAF
CMU
CTR
EAG
LEG 2
LIN 5
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SEC 1
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Enclosure
cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with GTE Florida Incorporated concerning interconnection and resale under the Telecommunications Act of 1996	)	Docket Nos. 960847-TP 960980-TP Filed: February 17, 1997

COMMENTS OF MCImetro IN SUPPORT OF ITS VERSION OF DISPUTED LANGUAGE IN PROPOSED INTERCONNECTION AGREEMENT

MCImetro Access Transmission Services, Inc. and MCI Telecommunications Corporation (collectively, MCIm) hereby submit their comments in support of MCIm's version of the disputed language in the proposed MCImetro/GTE Interconnection Agreement 1997 (Agreement) filed concurrently herewith.

I. BACKGROUND

On April 3, 1996, MCIm requested that GTE Florida Incorporated (GTEFL) begin negotiations for an interconnection agreement pursuant to Section 252 of the Telecommunications Act of 1996 (Act). On August 28, 1996, MCIm filed its petition with the Commission for arbitration with GTEFL pursuant to Section 252(b)(1) of the Act.

On January 17, 1997, the Commission issued Order No. PSC-97-0064-FOF-TP (Order) which resolved over thirty major issues between the parties, some of which contained a number of subissues. The Commission ruled in favor of MCIm's position on

some issues and in favor of GTEFL's position on other issues. The Commission did not, however, specify the particular contract language necessary to implement those rulings.

Pursuant to Part VI.D of the Order, the parties were given until February 17, 1997 to submit a written agreement memorializing and implementing the decisions contained in the Order. The Order provided that if the parties could not agree to the language of the agreement, each party should submit its own version of the language, and the Commission would decide on the language that best incorporates the substance of its decision. (Order at 148-149)

MCIm and GTEFL have continued to negotiate an agreement which incorporates the Commission's decisions on the major issues and which includes the myriad of other provisions necessary for a comprehensive agreement on interconnection, unbundling and resale. MCIm and GTEFL have spent thousands of man-hours (both before and after the Commission's Order) negotiating the Agreement filed herewith and have reached agreement on the vast majority of the necessary provisions.[1] Nevertheless, there are still a relatively small number of provisions which the parties

[1] In some cases, the parties have simply adopted language that they agree is necessary to implement and conform to the decisions contained in the Commission's Order. These provisions are shown in the Agreement as "Conformed." By including these provisions in the Agreement submitted for approval, MCIm does not waive its right to assert in the appropriate forum that the underlying Commission rulings are inconsistent with the Act or the applicable FCC Rules and Regulations thereunder.

have been unable to resolve between themselves, and on which they have submitted competing language to the Commission.

In each case where the parties have not agreed to specific contractual language, the Agreement shows MCIm's version of disputed language in **bold text** and GTEFL's version of disputed language in ***bold italics***. Each party is filing separate comments in support of its version of the disputed language or (in the case of GTEFL) its position that the Commission should refuse to resolve the dispute.

II. THE COMMISSION SHOULD DECIDE ALL UNRESOLVED ISSUES

It is essential for the Commission to resolve all the open issues between the parties. At the time MCIm filed its Petition for Arbitration it had identified over 500 items that must be addressed in any comprehensive interconnection agreement.[2] While the parties appeared to have reached agreement in principle on many of these issues, they had not reached agreement on any specific contractual language. MCIm's Petition for Arbitration therefore submitted **all** of these items for arbitration. (Petition ¶ 18, 33, 57)

In recognition of the fact that the Commission should not expend its resources on areas where the parties could likely reach agreement, MCIm asked the Commission to establish a Mediation Plus arbitration procedure to attempt to bring many of

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[2] See the Term Sheet attached as Exhibit 2 to MCI's Petition for Arbitration and the Term Sheet Items attached as Exhibit 3. These documents are included in the record as part of Exhibit 21.

these issues to closure before the hearings on MCIm's petition. (Petition ¶ 19-24) MCIm also asked the Commission to fully arbitrate all of these unresolved issues in the event that its request for Mediation Plus was not granted. (Petition ¶ 18)

The Commission denied MCIm's request for Mediation Plus. The Commission instead identified approximately 30 categories of major issues to be specifically addressed at the hearings in this docket. Under the post-decision procedures discussed at the prehearing conference and at the hearing, MCIm understood that if the parties were unable to reach agreement on specific items that were not arbitrated as major issues, the Commission would resolve those items at the contract submission phase by picking the language submitted by one party or the other.

MCIm expects that GTEFL will contend that since some of the unresolved items were not specifically addressed as part of the major issues, the Commission should decline to choose between the parties' competing language. This would be an intolerable result. MCIm recognized at the outset of this proceeding that a full and complete interconnection agreement was essential to its ability to enter and compete in the local telecommunications market. As a result, MCIm placed all material and relevant issues impacting on the interconnection agreement at issue in its Petition for Arbitration. MCIm submits that these issues are properly within the scope of the proceedings before the Commission and should be addressed as part of this contract approval process. At stake in this proceeding is the very

viability of the interconnection agreement between MCIm and GTEFL, and with that, of MCImetro's ability to compete in the local market.

