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ORIGINAL

September 17, 1999

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

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991414

Re: Docket No.
GTE Florida Incorporated's Petition for Declaratory Ruling Concerning Order
Number PSC-99-1477-FOF-TP

Dear Ms. Bayo:

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Petition for Declaratory Ruling Concerning Order Number PSC-99-1477-FOF-TP. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this filing, please contact me at (813) 483-2617.

Sincerely,

Anthony P. Gillman

- AFA _____
- APP *Smith*
- CAF _____
- CMU *Buttars*
- CTR _____
- EAG _____ KC:tas
- LEG *Buttars* Enclosures
- MAS 3
- OPC _____
- PAI _____
- SEC 1
- WAW _____ A part of GTE Corporation
- OTH _____

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: GTE Florida Incorporated's Petition for)
Declaratory Ruling Concerning Order Number)
PSC-99-1477-FOF-TP)
_____)

Docket No.
Filed: September 17, 1999

PETITION FOR DECLARATORY RULING

GTE Florida Incorporated (GTE) asks the Commission to issue a declaratory ruling that GTE may use the contractual tandem-switching rate to compensate Intermedia Communications, Inc. (ICI) for Internet-bound calls under Order number PSC-99-1477-FOF-TP (Order), issued July 30, 1999.¹ There, the Commission determined that calls from GTE's end users transiting ICI's switch to the Internet were local calls. Under the GTE/ICI interconnection agreement, the parties are to "compensate each other for the exchange of Local Traffic in accordance with Appendix C." (Order at 5, quoting Agreement at section 3.3.1.) The Commission thus ordered GTE to compensate ICI for the ISP traffic at issue "according to the parties' Interconnection Agreement for the entire period the balance owed is outstanding." (Order at 9.)

Although GTE disagrees with the Commission's decision that ISP traffic is local and thus subject to reciprocal compensation, GTE is not challenging that decision in this forum. Rather, GTE asks the Commission to clarify which rate should be used to calculate the amount owed to ICI. Appendix C (attached) sets forth the rates for transport and termination of traffic. Because the Commission's decision considers the ISP calls to

¹ GTE believes a petition for declaratory ruling is proper because GTE is asking the Commission to resolve a "question or doubt" about the application of the above-mentioned Order. Uniform Rule sec. 28-105.001. If the Commission believes this is not the appropriate procedural vehicle, then GTE asks it to consider this filing a Petition for Clarification of the Order.

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"terminate" on ICI's network, a rate from the "Local Call Termination" category would apply to this traffic. There are several such rates (but no specific rate for ISP switching). The Commission did not specify which of these rates should apply to ISP traffic. GTE asked Commission Staff which rate it was supposed to apply under the Order, but Staff declined to give any guidance.

ICI has calculated the reciprocal compensation amount due using the "Local Switching 2" rate of \$.0089000. GTE, however, believes the "Access Tandem Switching" rate is the correct one to use, because it more accurately reflects the function that ICI performs. Switching of calls to ISP customers, such as those of ICI, is typically performed in a trunk-to-trunk manner. When a GTE end user originates a call to an ISP served by an alternative local exchange carrier (ALEC), the end user receives dial tone from the GTE central office switch and proceeds to dial a 7- or 10-digit access code. GTE's switch translates the digits dialed and routes the call to an outgoing ALEC local interconnection trunk group. This call is then delivered to an incoming trunk port in the ALEC switch via transport facilities. The ALEC's switch performs a simple translation of the called number and the call is routed to an outgoing trunk port, typically a PRI or outgoing T1 facility. The CLEC performs no local switching functions in this instance. The only local switching involved in the ISP call is at GTE's end—from the end user's line appearance to the outgoing trunk port.²

² This call flow is consistent with GTE's network configuration when switching calls to ISP customers served by a different end office than that serving the calling end user. From a symmetrical pricing standpoint, this is the proper network configuration to consider since reciprocal compensation is based on GTE's costs and rate applications.

