

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

MARCH 12, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (GREER, GRISWOLD, NORTON, SHELPER, SIRIANNI, STAVANJA, WIDELL) *576* *Raw* *WBR* *RA*
DIVISION OF LEGAL SERVICES (BROWN) *NCB*

RE: DOCKET NO. 960980-TP - PETITION BY MCI TELECOMMUNICATIONS CORPORATION AND MCI METRO ACCESS TRANSMISSION SERVICES, INC. (MCI_m) FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH GENERAL TELEPHONE COMPANY OF FLORIDA (GTE) CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996

AGENDA: MARCH 18, 1997 - REGULAR AGENDA - POST HEARING DECISION - APPROVAL OF ARBITRATED AGREEMENT - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: MARCH 19, 1997 - 30 DAY REVIEW PERIOD PURSUANT TO THE ACT ENDS

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960980TP.RCM

DOCUMENT NUMBER-DATE

02630 MAR 12 5

FPSC-RECORDS/REPORTING

DOCKET NO. 960980-TP
MARCH 12, 1997

CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC 151 et. seq., provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements established by compulsory arbitration. Section 252(b)(1) states:

(1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On March 11, 1996, AT&T Communications of the Southern States (AT&T) requested that GTE Florida Incorporated (GTE) begin negotiations for an interconnection agreement pursuant to Section 252 of the Act. On August 16, 1996, AT&T filed a petition for arbitration of unresolved issues pursuant to Section 252 of the Act.

On April 3, 1996, MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively MCI) requested that GTE begin negotiations. On August 28, 1996, MCI filed its petition for arbitration with GTE, and also filed a motion to consolidate its arbitration proceeding with the AT&T/GTE arbitration proceeding. Docket No. 960980-TP was established for MCI's petition. On September 13, 1996, MCI's motion to consolidate was granted by Order No. PSC-96-1152-PCO-TP.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC order, and

DOCKET NO. 960980-TP
MARCH 12, 1997

requested a stay of the Order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Order.

On October 14-16, 1996, the Commission conducted an evidentiary hearing for the consolidated dockets. At its December 2, 1996, Agenda Conference the Commission made its decision on the issues addressed by the parties in four main subject areas: network elements; resale; transport and termination; and, implementation matters.

On January 17, 1997, the Commission issued Order No. PSC-97-0064-FOF-TP memorializing its arbitration decision the remaining unresolved issues between AT&T and GTE. In the Order, the Commission directed the parties to file agreements memorializing and implementing its arbitration decision within 30 days. The parties filed their arbitrated agreement with the Commission on February 17, 1997 and identified the sections where there were still disputes on the specific language. This recommendation addresses approval of the agreement.

DOCKET NO. 960980-TP
MARCH 12, 1997

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the sections of MCI and GTE's arbitrated agreement identified in Exhibit A?

RECOMMENDATION: Yes. The Commission should approve the sections identified in Exhibit A. The sections are consistent with Section 251 of the Act and the Commission's arbitration order.

STAFF ANALYSIS: The parties to the proceeding have agreed to the language in the sections identified in Exhibit A. Section 252(e)(2)(B) states that the Commission can only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to section 251, or the standards set forth in subsection (d) of Section 252 of the Act. Staff has reviewed the agreed language for compliance with the Commission's order issued in this proceeding, the Act and the FCC's implementing rules and orders. Staff believes that the language is appropriate. Therefore, staff recommends that the Commission approve the language contained in the sections identified in Exhibit A.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 2: Should the Commission incorporate language in the MCI and GTE arbitration agreement for the disputed sections identified in Exhibit B that were **not** considered in the arbitration proceeding?

RECOMMENDATION: No. The Commission should not incorporate language in the arbitrated agreement for the disputed sections identified in Exhibit B that were not part of the arbitration proceeding. These sections should be eliminated from the final agreement approved by the Commission.

STAFF ANALYSIS: The parties to this proceeding have not agreed to language in the sections identified in Exhibit B. Staff has reviewed the issues and the language in Exhibit B. Since those issues were not matters that the Commission arbitrated, staff recommends that the Commission should not establish language for these sections. The sections should be eliminated from the final agreement approved by the Commission.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 3: What language should the Commission include in the arbitrated agreement of MCIIm and GTE for those sections of Article IV (Interconnection) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

<u>Section</u>	<u>Title</u>
4.4.5	Direct Network Interconnection

MCIIm's Proposed Language:

The interval used for the provisioning of Local Interconnection Trunk Groups will be determined by Desired Due Date, or as mutually agreed upon by the Parties.