Under the ground rules understood by MCIm, the Commission would choose between the parties competing language based on the record in the proceeding and on the parties' comments in support of their language. MCIm believes that this procedure is fully appropriate, and represents the most efficient way of resolving the remaining disputes.[3]

Nevertheless, if the Commission determines that there are any issues which require further evidentiary proceedings to resolve, MCIm urges the Commission to hold the further hearings on an expedited basis, without prefiled testimony. In no event does MCIm believe that any new factual determinations which the Commission concludes need to be made should have to be postponed for some nine months, as would happen if MCIm were forced to begin a new round of negotiation/arbitration under the Act.

III. SPECIFIC COMMENTS ON DISPUTED CONTRACTUAL LANGUAGE

MCIm submits that the Commission should accept its version of the proposed contractual language on each disputed issue for the reasons set forth below:

[3] This is the same procedure being followed by other Southeast states, including Georgia and Tennessee.

A. General Terms and Conditions

1. Article III, § 13, Revenue Protection

The Section 13 revenue protection sections raise issues that are addressed via Operational Support Systems (OSS). MCIm urges that revenue protection should be viewed as synonymous with fraud protection. Failure to fully implement fraud protection results ultimately in increased costs for subscribers. In the resale marketplace -- the primary means by which MCIm and other providers are likely to provide service at the beginning -- MCIm will have no control over GTEFL's network. MCIm will conduct fraud investigations and will have to rely on GTEFL to resolve the targeted concern. MCIm asserts that protection of MCIm's revenue will always take a back seat to protection of GTEFL's revenue and that the provisions at issue are an appropriate means of addressing this problem.

MCIm's language assigns responsibility for uncollectible or unbillable revenues to the party who caused the error (§13.1.1), failed to control access to the network or support systems by unauthorized third parties (§13.1.2), or failed to protect its physical facilities (§13.1.3). GTEFL, on the other hand, would assume no responsibility for revenue losses caused by its own failures, but would merely provide a partial credit against its bill for the affected services. If GTEFL is permitted to insulate itself from responsibility for the consequences of its failure to implement adequate fraud control procedures, GTEFL will have no incentive to exercise the same degree of care when

providing resold services and unbundled network elements to MCIm as it exercises in the provision of its own services.

This is ultimately a quality of service assurance issue -- i.e. what provisions are necessary to ensure that GTEFL provides the same quality of fraud protection to MCIm as it provides to itself. This dispute is therefore within the scope of Issue 4(a), and the Commission's decision at page 94 of the Order.

2. Article III, § 20, Indemnification
Article III, § 22, Limitation of Liability

a. General

The indemnification and limitation of liability provisions have been among the most difficult contractual provisions for the parties to address. In addition to fully litigating these issues before the Commission, MCIm and GTEFL participated in mediation before the Commission's General Counsel in an attempt to resolve their differences.

MCIm recognizes that the Commission declined to arbitrate liability and indemnification provisions, and found that the parties can and should establish remedies for performance failures through negotiation. (Order at 98) The parties have continued to negotiate these provisions since the date of the Order and, despite the Commission's expectation to the contrary, have been unable to reach agreement. MCI therefore urges the Commission to choose appropriate indemnification and liability provisions based on the record in this proceeding. As discussed in more detail below, the appropriate language would hold each party responsible for damages caused by its actions or inactions

related to the performance of the Agreement. (See, Inkellis, T. 1061-1100)

If the Commission stands by its earlier decision and refuses to select indemnification and liability language, MCIm urges -- as a second-best solution -- that the Commission clearly order the parties to execute an agreement containing no indemnification and liability provisions. This would leave the rights of the parties to be governed by the common law. MCIm fears that without clear direction by the Commission, GTEFL may refuse to execute an agreement which contains no limitation of liability provision, since such an agreement exposes both parties to more potential liability than either party's proposed language.

b. Limitation of Liability

MCIm's limitation of liability provision starts with a general limitation (not found in the common law) on indirect, incidental, special or consequential damages. This provision then carves out a reciprocal exception from the limitation of liability for either MCIm or GTEFL in the event of willful or intentional misconduct, including gross negligence, or repeated breach by a party of one or more of the party's material obligations under the Agreement.