Because the CLEC performs only trunk-to-trunk switching functions for these calls,³ the tandem rate element is the most appropriate contract reference for determining compensation for calls routed to ICI from GTE and switched by ICI to its ISP customers. The tandem switching rate element essentially reflects the costs of the trunk-to-trunk switching that ICI performs for ISP calls. The local switching rate, on the other hand, reflects the costs of end-office switching, which has much different cost characteristics than trunk-to-trunk or tandem switching functions. For example, for trunk-to-trunk switching, it is only necessary to switch the call from the incoming trunk port to an outgoing trunk port, while the end office performs the call set-up and switching/routing functions for line-to-line, line-to-trunk and trunk-to-line calls. Minutes-of-use costs are lower for trunk-to-trunk switching, primarily because they have higher switch-path utilization. To ensure acceptable grade-of-service levels for end-office switching, utilization is typically much lower, resulting in higher costs.

Indeed, even the tandem rate GTE proposes to use is likely too high for ISP calls. Tandem-switching rates are based on a 3-4 minute average holding time per call. ISP calls have significantly higher average holding times—in the 25-35 minute range. These longer holding times result in a significantly lower average cost per minute to switch calls to ISPs.

In fact, any of GTE's rates for transport and termination of local calls are probably too high for ICI's switching functions. The rates set forth in Appendix C are based on

³ For this application, GTE assumes that ICI is actually performing the switching function, which is not always the case for these kinds of calls.

GTE's costs, not ICI's. ICI submitted no cost studies to show its costs of transporting or terminating calls originating on GTE's network. It would be a mistake to assume that GTE's and ICI's costs are the same. In fact, an ALEC's cost per unit of traffic will likely be lower than GTE's for several reasons—for example, the total capacity of an ALEC's network tends to be more fully utilized than an ILEC's network capacity; ALEC switching equipment is often newer and more efficient than ILEC equipment; an ILEC's traffic is dispersed throughout a network of end offices and tandem switches serving a relatively large number of low-volume residential customers, while an ALEC usually has fewer end office switches serving a relatively larger number of high-volume business customers.

Symmetrical rates based on GTE's costs are thus likely to subsidize ICI (even aside from the direct wealth transfers effected by applying reciprocal compensation to ISP calls). Applying the local switching rate would just exacerbate this effect. Compensating ICI using this rate would be a clear and marked departure from the "just and reasonable" cost-based pricing outcome the Act requires (Act sec. 252(d)(2)). It would, moreover, violate the FCC's pricing rules requiring state commissions to establish transport and termination rates that "are structured consistently with the manner that carriers incur those costs." (FCC Rule 51.709.)

In light of the cost considerations associated with the functions ICI is performing, use of the contract rate for tandem switching is more than compensatory. In addition, application of the lower tandem rate will, to the extent possible under the Order, recognize the wild imbalance in the parties' traffic. In other words, GTE's customers call ISPs, but ISPs do not call back. Because this traffic is one-sided, the ALEC can easily earn more

in reciprocal compensation payments than it does in monthly service fees from the ISP.

This effect recently prompted the New York Public Service Commission to limit Bell Atlantic's liability for reciprocal compensation. *Where the traffic delivered to the ALEC's network in a three-month period is three times greater than the traffic terminated on Bell Atlantic's network, the Commission deems it fair to presume that a substantial portion of it is associated with "convergent customers"—i.e., those that generate a large volume of inbound calls, but little outbound traffic. Because the costs of serving these convergent customers are likely to be lower than serving a mass market, the Commission in these instances will permit Bell Atlantic to pay a lower compensation rate than would otherwise apply. (Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, Op. No. 99-10 (N.Y. P.S.C. Aug. 26, 1999).*

GTE suggests that this Commission is, likewise, obliged to consider the policy implications of the particular rates to be applied, and the requirement for reciprocal compensation to be cost-based. Application of the local switching rate will yield a compensation figure several millions of dollars higher than will use of the tandem switching rate. As the Massachusetts Department of Telecommunications and Energy explained recently, the "unqualified payment of reciprocal compensation for ISP-bound traffic" is a regulatory loophole creating an unintended arbitrage opportunity that does not promote real competition or economic efficiency. "[R]egulatory policy...ought not create such loopholes or, once having recognized their effects, ought not to leave them open." (Complaint of MCI WorldCom, Inc. against New England Tel. and Tel. Co., d/b/a Bell Atlantic-Massachusetts for breach of interconnection terms entered into under Sections