MCIIm's Rationale: MCIIm contends the parties disagree on the provisioning interval for local interconnection trunk groups. MCIIm's proposal ties the provisioning to MCIIm's desired due date, but permits the parties to mutually agree to a different time frame. MCIIm states that GTE's 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 GTE's control. MCIIm asserts that because a delay in the provisioning of interconnection circuits can seriously impair MCIIm's ability to provide service to its customers, it is not appropriate to leave the definition of the provisioning interval totally in GTE's control.

GTE's Proposed Language:

GTE will provide a Firm Order Confirmation (FOC) within five (5) days after receiving MCIIm's ASR. The Parties shall cooperate towards the goal of provisioning Local Interconnection Trunk Groups by the Desired Due Date.

GTE's Rationale: No rationale was provided by GTE.

DOCKET NO. 960980-TP
MARCH 12, 1997

Staff's Recommended Language:

Staff believes the Commission should adopt MCI's proposed language.

Staff Rationale: Staff believes that MCI has provided valid arguments to support its language. Since GTE did not provide any rationale for its language, staff recommends that MCI's proposed language be approved.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 4: What language should the Commission include in the arbitrated agreement of MCI and GTE for those sections of Article VI (Unbundled Network Elements) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

<u>Section</u>	<u>Title</u>
18.2	Dark Fiber

MCI's Proposed Language:

If dark fiber facilities are available, MCI shall have the right to lease them subject to the following conditions:

MCI's Rationale: MCI asserts that this language was resolved by the Commission's order. MCI contends that the Commission ruled that since GTE has agreed to allow MFS to lease dark fiber for the specific purpose [of interconnection]... that GTE be required to also make dark fiber available to MCI under the same terms and conditions. MCI asserts that nowhere in the order, or in the order approving the GTE/MFS interconnection agreement, is there any suggestion that GTE has the unilateral right to decide whether to offer such dark fiber in the first instance.

GTE's Proposed Language:

If GTE decides to offer dark fiber facilities for interconnection purposes, and such facilities are available, MCI shall have the right to lease them subject to the following conditions:

GTE's Rationale: GTE asserts that the Commission found that dark fiber was not a network element and declined to require GTE to lease it, except under explicitly limited circumstances. Specifically, the Commission instructed GTE to lease dark fiber to MCI under the same terms and conditions as those GTE offered to Metropolitan Fiber Systems of Florida, Inc. (MFS) in a contract executed last year. GTE contends that the contract gives MFS the right to lease dark fiber facilities "if available."

GTE believes that MCI's proposed language gives an unintended meaning to the phrase, "if available," granting it immediate rights

DOCKET NO. 960980-TP
MARCH 12, 1997

that go well beyond those MFS obtained in the contract that is also to govern MCIm's rights to dark fiber.

GTE also asserts that it believes the intention of the language at issue means that "if GTE ever decides to offer dark fiber and if [GTE has] facilities available, then MFS has a right to them." Furthermore, GTE contends that the Commission should accept its language and reject MCIm's attempt to obtain greater rights than MFS received.

Staff Recommended Language: Staff recommends the Commission approve the following language for inclusion in the arbitration agreement.

If dark fiber facilities for interconnection purposes are available, MCIm shall have the right to lease them subject to the following conditions:

Staff Rationale: The Commission's order specifically states "that GTE shall be required to lease dark fiber to AT&T and MCIm only for interconnection purposes, under the same terms and conditions as those in GTE's agreement with MFS." Nowhere in the Commission's order does it state that GTE must first decide whether to offer dark fiber. Thus, staff does not believe that GTE or MCIm's proposed language properly reflects this Commission's decision regarding this issue. However, staff believes that the addition of the phrase "for interconnection purposes" to MCIm's language would be acceptable. Therefore, staff recommends that the Commission approve its recommended language as state above.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 5: What language should the Commission include in the arbitrated agreement of MCI and GTE for those sections of Article VII (Ancillary Services) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

<u>Section</u>	<u>Title</u>
6.6.1	Performance Measurements and Reporting

MCI's Proposed Language:

MCI shall provide information on new subscribers to GTE within one (1) business day of the order completion. GTE shall update the database within one (1) business day of receiving the data from MCI. If GTE detects an error in the MCI provided data, the data shall be returned to MCI within two (2) business days from when it was provided to GTE. MCI shall respond to requests from GTE to make corrections to database record errors by uploading corrected records within two (2) business days. Manual entry shall be allowed only in the event that the system is not functioning properly.

