

ATTACHMENT 1

ALTERNATIVE DISPUTE RESOLUTION

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Appendix 1 Procedures for Resolution of Service-Affecting Disputes

ALTERNATIVE DISPUTE RESOLUTION

1. Purpose

This Attachment 1 is intended to provide for the expeditious, economical, and equitable resolution of disputes between GTE and AT&T arising under this Agreement, and to do so in a manner that permits uninterrupted, high quality services to be furnished to each Party's customers.

2. Exclusive Remedy

2.1 Negotiation and arbitration under the procedures provided herein shall be the exclusive remedy for all disputes between GTE and AT&T arising out of this Agreement or its breach. GTE and AT&T agree not to resort to any court, agency, or private group with respect to such disputes except in accordance with this Attachment.

2.1.1 If, for any reason, certain claims or disputes are deemed to be non-arbitrable, the non-arbitrability of those claims or disputes shall in no way affect the arbitrability of any other claims or disputes.

2.1.2 **If, for any reason, the FCC or any other federal or state regulatory agency exercises jurisdiction over and decides any dispute related to this Agreement or to any GTE Tariff and, as a result, a claim is adjudicated in both an agency proceeding and an arbitration proceeding under this Attachment 1, the following provisions shall apply:**

2.1.2.1 To the extent required by law, the agency ruling shall be binding upon the parties for the limited purposes of regulation within the jurisdiction and authority of such agency.

2.1.2.2 *The arbitration ruling rendered pursuant to this Attachment 1 shall be binding upon the parties for purposes of establishing their respective contractual rights and obligations under this Agreement, and for all other purposes not expressly precluded by such agency ruling.*

2.1.3 Nothing in this Attachment 1 shall limit the right of either GTE or AT&T to obtain provisional remedies (including injunctive relief) from a court before, during or after the pendency of any arbitration proceeding brought pursuant to this Attachment 1. However, once a decision is reached by the Arbitrator, such decision shall supersede any provisional remedy.

3. Informal Resolution of Disputes

3.1

Prior to initiating an arbitration pursuant to the American Arbitration Association ("AAA") rules, as described below, the Parties to this Agreement shall submit any dispute between GTE and AT&T for resolution to an Inter-Company Review Board consisting of one representative from AT&T at the Director-or-above level and one representative from GTE at the Vice-President-or-above level (or at such lower level as each Party may designate). The dispute will be submitted by either Party giving written notice to the other Party, consistent with the notice requirements of this Agreement, that the Party intends to initiate the Informal Resolution of Disputes process. The notice shall define the dispute to be resolved. The Parties may use a mediator to help informally settle a dispute.

The initial representatives of each Party shall be as follows:

AT&T

Telephone: _____

Telecopier: _____

GTE

Telephone: _____

Telecopier: _____

A representative shall be entitled to appoint a delegee to act in his or her place as a Party's representative on the Inter-Company Review Board for any specific dispute brought before the Board.

3.2

The Parties may enter into a settlement of any dispute at any time. The Settlement Agreement shall be in writing, and shall identify how the Arbitrator's or mediator's fee for the particular proceeding, if any, will be apportioned.

3.3

At no time, for any purposes, may a Party introduce into evidence or inform the Arbitrator appointed under Section 6 below of any statement or other action of a Party in connection with negotiations between the Parties pursuant to the Informal Resolution of Disputes provision of this Attachment 1.

3.4

By mutual agreement, the Parties may agree to submit a dispute to mediation prior to initiating arbitration.

4. **Initiation of an Arbitration**

If the Inter-Company Review Board is unable to resolve a non-service affecting dispute within 30 days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, the Parties shall initiate an arbitration in accordance with the AAA rules. Any dispute over a matter which directly affects the ability of a Party to provide high quality services to its customers will be governed by the procedures described in Appendix 1 to this Attachment 1.

