

**ORIGINAL
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**In re: Arbitration of Terms and
Conditions Between ICG
Telecom Group, Inc. and GTE
Florida Incorporated,
Pursuant to 47 U.S.C. § 252**

Docket No. 97036-TP

Filed: March 18, 1997

**DIRECT TESTIMONY OF JOHN BOERMA
ON BEHALF OF ICG TELECOM GROUP, INC.**

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FPSC-RECORDS/REPORTING

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2 **DIRECT TESTIMONY OF JOHN BOERSMA**

3 **ON BEHALF OF ICG TELECOM GROUP, INC.**

4 **Q. PLEASE IDENTIFY YOURSELF FOR THE RECORD.**

5 **A. My name is John Boersma. I am Vice President of Carrier Relations for**
6 **ICG Telecom Group, Inc. My business address is 180 Grand Avenue,**
7 **Suite 1000, Oakland, CA 94612.**

8 **Q. WHAT IS YOUR WORK AND EDUCATIONAL BACKGROUND?**

9 **A. I have worked in the competitive access and competitive local exchange**
10 **businesses for ten years. Prior to my current position, I was Vice**
11 **President and General Manager of ICG's Northern California operations.**
12 **I have a Master's degree in Geophysics from San Diego State University**
13 **and an M.B.A. from Golden Gate University.**

14 **Q. HAVE YOU TESTIFIED IN REGULATORY PROCEEDINGS BEFORE?**

15 **A. Yes. I have testified in California on the conditions under which it is**
16 **appropriate for local exchange carriers to use customer-specific contracts**
17 **in the provision of service to governments.**

18 **Q. HAVE YOU PARTICIPATED IN ICG'S INTERCONNECTION**
19 **NEGOTIATIONS WITH GTE?**

20 **A. Yes. I have led the technical portion of ICG's negotiations with GTE.**

21 **Q. HOW WERE NEGOTIATIONS CONDUCTED?**

22 **A. ICG sent a letter to GTE on October 10, 1996, seeking a comprehensive**

1 interconnection agreement in states where ICG provides or plans to
2 provide local exchange service. ICG and GTE have conducted fifteen
3 lengthy meetings, both in person and by teleconference, in an attempt
4 to reach agreement on interconnection, network unbundling, and resale.

5 **Q. HOW DID THE NEGOTIATIONS PROCEED?**

6 **A. At the outset, GTE proposed that we negotiate on the basis of a draft**
7 **agreement that it offered. We countered that we would prefer to**
8 **negotiate on the basis of our draft. Our draft was essentially the same**
9 **as the agreement that ICG had negotiated with Ameritech and which had**
10 **been approved by the Public Utilities Commission of Ohio. GTE declined**
11 **to work from our draft. As a compromise, we offered to negotiate from**
12 **any state commission-approved agreement. GTE declined this**
13 **compromise offer.**

14 **Q. HOW DID YOU THEN PROCEED?**

15 **A. At this point in time it was clear that negotiations with GTE would be**
16 **neither short nor simple. In the interest of proceeding as quickly as**
17 **possible with our business plan, we proposed first negotiating an interim**
18 **agreement with GTE covering states other than California (where ICG**
19 **had already negotiated an interim interconnection agreement pursuant to**
20 **a decision of the California Public Utilities Commission). The interim**
21 **interconnection agreements were intended to cover only interconnection,**
22 **mutual compensation for the termination of local traffic, and number**

1 portability, and defer consideration of resale and network unbundling, as
2 well as the more detailed issues regarding ordering, provisioning, and
3 billing. GTE agreed to this approach. ICG then proposed that the interim
4 interconnection agreement in all states at issue be based on the interim
5 agreement for California that the parties had entered into in August,
6 1996. GTE refused to negotiate based on the agreement that it had
7 previously signed for California, and instead, offered a new draft.