MCI's Rationale: MCI asserts that while GTE does not appear to object to providing updates to directory listing information as requested by MCI, it objects to providing such updates within the intervals MCI requests. MCI contends the requested intervals are needed to ensure that there are outside limits on when GTE is to update the listings. MCI asserts that since these updates will be handled through electronic interfaces in most instances, it is difficult to understand how its requested intervals are not reasonable.

GTE's Proposed Language:

GTE proposes that this section be deleted.

GTE's Rationale: GTE asserts that it will provide the requested updates at the same intervals it uses to update its own subscriber information, and it has no obligation to meet the standards set by MCI. GTE contends that it cannot agree that MCI's requested standards are reasonable or can be met in all cases. Therefore, GTE does not believe that this section should be included in the

DOCKET NO. 960980-TP
MARCH 12, 1997

agreement.

Staff's Recommended Language: Staff recommends the Commission approve MCI's proposed language for inclusion in the arbitration agreement.

Staff's Rationale: The Commission ordered GTE to provide MCI services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates. GTE and MCI were ordered to continue negotiations concerning detailed standards of performance to be incorporated into the proposed interconnection agreement to be submitted to the Commission for approval.

In this section, MCI proposes specific reporting requirements regarding service order completions. GTE proposes to delete this section, arguing that it has no obligation to meet the standards set by MCI. However, the Commission instructed the parties to develop performance standards and measurements; therefore, staff disagrees with GTE. As stated in the FCC Order (at 314), if the LEC is requested to provide access or unbundled elements of higher quality than that which it provides itself, there is nothing to excuse the LEC, where technically feasible, from providing the higher quality of service. The order also states that the LEC should be fully compensated for any efforts it makes to increase the quality service in its network. Therefore, if MCI requests a feature or function from GTE that requires additional compensation, above the rates set by this Commission, the parties have the ability to negotiate this among themselves or bring this matter back to the Commission in another Arbitration proceeding. Therefore, staff recommends that the Commission approve MCI's proposed language.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 6: What language should the Commission include in the arbitrated agreement of MCI and GTE for those sections of Article VIII (Business Process) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS: Several sections in Article XIII - Service Order Provisioning and Billing - contain disputed language. The following addresses each of these sections, excluding those sections not arbitrated. In Issue 2, staff recommends the sections not arbitrated be excluded from the Agreement.

Section 2 Pre-Ordering
Section 2.1.4 Number Administration/Number Reservation
Section 2.1.4.2

MCI Proposed Language:

Where MCI has not obtained its own NXX, GTE shall reserve up to 100 telephone numbers, subject to number resource availability, for up to forty five (45) days, per MCI request, per NPA-NXX, for MCI's exclusive use for its provision of Telecommunications Services. GTE shall provide additional numbers at MCI's request as subscriber demand requires. Telephone numbers reserved in this manner may be released for other than MCI use only upon agreement of MCI.

MCI's Rationale:

Apparently, GTE's concern is that MCI might lock up blocks of numbers leading to a depletion of the numbering resource. This is not MCI's intent. MCI has offered to limit its reservation of numbers to blocks of no more than 100, for no more than 45 days. Significantly, by making such limited reservations subject to number resource availability, MCI has left great control to GTE over the reservations of such numbers. GTE's alternative language would treat MCI like a retail customer, not a carrier, and would permit GTE to charge inflated retail rates for reservation of numbers. That language would deny MCI parity, contrary to the Act.

DOCKET NO. 960980-TP
MARCH 12, 1997

GTE Proposed Language:

Unless otherwise specifically provided by this Agreement, MCIm may only reserve telephone numbers on the same rates, terms, and conditions as GTE allows its retail subscribers to reserve telephone numbers.

