BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Interconnection Contract Negotiations Between AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., and GTE NORTHWEST INCORPORATED, Pursuant to 47 U.S.C. Section 252	)))))))	**DOCKET NO. UT-960307**

POST-ARBITRATION BRIEF OF

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.

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TABLE OF CONTENTS

I. OVERVIEW

AT&T Communications of the Pacific Northwest, Inc. ("AT&T"), and GTE NORTHWEST INCORPORATED ("GTE") agree on at least one thing -- that the Telecommunications Act of 1996 (the "Act") was enacted on February 8, 1996. AT&T and GTE, however, have starkly different visions of the Act. AT&T views the Act as opening local telecommunications markets to entry by multiple service providers who will bring the benefits of competition to all consumers of local exchange service, both business and residence, urban and rural. GTE, on the other hand, interprets the Act to allow GTE to maintain monopoly revenues and severely limit the ability of other providers to compete effectively in GTE's local markets, while GTE is already providing interLATA service.

A. Disputed Issues

In general, the unresolved issues presented to the Commission for arbitration include (1) unbundling the network and collocation, (2)operations support systems, (3) the pricing of certain unbundled network elements, (4) wholesale discounts, and (5) performance

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GTE will undoubtedly argue that a telecommunications carrier that enters into an agreement with GTE pursuant to Section 252 of the Act cannot avail itself of any other GTE services provided to carriers pursuant to tariffs approved by this Commission. This argument is erroneous and should be rejected. The Commission has ordered GTE to file tariffs governing the provision of certain services to telecommunications carriers on a nondiscriminatory basis. The Commission's rules and orders in this regard are expressly authorized by the Act. See 47 U.S.C. §261. Nothing in the Act prohibits a telecommunications carrier from purchasing services under a valid intrastate tariff.

standards and dispute resolution. The parties are, perhaps needless to say, far apart in their recommendations on these issues.

GTE asks this Commission to protect GTE's monopoly position and thwart the introduction of effective competition in the local services market in this State. For example, GTE recommends the imposition of unreasonable restrictions on both the type of equipment that AT&T may collocate and where it may collocate. In addition, GTE requests that this Commission disregard certain aspects of the Federal Communications Commission's ("FCC") August 8th Interconnection Order. GTE also refuses to provide AT&T with the types of electronic interfaces that AT&T needs to provide consumers the same quality of service that GTE provides those consumers. Finally, GTE's recommended unbundled network element prices and wholesale discounts are designed to insulate GTE from all revenue losses of any kind. Indeed, GTE's proposed wholesale "discount" would require AT&T to pay GTE more than GTE's retail rate.

AT&T, on the other hand, seeks an agreement that will promote competition and benefit consumers. The collocation options that

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While AT&T focuses on these issues in its post-hearing brief, it also seeks resolution on all disputed issues set forth in the Matrix of Issues/Positions of AT&T and GTE.

First Report and Order, In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-325 (August 8, 1996)("FCC Order").

AT&T requests will permit AT&T to design its network to provide consumers alternative service options in the most efficient manner possible. In addition, AT&T requests operational interfaces and performance standards that will ensure consumers will benefit not only in terms of price, but also in terms of quality. Furthermore, AT&T's proposed wholesale discounts are derived utilizing sound economic and accounting principles consistent with the FCC's recommendations. These proposed discounts will allow providers such as AT&T to bring the benefits of competition to all consumers in the State, rural and urban, business and residential. Finally, AT&T seeks a thorough and detailed agreement that addresses as many issues and potential issues as possible to minimize future disputes and to ensure that each party is fully aware of its obligations under the agreement. AT&T -- not GTE -- will be responsible for satisfying AT&T's local customers. AT&T cannot fulfill that responsibility unless it can reasonably rely on receiving quality services and facilities from GTE. Such reliance is only possible under a detailed contract that minimizes GTE's economic incentive to delay or deny the provision of quality services and facilities.

GTE refuses to negotiate an appropriately detailed contract, advocating an agreement on general principles and leaving most of the details of day-to-day interaction between the parties to be negotiated at a later date. Such lack of detail would result not only in the continued monopolization of Washington local exchange markets, but also in depletion of Commission resources, as it will

be necessary for this Commission to repeatedly resolve disputes arising out of a contract lacking in necessary detail. For these reasons, the Iowa Utilities Board recently concluded:

> The Board finds overall, however, that the AT&T agreement is superior to the USWC agreement in the level of process-oriented detail on the components basic to a competitive transition. USWC would leave most of the specific details concerning areas such as interconnection and collocation open for further negotiation and future resolution. In light of the failure of negotiations to date to produce much agreement on substantive issues, the Board believes the USWC approach would result in additional delay and repeated disputes.

In re Arbitration of AT&T, MCI, and USWC, Docket Nos. ARB-96-1 & -2, Preliminary Arbitration Decision at 5-6 (Iowa Utils. Bd. October 18, 1996) ("Iowa Arbitration Order"). These same comments hold equally true for the contract proposed by GTE in this arbitration.

This Commission is all too familiar with the disputes and attendant delays inherent in simply deciding general principles applicable to the incumbent LECs. For example, it took GTE almost one year to file tariffs for unbundled loops, interim number portability, and expanded interconnection and channel termination after the Commission ordered it to do so. U S WEST still has not complied with those directives. See WUTC v. USWC, Consolidated Docket Nos. UT-941464, et al., Fourth Supp. Order (October 31, 1995) ("Interconnection Order"). Subsequent Commission orders in those dockets confirm that, in the absence of specific direction, the incumbent is likely to interpret general principles as favorably to itself as it can as a means of attempting to evade the

understandings of the Commission and other parties. See, e.g., id., Ninth Supp. Order. Neither AT&T, the Commission, nor Washington consumers should continue to endure the endless disputes and delays that result when specific obligations and duties are not set forth. Such specificity is precisely the purpose of establishing a contract, rather than simply relying on GTE to do the right thing.

B. Effect of Eighth Circuit Stay

In addition to the disputed issues outlined above, the effect on this arbitration of the Eighth Circuit Court of Appeals' order, staying the effective date of limited portions of the FCC Order, was discussed at the arbitration and in the parties' pre-filed testimony. See Iowa Utils. Bd. v. FCC, Consolidated Docket Nos. 96-3321, et al. (8th Cir. October 15, 1996)(order granting stay in part)("Stay Order"). The Stay Order, premised on jurisdictional arguments that the FCC does not have authority to issue pricing regulations affecting intrastate rates, affects only selected rules, including costing and pricing of unbundled network elements, the calculation of the avoided retail cost discount, and the "most favored nation" clause. All other FCC Rules and the related provisions in the FCC Order are not affected by the stay.

The Stay Order affects the following rules: 47 C.F.R. §§ 51.501-15 (Pricing of Network Elements and Interconnection); §§ 51.601-11 (Resale); §§ 51.701-17 (Compensation for Transport and Termination); and § 51.809 ("most favored nation"). The Stay Order does not stay the FCC rules on network elements that are required to be unbundled or permissible restrictions on resale.

The Stay Order should not affect the outcome of this arbitration. The rights and duties related to arbitrations are created and imposed directly by the Act, not by the FCC's Rules. See 47 U.S.C. § 252(b). The premise of the stay is that the Act requires states, not the FCC, to determine prices. The Stay Order precludes the FCC from seeking to enforce its pricing methodologies and proxies; however, it does not preclude this Commission from basing its own decision on the FCC's analyses of the terms and policies underlying the Act. Indeed, the Commission will be considering the same provisions of the Act and the same arguments that were at issue before the FCC. Thus, while the Commission is not currently bound to follow the stayed provisions of the FCC Rules, no rational basis exists for pricing decisions different from those embodied in the Rules. For example, pricing unbundled network elements at forward-looking Total Service Long Run Incremental Cost ("TSLRIC"), applied on a network element basis (Total Element Long Run Incremental Cost or "TELRIC"), is both required by the Act and mandated by this Commission's prior decisions. See, e.g., WUTC v. USWC, Docket No. UT-950200, Fifteenth Supp. Order, at p. 82, Wash. Utils. and Trans. Comm'n (April 11, 1996)("USWC Rate Case Order").