The nature of the local telecommunications marketplace mandates the use of MCIm's limitation on liability provision in the Agreement. A once-monopoly provider (GTEFL) is supplying a competitor (MCIm) with essential interconnection, network elements and resold services. GTEFL has every incentive to see

that MCIm takes as few of its customers as possible. One way this can be accomplished, intentionally or unintentionally, is for GTEFL to repeatedly breach the material obligations of the Agreement, thereby impairing MCIm's ability to provide high quality service to its customers. In such cases, MCIm will not be made whole by direct damages, because the actual harm to MCIm is in the form of lost revenues and goodwill. Direct damages cannot even be measured, because the normal measure of contract damages -- which is the cost to replace the faulty services or elements -- does not exist when GTEFL is the sole provider of such items. (See, Inkellis, T 1061-1100)

GTEFL's alternative language excludes liability for consequential damages that result for *any* reason, including GTEFL's "negligence of any kind whether active or passive." Under this language, GTEFL could actively engage in grossly negligent conduct that breaches the Agreement, yet be completely shielded from any liability for the resulting harm to MCIm's revenues and goodwill. In fact, the only conduct for which GTEFL proposes to accept responsibility is the willful misconduct of GTEFL or its employees or agents with regard to (i) mistakes in directory listings, 911 databases, or similar databases, and (ii) incorrect referrals of end users to MCIm. These are clearly unreasonable provisions, and should be rejected outright.

c. Indemnification

MCIm's proposed indemnification language is narrowly tailored to address issues "relating to or arising out of the

libel, slander, invasion of privacy, misappropriation of a name or likeness, negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors ***in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement.***" (emphasis added) This language does not open the door to unlimited claims against GTEFL by MCIm's end users -- it allows such claims only where they are arise from GTEFL's failure to perform its obligations under the Agreement.

The Agreement determines the services and quality of services that MCIm will be providing to its end users and, therefore, determines the viability of MCIm's local exchange service. If GTEFL fails to comply with the Agreement, and GTEFL's breach of the Agreement causes a claim against MCIm by a third party, GTEFL should bear the responsibility. Without the language proposed by MCIm, GTEFL would be absolved from any responsibility to third parties resulting from its breaches of contract -- whether negligent or intentional. Coupled with GTEFL's proposed language on limitations of liability, this would give GTEFL free rein to ignore its contractual obligations to MCIm, and would make the competitive playing field severely uneven.

The unreasonableness of GTEFL's position is particularly evident in GTEFL's proposed Sections 20.1.4 and 20.1.5. Carriers have no control over what their customers transmit, yet under Section 20.1.4 GTEFL would have MCIm bear responsibility for

alleged libel or slander transmitted by such customers over services resold by MCIm. Similarly, in Section 20.1.5, GTEFL seeks to have MCIm indemnify GTEFL if the use of GTEFL's network by MCIm's customers results in GTEFL being sued for intellectual property infringement.

For the reasons stated above, and in the testimony of Mr. Inkellis (T. 1061-1100), MCIm urges that the Commission accept MCIm's proposed liability and indemnification provisions, and reject the alternative language proposed by GTEFL.

3. Article III, Section 23, Intellectual Property

GTEFL seeks to delete provisions proposed by MCIm that would (i) require each party to obtain, at no additional cost, any necessary licenses for intellectual property used in the party's network (§23.2), and (ii) require each party providing a service pursuant to the Agreement to defend the purchaser of the service against any claims for patent or copyright infringement arising from the use of the service (§23.1). GTEFL takes the position that these costs should not be imposed on it. This position is unreasonable.

GTEFL has developed its network using a combination of proprietary and third-party technologies which is transparent to MCIm or any other customer or carrier. It is incumbent on GTEFL to ensure that providing access to and use of its network to MCIm for a fee does not violate the intellectual property rights of third-parties. Therefore, it is entirely appropriate that GTEFL bear the burden of ensuring that it has obtained all necessary

licenses from third-parties who have contributed technology to its network.

The rates paid by MCIm as established in the Commission's Order for unbundled network elements and resold services are intended to cover both the service provided, and any technology and rights necessary for the provision of that service. It would be inappropriate for GTEFL to recover such costs twice, or to fail to defend MCIm against a third-party claim that the provision of service to MCIm violates the third-party's intellectual property rights.

These are essentially cost recovery issues and are therefore within the scope of Issues 3 and 13(b).

4. Article III, § 24.2, Remedies

Section 24.2 of Article III provides that if GTEFL fails to switch a customer to MCIm's service, GTEFL is responsible to MCIm for the revenues that would have been received if the customer had properly been transferred. GTEFL opposes this section in its entirety.

MCIm's proposed language is necessary in order to remove any incentive for GTEFL to delay the transfer of a customer to MCIm, such as a customer who uses a sizable amount of telecommunications services. The appropriate measure of compensation for such failure to release the customer is the gross revenues received from the customer by GTEFL during the period when the customer should have been transferred to MCIm. GTEFL should not be permitted to offset such gross revenues by

its "costs," which might go unchecked since GTEFL knew it was going to lose the customer. The situation is within GTEFL's total control; it needs simply switch MCIm customers to MCIm when it promises to do so.