GTE's Rationale:

MCIm is attempting to reserve numbers on a favored basis. GTE does currently reserve blocks of numbers for specific purposes; i.e., Centranet. GTE will still administer these numbers. However, MCIm can obtain numbers from the North American Numbering Plan (NANP) administrator, just like any other telephone carrier, and they, in fact, have no charges for these NXXs. Moreover, MCIm is able to reserve numbers on the same terms and conditions as any other purchaser of GTE services. GTE's proposal for reserving blocks of 100 numbers will apply to all ALECs. With many ALECs, the number resource may be threatened.

Staff Rationale:

Reservation of numbers by MCIm at the same rates, terms, and conditions as GTE allows its retail customers is not appropriate treatment for a carrier. Carriers are not retail customers. Also, there may be a charge levied on retail customers for number reservations which, under nondiscrimination, would have to be levied on MCIm as well. To avoid the charge, MCIm could obtain numbers from the NANP, as GTE points out. MCIm has apparently contemplated this with its inclusion of the language "[w]here MCIm has not obtained its own NXX. . . ." MCIm's language that limits the numbers it can reserve to blocks containing 100 numbers for 45 days may not alleviate GTE's concerns for the potential strain on the number resources. According to MCIm's proposed language, GTE will reserve 100 numbers per NPA-NXX. There is no mention of the number of NXX's MCIm could obtain per NPA, both from the NANP and from requests made to GTE. With 100 numbers allocated to each NXX, the stress on numbers could occur. In addition, if many ALECs were to reserve numbers under the same requirements as MCIm, a strain on numbers could be significant. However, currently there are not a large number of ALECs operating in GTE's territory, and it does not look as though their numbers are going to increase significantly any time soon. Nonetheless, the Commission concluded ". . . that GTE is required to furnish NXX codes in a nondiscriminatory manner at no charge as required by industry guidelines." (PSC-97-0064-FOF-TP, p. 131) Therefore, staff recommends the Commission approve GTE's proposed language for Section 2.1.4.2.

DOCKET NO. 960980-TP
MARCH 12, 1997

Section 2 Pre-Ordering

Section 2.1.4 Number Administration/Number Reservation

Section 2.1.4.3

MCIm Proposed Language:

When MCIm has obtained its own NXX, but purchased GTE services for resale or Network Elements, where technically feasible, GTE agrees to install the MCIm NXX in GTE's switch according to the local calling area defined by MCIm and perform appropriate network routing functions for interswitch arrangements.

MCIm's Rationale:

GTE does not appear to be contending that installation of NXX codes into GTE's switch is not technically feasible. But GTE's objection to the entire section would ". . . contravene MCIm's right to define its own calling scope. . . ." This issue was arbitrated under Issue 29.

GTE Proposed Language:

GTE proposes to delete the Subsection. This issue was not arbitrated.

GTE's Rationale:

"MCIm proposes requiring GTE to install MCIm NXXs in GTE's switch according to local calling areas defined by MCIm. For GTE, this will require ". . . costly programming changes to adapt its switches to the second local calling area." There is no mention in MCIm's language of cost recovery. In addition, this issue was not arbitrated.

Staff Rationale:

Staff believes that this section falls under Issue 29. (Terms and Conditions of Code Assignments)

Section 2.1.4.1, which is undisputed, states that ". . . GTE shall provide testing and loading of MCIm's NXX on the same basis as GTE provides itself or its affiliates." One tool a new entrant might use to compete with the incumbent is to define a calling scope that differs from that of the incumbent. MCIm has indicated

DOCKET NO. 960980-TP
MARCH 12, 1997

that it wants the freedom to define its own calling scope. Staff would point out that if GTE incurs additional costs to install MCI's NXXs according to MCI's defined calling scope, there is no provision preventing GTE from charging MCI for the service. Therefore, staff recommends the Commission approve MCI's proposed language.

Section 4 Connectivity Billing and Recording

Section 4.7

MCI Proposed Language:

Subject to the terms of this Agreement, including without limitation Section 3.2 of this Article VIII, MCI shall pay GTE within thirty (30) calendar days from the Bill Date, or twenty (20) calendar days from the receipt of the bill, whichever is later. **MCI shall pay CBSS bills to GTE within sixty (60) calendar days from the receipt of the bill, whichever is later.** If the payment due date is a Saturday, Sunday or has been designated a bank holiday, payment shall be made the next business day.