However, on November 1, the 8th Circuit lifted the stay as §§ 51.701, 51.703 and 51.717. See Iowa Utilities Board v. FCC, Consolidated Docket No. 96-332 et al.(order lifting stay in part, (November 1, 1996).

C. AT&T's Proposed Contract Is Consistent With the Law Governing This Proceeding

AT&T has requested that the Commission arbitrate the unresolved issues and impose appropriate conditions on the parties. The Act specifically requires that the Commission shall

> (1) ensure that such resolution and conditions meet the requirements of [47 U.S.C.] section 251, including the regulations prescribed by the [FCC] pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
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> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

47 U.S.C. § 252(c). The Act also authorizes the Commission to enforce its own regulations, orders, and policies for access and interconnection between telecommunications companies to the extent such regulations, orders, and policies are not inconsistent with federal law. Id. § 251(d)(3). Thus, this Commission's orders regarding interconnection, unbundling, and virtual collocation, to the extent that they are consistent with the Act and the FCC's rules, can and should be incorporated into the agreement between AT&T and GTE adopted as a result of this proceeding.

AT&T's proposed contract is consistent with the Act, the FCC Order and Rules, Washington law, this Commission's Orders and Rules, and the goals of both federal and state law to foster effective competition in local exchange markets. Indeed, most of the requirements in that contract are derived directly from the

Act, the FCC Order and this Commission's Orders. GTE's proposals, in contrast, are inconsistent with the Act, the FCC Order, and this Commission's directives and would seriously hamper, if not prevent the development of, local exchange competition. GTE openly concedes that many of its proposals are inconsistent with the FCC Order, but asks the Commission simply to ignore the law. The FCC Order, however, is binding on the Commission to the same extent as federal statutes. City of New York v. F.C.C., 486 U.S. 57, 63 (1988). In addition, the Act specifically requires the Commission to ensure that its resolution of the unresolved issues between the parties "meet[s] the requirements of [47 U.S.C.] section 251, including the regulations prescribed by the [FCC] pursuant to section 251." 47 U.S.C. § 252(c)(1) (emphasis added). Even if the Commission could ignore federal law, acceptance of GTE's proposals would undermine competition and its attendant consumer benefits.

II. DISCUSSION

A. INTERCONNECTION AND COLLOCATION (Issues 42-43, 50-54)

GTE and AT&T have reached agreement concerning many interconnection and collocation issues. However, the types of equipment AT&T may collocate and the premises at which GTE will permit collocation remain in dispute.

1. Types of Collocated Equipment.

While AT&T does not address every issue in this brief, its positions on the relevant issues are set forth in the Issues Matrix and are incorporated herein by reference.

The primary point of dispute regarding the type of equipment AT&T may collocate at GTE premises is whether AT&T may collocate remote switching units ("RSUs"). Section 251(c)(6) of the Act requires collocation of equipment "necessary for interconnection or access to unbundled elements." Interpreting the meaning of the term "necessary" in this provision, the FCC concluded that an ILEC must permit any "used" or "useful" equipment to be collocated. FCC Order, ¶ 579. Although the FCC stated that it would not require an ILEC to permit the collocation of switching equipment, it determined that because "modern technology has tended to blur the line between switching equipment and multiplexing equipment," it would leave to state commissions to decide whether a particular piece of equipment is used for interconnection or access to unbundled elements and therefore should be collocated. FCC Order, ¶ 581.

The collocation of RSUs meets these criteria. Indeed, AT&T proposes to use RSUs to interconnect with GTE's network and unbundled elements. In addition, RSUs are necessary, in that they are "used" and "useful" (1) to avoid the serious quality problems, including echo, delay and noise, associated with back-to-back placement of subscriber loop carriers ("SLCs"), AT&T/25, BOHLING/14-15; (2) to complete calls between two AT&T customers who are both served by unbundled local loops provided through the same GTE central office, Tr. at 26-30; and (3) to enable 911/E911 calls and intra-community calls to be completed even if the facility is

accidentally severed, Tr. at 30. Thus, not only will AT&T use RSUs for interconnection, RSUs are also a "necessary" part of providing high quality, efficient telecommunications service.

GTE presented no evidence that collocation of RSUs is technically infeasible or not "useful". In fact, GTE's technical witness admitted that collocation of RSU's is indeed technically feasible. Tr. at 89. By way of objection, GTE states only that the collocation of RSUs will not decrease the number of analog to digital conversions or prevent the reductions in modem speeds associated with back-to-back placement of SLCs. Tr. at 74-75. Even if assumed true, this assertion does not rebut the presumption of technical feasibility. Moreover, the space required to house an SLC is significantly greater than that for an RSU. Tr. at 31. thus, GTE may not reasonably claim that the collocation of RSUs is infeasible due to space limitations. Therefore, GTE has not satisfied its burden to show that collocation of RSUs is technically infeasible or unnecessary. More importantly, collocating RSUs will enable AT&T to interconnect efficiently with GTE's network and provide high quality service to end users. Recognizing these benefits, other state commissions have ordered that the collocation of RSUs must be permitted. For these reasons, the Commission should require GTE to permit collocation of RSUs.

See Arbitrator's Report, In re AT&T's, MCI's and MFS's Consolidated Petitions for Arbitration with U S WEST, OAH Docket No. 9-2500-10697-2, MPUC Docket Nos. P442,221/M-96-855, et al., Minn. Pub. Utils. Comm'n (November 5, 1996) ("Minnesota

2. Premises at Which GTE Will Permit Collocation.

AT&T and GTE continue to disagree over where AT&T may place its collocated equipment. Pursuant to Section 251(c)(6) of the Act, collocation must be provided "at the premises of the local exchange carrier[.]" According to the FCC, the term "premises" includes the LEC's "central offices, serving wire centers and tandem offices, as well as all buildings or similar structures owned or leased by the incumbent LEC that house LEC network facilities . . . [and] any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures." FCC Order, ¶ 573. Only when the ILEC can show that a particular location is not technically feasible should either physical or virtual collocation be denied. FCC Order, ¶¶ 573-574.

GTE asks the Commission to disregard the FCC's definition of "premises" and restrict collocation to end offices and tandems. Tr. at 72. However, GTE has not provided evidence that collocation at the premises set forth by the FCC is not technically feasible. GTE claims only that it must restrict access to Controlled Environmental Vaults ("CEVs") and manholes because, due to their

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Arbitration Order"); Opinion and Order, In re Petition of AT&T for Arbitration of Interconnection Rates, Terms, and Conditions with U S WEST, Docket No. U-2428-96-417, Ariz. Corp. Comm'n (November 13, 1996)("Arizona Arbitration Order").

GTE addresses only CEVs and manholes. It provides no explanation for its desire to restrict access to other premises, including serving wire centers or rights-of-way.

small size, GTE will be unable to cage, and thereby protect, the equipment of collocators. Tr. at 72-73. This is not the evidence of technical infeasibility contemplated by the FCC Order. See, e.g., FCC Order, ¶ 573. Moreover, any perceived difficulty in protecting collocators' equipment on these premises may be overcome through agreements amongst collocating carriers to observe necessary safety protocols in entering collocation premises. Therefore, AT&T requests that the Commission require GTE to permit collocation at the premises set forth in the FCC Order.

B. UNBUNDLING NETWORK ELEMENTS (Issues 17-19, 30-41)

As with interconnection and collocation, the parties have resolved many of the issues associated with access to unbundled elements. The following issues, however, remain in dispute: (1) subloop unbundling; (2) customized routing of Operator Services ("OS") and Directory Assistance ("DA") calls; (3) access to dark fiber; and (4) the combination of unbundled elements purchased from GTE.