This remedy also is analogous to Section 258 of the Act and a similar provision in the FCC's rules. Section 258 provides that a telecommunications carrier who violates the FCC's verification procedures when submitting a change in a subscriber's selection of his local or toll carrier is liable for all charges paid by the subscriber to the incorrect carrier after such violation, in addition to any other remedies available by law. MCIm's proposed language simply makes this obligation reciprocal, and places a similar make whole burden on GTEFL when it fails to process a valid order to switch a subscriber to MCIm.

This is a quality assurance issue, and is therefore within the scope of Issue 4(a), and the Commission's decision at page 94 of the Order.

5. Article III, § 28, Non-Discriminatory Treatment

Section 28 provides that if GTEFL provides any of the services covered by the Agreement to another party by tariff or agreement, then MCIm has the option of taking the prices, terms and conditions of such tariff or other agreement in lieu of the prices, terms and conditions contained in this Agreement. GTEFL proposes to delete this provision in its entirety.

This provision is necessary to implement Section 252(i) of the Act. Without an explicit provision in the Agreement, GTEFL

might subsequently claim that MCIm has contracted away its ability to obtain the "most favored nation" protection afforded by Section 252(i). This concept underlying this provision is consistent with the Commission's decision regarding "dark fiber," in which it ruled that MCIm and AT&T were entitled to obtain dark fiber on the same terms and conditions as contained in a previously approved agreement between GTEFL and MFS. (Order at 21-24)

6. Article III, § 39 and related sections

The ability for MCIm to conduct reasonable audits and examinations is critical to MCIm's provision of quality service to its end users and to ensure that it is paying no more than the agreed amount for the services it obtains from GTEFL.

MCIm's proposed Section 39 establishes audit and examination procedures that MCIm requires in order to ensure that GTEFL is providing the purchased services and elements pursuant to the rates, terms, and conditions of the Agreement. MCIm's proposed procedures are reasonable. They provide for 30 days' notice, audit or examination during normal business hours, an agreed-to scope for each audit or examination, and for each party to bear its own expenses under normal circumstances. MCIm's language also addresses the procedures to be used for making audit adjustments, states the conditions under which the right to audits can be waived, and permits audits to take place for up to two years after the termination of the Agreement.

In addition, other sections of the Agreement (Art.IV, §3.1; Art.VIII, §6.1.3.7, 6.1.7.6; Art.XIII, §1.7) contain audit or examination provisions tailored to those specific portions of the Agreement. For example, §3.1 of Article III permits audits of local interconnection usage reports to be conducted on twenty days notice, rather than thirty. Similarly, §6.1.7.6 provides for review of control procedures for transfer of usage data to be performed as part of the normal production interface management function. In each case, these provisions were separately negotiated and, at one time, were agreed to by the negotiators for MCIm and GTEFL.

GTEFL objects to all examinations and proposes its own more limited language for audits which does not address many of the details that are required to have a complete and workable audit provision. In addition, GTEFL proposes changes to language in other sections which removes some of the service-specific audit language to which GTEFL's negotiators had previously agreed, thereby effectively voiding agreed-upon audits negotiated by the parties in various sections of the Agreement. The GTEFL provisions should be rejected since they do not provide adequate detail and in some cases represent an attempt to renege on agreements that had been reached on specific contractual provisions.

The method by which audits are conducted is part of the overall issue of quality assurance, and is therefore covered by Issue 4(a), and the Commission's decision at page 94 of the Order.

7. Article III, § 41.1, Dispute Resolution

The parties are in agreement on dispute resolution provisions with two exceptions. The first is the length of time (30 days vs. 60 days) that the parties should be required to negotiate before submitting a dispute to the Commission under §41.1 or to an arbitrator under §41.2; the second is whether the parties should give up their right to seek judicial relief for violations of any state or federal statutory right.

MCIm urges the Commission to adopt MCIm's version of the disputed language. As a practical matter, disputes which cannot be resolved by the parties within 30 days are unlikely to be resolved within 60 days. To require a 60-day negotiation period as a prerequisite to seeking outside help in dispute resolution would simply delay the process of getting disputes heard and resolved in a timely manner. Also, while recourse to the Commission or to commercial arbitration is an appropriate method of resolving the majority of disputes which might occur, MCIm should not be required to give up its ability to seek judicial relief in the event that GTEFL's actions violate any of MCIm's state or federal statutory rights.

B. Interconnection and Transport and Termination of Traffic

1. Article IV, § 1.4, Access to Telephone Closets

The parties have agreed that, where technically feasible, MCIm can request interconnection at a telephone closet. The parties disagree on whether, if a third-party has control over a telephone closet, GTEFL should be required to cooperate with MCIm

in obtaining the third-party owner's permission for the placement of facilities.