MCI's Rationale:

MCI will pay CABS-formatted bills on the 30/20 schedule, specified in 4.7. However, CABS-formatted billing is not yet available from GTE. Until it is, GTE will provide MCI with CBSS bills. MCI cannot audit and process these bills on a mechanized basis and must process them manually. MCI cannot process hundreds of bills per month and meet the bill payment date. As a result, MCI needs the additional time to process the bills. This issue is within the scope of Issue 28.

GTE Proposed Language:

Subject to the terms of this Agreement, including without limitation Section 3.2 of this Article VIII, MCI shall pay GTE within thirty (30) calendar days from the Bill Date, or twenty (20) calendar days from the receipt of the bill, whichever is later. MCI shall pay CBSS bills to GTE on the bill payment date. If the payment due date is a Saturday, Sunday or has been designated a bank holiday, payment shall be made the next business day.

DOCKET NO. 960980-TP
MARCH 12, 1997

GTE's Rationale:

"This issue will be relevant only as long as GTE is issuing CBSS bills. In this regard, GTE estimates that it will be able to transition to CABS-like billing in just a few months."

GTE has determined that the longer payment period needed by MCIm to process CBSS-formatted bills will require GTE to adjust its current billing cycles at a cost to GTE. Therefore, GTE cannot agree to the longer period for CBSS bills. This issue was not arbitrated.

Staff Rationale:

Staff believe this issue falls under Issue 28. (Timeframe for CABS formatted billing)

As the ALEC with a small portion of the market (if any portion), MCIm will not likely receive and pay "hundreds" of bills in the near future. Consequently, it should have no trouble paying the bills on the bill payment date. Staff expects that by the time MCIm is confronted with hundreds of bills GTE will have transitioned MCIm to the CABS billing system. Therefore, staff recommends the Commission approve GTE's proposed language for the payment period for CBSS-formatted bills.

Section 7 Maintenance

Section 7.1 General Requirements

Section 7.1.11

MCIm Proposed Language:

In the event GTE fails to provide performance and service quality at parity, **MCIm may request, and GTE shall perform and deliver to MCIm, a root cause analysis on the reasons for GTE's failure to conform, and GTE shall correct said cause as soon as possible, at its own expense.**

MCIm's Rationale:

"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 GTE to perform root-cause analyses. MCIm's language . . . is essential to ensure parity" This issue

DOCKET NO. 960980-TP
MARCH 12, 1997

falls under Issue 4(a).

GTE Proposed Language:

GTE proposes to delete the Subsection. This issue was not arbitrated.

GTE's Rationale:

"GTE is willing to inform MCI of the reason it might be unable to provide service at parity. However, this section, by requiring GTE to perform an analysis for the failure at its own expense, effectively imposes an additional--and unwarranted--remedy that can be exercised at MCI's option. GTE is thus justified in resisting its imposition." This issue was not arbitrated.

DOCKET NO. 960980-TP
MARCH 12, 1997

Staff Rationale:

This is addressed in Issue 4(a). The Commission's Order No. PSC-97-0064-FOF-TP states: ". . . we find it appropriate to require the parties to negotiate processes and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are equal in quality to those that GTE provides itself and its affiliates. To the extent that the parties are able to reach agreement on such processes and standards, these should be included in the arbitrated agreements submitted for approval in this proceeding. We will make a decision on the areas upon which the parties cannot agree at a later time." (p. 94)

The above language contains the phrase "processes and standards" to ensure GTE provides service at parity. A "process" for ensuring quality of service is to analyze causes of service failures, which GTE would likely do to make changes that prevent a failure from happening again. For MCI, the concern should be that a failure is corrected as soon as possible. Requiring GTE to provide a report based on a root-cause analysis at MCI's every request goes beyond requiring equality of service. Therefore, staff recommends the Commission approve MCI's language with the exclusion of the bolded segment.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 7: What language should the Commission include in the arbitrated agreement of MCIm and GTE for those sections of Article X (Rights of Way) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

1. Rights of Access

MCIm's Proposed Language

GTE shall allow MCIm to **select the space MCIm will occupy on poles**, or in conduits and right-of-way owned or controlled by GTE, at parity with GTE, based upon the same criteria GTE applies to itself. GTE agrees to permit MCIm to occupy, place and maintain communications facilities within GTE's Poles, ducts, conduits and ROW as GTE may allow pursuant to the Pole Attachment Act and the terms of this Agreement.