1. Access to Subloop Unbundling (Issue 33).

AT&T and GTE agree that subloop unbundling will be addressed through a bona fide request ("BFR") process. Tr. at 81. AT&T suggests, however, that this Commission specifically order that the subloop elements AT&T requests in this proceeding be unbundled,

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For example, AT&T and GTE have reached agreement on AIN and SCP unbundling issues. See Issue Matrix Nos. 35-38; Tr. at 126-129.

These subloop elements are the NID, Loop Distribution, Loop

with the understanding that a request for interconnection at any particular point will have to be made, and its feasibility assessed, prior to interconnection at that point. Tr. at 12-14.

GTE presented no evidence, in pre-filed testimony or at the arbitration, establishing the technical infeasibility of subloop unbundling. Rather, GTE merely discussed the variety of possible loop configurations. Tr. at 46-65. While this description illuminates the complexity of loop technology, it in no way proves the technical infeasibility of unbundling the subloop elements requested by AT&T. In fact, GTE itself admits that subloop unbundling is indeed technically feasible in some instances. Tr. at 52-53, 61-63. Therefore, AT&T requests that, pursuant to the FCC Order and in furtherance the development of competition in this state, the Commission order GTE to provide these additional unbundled elements.

2. Customized Routing of OS and DA Calls (Issues 17-19).

In defining the scope of unbundled access to operator services ("OS") and directory assistance ("DA"), the FCC concluded that incumbent LECs must, to the extent technically feasible, "provide customized routing, which would include such routing to a competitor's operator services or directory assistance platform." FCC Order, ¶ 536. Access to unbundled network elements is deemed

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Feeder, and Loop Concentrator/Multiplexer Capabilities. See AT&T/7, Bohling/14-15.

technically feasible "absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier." 47 C.F.R. § 51.5. Thus, an incumbent LEC objecting to the requirement that it provision customized routing, "must prove to the state commission that customized routing ***in a particular switch*** is not technically feasible." FCC Order, ¶ 418 (emphasis added).

GTE states that, while it may be technically feasible if engaged in by only a few CLECs using a small number of line class codes, customized routing engaged in by a larger number of CLECs will not be technically feasible because of the limited number of line class codes available. Tr. at 70. However, GTE readily admits that "it is unclear at this time how many line class codes would be required by each requesting CLEC" and that the use of line class codes may indeed work as a short-term solution. Id. Thus, even GTE has determined that, at least at this time, customized routing is technically feasible. Moreover, the execution of customized routing is not limited to a process involving line class codes. Other alternatives, including use of AIN capabilities, are available and have been agreed to by other incumbent LECs. AT&T/25, Bohling/9-10.

3. Dark Fiber (Issue 39).

The Act and FCC Rules direct state commissions to order all technically feasible unbundling of network elements. 47 U.S.C. § 251(c)(3); FCC Order ¶ 450. A "network element" is a facility or

equipment used in the provision of telecommunications service and includes the features, functions, and capabilities provided by means of such facility or equipment. 47 U.S.C. § 153(45). This Commission specifically held that lease of dark fiber is a telecommunications service under Washington law, a holding left undisturbed by the supreme court. See In re Consolidated Cases Concerning the Registration of Electric Lightwave, Inc., 123 Wn.2d 530, 545, 869 P.2d 1045 (1994).

GTE does not argue that unbundling of dark fiber is technically infeasible. Rather, GTE's position is that reliability of its network could be affected if AT&T and other CLECs are provided access to GTE's dark fiber. Tr. at 66-67. However, GTE's argument simply does not go to the technical infeasibility of unbundling dark fiber. Indeed, other state commissions have recognized the technical feasibility of unbundling dark fiber. AT&T/25, Bohling/6-7. Moreover, because it will be servicing its own customers through GTE's network, AT&T has every interest in maintaining its reliability. Tr. at 81.

4. The Combination of Unbundled Elements.

The Act and FCC Order require GTE to provide combinations of unbundled elements, provided those combinations are technically feasible. Under Section 251(c)(3) of the Act, incumbent LECs must

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See In re Investigation into the Cost of Providing Telecommunications Services, Docket No. UM 351, Order No. 96-188, Pub. Util. Comm'n of Oregon (July 19, 1996); see also Minnesota Arbitration Order, p. 19; Arizona Arbitration Order, p. 14.

provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide . . . telecommunications service." The FCC concluded that this language "bars incumbent LECs from separating elements that are ordered in combination . . . and requires incumbent LECs, if necessary, to perform the functions necessary to combine requested elements in any technically feasible manner . . . with other elements from the incumbent's network[.]" FCC Order, ¶ 293.

Therefore, the Commission should reject GTE's attempts to restrict AT&T's recombination of unbundled network elements under the terms of the Act, the FCC Order and this Commission's unbundling orders.

C. SERVICES AVAILABLE FOR RESALE (Issues 9-11, 13-16)

The Act contemplates at least three means by which competitors will enter the local market. In addition to facilities-based competition and access to unbundled elements, the Act provides for the resale of the incumbent LECs' bundled retail services. In this regard, an incumbent LEC must "offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4)(A). Moreover, the incumbent LEC must not impose "unreasonable or discriminatory conditions or limitations on the resale of such telecommunications service." 47 U.S.C. §251(c)(4)(B).

Implementing these provisions of the Act, the FCC Order requires, GTE to "establish a wholesale rate for each retail service that: (1) meets the statutory definition of `telecommunications service' and (2) is provided at retail to subscribers who are not `telecommunications carriers.' FCC Order, ¶ 871. The FCC concluded, "We thus find no statutory basis for limiting the resale duty to basic telephone services, as some suggest." Id. The FCC further determined that "resale restrictions are presumptively unreasonable." FCC Order, ¶ 939.

Consistent with its intention to provide a broad array of services to customers throughout Washington, AT&T proposes that GTE make all of its retail telecommunications services available for resale at wholesale rates, including (1) below cost services; (2) services already offered on a wholesale basis; (3) pay phone and semi-public services; (4) "grandfathered" services; (5) contract services and special arrangements; (6) services offered on an individual contract basis; (7) discounted services; and (8) promotional offerings. See Direct Testimony of Douglas Wellemeyer, p. 27; Tr. at 282-284. AT&T recommends that GTE's restrictions on the resale of these services be narrowly limited to those restrictions expressly authorized by the FCC Order. To promote competition, the Commission should reject the host of restrictions on resale proposed by GTE, none of which are authorized by the FCC or the Act. Tr. at 285-289.

The Commission should also reject any proposal which effectively restricts the resale, at wholesale prices, of retail services that include term or volume discounts. First, the evidence does not demonstrate that GTE would avoid fewer retail costs if such services were no longer offered to retail customers. Second, under AT&T's proposed avoided cost discount proposal, GTE remains margin neutral regardless of the structure of the retail rate. Thus, any restriction on the resale of volume discounted retail services or reduced avoided cost discount would be inappropriate and would effectively deny consumers the alternatives to GTE's term and volume discounted services contemplated by the Act and FCC Order.

D. OPERATIONS SUPPORT SYSTEMS (Issues 27, 44-47)

AT&T and GTE have agreed to an interim solution for access to GTE's operations support systems ("OSS"). The parties have also agreed, at least conceptually, on a long-term solution: real-time electronic access, through a nationally standardized gateway, to OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing. See, e.g., FCC Order, ¶ 527. The parties differ, however, regarding the process and time frame for implementation of that long-term solution, as well as the manner in which costs will be recovered. Tr. at 172-173, 175.