MCIM submits that this issue is one of parity. GTEFL presumably has an existing relationship of some type with the premises owner. The proposed language would merely require GTEFL to cooperate with MCIm's efforts to obtain from the owner the similar right of access that GTEFL already enjoys.

2. Article IV, § 3.3, Reciprocal Compensation

This section provides that MCIm shall charge GTEFL the tandem reciprocal compensation rate except where MCIm completes calls within a rate center to which GTEFL would have provided direct end office trunking, in which case only the end office reciprocal compensation rate shall apply.

The parties have agreed that, when trunks are established to an end office, only calls to those NXXs assigned to that end office in the LERG can be completed. If there are calls to ported numbers, those numbers with their corresponding NXXs are not assigned to the MCIm switch. The only way to get calls completed to those numbers is through tandem switching. Parity requires, therefore, that if MCIm has to pay a tandem charge when MCIm doesn't trunk to an end office, GTE also should have to do the same.

This dispute is within the scope of Issue 22 relating to compensation for the termination of local traffic.

3. Article IV, § 4.4.5, Trunk Ordering Interval

The parties disagree on the provisioning interval for local interconnection trunk groups. MCIm's proposal ties the provisioning to MCIm's desired due date, but permits the parties to mutually agree to a different time frame. The GTEFL proposal would use the desired due date only as a goal, and would commit to installation only by a firm order confirmation date which is totally within GTEFL's control. Because a delay in the provisioning of interconnection circuits can seriously impair MCIm's ability to provide service to its customers, it is not appropriate to leave the definition of the provisioning interval totally in GTEFL's control.

This is a quality of service issue and is within the scope of Issue 4(a).

C. Resale

1. Article V, Sections 3.1.3.2, Resale of Voice Mail Service

MCIm's language requires GTEFL to make available for resale any voice mail service provided to retail customers. GTEFL objects to this language on the ground that the Commission's order did not specifically require the resale of voice mail.

MCIm's proposed §3.1.3.2 is fully consistent with the Commission's order. Issue 1 asked what services provided by GTEFL should be excluded from resale. GTEFL's position on this issue did not identify voice mail as a candidate for exclusion, and the Commission adopted the staff's recommendation that "GTEFL should be required to offer for resale any services it provides

at retail to end use customers who are not telecommunications carriers." (Staff Recc. at 20)

Because GTEFL had not refused to provide voice mail service, the Order did not specifically address that service; instead it addressed only those services "that GTEFL has refused to offer AT&T and MCIm on a retail basis." (Order at 44) Accordingly, as a service provided at retail to customers who are not telecommunications carriers, voice mail is within the overall scope of the resale requirement and must be resold.[4] This dispute is within the scope of Issue 1.

D. Unbundled Network Elements

1. Article VI, § 7.2.2.2, 7.2.2.3, Rights and Allocation of Cost for Switch Modifications

The Commission should approve MCIm's proposed language in Sections 7.2.2.2 and 7.2.2.3, These sections simply seek to protect MCIm's interests in any MCIm-requested switch modifications for which MCIm has paid. Without MCIm's request the modification would not exist, and MCIm is entitled to its exclusive use, unless fairly compensated by reimbursement of an appropriate share of the development and implementation costs.

Section 7.2.2.2 provides that MCIm is entitled to pro rata reimbursement if the switch modification is used by other third parties. Section 7.2.2.3 provides that MCIm is entitled to full

[4] To the extent that GTEFL now argues that voice mail is not a "telecommunications service," it raises a legal issue which was resolved by the Commission in favor of the resale of voice mail in the MCI/Sprint arbitration, Docket No. 961230-TP.

reimbursement (less any amounts already received from third parties) if the switch modification is used by GTEFL.

This latter section puts MCIm and GTEFL in the same position with regard to all switch features, functions and capabilities used by GTEFL. If the function was originally requested and paid for by GTEFL, then MCIm would pay only the Commission-approved price for switching. If the function was originally requested and paid for by MCIm, then once GTEFL begins to use that functionality, MCIm should be reimbursed for the total cost of the modification, and should pay only the Commission-approved price for switching.

The deletion of Section 7.2.2.3 proposed by GTEFL would create a windfall to GTEFL. Without that section, GTEFL would be able to use switch modifications by paying only a fraction of the cost which it would have incurred if it had ordered the modification itself.

This issue relates to the pricing of unbundled local switching features, and is within the scope of Issue 13(b).

2. Article VI, § 18.2, Dark Fiber

The disputed language in Section 18.2 relates to whether GTEFL is required to lease dark fiber facilities to MCIm for interconnection purposes when such facilities are available, or only if GTEFL first decides to offer dark fiber facilities for interconnection purposes. This issue was resolved by the Order. The Commission ruled that "since GTEFL has agreed to allow MFS to lease dark fiber for the specific purpose [of interconnection]...

we find that 47 U.S.C. §252(i) requires GTEFL to also make dark fiber available to AT&T and MCI under the same terms and conditions." (Order at 24) Nowhere in the Order, or in the order approving the GTEFL/MFS interconnection agreement, is there any suggestion that GTEFL has the unilateral right to decide whether to offer such dark fiber in the first instance. MCI's proposed language therefore best implements the Commission's Order, and should be approved.