8 **Q. DID GTE OFFER ANY COMPELLING REASON FOR REFUSING TO**
9 **NEGOTIATE BASED ON THE INTERIM AGREEMENT THAT IT HAD**
10 **PREVIOUSLY VOLUNTARILY ENTERED INTO IN CALIFORNIA?**

11 **A. No.**

12 **Q. HOW DID NEGOTIATIONS FOR AN INTERIM AGREEMENT PROCEED?**

13 **A. We had hoped that negotiation of an interim agreement would be simple**
14 **and quick. It was neither. GTE offered, and was only willing to**
15 **negotiate, from a draft that had numerous offensive provisions. After**
16 **months of negotiation, we finally reluctantly agreed to sign interim**
17 **agreements with these flawed provisions.**

18 **Q. HOW DID NEGOTIATIONS ON A COMPREHENSIVE AGREEMENT THEN**
19 **PROCEED?**

20 **A. GTE continued to insist on negotiating only on the basis of its draft. As**
21 **an alternative, ICG proposed negotiating a matrix of technical and legal**
22 **issues, and deferring consideration of the specific language for the**

1 **agreement. Negotiation of these issues then proceeded for some**
2 **months. GTE and ICG were able to agree provisionally on a variety of**
3 **technical issues, but remained significantly apart on substantive and**
4 **pricing terms. We did provisionally agree as to rates, although GTE**
5 **made it clear that it would withdraw its agreement on rates if ICG were**
6 **to proceed to arbitration. Ultimately no complete agreement was**
7 **reached.**

8 **Q. HAVE THE PARTIES MADE COMPLETE PROPOSALS TO EACH OTHER**
9 **IN THE COURSE OF NEGOTIATIONS?**

10 **A. ICG, at the outset, proposed an agreement based on ICG's voluntarily**
11 **negotiated agreement with Ameritech. ICG still recommends that draft**
12 **as the basis of the agreement ICG is requesting this Commission to**
13 **order, with appropriate modifications as further described below. GTE**
14 **has, over the course of negotiations, offered ICG a series of continually**
15 **modified and incomplete agreements. GTE repeatedly indicated that**
16 **newly revised proposals representing its latest offer would be**
17 **forthcoming, but would not indicate when those proposals would be**
18 **available to ICG and exactly what issues would be covered by those**
19 **proposals. Accordingly, ICG was not able to schedule meetings to**
20 **negotiate substantive provisions with any reasonable predictability. On**
21 **several occasions, ICG representatives attended scheduled meetings in**
22 **the expectation, based on GTE statements, that revised GTE proposals**

1 would be available at that negotiating session, only to find on the
2 evening prior to the scheduled meeting, or during the scheduled meeting,
3 that GTE's revised proposals were not ready for presentation to ICG. In
4 addition, GTE never presented final offers with respect to all the issues
5 about which its position was supposedly being revised. Moreover, as of
6 now, GTE still has not offered a draft agreement to ICG that GTE itself
7 characterizes as a complete and final offer.

8 Exacerbating these problems has been the fact that GTE failed to
9 send (or make available by telephone) a representative authorized to bind
10 GTE in any of the negotiating sessions. On many occasions, ICG asked
11 the GTE representatives who did attend the negotiating sessions to ask
12 those in authority at GTE for answers to specific questions and to relay
13 those answers to ICG. The GTE representatives often failed to do so.

14 Although in some areas, such as OSS and network elements, GTE
15 agreed to provisions that amounted to the same as they had negotiated
16 or arbitrated with others, GTE otherwise has refused to make available
17 to ICG other arbitrated approved agreements or the benefits of earlier
18 arbitrations. (ICG is unclear as to whether the provisional agreements on
19 network elements, and OSS systems to be provided continue to reflect
20 both parties' positions in light of this arbitration.)

21 **Q. TO YOUR KNOWLEDGE, HAS GTE VOLUNTARILY ENTERED INTO A**
22 **COMPREHENSIVE INTERCONNECTION, UNBUNDLING, AND RESALE**

1 **AGREEMENT WITH ANY PARTY, IN ANY STATE?**

2 **A.** No.

3 **Q.** **HAS THIS INTRANSIGENCE ON THE PART OF GTE INFLUENCED ICG'S**
4 **NEGOTIATING POSITION?**

5 **A.** Yes. We realized that, in dealing with GTE, we must be willing to be
6 quite flexible in our negotiating positions, and compromise to a degree
7 typically unnecessary. Unfortunately, GTE took negotiating positions so
8 antithetical our business interests that agreement was impossible.