The FCC Order requires GTE to provide access to pre-ordering, ordering, provisioning, maintenance and repair, and billing interfaces by January 1, 1997, under the same terms and conditions

that GTE provides such interfaces to itself. FCC Order, ¶¶ 316, 516-528. Furthermore, access to GTE's OSS is a "network element", which must be unbundled pursuant to Section 251(c)(3) of the Act. Thus, it must be priced at TELRIC. See Section F regarding the Pricing of Unbundled Elements.

GTE refuses to commit resources to developing a long-term solution until national standards are established and until AT&T and GTE reach agreement on cost recovery issues. Tr. at 198, 208. Moreover, GTE claims that AT&T, and other new entrants, must bear all of the costs of access to GTE's OSS. Tr. at 212. However, because the parties' interim solution is prone to error and delay, Tr. at 201-203, the transition to a long-term solution must begin immediately. In addition, because sufficiently defined national standards for electronic interfaces already exist, GTE may not base its delay in development and implementation of a long-term solution on a lack of standards. Tr. at 205, 209. Finally, if GTE is permitted to delay the long-term solution while cost recovery issues are resolved, AT&T, and consumers in this state, will not see the benefits of nondiscriminatory access until long after the FCC mandated date for implementation. For these reasons, the Commission should require GTE to immediately begin developing a long-term solution that will comply with the standards and timeline set by the Act and FCC Rules.

AT&T's electronic interfaces proposal complies with the Act and FCC Rules. It is based on existing, or soon to be established,

national standards, can be implemented within the time frame contemplated by the FCC, and has the potential to evolve into the type of uniform national gateway which the parties agree will satisfy their long-term needs. In addition, AT&T's cost recovery proposal complies with the Act because all carriers will share the costs of implementing the national gateway in proportion to the benefits they will receive and will pay for ongoing access to another's OSS at cost-based rates.

1. Pre-Ordering.

AT&T proposes that the interface for pre-ordering be based on the national standards currently being developed by the Electronic Communication Implementation Committee. While not yet established in their entirety, these standards are expected to be finalized by year-end 1996, at which time GTE should be required to implement them. Tr. at 180.

2. Ordering and Repair/Maintenance.

There currently exist interfaces for ordering and repair/maintenance, designed according to national industry standards. Because the hardware, software and platforms associated with these interfaces may be re-used, they have the potential to evolve into the long-term industry solution mandated by the FCC. For ordering, that interface is Electronic Data Interchange ("EDI"). Tr. at 181. For maintenance and repair, it is Electronic Bonding-Trouble Administration ("EBTA"). Tr. at 181. AT&T suggests that it makes sense to adopt these existing interfaces,

which have the potential to evolve into the long term industry solution, rather than an entirely novel system which would take considerable time and resources to develop and implement.

3. Billing.

AT&T and GTE agree that billing interfaces need not be real time. In addition, the parties agree that daily usage data may be provided in the existing Bellcore EMR format, and transmitted via the Network Data Mover. However, the format and transmission method for wholesale billing remain disputed.

AT&T suggests use of the nationally standardized Billing Output Specifications ("BOS") format. GTE is unwilling to agree to BOS, in spite of the fact that GTE's existing Carrier Access Billing System ("CABS") already conforms to BOS. Tr. at 194-195. Furthermore, it makes sense to use CABS, which is an existing interface between AT&T and GTE, for the transmission of wholesale billing information to AT&T, rather than devise an entirely new system to do the same. In fact, GTE itself now agrees that, with some modifications, CABS may be implemented as a long term solution. Tr. at 194.

4. Cost Recovery.

All carriers, including GTE, will benefit from the implementation of national gateway interfaces. Tr. at 181-184.

Evidence of the reasonableness of EDI and EBTA is the fact that Ameritech, Bell Atlantic, Nynex, and Southwest have all agreed to use them. Tr. at 211.

Consequently, all carriers must share in the costs of their implementation. For this reason, AT&T proposes that each party be responsible for the costs of its own gateway. Id. In addition, use of GTE's support systems should be priced at TELRIC, as are other unbundled network elements.

E. ANCILLARY SERVICES (Issues 21, 48-49, 55-58)

In addition to the interconnection, unbundled network elements and resale services discussed above, the Act requires that GTE provide AT&T with several other "ancillary" services, including: (1) service provider number portability, (2) access to rights of way, (3) dialing parity and number resources, and (4) branding. Consumers stand to benefit from pro-competitive resolution of these issues and will be severely disadvantaged if the Commission adopts GTE's recommendations -- recommendations intended to stall competition and solidify GTE's monopoly position in the marketplace. These ancillary services will enable AT&T to provide Washington consumers with cost-effective service alternatives without disruption to the customer experience. For example, adoption of AT&T's number portability, dialing parity and branding proposals will ensure that customers will not suffer additional burdens or confusion when changing providers.

1. Local Number Portability (Issues 48-49)

Section 251(b)(2) of the Act obligates GTE to provide technically feasible local number portability ("LNP"), which is defined as "the ability of users of telecommunications services to

retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one carrier to another." 47 U.S.C. §153(a)(46).

To ensure that end users are able to conveniently switch from one carrier to another, AT&T requests four interim number portability options: (1) remote call forwarding ("RCF"); (2) direct inward dialing ("DID"); (3) portability hub route indexing; and (4) LERG reassignment. Tr. at 156. While GTE agrees to provide RCF, DID and LERG reassignment, it claims that AT&T's suggestions concerning the arrangement of portability hub route indexing, i.e. directing the ported call to the access tandem, is not technically feasible. Tr. at 159. However, even GTE's number portability witness admits that other RBOCs have agreed to provide portability hub route indexing. Tr. at 161.

The recovery of costs associated with implementing number portability is also at issue. The FCC has ordered that the cost of LNP be borne by all telecommunications carriers, including ILECs, on a competitively-neutral basis. First Report and Order, In re Telephone Number Portability, CC Docket No. 95-116 (July 2, 1996)("Number Portability Order"). AT&T proposes that the Commission require each party to bear its own costs, essentially "bill and keep", or in the alternative adopt the cost recovery mechanism adopted in New York, both of which the FCC has specifically approved. See id., ¶¶ 134-136. These cost recovery

options are competitively neutral and thus comply with the FCC Order.

2. Access To Rights Of Way (Issues 55-58).

Pursuant to Section 251(b)(4) of the Act, GTE has a "duty to afford access to poles, ducts, conduits and rights-of-way of such carrier to competing providers of telecommunications services on rights, terms and conditions that are consistent with section 224." The FCC Order further clarifies this duty. First, while GTE may maintain capacity for maintenance and administrative purposes, FCC Order, ¶¶ 1165-1170, it may not reserve space for its own use to the detriment of a new entrant. FCC Order, ¶¶ 1165-1170. Second, GTE must take reasonable steps to accommodate requests for access, including modifying its facilities to increase capacity. FCC Order, ¶¶ 1161-1164. Third, where the access requested is access restricted through a given relationship with grantors or licensors, GTE, who maintains those relationships, should facilitate negotiation for the requested access. If necessary, GTE must exercise its eminent domain powers to expand an existing right-of-way over private property to accommodate a request for access. FCC Order, ¶ 1181.

AT&T's request for nondiscriminatory access to GTE's poles, ducts, conduits, rights-of-way and related facilities, on the same

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In contrast, this Commission's interim solution, see, e.g., Interconnection Order at 55, is not competitively neutral and thus does not comply with the FCC Order.

terms and conditions which GTE provides such access to itself or to third parties, mirrors the Act's requirements. AT&T's proposal includes ordering procedures to implement these provisions. Specifically, GTE should be required to provide current detailed engineering on the facilities as well as any information on the environmental conditions. In addition, once a request is made for space, GTE should reserve those facilities pending attachment and/or installation of AT&T's facilities. Finally, if GTE denies access, it must prove that the request is not technically feasible.