E. Ancillary Services

1. Article VII, §§ 6.1.2.1, 6.1.2.2, and 6.1.2.3, Transfer of Ownership and Billing for Yellow Page Listings.

Once a subscriber transfers from GTEFL to MCIm, it is axiomatic that ownership of, and the right to bill for, the subscriber's directory listing information thereafter belongs to MCIm. The agreed portions of §§ 6.1.2.3 to 6.1.2.3 recognize this right as to the subscriber's white page listing. Since the white page listing for a business customer carries with it the right to a primary yellow page listing, it is only logical that the ownership of both listings must travel together. Such ownership of yellow page listings is essential if MCIm is to be at parity with GTEFL in the provision of telecommunications services. If MCIm is precluded from receiving the yellow page listings, one-half of the value of MCIm's directory services -- particularly in dealing with business customers -- would be lost. The MCIm proposed language for Section 6.1.2.1, 6.1.2.2 and 6.1.2.3 is therefore fully appropriate for inclusion in the Agreement.

2. Article VII, Section 6.6.1, Performance Standard for Database Updating.

GTEFL does not appear to object to providing updates to directory listing information as requested by MCIm. However, GTEFL objects to providing such updates within the intervals MCIm requests.

The intervals MCIm requests in Section 6.6.1 are needed to ensure that there are outside limits on when GTEFL is to update the listings. Moreover, it is difficult to conceive how the intervals MCIm is proposing are not commercially reasonable, particularly in light of the fact that such updates will be handled through electronic interfaces in most instances.

This issue involves the performance metrics for updating directory listing information, and is within the scope of Issue 4(a). See Order at 94.

F. Business Processes

1. Article VIII, §§ 2.1.4.2, Reservation of Telephone Numbers

MCIm proposes in Section 2.1.4.2 that where MCIm has not obtained its own NNX, it should be permitted to reserve up to 100 numbers, for up to 45 days, subject to number resource availability. This is a reasonable request which provides MCIm with much less access to number resources than that enjoyed by GTEFL itself. GTEFL, for example, reserves entire blocks of NXXs (10,000 telephone numbers) or large blocks of numbers for services like Centrex. GTEFL admitted as much during negotiations on this issue.

Apparently GTEFL's concern is that MCIm (or other ALECs) might "grab" blocks of numbers which could lead to depletion of the numbering resource. That is not MCIm's intent. MCIm simply wishes to reserve blocks of numbers for its services just as GTEFL does.

In response to GTEFL's concern, MCIm has offered to limit its reservation to no more than 100 numbers, for no more than 45 days. Significantly, by making even such limited reservations subject to the availability of number resources, MCIm has left great control to GTEFL over the reservation of such numbers.

GTEFL's alternative language would treat MCIm like a retail customer, not a carrier, and would permit GTEFL to charge inflated retail rates for reservation of numbers. That language would deny MCIm parity, contrary to the Act.

Issues regarding non-discriminatory access to numbering resources are within the scope of Issue 29.

2. Article VIII, §2.1.4.3, Installation of NXXs

MCIm proposes that, where technically feasible, GTEFL be required to install MCIm's NXX in GTEFL's switch. GTEFL does not appear to be contending that such installation is not technically feasible. It being technically feasible to do, MCIm has a right to its request.

To the extent that GTEFL's objection is based on MCIm's desire to define its own local calling areas, GTEFL's proposal to eliminate this section would contravene MCIm's right to define its own calling scope, and thereby infringe on the development of

new and/or improved services -- the desired product of effective competition.

Issues regarding non-discriminatory access to numbering resources are within the scope of Issue 29.

3. Article VIII, Section 4.7, Payment Period for Bills.

MCIm had agreed to pay CABS-formatted bills within 30 days from the bill date, or 20 days from receipt of the bill, whichever is later. Until CABS-formatted billing is available, GTEFL will provide CBSS bills. MCIm proposes to pay such CBSS bills within 60 days from the bill date, or 40 days from receipt of the bill, whichever is later. This additional time is required because CBSS bills cannot be audited and processed on a mechanized basis, but must be reviewed and approved for payment manually. In the situation where MCIm is receiving and paying hundreds of bills per month, this process cannot reasonably be completed by the "bill payment date" specified in GTEFL's proposal.

The issue of CABS vs. CBSS bills is within the scope of Issue 28.