5. **Governing Rules for Arbitration**

The rules set forth below and the rules of Commercial Arbitrations of the AAA shall govern all arbitration proceedings initiated pursuant to this Attachment; however, such arbitration proceedings shall not be conducted under the auspices of the AAA unless the Parties mutually agree. Where any of the rules set forth herein conflict with the rules of the AAA, the rules set forth in this Attachment shall prevail.

6. **Appointment and Removal of Arbitrator**

6.1 Within forty-five (45) days following the Effective Date of this Agreement the Parties will appoint three arbitrators, each of whom will have experience in the field of telecommunications. Each such Arbitrator shall serve for the full term of this Agreement, unless removed pursuant to Section 6.3 of this Attachment. Each of the three Arbitrators will be appointed by mutual agreement of the Parties in writing within the aforementioned forty-five day period. Each Arbitrator so appointed shall receive an assignment designation number (1, 2 or 3), and the Arbitrators shall be assigned in that sequence as disputes arise that are subject to this Attachment. In the event that any of the three initial Arbitrators so appointed resigns or is removed pursuant to Section 6.3 of this Attachment, or becomes unable to discharge his or her duties, the Parties shall, by mutual written agreement, appoint a replacement Arbitrator within thirty (30) days after the date of such resignation, removal or disability. All matters pending before the departing Arbitrator shall be reassigned as provided in Section 6.4 of this Attachment; provided however that such matters shall not be assigned to the replacement Arbitrator. New matters will be assigned the replacement Arbitrator in accordance with the procedure set forth herein(above).

6.2 *For each dispute properly submitted for arbitration under this Attachment, the Parties shall assign a sole Arbitrator from among the three Arbitrators appointed under Section 6.1 in*

accordance with the assignment sequence described therein. Each such assignment shall be made within ten (10) days of the expiration under Section 4 of this Attachment of the Inter-Company Review Board review period. Insofar as common issues arise concerning more than one Interconnection, Resale and Unbundling Agreement signed between an AT&T Affiliate and a GTE Affiliate, the Parties agree that such common issues will be combined and submitted to the same Arbitrator for resolution.

6.3 The Parties may, by mutual written agreement, remove an Arbitrator at any time, and shall provide prompt written notice of removal to such Arbitrator. Notwithstanding the foregoing, any Arbitrator may be removed at any time unilaterally by either Party as permitted in the rules of the AAA. Furthermore, upon (30) days' prior written notice to the Arbitrator and to the other Party, a Party may remove an Arbitrator with respect to future disputes which have not been submitted to arbitration in accordance with the requirements of Section 4 of this Attachment 1, as of the date of such notice.

6.4 In the event that an Arbitrator resigns or is removed pursuant to Section 6.3 of this Attachment, or becomes unable to discharge his or her duties, or is otherwise unavailable to perform the duties of Arbitrator, any matters then pending before that departing or disabled Arbitrator will be assigned to the incumbent Arbitrator with the next assignment designation number (in ascending order). Such assignment will be made effective by written notice of the Parties to be provided within ten days following the resignation, removal or unavailability that necessitates such reassignment.

6.5 *In the event that the Parties do not appoint an Arbitrator or replacement Arbitrator within the time periods prescribed in Section 6.1 of this Attachment 1, either Party may apply to AAA for appointment of such Arbitrator. Prior to filing an application with the AAA, the Party filing such application shall provide ten (10) days' prior written notice to the other Party to this Agreement.*

7. **Duties and Powers of the Arbitrator**

7.1 The Arbitrator shall receive complaints and other permitted pleadings, oversee discovery, administer oaths and subpoena witnesses pursuant to the United States Arbitration Act, hold hearings, issue decisions, and maintain a record of proceedings. The Arbitrator shall have the power to award any remedy or relief that a court with jurisdiction over this Agreement could order or grant, including, without limitation, the awarding of damages, pre-judgment interest, specific performance of any obligation created under the Agreement, issuance of an injunction, or imposition of sanctions for abuse or frustration of the arbitration process, except that the Arbitrator may not award punitive damages or any remedy rendered unavailable to the Parties pursuant to Section 10.3 of the General Terms and Conditions of this Agreement.