3. Dialing Parity And Access To Number Resources (Issue 26).

GTE has a duty "to provide dialing parity to competing providers of telephone exchange services and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers . . . and directory listing, with no unreasonable dialing delays." 47 U.S.C. § 251(b)(3). AT&T customers must be able to dial the same dialing and digit pattern for local calls as GTE's customers. While GTE appears to agree in principle, its contract language is not specific. Therefore, AT&T requests that the Commission adopt AT&T's contract language pertaining to dialing parity issues.

4. Branding (Issue 21).

AT&T requests that GTE rebrand directory assistance, operator services and announcements, and repair and maintenance services to prevent customer confusion. The rebranding of repair and

maintenance requires simply that when a GTE repair person goes to a customer premise, he or she merely state the service call is being made on behalf of AT&T and leave behind an information card with the repair call information relating to AT&T. The customer will have called an AT&T service representative to report the service problem and will be confused if a GTE service representative appears at the door without some reasonable explanation. GTE's refusal to meet these reasonable requests underscores the need for this Commission to be vigilant in curbing "non-price" forms of discrimination.

AT&T, therefore, urges the Commission to adopt AT&T's proposed language addressing these issues -- provisions that are generally consistent with this Commission's directives in Order No. 96-021. Issues of costing and pricing are the same as those discussed in connection with unbundled network elements. See infra at K.

F. PRICING FOR UNBUNDLED ELEMENTS, INTERCONNECTION, COLLOCATION AND WHOLESALE SERVICES (Issues 1-5, 7)

Costing and pricing are perhaps the most critical -- and consequently the most controversial -- issues presented for resolution in this arbitration. Not surprisingly, AT&T and GTE have fundamentally different approaches to estimating the costs of GTE facilities and services. AT&T seeks economically rational pricing that will allow GTE to recover its forward-looking, long run incremental costs and enable AT&T and other competitors to enter the local exchange market and bring the benefits of

competition to consumers throughout Washington. GTE, on the other hand, views the world through a monopolist's eyes, and would set prices at a level that would guarantee that GTE generates the same revenues regardless of the existence of competition. Not only would such prices nip emerging competition in the bud but they would insulate GTE from competitive pressures to operate more efficiently, at lower cost, and with higher service quality. GTE's proposals are inconsistent with the Act and economic principles, and they would undermine the Commission's efforts to develop effective local exchange competition to the ultimate detriment of Washington consumers.

1. Economically Efficient Pricing Principles.

The standards for establishing prices are clearly articulated in the Act. First, GTE must provide interconnection with its network, unbundled network elements, and collocation at "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(2), (3) & (6). The prices for interconnection and unbundled network elements must be "based on the cost (determined without reference to a rate of return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable)," "nondiscriminatory," and "may include a reasonable profit." Id. § 252(d)(1).

The Commission has determined that Total Service Long Run Incremental Costs ("TSLRIC") are the appropriate measure of cost-based pricing for telecommunications services. See, e.g., WUTC v.

USWC, Docket No. UT-950200, Fifteenth Supp. Order (April 11, 1996). The FCC adopted this methodology for network elements ("TELRIC"), rather than for services. Proper economic theory supports these approaches. See Exhibit AT&T/12, Mayo/4-22.

GTE takes a fundamentally different approach, typified by its belief that its shared costs are the difference between its revenues and its incremental costs. Exhibits GTE/7 at 23 and GTE/8, Attachment 2. Thus, GTE, through its pricing proposals, seeks to ensure that it not only will recover its costs from competitors but will maintain its revenue stream whether GTE or a new entrant serves the customer. GTE formerly referred to this principle as Efficient Component Pricing Rule ("ECPR") -- a principle to which the Commission has never subscribed and which the FCC specifically rejected as inconsistent with the Act:

> We conclude that ECPR is an improper method for setting prices of interconnection and unbundled network elements because the existing retail prices that would be used to compute incremental opportunity costs under ECPR are not cost-based. Moreover, the ECPR does not provide any mechanism for moving prices towards competitive levels; it simply takes prices as given. The record indicates that both incumbents and new entrants agree that retail prices are not based on costs. Incumbents generally argue that local residential retail prices are below costs while new entrants contend that they exceed

> competitive levels. In either case, application of ECPR would result in input prices that would be either higher or lower than those which would be generated in a competitive market and would not lead to efficient retail pricing.

FCC Order ¶ 709.

GTE now proposes what it calls Market-based ECPR ("M-ECPR"), which modifies the previous version of ECPR by capping the opportunity costs component by a "market constraint" representing alternative competitive supply prices or stand-alone costs. Exhibit GTE/2 at 7-13. This modification eliminates only the most egregious outcomes in the practical application of this rule -- the basic flaws of the ECPR still remain. See Exhibit AT&T/23, Mayo/2-11. Unbundled network element prices that are based on any version of the ECPR are not *efficient*, and thus are inappropriate.

The ECPR, in all its versions, is an attempt to perpetuate the recovery of monopoly rents of an incumbent monopolist despite competition in complementary markets. The ECPR renames the "monopoly rents" of the incumbent as its "opportunity costs," and demands their recovery. There is no efficiency basis at all for such a demand. On the contrary, ECPR-based prices are designed to

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GTE has provided no evidence to support its claim that its proposed prices are at or below the "stand-alone" costs of providing network elements.

keep competitors out of the market and to keep final goods prices high, to the detriment of consumers. Id. at 2-7.

GTE also suggests that, as a consequence of regulation of GTE's rates, current GTE revenues can serve as a basis for inferring GTE's forward-looking common costs. This proposition has no support in economic theory. Forward-looking costs arise from efficient utilization of technologies used to deliver telecommunications services. Actual firm revenues reflect regulatory initiatives, lack of competition, and blind chance. Thus, *revenues are a totally incorrect basis for calculating costs.* This error, calculating costs from revenues, is one of the fundamental and fatal flaws of the ECPR methodology. Id. at 8-9.

Finally, not satisfied with the protections afforded under its ECPR pricing scheme, GTE also recommends end user charges to recover "other" costs. There are several problems with this proposal. First, the nature and application of this fee are unclear. Second, some of the costs outlined by GTE are included under TELRIC based pricing, including the costs incurred by GTE to accomplish unbundling of network elements or resale of network services are included in TELRIC and avoided cost components. GTE's surcharge would presumably collect a total of $40 on a business line that currently retailed at $38. Tr. at 294-95. This figure captures additional revenues relating to toll and access. This is

inappropriate in a competitive market. Exhibit AT&T/23 at 10. Finally, the Commission specifically rejected any imposition of a charge on competitors that represents an incumbent LEC's attempt to recover lost revenues. WUTC v. USWC, et al., Consolidated Docket Nos. UT-941464, et al., Fourth Supp. Order at 38-39 (October 31, 1995) ("Interconnection Order").

2. Cost Methodology (Issue 3).

AT&T and GTE each sponsored cost studies supporting their very disparate estimates of the TELRICs of the unbundled network elements. The Hatfield Model sponsored by AT&T incorporates TSLRIC principles and uses inputs and assumptions derived from publicly available sources in an open model that is easily verifiable. GTE's cost study, in sharp contrast, is based on its fatally flawed M-ECPR and uses proprietary, undisclosed inputs and assumptions in a model that is impossible to verify. The Hatfield Model satisfies the costing principles set forth in the Act, as well as sound economic policy, while GTE's studies do not. As a result, it is the Hatfield Model on which the Commission should rely to establish prices.

a. The Hatfield Model

Furthermore, GTE's proposal for recovery of "losses" incurred when "avoided costs are incorrectly overstated" raises the question of whether GTE will be penalized when and if they gain from understated avoided costs. Shared costs of network operation and common costs of network operation are recoverable under the TELRIC formula, while universal service reform, now under review, will address the other "incumbent burdens" cited by GTE.