9 **Q.** **WHAT SHOULD THE COMMISSION DO TO RESOLVE THIS**
10 **ARBITRATION?**

11 **A.** The Commission should adopt the form of agreement proffered by ICG,
12 with modifications to reflect the outcome of this arbitration and to reflect
13 those agreements that ICG and GTE have managed to reach, as well as
14 a few technical improvements that ICG's experience has revealed are
15 desirable.

16 **Q.** **WHY IS THIS AN APPROPRIATE OUTCOME?**

17 **A.** The form of the agreement that ICG proposes has already been
18 voluntarily entered into by an incumbent local exchange carrier, and
19 approved by a state Commission. No interconnector has ever agreed to
20 the terms that GTE proposes, and no state Commission has ever
21 approved them as they are proposed.

22 **Q.** **CAN YOU SUMMARIZE ICG'S PROPOSED AGREEMENT TERMS?**

1 **A.** Yes. ICG proposes reasonable terms for interconnection, resale,
2 provision of customer information, operational support, and access to
3 poles, conduits, and rights-of-way.

4 **Q.** **WHERE HAVE ICG AND GTE DISAGREED ON THE TECHNICAL AND**
5 **FINANCIAL TERMS OF INTERCONNECTION?**

6 **A.** ICG and GTE have not been able to agree on a resale discount rate, on
7 the services available for resale, on provisions if billing data provided by
8 GTE is late or in error, on escalation procedures, on the appropriateness
9 of GTE demanding proof of state certification from ICG, on positive tests
10 of proper installation and translations of ICG's telephone codes in GTE
11 switches, on financial and technical terms of interconnection, on the
12 rates for unbundled network elements, on methods of transition from
13 access services to unbundled network elements, on account
14 representation, on service quality standards, and on retroactive
15 adjustments of resale discounts, interconnection rates, and unbundled
16 element rates after a general state proceeding determining reasonable
17 rates has been concluded.

18 **Q.** **WHAT IS ICG'S POSITION ON REALE DISCOUNTS,**
19 **INTERCONNECTION RATES, AND RATES FOR UNBUNDLED NETWORK**
20 **ELEMENTS?**

21 **A.** ICG is aware that the issue of appropriate rates for GTE was the subject
22 of thorough analyses in dockets involving MCI and Sprint. ICG believes

1 the rates established in those dockets would be reasonably applied to
2 ICG. However, if the Commission intends to base its decision on a
3 different record, ICG proposes that the Commission set rates based upon
4 the appropriate parameters and analyses discussed in the testimony of
5 ICG witness Dr. Marvin Kahn.

6 **Q. WHAT SERVICES SHOULD GTE MAKE AVAILABLE FOR RESELL?**

7 **A.** GTE should make available for resale, with a resale discount, all
8 telecommunications services. There is no legal basis for excluding any
9 service from resale. Services available for resale should include all
10 CLASS features, all voice-mail related telecommunications services, all
11 Advanced Intelligent Network services, all promotional offerings, and all
12 pay phone services. GTE should not be permitted to impose any use
13 restrictions on resold services, with the exception of a prohibition on
14 resale of residential services to business users where permitted by the
15 states and grandfathered services.

16 **Q. WHAT IS ICG'S POSITION ON THE AVAILABILITY OF CUSTOMER
17 PROPRIETARY NETWORK INFORMATION ("CPNI")?**

18 **A.** GTE should make all CPNI available upon receipt of a valid letter of
19 agency ("LOA"). At the moment, it is not clear whether the information
20 GTE is proposing to make available includes all CPNI. GTE should be
21 required to make clear that the information it is proposing to provide is
22 all CPNI and that all CPNI will be provided electronically in a prompt and

1 timely manner.