MCIm's Rationale: Under the Order, MCIm has a right to access GTE's poles, conduits, and rights-of-way on a parity with GTE. (Order at 141) Since GTE 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. GTE's alterative 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 of the Commission's Order.

GTE's Proposed Language

GTE proposes to replace the phrase "to select the space MCIm will occupy on" with "access to."

GTE's Rationale: MCIm's proposed Section 1 states that "GTE shall allow MCIm to select the space MCIm will occupy." Section 3.3 states that GTE will provide certain information "to facilitate non-discrimination in MCIm's selection of space." Neither of these sections accurately reflects GTE's obligation under the Act or the way in which space on poles and in ducts, conduits and rights-of-way is apportioned. Although MCIm can, of course, provide GTE with its require route, and ask for certain facilities along that route,

DOCKET NO. 960980-TP
MARCH 12, 1997

GTE retains the discretion to select the space MCIm's facilities will actually occupy along that route. This type of discretion is absolutely necessary to GTE if it is to maintain any sort of order and efficiency in the use of space in poles, ducts, conduits and rights-of-way, which GTE will administer in a non-discriminatory manner. Accordingly, GTE must insist on its formulation of Sections 1 and 3.3.

Staff Recommended Language

Staff recommends the approval of GTE's proposed language.

Staff's Rationale: Staff agrees with GTE that it should maintain order and efficiency in the use of space in poles, ducts, conduits and ROW. Staff believes that the party who owns or controls the structures must have the discretion to select the space for another carrier to occupy. If other carriers have the right to select specific space, what will the result be if two such carriers selected the same space? Of course, GTE must act in a non-discriminatory manner in assigning space.

3.3-Selection of Space

MCIm's Proposed Language

To facilitate non-discrimination in MCIm's selection of space, GTE must provide information to MCIm about the network guidelines and engineering protocols used by GTE in determining the placement of facilities on poles and in ducts and conduits.

MCIm's Rationale: See rationale in Section 1 above.

GTE's Proposed Language

GTE proposes to eliminate the BOLD phrase "to facilitate non-discrimination in MCIm's selection of space".

GTE's Rationale: Same as Section 1 above.

Staff's Recommended Language

Staff recommends that GTE's proposed language be approved.

Staff's Rationale: Same as Section 1 above.

8.1.1 and 9.1.1-Cost Allocation

MCIm's Proposed Language

8.1.1 With respect to allocation of costs for modifying attachments, to the extent the **cost of such modification is incurred for the sole benefit of MCIm**, MCIm will be obligated to bear all of the cost.

9.1.1 With respect to allocation of costs for modifying occupancy, to the extent **the cost of such modification is incurred for the sole benefit of MCIm**, MCIm will be obligated to bear all of the cost.

MCIm's Rationale: 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) GTE'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, event though the modification was not for MCIm's sole benefit. MCIm believes that GTE'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.

GTE's Proposed Language

GTE proposes substitution of "that a modification is undertaken solely at MCIm's request," for "the cost of such modification is incurred for the sole benefit of MCIm" in both Sections 8.1.1 and 9.1.1.

Staff's Recommended Language

Staff recommends that GTE's proposed language be approved for both sections.

DOCKET NO. 960980-TP
MARCH 12, 1997

Staff's Rationale: Staff believes that Order No. PSC-97-0064-FOF-TP clearly states that if a user's modification affects the attachments of others who do not initiate or request the modification, the cost will be covered by the initiating party. This is the case in the modifications covered by these two sections. If the modification is initiated by multiple parties, the cost allocation is covered by Sections 8.1.2 and 9.1.2.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 8: What language should the Commission include in the arbitrated agreement of MCIm and GTE for those sections of Article XI (Numbering Resources and Portability) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

Article XI

Section 4.4

MCIm's Proposed Language: None

MCIm's Rationale: None

GTE's Proposed Language:

4.4 Installation Intervals. GTE shall install RCF INP within an installation interval mutually agreed upon by GTE and MCIm, but in no event shall such interval be greater than that GTE provides itself, its Affiliates, or its customers

GTE's Rationale: None

Staff's Recommended Language: Staff believes GTE's proposed language for this section should be adopted.