AT&T's unbundled network element prices are based on outputs from a computer model created by Hatfield Associates, Inc., known as the Hatfield Model, Version 2.2, Release 2. Dr. Mercer described in detail the most recent version of the Model and explained why the Hatfield Model is consistent with the costing principles set forth in the Act and economically efficient pricing standards. See Exhibits AT&T/13-16, 29 & 43; Tr. at 521-43. Dr. Mercer highlighted the Model's key principles and attributes:

(1) The Model considers all network elements, and within those elements makes provision for every component part;

(2) The Model estimates the costs for total services, as well as individual network elements, with a consistent set of logic, assumptions, and inputs;

(3) The Model uses TSLRIC or "TELRIC" principles to assess forward looking, best technology, least cost, long run economic costs;

(4) The Model is publicly available and user friendly, allowing verification of the Model's operation and the ability to manipulate and run sensitivity analyses using updated or different inputs.

Tr. at 522-37. These attributes -- particularly the Model's transparency and ability to vary inputs and assumptions -- have prompted this Commission, as well as other state commissions, to endorse the Hatfield Model and use it to set prices. See In re Arbitration of AT&T and GTE, Docket No. ARB-96-3, Preliminary Arbitration Decision at 3-4 (Iowa Utils. Bd. Nov. 14, 1996); WUTC v. USWC, Docket No. UT-950200, Fifteenth Supp. Order at 86 (April 11, 1996); see also In re AT&T Petition for Arbitration with GTE,

Docket No. OAH 78-2500-10733-2, Arbitration Decision at 17-19 (Minn. PUC Office of Admin. Hearings November 12, 1996) ("Minnesota Arbitration Decision") (recommending rejection of GTE cost studies in favor of Hatfield Model).

GTE questions the Model's documentation as being insufficient and its inputs and assumptions as being overstated and unrealistic, but GTE has all the cost information necessary to refute the Hatfield Model if its documentation is as thin and its assumptions as unreasonable as GTE contends. GTE has equipment and material invoices, time and payroll records, and other tangible evidence that it could use to prove the costs necessarily incurred to construct network facilities. GTE, however, offers no evidence to substantiate alternative values for the inputs and assumptions used in the Hatfield Model. Ironically, GTE's attack on the Hatfield Model shows that it can determine and understand the Model's assumptions, assess them, question them, and run the Model with revised assumptions -- something that AT&T cannot do with GTE's studies. See Tr. at 640.

The Commission previously found that the Hatfield Model and its results represent the best estimate of an incumbent LEC's costs. The Hatfield Model cost study comports with TSLRIC

Furthermore, GTE's witness had not examined GTE's own cost studies, which contain many of the same "flaws" that he claims exist in the Hatfield Model despite the fact that GTE, unlike Hatfield, has unlimited access to verifying data. See Tr. at 594 & 640-55.

methodology and the Act's pricing policy standards, and GTE's criticisms of the Model only highlight its accessibility and confirm its utility. The Commission should adopt the results and methodology of the Hatfield Model for costing and pricing purposes in this arbitration.

b. GTE's Cost Studies

GTE's cost studies are not a usable tool upon which this Commission can rely to establish prices. First, the studies were only produced in computer-readable format at the last minute. Exhibit AT&T/34 at 13-14. Even then, the switching module was not produced. The modules were provided in compiled form only, effectively precluding analysis of the formulae and calculations that underlie the model. Id.; Tr. at 640. Most of the key inputs are undocumented. For example, vendor prices for equipment were not provided nor the levels of any discounts in order to verify costs. Similarly, while total labor costs are provided, the components required -- number of hours and hourly rate -- were not. Tr. at 642; Exhibit AT&T/34, Klick/15. In addition to not being able to verify the investment inputs, the factors applied to determine expenses also are not supported. Tr. at 644-45. Again,

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This, of course, is an area where GTE criticizes the Hatfield Model for underestimating costs of switching equipment. Despite having executed protective agreements specifically designed to address this information, none was provided. As Mr. Klick testified, this failure is particularly frustrating because, where he has been provided with these details, he has been able to support the Hatfield estimates through the use of the incumbent's own data. Tr. at 648-49.

the lack of data prevents verification of the inputs to the models. See Exhibit AT&T/34, Klick/15-18.

Even with limited visibility, Mr. Klick was able to make some observations about the models, demonstrating the importance of scrutiny and review by others. Mr. Klick made the following observations:

-- GTE does not use a consistent cost of capital. Tr. at 655; Exhibit AT&T.

-- The copper/fiber breakpoint in calculating the loop is not applied correctly, substantially overstating GTE's costs. Tr. at 650-53; AT&T/34, KLICK/24.

-- GTE uses a 55 percent fill factor, Exhibit AT&T/34 at 14 & Tr. at 648, although the Commission has required the use of objective fill. See WUTC v. USWC, Docket No. UT-950200, Fifteenth Supp. Order (April 11, 1996). The fill factor has a significant impact upon loop costs. See Tr. at 654.

-- GTE is applying its 55% utilization factor to land and building costs, resulting in cost overstatement. Exhibit AT&T/34 at 28.

Correcting GTE's cost study just for two of these factors -- using objective fill and proper copper/fiber breakpoint calculations -- reduces GTE's loop cost estimate from $23.81 to between $14.93 and $13.96, only slightly higher than the Hatfield Model results. Tr. at 650-54. While GTE's study remains largely inaccessible and unverifiable, these calculations using GTE's own

study support the accuracy of the Hatfield Model results, and, if anything, demonstrate that the Hatfield Model likely overstates GTE's costs. The GTE studies offered in this proceeding thus are entirely unreliable and produce unverifiable results clearly intended to create a barrier to entry for AT&T and other new entrants. The Commission should not, therefore, use the GTE cost studies presented in this proceeding as the basis for rates in the interconnection contract between AT&T and GTE.

3. Deaveraging (Issue 3).

The results generated by the Hatfield Model reflect costs that vary by density as measured by census block groups ("CBG's) and loop length in relation to wire center locations. In its pricing proposal, AT&T has proposed three (3) geographically deaveraged zones to comply with the FCC's requirement, FCC Order ¶ 765, that at least three (3) such zones be identified. Failure to establish wholesale prices for the unbundled loop that properly mirror costs will give a significant competitive advantage to the incumbent. While GTE's costs vary, those of a new entrant would be "averaged." Entry is occurring first in the more urbanized competitive zone -- where GTE's costs are less than the average. The Commission should adopt these zones, as well as AT&T's proposed pricing.

4. Collocation Pricing (Issue 7).

AT&T's proposed pricing for physical collocation and virtual collocation are set forth in AT&T's pricing proposal and are based on Oregon Public Utility Commission Docket No. UT-119. Exhibit

AT&T/33. The prices for virtual collocation should be those adopted by the Commission in Order No. 96-079 in OPUC Docket No. UT 119. The prices for physical collocation should be those contained in the stipulation between GTE and AT&T in UT 119. These prices reduce the non-recurring charges, and by recovering the costs through recurring rates, this rate design more effectively promotes competitive entry. The Commission should adopt AT&T's proposal.

5. Transport and Termination Pricing (Issues 4-5).

The Commission has already addressed and largely decided the issue of compensation for the transport and termination of local traffic. Interconnection Order at 19-43. The Act requires GTE "to establish reciprocal compensation arrangements for the transport and termination of telecommunications [services]." 47 U.S.C. § 251(a)(5). These arrangements must "provide for the mutual and reciprocal recovery of costs associated with [call] transport and termination." Id. § 252(d)(2)(A)(i). Such agreements may "afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)." Id. § 252(d)(2)(B)(i). The FCC's Rules governing reciprocal compensation for transport and termination of local telecommunications traffic echo these requirements, although they have been stayed by the Eighth Circuit Stay Order. See 47 C.F.R. §§ 51.701-17; FCC Order ¶¶ 1027-95. The Commission also has required mutual, reciprocal compensation for the exchange of local traffic and has established bill-and-keep as

the appropriate interim form of such compensation until the parties negotiate or the Commission orders a capacity-based form of compensation. Interconnection Order at 28-32.