4. Article VIII, § 5.1.6, Summary of Usage Sensitive Messages.

GTEFL's objection to Section 5.1.6 appears to be one of GTEFL's ability to provide the monthly file summarizing usage sensitive messages at this time. MCIm is willing to modify this section by inserting the phrase "where technically feasible" after the phrase "At the same time as the monthly bill is transmitted," and before the acronym "GTE" in the opening

sentence of Section 5.1.6. As so modified, MCIm's language should be approved. MCIm should be entitled to receive such information where its provision is technically feasible, in order to be able to ascertain its potential liability for services that it has used during the billing period.

This dispute is within the scope of Issue 8(a) on billing and usage recording services.

5. Article VIII, § 7.1.11, Root Cause Analysis

GTEFL contends that it is not required to perform a root-cause analysis for those instances where GTEFL falls below the performance standards set forth in the agreement. MCIm submits that the simple act of keeping performance records is of no use unless such records are subject to being analyzed to determine the reason for performance failures -- in short, to enable GTEFL to perform root-cause analyses. MCIm's language in Section 7.1.11 is essential to ensure parity and should be retained.

This is a quality assurance issue within the scope of Issue 4(a).

G. Rights of Way

1. Article X, § 1, Rights of Access
Article X, § 3.3, Selection of Space

Under the Order, MCIm has a right to access GTEFL's poles, conduits, and rights-of-way on a parity with GTEFL. (Order at 141) Since GTEFL has the right to select the space that it will occupy on poles and in conduits, parity requires that MCIm have the same right, which is reflected in MCIm's proposed language

for Sections 1 and 3.3. GTEFL's alternative language, which does not give MCIm the right to select specific space on poles or in conduits, is contrary to the concept of parity as established by the Act and the Commission's Order.

This issue is included within the scope of Issue 17(a) regarding access to poles, ducts, conduits and rights-of-way.

2. Article X, § 6.2, Inquiry Request

The language in Section 6.2 has been agreed by the parties for some time, but MCIm understands that GTEFL has recently elected to dispute this section and will discuss this dispute in its comments. The current version of Section 6.2 should be approved. Under the methodology negotiated by the parties, MCIm has the right to make an initial inquiry regarding the availability of space on GTE facilities in advance of submitting an attachment request. This enables MCIm to explore alternatives without triggering the formal attachment request process. This section also provides for expedited approval of an attachment request in the event that an inquiry showed that space was available, and MCIm promptly followed-up with a formal attachment request. This is a reasonable procedure that ensures that MCIm has the same right as GTEFL to informally determine the availability of space. As such, it is fully consistent with the parity provisions of the Commission's Order. (Order at 141)

This dispute is within the scope of Issue 17(a).

3. Article X, §§ 8.1.1 and 9.1.1, Cost Allocation

The parties differ on whether MCIm is required to bear the full cost for modifying a pole attachment (§8.1.1) or for modifying occupancy arrangements (§9.1.1) whenever MCIm is the only party requesting a modification, or only when the modification is made for the sole benefit of MCIm.

The Commission's Order on this point adopted the FCC's methodology for allocating pole attachment costs. (Order at 142) MCIm believes that its version of Sections 8.1.1 and 9.1.1 are supported by and consistent with the language in the FCC Order which states that "to the extent the cost of modification is incurred **for the specific benefit of any particular party**, the benefiting party will be obligated to assume the cost of modification. . ." (as quoted at Order, page 142, emphasis added) GTEFL's proposal goes further, and would require MCIm to bear the entire cost of a modification, whenever the modification was made solely at MCIm's request, even though the modification was not for MCIm's sole benefit. MCIm believes that GTEFL's position is based on a misreading of the FCC Order, and attempts to hold MCIm responsible for unwarranted costs in situations where multiple parties benefit from a modification.

This dispute is within the scope of Issue 17(b).

4. Article X, § 15.1, Charges for Unauthorized Attachments

GTEFL proposes an introductory sentence to §15.1 which would impose unreasonably high fees for unauthorized attachments in the guise of a liquidated damages provision. MCIm does not intend to

build its network by stealing attachments from anyone. If MCIm mistakenly attaches where it should not, there should be no penalty. GTEFL is adequately protected by the other language in Section 15.1, which provides for MCIm to pay retroactive attachment fees and any costs incurred by GTEFL as a result of the unauthorized attachment. The exception for mistaken attachments in good faith contained in Section 15.2 pursuant to an approved attachment request would not cover all situations in which a mistake might occur. Moreover, GTEFL's proposed self-serving language that the payments are not "penalties", but are "liquidated damages" does not disguise the true nature of the payments requested by GTEFL.

This issue is within the scope of Issue 17(b) regarding compensation for use of poles, ducts, conduits and rights of way.

5. Article X, §§ 17 and 18, Indemnification and Insurance

There is no need for a separate indemnification section in Article X. GTEFL is adequately covered by the general indemnification provision in Article III, Section 20 of the Agreement. Of course, to the extent the Commission determines that it cannot or will not dictate specific indemnification language, that ruling should apply equally to GTEFL's proposals in Article X.