7.2 *The Arbitrator shall not have the authority to limit, expand, or otherwise modify the terms of this Agreement.*

8. **Discovery**

GTE and AT&T shall attempt, in good faith, to agree on a plan for document discovery. Should they fail to agree, either GTE or AT&T may request a joint meeting or conference call with the Arbitrator. The Arbitrator shall resolve any disputes between GTE and AT&T, and such resolution with respect to the scope, manner, and timing of discovery shall be final and binding.

9. **Privileges**

Although conformity to certain legal rules of evidence may not be necessary in connection with arbitrations initiated pursuant to this Attachment, the Arbitrator shall, in all cases, apply the attorney-client privilege and the work product immunity doctrines.

10. **Location of Hearing**

Unless both Parties agree otherwise, any hearings shall take place in Dallas, Texas.

11. **Decision**

11.1 Except as provided below, the Arbitrator's decision and award shall be final and binding, and shall be in writing and shall set forth the Arbitrator's reasons therefor for decision unless the Parties mutually agree to waive the requirement of a written opinion. Judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof. Either Party may apply to the United States District Court for the district in which the hearing occurred for an order enforcing the decision.

11.2 **A decision of the Arbitrator shall not be final in the following situations:**

a) a Party appeals the decision to the Commission or FCC, and the matter is within the jurisdiction of the Commission or FCC, provided that the agency agrees to hear the matter;

b) the dispute concerns the misappropriation or use of intellectual property rights of a Party, including, but not limited to, the use of the trademark, tradename, trade dress or

service mark of a Party, and the decision appealed by a Party to a federal or state court with jurisdiction over the dispute.

11.3 Each Party agrees that any permitted appeal must be commenced within thirty (30) days after the Arbitrator's decision in the arbitration proceedings is issued. In the event of an appeal, a Party must comply with the results of the arbitration process during the appeal process.

12. **Fees**

Unless otherwise mutually agreed in writing, each Arbitrator's fees and expenses shall be shared equally between the Parties, provided, however, that in the arbitration of any particular dispute either Party may request that all fees and expenses directly related to that arbitration matter be imposed on the other Party, and the Arbitrator shall have the power to grant such relief, in whole or in part.

13. **Confidentiality**

13.1 GTE, AT&T, and the Arbitrator will treat the arbitration proceeding, including the hearings and conferences, discovery, or other related events, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by an order or lawful process of a court or governmental body.

13.2 ***In order to maintain the privacy of all arbitration conferences and hearings, the Arbitrator shall have the power to require the exclusion of any person, other than a Party, counsel thereto, or other essential persons.***

13.3 To the extent that any information or materials disclosed in the course of an arbitration proceeding contains proprietary or confidential Information of either Party, it shall be safeguarded in accordance with Section 17 of this Agreement. However, nothing in Section 17 of this Agreement shall be construed to prevent either Party from disclosing the other Party's Information to the Arbitrator in connection with or in anticipation of an arbitration proceeding. In addition, the Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, or other sensitive information.

14. **Service of Process**

14.1 Service may be made by submitting one copy of all pleadings and attachments and any other documents requiring service to each Party and one copy to the Arbitrator. Service shall be deemed made (i) upon receipt if delivered by hand; (ii) after three (3) business days if sent by first class certified U.S. mail; (iii) the next business day if sent by overnight courier service; (iv) upon confirmed receipt if transmitted by facsimile. If service is by facsimile, a copy

shall be sent the same day by hand delivery, first class U.S. mail, or overnight courier service.

- 14.2 Service by AT&T to GTE and by GTE to AT&T at the address designated for delivery of notices in this Agreement shall be deemed to be service to GTE or AT&T, respectively. The initial address for delivery of notices is specified in Subsection 3 above.