AT&T proposes that the Commission order bill and keep compensation, as authorized by the Act, the FCC Order, and the Commission's Interconnection Order. The parties have not been able to agree on a flat-rated form of mutual compensation, nor has GTE proposed such compensation. GTE has presented no evidence that traffic between it and AT&T is likely to be out of balance. GTE, however, takes the same position it took in the Interconnection Docket: GTE opposes bill and keep and proposes a measured compensation scheme. The Commission, however, specifically rejected measured compensation for the exchange of local traffic between competing providers as not cost-based and as conflicting with, and potentially undermining, the state's policy in favor of providing telephone customers with the option of flat-rated local service. Interconnection Order at 26-28. As the Commission explained,

> The minutes of use plan would not only raise costs of competitors but also directly place upward pressure on the incumbents' flat-rated local service, both because of the additional expenses associated with measurement and billing, and the potential that retail rates would have to be raised when the access charges are included in an imputation calculation.

Id. at 28.

GTE has not produced any evidence in this proceeding to refute these Commission findings. AT&T intends to be a broad-based, full-

service competitor of GTE in Washington. Minute of use compensation would create perverse incentives to AT&T not to become a broad-based provider, but rather to narrow its focus to customers with high volumes of inbound traffic, such as Internet service providers. Under bill and keep, traffic is likely to be in balance precisely because of the incentive that will be created to serve a broad range of customers. The market, rather than the form of intercompany compensation, should determine which customers AT&T serves.

For these reasons, the Commission should follow its own prior order, as well as the FCC Order, and continue to find that local traffic exchanged between AT&T and GTE will be close to balance. See Interconnection Order at 30-31. The final arbitrated interconnection agreement, therefore, should provide for bill and keep compensation for the transport and termination of local traffic until such time as the parties or the Commission establish a capacity-based form of mutual compensation.

6. Calculation of Wholesale Rates (Issues 1-2).

No factor will be more critical in determining whether resale will permit viable entry into the local service market in Washington than the wholesale rates at which such services are made available. A properly determined wholesale discount rate will, consistent with both state and federal law, promote competition throughout Washington and allow AT&T (and other resellers) to engage in fair and effective competitive in GTE's local markets.

Section 252(d)(3) of the Act requires the Commission to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunication services requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." The FCC Rules implementing this section appear at 47 C.F.R. §§ 51.607 & 51.609 and are among the provisions stayed by the Eighth Circuit.

a. AT&T's Simplified Avoided Cost Study

AT&T developed its Simplified Avoided Cost Study consistent with the requirements of the Act, the FCC's interpretations of the Act and sound economic principles. See Exhibits AT&T/17-20. AT&T's study also complies with sound modelling principles, as Ms. Dodds described. See Tr. at 242-43. The AT&T Study is (1) logical and verifiable, enabling other parties to understand its rationale and trace data from inputs to output; (2) reproducible or replicable allowing anyone who runs the model to obtain the same results; and (3) assumption driven, enabling sensitivity analyses to test the range of reasonableness around the assumptions that drive the model. Tr. at 242-57.

Section 51.607(a) requires that "the wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs, as described in Section 51.609 of this part." Section 51.609 provides specific direction to be followed in determining avoided retail costs and in designing an appropriate avoided cost study.

AT&T's Study analyzes the costs that GTE reasonably will avoid in a wholesale business environment, rather than requiring that GTE actually experience a reduction in its operating expenses. See FCC Order ¶¶ 911, 912. Thus, this approach identifies the costs attributed to wholesale operations by a prudent incumbent LEC that successfully transitions to providing service as both a wholesaler and a retailer. This is critical to the development of resale competition because it also considers the costs that a new entrant, as a wholesale customer, would incur. Any other approach would require new entrants to fund costs that the new entrant will also likely incur in its provisioning of service.

The AT&T Simplified Avoided Cost Study attempts to identify the specific functions and costs that are not applicable to GTE's provision of wholesale services. Both direct and indirect costs of each GTE retail business unit are eliminated to determine an appropriate avoided cost discount in Washington. Exhibit AT&T/17, Dodds/9-12. The primary inputs used in the AT&T Study are the

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The Act does not require that GTE "shed" costs in order for them to be considered "avoided." If a cost is not incurred to provide wholesale service, then it would not be appropriate to recover that cost from wholesale customers such as AT&T, and the costs should be considered "avoided". For example, GTE's expenses incurred in advertising its retail services will not be shed when GTE begins to provide services for resale, and in fact, may increase as GTE responds to new competition. Yet, such advertising costs are clearly inapplicable to GTE's provision of wholesale services. It would be inappropriate if AT&T and other potential competitors were required to fund GTE's marketing campaigns. The Act thus explicitly defines such marketing expenses as "avoided costs." 47 U.S.C. § 251(c)(4)(A).

pertinent expense and revenue data contained in GTE's 1995 financial and operational Automated Report Management Information System ("ARMIS") data GTE files with the FCC. Id. at 7-9. AT&T reviewed each of the accounts in the Uniform System of Accounts ("USOA") individually and analyzed the extent to which GTE will avoid those account costs in a wholesale environment. Id. at 11-17. The result is a wholesale discount of 31.23%. Id. at 18.

The AT&T Simplified Avoided Cost Study represents a reasonable and conservative approach that is consistent with the provisions of the Act, the FCC Order, and sound economic principles. AT&T's analysis accurately reflects the costs that GTE will reasonably avoid in the resale of services and should be accepted by the Commission for determining wholesale price discounts.

b. GTE Avoided Cost Study

The same cannot be said for GTE's avoided cost study -- or more accurately, studies, because GTE submitted two separate avoided cost studies in this proceeding. The first is a national study prepared by GTE before issuance of the FCC Order ("GTE Original Study"). The national study yields unreasonably low wholesale discounts. For example, for a business line offered at a retail price of $38, GTE claims that the avoided costs are only $1.06. Tr. at 273 & 294-95. The second study is a modification of an ARMIS-based analysis similar to that used by AT&T and the FCC

For a detailed description of activities associated by the USOA cost accounts, see 47 C.F.R. §§ 32.6611-23.

("GTE Modified Study") and yields a wholesale discount of 11.81%. Exhibit GTE/10 at 28 & Resale Attachment at 26; Tr. at 264. GTE apparently is urging adoption only of its Original Study, but the Commission should reject both GTE avoided cost studies as unreliable and contrary to the Section 252(d)(3) wholesale pricing standards.

The GTE Original Study is flawed both in process and substance. From a modelling standpoint, the Study fails to comply with any of the proper criteria described by Ms. Dodds. The data sources in the study are not verifiable. The data used in the model comes from managerial sources to which AT&T has no access, not publicly available financial reporting. Tr. at 259. The Study lacks documentation or any explanation of how costs were considered avoided. Tr. at 259-60. The methodologies used are inconsistent and illogical, and the costs are allocated to service lines by non-cost causative methods. Tr. at 260. Finally, AT&T is unable to reproduce or replicate the model or its results and cannot run any sensitivity analyses to test the reasonableness of the inputs and assumptions. Tr. at 261. GTE's Study thus is simply unreliable.

Based on AT&T's understanding that GTE is proposing the use of its Original Study for establishing wholesale discounts, and not its Modified Study, AT&T does not address in this brief the numerous flaws in GTE's Modified Study. AT&T's criticisms of the GTE Modified Study are set forth in the Reply Testimony of Ms. Dodds and are incorporated herein by reference. See Exhibit AT&T/30 at 13-16.

Substantively, the GTE Original Study suffers from a flawed methodology and a lack of Washington-specific data. As a result, it seriously understates GTE's true avoided costs with correspondingly low discount rates. First, GTE's definition of "avoided costs" used in the Original Study assumes that GTE must actually experience a reduction in its operating expenses for the costs to be considered "avoided." Tr. at 258. This "shed-cost" approach was expressly rejected by the FCC. FCC Order ¶ 911.