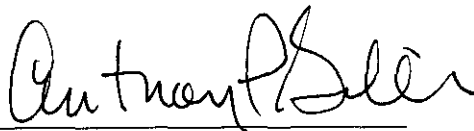
251 and 252 of the Telecomm. Act of 1996, D.T.E. 97-116-C, at 13 (nullifying its earlier decision requiring the parties to pay reciprocal compensation for handling one another's ISP-bound traffic). See also KMC Telecom, Inc. v. BellSouth Telecomm, Inc., Docket no. U-23839, Louisiana PSC Staff's Post-Hearing Brief, at 9 ("The unqualified payment of reciprocal compensation for ISP-bound traffic...does not promote real competition in telecommunications.") (Aug. 5, 1999).)

The Massachusetts Department's sound advice should guide this Commission's thinking in this case. Even though this Commission has deemed the ISP traffic at issue to be local, it should nevertheless apply its Order in the way that is most consistent with the promotion of rational competition. Fortunately, good policy aligns with the facts in this case. *The tandem rate is not just the right choice from a pro-competitive, pro-consumer policy perspective, but, as explained above, it more accurately reflects the functions ICI performs in handling ISP traffic.*

For all the reasons stated in this Petition, GTE asks the Commission to declare that it may use the access tandem switching rate in Attachment C of the parties' interconnection contract to calculate reciprocal compensation payments under the Order. GTE further asks the Commission to order ICI to return all reciprocal compensation amounts in excess of those that would have been paid if the tandem switching rate had been used. To this end, GTE notes that it has paid ICI in accordance with ICI's demand letter sent to GTE in the wake of the Order. GTE made this payment (primarily to avoid additional interest liability) under the expressly stated reservation of its rights to recalculate reciprocal compensable traffic and to request a refund on amounts paid.

If the Commission believes it needs more information before it can declare that the tandem switching rate applies to the traffic at issue, then GTE requests a hearing under section 28-105.003 of the Uniform Rules.

Respectfully submitted on September 17, 1999.

By: 
for Kimberly Caswell
Post Office Box 110, FLTC0007
Tampa, Florida 33601
Telephone: 813/483-2617

Attorney for GTE Florida Incorporated

**APPENDIX C
RATES AND CHARGES FOR
TRANSPORT AND TERMINATION OF TRAFFIC
FLORIDA**

LOCAL CALL TERMINATION

| | | |
|----------------------------------|--------------|----------------------------|
| GTE | | |
| Switched Common Transport | \$.0000135 | Per Minute of Use Per Mile |
| Facilities Termination | \$.0002688 | Per Minute of Use |
| Access Tandem Switching | \$.0007500 | Per Minute of Use |
| Local Switching 2 | \$.0089000 | Per Minute of Use |
| Information Surcharge | \$.0072000 | Per Minute of Use |
| Contel | \$ NA | Per Minute of Use |
| | | |
| Transit Tandem Switching: | | |
| GTE | \$ 0.0007500 | Per Minute of Use |
| Contel | \$ NA | Per Minute of Use |

| | Monthly Rate | Non recurring Charge |
|--|---------------------|-----------------------------|
| E911 Services | | |
| GTE | | |
| E911 trunk, fixed rate each trunk | \$ 26.00 | \$ 89.00 |
| E911 trunk, per airline mile each trunk | 1.50 | N/A |
| E911 Selective Routing per trunk | 30.00 | 260.00 |
| Selective Routing Boundary Maps | N/A | 44.00 |
| E911 ALI Entry Software, per package (optional) | 11.00 | 250.00 |
| E911 ALI Entry User's Guide, per package (optional) | N/A | 30.00 |
| MSAG Copies, per county diskette or magnetic tape | N/A | 45.00 |
| paper copy | N/A | 110.00 |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Petition for Declaratory Ruling Concerning Order Number PSC-99-1477-FOF-TP were sent via overnight delivery(*) on September 16, 1999 or U.S. mail(**) on September 17, 1999 to the following:

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