Staff's Rationale: There does not appear to be a dispute associated with the addition of ...or its... in the language listed above. It appears to be merely a clerical error when drafting the language for this section. Therefore, staff believes GTE's proposed language should be included in the agreement.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 9: What language should the Commission include in the arbitrated agreement of MCI and GTE for those sections of Appendix C (Pricing) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS: The disputed language between the parties concerns prices and pricing principles stated throughout the agreement which may or may not reference Appendix C. Appendix C contains a table with elements, capabilities, or functions and corresponding prices. MCI and GTE have provided similar language which clarifies when pricing references will be considered "To Be Determined" (TBD). The disputed language for each party is as follows:

MCI's Proposed Language

1.8 To Be Determined Rates. Numerous provisions in this Agreement and its Appendices refer to prices or pricing principles set forth in Appendix C. If a provision references prices in Appendix C or if a provision specifically refers to a price or prices or to provision at cost, but does not reference Appendix C, and there are not corresponding prices already set forth in Appendix C for such item, such price shall be considered "To Be Determined" (TBD).

GTE's Proposed Language

In the following situations, Appendix C may not provide prices for an item, service or technical upgrade provided by either party under this Agreement: (i) a provision references prices in Appendix C and there are no corresponding prices already set forth in Appendix C; (ii) a provision specifically refers to a price or prices, but does not reference Appendix C and there are no corresponding prices already set forth in Appendix C; (iii) a provision requires either party to provide an item, service or technical upgrade but does not explicitly mention cost recovery, and there are no corresponding prices already set forth in Appendix C. In any of these situations, such price shall be considered "To Be Determined" (TBD).

DOCKET NO. 960980-TP
MARCH 12, 1997

MCIm's Rationale: GTE 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.

GTE's Rationale: GTE argues that there are two pricing situations where MCIm's proposed language may not be sufficient to cover areas in the agreement where unspecified costs exist. First, GTE contends that there are numerous technical references which GTE states the parties agree that GTE will not meet as of the effective date of the agreement. GTE states that it is its understanding that MCIm would pay for the cost of upgrades to meet the requested standards. Second, numerous sections in the proposed agreement require GTE to provide a service, but no cost recovery mechanism is cited. GTE believes that MCIm's suggested language may not provide cost recovery for unspecified costs and GTE asserts that it is not obliged to provide services for free.

Staff's Rationale: There was not an issue in the proceeding that addressed the disputed language for this section. Because the disputed language was not arbitrated, staff does not recommend that the Commission determine which language is appropriate. However, the remainder of Section 1.8 includes a process for determining interim rates for the "To Be Determined" elements. Staff believes this undisputed language should remain in the agreement for two reasons. First, it applies to both those elements which the Commission will set rates for and any other elements the parties have agreed on. Second, the process for setting interim rates for these elements is in the best interest of promoting competition. Staff believes that interim rates which are agreed upon between the parties will allow those elements to be used in providing services. The parties have agreed to true-up any over or underpayment resulting from an interim rate that differs from a Commission determined permanent rate. Staff, therefore, recommends that the Commission approve only the undisputed language in Section 1.8 of Appendix C.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 10: What language should the Commission include in the arbitrated agreement of MCI and GTE for those sections of Appendix E (Reciprocal Compensation) that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS:

<u>Section</u>	<u>Title</u>
2.3.1.1	Appendix E
2.3.2.1	
2.3.3.1	
2.3.4.1	
2.3.4.3	
2.3.5.1	
2.3.6.1	
2.3.7.1	
2.4.1.1	
2.4.2.1	
2.5.1.1	
2.5.2.1	

GTE's Proposed Language:

... and applicable RIC and CCL charges.

MCI's Proposed Language:

[none]

Staff's Recommended language: ... and applicable RIC and CCL charges where such charges are required by the Commission.

Staff Rationale: Appendix E addresses how calls are charged for purposes of reciprocal compensation. The parties agree on most of the language. However, they differ with respect to the application of the Residual Interconnection Charge (RIC) and the Carrier Common Line Charge (CCL) for intrastate and interstate calls where MCI has purchased GTE's unbundled local switching. GTE believes that the Commission's order allows it to charge these switched access rates for most types of calls. MCI believes that it does not, and objects to GTE's proposed language in the agreement that would allow it to charge the RIC and CCL for intraLATA toll calls, and for intrastate and interstate switched access calls. MCI argues

DOCKET NO. 960980-TP
MARCH 12, 1997

that GTE's language would allow it to recover those switched access charges anytime MCIm originates a toll call regardless of who might be the carrier terminating the call. According to MCIm, this is equivalent to an additional charge for unbundled local switching, and is contrary to the FCC's Order, particularly where GTE is not the terminating carrier. GTE did not discuss its position on this issue in its comments.