Second, the GTE Original Study fails to exclude any amount of indirect or shared costs. Tr. at 260. GTE's approach stands in marked contrast to its approach in determining costs for establishing prices for unbundled network elements, in which all indirect and shared costs are included.

Third, the GTE Original Study uses national retail data from its "work centers" in an attempt to determine avoided costs. Exhibit GTE/10 at 11-17. It then seeks to apply the determination based on the national data to GTE's Washington residential and business retail rates. Yet, GTE has presented no evidence to even remotely suggest that its average national avoided costs for each service category is representative of the state-specific costs underlying GTE's retail rates in Washington. In short, the GTE Original Study does not identify or use any Washington costs as the basis for determining the wholesale discount. Tr. at 304-05. Rather, the national study employs a "bottom up" TSLRIC study which

admittedly identifies the costs which will continue to be incurred rather than those that will be avoided.

Finally, the inclusion of GTE's "plus" pricing in setting the wholesale rate is unambiguously foreclosed by the Commission's Interconnection Order and by the Act. GTE's plus pricing is designed to recover expected access and toll revenue losses and would require a reseller to pay GTE more than the retail rate. Tr. at 274. The Commission expressly rejected just such an "interim universal service charge" to be assessed competitors to compensate the incumbent for lost "contribution" from access and toll services. Interconnection Order at 38-39. The Act, in turn, specifically focuses on "retail rates" in calculating the wholesale discounts and requires "excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided . . . ." Section 251(c)(4)(A). By its terms, the Act seeks to foster resale competition and precludes any additions by GTE to the avoided retail costs in establishing the wholesale rate.

Not surprisingly GTE's proposed cost studies substantially understate its avoided costs and the resulting wholesale discount and would convert the Act's contemplated discount into a resale premium. GTE thereby effectively eliminates resale as a commercially viable means of providing local service pending the development of facilities-based competition. GTE has failed to carry its burden of introducing competent cost information reflecting not only its perceived avoided costs, but also any new

costs it will purportedly incur in providing wholesale services. The correct avoided cost inquiry identifies the Washington costs which are reasonably avoidable and uses those costs as the basis for determining the wholesale discount rate in Washington. GTE has not applied this approach. Accordingly, the GTE Original Study should be rejected.

The Commission should approve the AT&T Simplified Study. It represents a reasonable and conservative approach which is consistent with the provisions of the Act (and FCC Order) concerning the determination of wholesale rates. Using GTE's own financial and operational information, the AT&T Simplified Study represents a sound approximation for determining the applicable discount for wholesale services. It was prepared consistent with the FCC's criteria for avoided cost studies and the methodology set forth in the FCC's Rules and Order treating certain USOA cost categories as presumptively avoidable. AT&T provides supporting rationale for these important determinations, particularly in light of the lack of available data from GTE, which will enable the Commission to set the appropriate wholesale discount at 31.23% applicable to all of GTE's telecommunications services offered at retail.

7. AT&T's Best and Final Offer

The Hatfield Model cost study comports with the Commission's TSLRIC methodology, as well as the pricing policy standards in the Act and the FCC Order. GTE's criticisms of the Model only

highlight its accessibility and confirm its utility. Therefore, this Commission should adopt the Hatfield Model as the ceiling for the rates for unbundled network elements adopted in this proceeding and as the basis for any updates to GTE's costs on a going-forward basis.

The Commission should also adopt a wholesale rate consistent with AT&T's Simplified Avoided Cost Study. AT&T continues to believe that the 31.23% discount accurately reflects GTE's avoided retail costs. However, as a last best offer, AT&T proposes that the Commission adopt an interim discount of 27.58%, based on the adjustments to the assumptions in USOA numbers 6611, 6612, 6613, 6623 that Ms. Dodds illustrated at the hearing. See Exhibit AT&T/39 at 8.

G. CONTRACT TERMS AND CONDITIONS

1. Service Quality (Issue 27).

One of the unresolved issues which is, without doubt, most critical for Washington consumers is AT&T's request that the Commission include performance standards in the interconnection contract. AT&T proposes agreement include AT&T's proposal that GTE provide all local services, network elements or combinations of elements in accordance with specific performance standards or "Direct Measures of Quality" ("DMOQs") that are at least equal or superior to the level of performance that GTE provides to itself or is required to provide by law. See Section 8 and Attachment 11 to AT&T's Proposed Interconnection Agreement. These standards will

ensure that one of the principal benefits of competition for consumers, improved service quality, is achieved -- an especially desirable outcome given recent experiences with GTE's level of service quality in Washington.

The Act requires GTE to provide nondiscriminatory service to other carriers, equal in quality to that provided to itself. 47 U.S.C. §§ 251(c)(2)(C) & (D). In implementing this provision, the FCC stated:

> We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party. We agree with MFS that this duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks.

FCC Order, ¶ 224; accord 47 C.F.R. § 51.311(b). The Act and the FCC thus require incumbent LECs to satisfy performance standards. Discussing the importance of performance standards, the FCC concluded:

> We agree . . . that to achieve the procompetitive goals of the 1996 Act, it is necessary to establish rules that define the obligations of incumbent LECs to provide nondiscriminatory access to unbundled network elements, and to provide such elements on terms and conditions that are just, reasonable and nondiscriminatory. . . . [W]e believe that incumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them, and thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete. We are also cognizant of the fact that incumbent LECs have the incentive and

> the ability to engage in many kinds of discrimination. For example, incumbent LECs could potentially delay providing access to unbundled network elements, or they could provide them to new entrants at a degraded level of quality.

FCC Order, ¶ 307.

GTE, however, has refused to provide to AT&T any information regarding its own internal quality standards or even to confirm or deny the existence of a comprehensive list of such standards. GTE is only willing to assure AT&T that it will receive the same service quality GTE provides to itself. GTE's assurances of equal treatment, however, represent another attempt by GTE at minimal compliance with the Act that will require future dispute resolution and further delay the advent of competition. GTE's general assurances will not help AT&T, nor its customers, when they receive poor service quality. Consequently, to ensure that AT&T is able to provide its customers service at least equal in quality to that to which they have become accustomed, and to meet this Commission's service quality rules, AT&T had no alternative but to draft and submit for the record its own detailed performance standards, DMOQs, as a proposed benchmark for performance and quality.

AT&T has made a good faith effort to propose appropriate service quality standards. The appropriateness of these standards is evidenced by AT&T's willingness to conform to those same standards. Moreover, AT&T is willing to work with GTE to ensure that the specified service quality standards accurately reflect GTE's internal standards. Unfortunately, GTE has no incentive to

engage in such negotiations unless the Commission adopts specific, defined standards to which GTE must adhere as part of its contractual obligations. AT&T, therefore, urges the Commission to adopt AT&T's DMOQs and associated remedies for nonperformance.

2. Dispute Resolution (Issues 59, 61, 65).

The parties agree that Alternative Dispute Resolution ("ADR") should be the primary means of resolving disputes arising under the arbitrated agreement. The parties differ only on the process. To minimize the education process required with each new dispute, AT&T requests a sitting arbitrator. In addition, AT&T suggests a "loser pays" provision to encourage the parties to resolve disputes short of ADR if possible. Such a provision will ensure that neither party uses the ADR process to delay or impose unnecessary costs on the other. AT&T does not suggest this procedure as a substitute for a party's right to bring a complaint before the Commission, but instead as a screening device to ensure that only significant issues over which the Commission has unique expertise are brought before it. Accordingly, AT&T suggests ADR be binding, unless the Commission determines to review the award upon its own motion or the motion of either party.

III. CONCLUSION

For the foregoing reasons, AT&T recommends that the arbitrator adopt AT&T's proposed interconnection and service resale contract and last best offer pricing recommendations presented in this proceeding.

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