The insurance clause proposed by MCIm in Section 17 is commercially reasonable and is adequate to cover GTEFL's needs under Article X. There is no need for the additional language proposed by GTEFL, such as a bond requirement. To the extent

that GTEFL is due any sums for rentals, inspections, etc., the general invoicing and payment provisions of the Agreement are sufficient.

6. Article X, § 19.7, Removal Costs

Section 19.7 provides for removal of retired cable from conduit systems or poles to allow for the efficient use of space and in order to make such facilities available. GTEFL proposes that MCIm must bear the cost of removal of retired cable. MCIm's proposal, that the entity owning or controlling the retired cable shall bear the cost of removal, places the burden on the appropriate party.

This issue is within the scope of Issue 17.

H. Pricing

1. Appendix C, § 1.8, TBD Rates

GTEFL proposes language for "to be determined" (TBD) rates that goes beyond the intentions of the parties in drafting the specific articles of the agreement and beyond the scope of the arbitration. MCIm's language should be adopted.

I. Reciprocal Compensation

1. Appendix E, Sections 2.3.1 to 2.5.2.1, Reciprocal Compensation with Unbundled Network Elements

GTEFL proposes additional language for Appendix E, Sections 2.3.1 through 2.5.2.1 that would inappropriately permit GTEFL to recover residual interconnection charges (RIC) and carrier common line (CCL) charges for various types of intraLATA toll calls (§2.3), intrastate switched access calls (§2.4) and interstate

switched access calls (§2.9) where MCIm uses GTEFL's unbundled local switching to originate or terminate the call.

The Order provides where MCIm uses GTEFL's unbundled local switching that:

> ...no additional charges shall be assessed for unbundled local switching over and above those approved herein for that element. With respect to toll traffic, however, existing Florida law does not allow carriers to bypass switched access charges. Therefore...the company terminating a toll call shall receive terminating switched access charges from the originating company unless the originating company can prove that the call is local.

Under GTEFL's proposal, however, GTEFL recovers originating RIC and CCL charges any time that MCIm originates a toll call using unbundled local switching, regardless of whether GTEFL, MCIm, another LEC, or an IXC is the company terminating the call. This is equivalent to an additional charge for unbundled local switching, and is contrary to the Order, particularly where GTEFL is not the company terminating the call.

Similarly, GTEFL proposes to recover terminating RIC and CCL charges any time that a toll call is terminated to MCIm using unbundled local switching, regardless of what carrier originated the call. This is likewise contrary to the Order, which indicates that the company terminating the call, in this case MCIm, is entitled to receive the terminating switched access charges.

WHEREFORE, for the reasons stated above, MCIm urges the Commission to adopt MCIm's version of the proposed contractual language in each of the disputed areas, to approve the Agreement

containing such language, and to direct the parties to execute such Agreement.

RESPECTFULLY SUBMITTED this 17th day of February, 1997.

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DISPUTED CONTRACT PROVISIONS

Provision	Subject	Issue #
III § 13	Revenue Protection	4(a)
III § 20.1	Indemnification	5
III § 22	Limitation of Liability	5
III § 23	Intellectual Property	3, 13(b)
III § 24.2	Remedies	4(a)
III § 28	Non-Discriminatory Treatment	Act §252(i)
III § 39 - IV § 3.1 - VIII § 6.1.3.7 - VIII § 6.1.7.6 - XIII § 1.7	Audits and Examinations	4(a)
III § 41	Dispute Resolution	--
IV § 1.4	Location of Additional IPs	--
IV § 3.3	Reciprocal Compensation	22
IV § 4.4.5	Trunk Ordering Interval	4(a)
V § 3.1.3.2	Voice Mail Service	1
VI § 7.2.2	Switch Modification Rights	13(b)
VI § 18.2	Dark Fiber	15(a)
VII § 6.1.2	Yellow Page Listings	--
VII § 6.6.1	Performance Measurements	4(a)
VIII § 2.1.4.2	Number Reservations	29
VIII § 2.1.4.3	NXX in GTEFL Switch	29
VIII § 4.7	Bill Payment Interval	28
VIII § 5.1.6	Billing Data	8(a)
VIII § 7.1.11	Root Cause Analysis	4(a)
X § 1	Rights of Access	17(a)
X § 3.3	Engineering Information	17(a)
X § 6.2	Inquiry Request	17(a)
X § 8.1.1, 9.1.1	Attachment/Occupancy Fees	17(b)
X § 15.1	Unauthorized Attachments	17(b)
X § 17, 18	Insurance/Indemnification	5
X § 19.7	Removal Costs	17
App. C § 1.8	TBD Rates	13(b)
App. E § 2.3.1.1 to 2.5.2.1	RIC and CCL	23

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 17th day of February, 1997.

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