At the present time, the applicable language in the FCC order has been stayed, and, therefore according to our order, Florida law will apply. Florida Statutes, Section 364.16(3)(a) requires that:

No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

This issue is left somewhat unclear in that the appropriate access charges have never been determined in this situation on an intrastate basis, and the federal order, which was more specific on this point, has been stayed. Staff therefore recommends that the following language be inserted into the agreement in those sections identified above, and that particular questions and disputes will have to be resolved on a case by case basis, either by the parties themselves, or by the Commission via the complaint process:

....and applicable RIC and CCL charges where such charges are required by the Commission.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 11: When should MCI and GTE file a signed agreement incorporating the Commission's decision?

RECOMMENDATION: The parties should file a signed agreement incorporating the Commission's decisions in this recommendation two weeks after issuance of this order, to become effective on that date.

DOCKET NO. 960980-TP
MARCH 12, 1997

ISSUE 12: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open until the parties have filed their signed arbitration agreement, and the Commission has completed its review of GTE's cost studies that were required to be filed pursuant to the order in this proceeding.

Agreement ID	Section	Title
Article I	All Sections	Recitals
Article II	All Sections	Definitions
Article III	1-12.2, 14-20, 20.2-21.8, 23, 23.3-24.1, 24.3-27, 29-38.3, 40-41, 41.3-46	General Provisions
Article IV	1-1.3, 1.5-3, 3.2- 3.2.3, 3.4-4.4.4, 4.4.6-9.1.8	Interconnection and Transport and Termination of Traffic
Article V	1-3.1.3.1, 3.1.4- 3.3.6	Resale of Services
Article VI	1-7.2.2.1, 7.2.3- 18.1, 18.2.1- 19.6.2.4	Unbundled Network Elements
Article VII	1-6.1.2, 6.1.3-6.6, 6.6.2-7	Ancillary Services
Article VIII	1-2.1.4.1, 2.1.4.4- 4.6, 4.8-5.1.5, 5.1.7-6.1.3.6, 6.1.4-6.1.7.5, 6.1.7.7-7.1.10, 7.1.12-8.1.3.2	Service Ordering, Provisioning, Billing and Maintenance
Article IX	All Sections	Collocation
Article X	2-3.2, 4-6.1, 7- 8.1, 8.1.2-9.1, 9.1.2-15, 15.2-16, 18-19.6, 19.8-20	Rights of Way
Article XI	1-4.3, 4.5-4.8.3	Number Resources and Portability
Article XII		Reserved
Article XIII	1-1.6, 1.8-3.3	Security

DOCKET NO. 960980-TP
MARCH 12, 1997

Agreement ID	Section	Title
Appendix A	All Sections	Service Matrix
Appendix B	All Sections	Interconnection, Telecommunications Services and Facilities Agreement
Appendix C	1-1.7.5, 2 and Attachment 1	Price Schedule
Appendix D	All Sections	Access Service Coordination for Jointly Provided Access Service
Appendix E	1-2.3.1, 2.3.1.2-2.3.2, 2.3.2.2-2.3.3, 2.3.3.2-2.3.4, 2.3.4.2, 2.3.5, 2.3.5.2-2.3.6, 2.3.7, 2.4-2.4.1, 2.4.2, 2.5-2.5.1, 2.5.2	Reciprocal Compensation for Call Termination for Resale and In Cases where MCI purchases GTE's Unbundled Switching

Agreement ID	Section	Title
Article III	13, 20.1, 22, 23.1-23.2, 24, 2, 28, 39, 41.1-41.2	General Provisions
Article IV	1.4, 3.1, 3.3	Interconnection and Transport and Termination of Traffic
Article V	3.1.3.2	Resale of Services
Article VI	7.2.2.2-7.2.2.3	Unbundled Network Elements
Article VII	6.1.2.1-6.1.2.3	Ancillary Services
Article VIII	5.1.6, 6.1.3.7, 6.1.7.6	Service Orderin, Provisioning, Billing and Maintenance
Article X	6.2, 15.1, 17, 19.7	Rights of Way
Article XI	4.8.4	Number Resources and Portability
Article XIII	1.7	Security