2 **Q. WHAT PROVISIONS SHOULD APPLY IF GTE SUPPLIES LATE OR**
3 **INADEQUATE OR INCOMPLETE BILLING DATA TO ICG ON RESOLD**
4 **SERVICES?**

5 **A. Late, inadequate, or incomplete billing data on resold lines interfere, and**
6 **can, if severe enough, prevent ICG from billing and collecting for services**
7 **to its customers. No payment should be due to GTE if billing data is**
8 **inadequate or incomplete. If billing data is late, the amount due should**
9 **be reduced by 1/365 for each day late. After a year, no payment would**
10 **be due for as yet unbilled services. This rate of discounting fairly reflects**
11 **the difficulties imposed on ICG in billing and collecting from its customers**
12 **when billing data needed from GTE is late.**

13 **Q. WHAT ESCALATION PROCEDURES SHOULD BE AVAILABLE TO ICG**
14 **FOR PROBLEM OR ISSUE RESOLUTION?**

15 **A. If issues are not otherwise resolved, ICG should have recourse, by**
16 **telephone or in-person meeting, to a GTE senior manager at least at the**
17 **vice president level. Seemingly intractable problems can often be**
18 **resolved when addressed at the right level, and this process should be**
19 **required before either party can proceed to arbitration or litigation.**

20 **Q. SHOULD GTE BE PERMITTED TO DEMAND PROOF OF STATE**
21 **CERTIFICATION FROM AN INTERCONNECTOR PRIOR TO PROVIDING**
22 **SERVICE?**

1 **A.** **No. GTE mistakes its role with that of regulators in 'policing' the local**
2 **exchange market. The Telecommunications Act of 1996 clearly requires**
3 **GTE to interconnect with 'telecommunications carriers,' which is broadly**
4 **defined and requires no specific certification or other regulatory**
5 **requirements. Simply being a 'telecommunications carrier' is enough for**
6 **ICG to request services from GTE. ICG should not have to negotiate**
7 **with GTE about whether ICG is certified to offer a particular services**
8 **before GTE provides services to ICG. ICG's compliance with certification**
9 **requirements is a matter between ICG and the applicable regulatory**
10 **authorities, not between ICG and GTE.**

11 **Q.** **SHOULD GTE BE REQUIRED TO PROVIDE POSITIVE DOCUMENTATION**
12 **DEMONSTRATING THAT GTE HAS PROPERLY PROGRAMMED ITS**
13 **SWITCHES TO RECOGNIZE AND CORRECTLY ROUTE TO TELEPHONE**
14 **NUMBERS CONTROLLED BY ICG?**

15 **A.** **Yes. Proper recognition of ICG's telephone numbers on the part of GTE**
16 **switching equipment is essential to ICG's provision of reliable telephone**
17 **service. If GTE fails to properly program even one of its switches, the**
18 **result will be that some GTE customers will not be able to call ICG**
19 **customers. If this were to occur, the result would be severe damage to**
20 **the service reputation of ICG due to technical error on GTE's part. Such**
21 **control by GTE cannot be permitted. GTE can easily provide test**
22 **documentation to ICG and should be required to do so.**

1 **Q. HOW SHOULD ACCESS SERVICES PURCHASED BY ICG BE**
2 **TRANSITIONED TO UNBUNDLED NETWORK ELEMENTS?**

3 **A. For purposes of billing and provisioning, access services should be**
4 **viewed as nothing more than 'bundled' unbundled network elements.**
5 **ICG and other interconnectors have purchased access services to date**
6 **because GTE has refused to make unbundled network elements available.**
7 **ICG should be permitted to request a billing change identifying the**
8 **unbundled network elements and any other services that comprise**
9 **currently purchased access services, and restating the bill on the basis**
10 **of the unbundled network elements and other services. No nonrecurring**
11 **charges, and no physical network changes whatsoever, should be**
12 **required.**

13 **Q. HOW SHOULD GTE MANAGE THE ICG ACCOUNT?**

14 **A. GTE should provide a single, unified account team for resale,**
15 **interconnection, and access. Separation of these areas into different**
16 **account teams leads to redundancy and inefficiency.**

17 **Q. WHAT SERVICE QUALITY STANDARDS SHOULD GTE MEET IN THE**
18 **PROVISION OF RESOLD SERVICES, NETWORK INTERCONNECTION,**
19 **AND UNBUNDLING?**

20 **A. GTE should be required to meet the same service quality standards it**
21 **meets when providing service to any other interconnector, and the same**
22 **standards it meets when providing service to its own end users. This**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the **Direct Testimony of John Boersma On Behalf of ICG Telecom Group, Inc.** has been furnished by hand delivery(*) or U.S. Mail to the following parties of record this **18th day of March, 1997:**

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