Appendix I to Attachment 1

ALTERNATIVE DISPUTE RESOLUTION

Procedure for Resolution of Service-Affecting Disputes

1. Purpose.

a) This Appendix 1 describes the procedures for an expedited resolution of disputes between GTE and AT&T arising under this Agreement which directly affect the ability of a Party to provide uninterrupted, high quality services to its customers and which cannot be resolved using the procedures for informal resolution of disputes contained in Attachment 1 to the Agreement.

b) Except as specifically provided in this Appendix 1 to Attachment 1, the provisions of Attachment 1 shall apply.

c) 2. Initiation of an Arbitration.

d) a) If the Inter-Company Review Board is unable to resolve a service affecting dispute within two (2) business days (or such longer period as agreed to in writing by the Parties) of such submission, and the Parties have not otherwise entered into a settlement of their dispute, a Party may initiate an arbitration in accordance with the requirements of this Appendix 1 to Attachment 1. However, in the sole discretion of the Party which submitted the dispute to the Inter-Company Review Board, the dispute may be arbitrated in accordance with the general procedures described in Attachment 1 rather than the expedited procedures of this Appendix 1 to Attachment 1.

e) b) A proceeding for arbitration will be commenced by a Party ("Complaining Party") filing a complaint with the Arbitrator and simultaneously serving a copy on the other Party ("Complaint").

f) c) Each Complaint will concern only the claims relating to an act or failure to act (or series of related acts or failures to act) of a Party which affect the Complaining Party's ability to offer a specific service (or group or related services) to its customers.

g) A Complaint may be in letter or memorandum form and must specifically describe the action or inaction of a Party in dispute and identify with particularity how the complaining Party's service to its customers is affected.

h)

i) 3. **Response to Complaint.**

j) A response to the Complaint must be filed within five (5) business days after service of the Complaint.

k) 4. **Reply to Complaint.**

l) A reply is permitted to be filed by the Complaining Party within three (3) business days of service of the response. The reply must be limited to those matters raised in the response.

m) 5. **Discovery.**

n) The Parties shall cooperate on discovery matters as provided in Section 8 of Attachment 1, but following expedited procedures.

o) 6. **Hearing.**

a) The Arbitrator will schedule a hearing on the Complaint to take place within twenty (20) business days after service of the Complaint. However, if mutually agreed to by the parties, a hearing may be waived and the decision of the Arbitrator will be based upon the papers filed by the Parties.

b) The hearing will be limited to four (4) days, with each Party allocated no more than two (2) days, including cross examination by the other Party, to present its evidence and arguments. For extraordinary reasons, including the need for extensive cross-examination, the Arbitrator may allocate more time for the hearing.

In order to focus the issues for purposes of the hearing, to present initial views concerning the issues, and to facilitate the presentation of evidence, the Arbitrator has the discretion to conduct a telephone prehearing conference at a mutually convenient time, but in no event later than three (3) days prior to any scheduled hearing.

Each Party may introduce evidence and call witnesses it has previously identified in its witness and exhibit lists. The witness and exhibit lists must be furnished to the other Party at least three (3) days prior to commencement of the hearing. The witness list will disclose the substance of each witness' expected testimony. The exhibit list will identify by name (author and recipient), date, title and any other identifying characteristics the exhibits to be used at the arbitration. Testimony from witnesses not listed on the witness list or exhibits not listed on the exhibit list may not be presented in the hearing.

c) The parties will make reasonable efforts to stipulate to undisputed facts prior to the date of the hearing.

- d) Witnesses will testify under oath and a complete transcript of the proceeding, together with all pleadings and exhibits, shall be maintained by the Arbitrator.

7. Decision.

- a) The Arbitrator will issue and serve his or her decision on the Parties within five (5) business days of the close of the hearing or receipt of the hearing transcript, whichever is later.
- b) The Parties agree to take the actions necessary to implement the decision of the Arbitrator immediately upon receipt of the decision.