BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

UT-960307

In the Matter of the Petition of AT&T Communications of the Pacific Northwest, Inc. For Arbitration of Interconnection Rates, Terms and Conditions with GTE Northwest Incorporated, Pursuant to 47 U.S.C. Sec. 252(B) of the Telecommunications Act of 1996.	)))))))

COMMENTS OF

GTE NORTHWEST INCORPORATED

ON AT&T'S REQUEST FOR APPROVAL AND MODIFICATION

OF AGREEMENT

February 18, 1997

TABLE OF CONTENTS

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INTRODUCTION

In accordance with the Arbitrator's Decision in this matter, GTE Northwest Incorporated ("GTE") submits its comments on the February 7, 1997 "Request for Approval and Modification of Arbitrated Agreement" submitted by AT&T Communications of the Northwest, Inc. ("AT&T") ("Request").

GTE notes first that, despite its title, the Request is actually for approval of negotiated, as well as arbitrated, contractual provisions. AT&T presents an agreement combining both types of provisions. AT&T's Request that the Commission approve the arbitrated portions of the agreement asks, in effect, that the Commission approve the substantive portions of the Arbitrator's December 11, 1996 Report and Decision ("Decision") and February 4, 1997 Supplemental Report on which those provisions are based.

These Comments are organized in two parts. Part One addresses whether the Arbitrator's substantive decisions meet the criteria of Section 252(e)(2)(B) of the Telecommunications Act of 1996 ("the Act"). It is organized in the same fashion as the Arbitrator's Decision, following statements of the open issues. Part Two of these Comments addresses specific contract drafting issues, such as whether AT&T's proposed language accurately and fairly implements the Arbitrator's Decision.

In several crucial respects the Arbitrator's Decision and, therefore, AT&T's proposed agreement, do not meet the standards of Section 252(e)(2)(B) of the Act and must be rejected. Most critically, the Decision and Agreement do not comply with the pricing standards of Section 252(d) and would effect an unconstitutional and unlawful taking of GTE's property. In addition, the Decision and the Agreement do not lawfully apply the provisions of Section 251 of the Act. For example, they exceed the scope of network element unbundling and retail service resale required by the Act. The proposed Agreement would have to be modified as described by GTE before the Commission could lawfully approve it.

I. ANALYSIS OF ARBITRATOR'S DECISION

ISSUES 9, 10 & 16: SERVICES FOR RESALE - What services should the Commission require GTE to offer for resale?[1]

The Arbitrator properly resolved Issue 10 in accordance with GTE's position, and the Commission should approve the corresponding portion of the proposed Agreement. The Decision unlawfully resolves Issues 9 and 16 with regard to below-cost priced services, however, and the proposed Agreement must be rejected on these points, unless it is modified.

The Arbitrator decided that below-cost priced services must be made available for resale at a wholesale discount. He recited no analysis, but only quoted a passage from the Federal Communications Commission's ("FCC") First Report and Order in its CC Docket No. 96-98. There the FCC merely speculated that incumbent local exchange carriers ("ILECs") would not be harmed by the forced discounted resale of below-cost priced services because the ILEC "continues to take the contribution if the service is priced above cost."

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[1] Issue 9: What GTE services should be required to be made available for resale at wholesale rates?

Issue 10: Should GTE be required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free directory assistance service calls, if that service is provided by GTE?

Issue 16: Should each and every retail rate have a corresponding wholesale rate?

The record in this case refutes the FCC's speculation that GTE will be kept whole by some imaginary continuation of implicit subsidy flows. Rather, it is plain that competitors will arbitrage discounts to below-cost retail rates against low prices for the network elements needed to recreate above-cost priced services, and that they will also bypass GTE's intraLATA toll service.[2] The competitors would thereby capture the cross-subsidy flowing to the below-cost priced services and at the same time avoid contributing to the subsidy by paying any above-cost retail rates.

Not only is such a result inconsistent with sound ratemaking policy, it is not consistent with the literal language of the Act. The wholesale discount requirement is described in section 252(d)(3), which provides:

> [A] state Commission shall determine wholesale rates on the basis of *retail rates* charged to subscribers for the telecommunications service provided, excluding the *portion thereof attributable to any* marketing, billing, collection, and other *costs which will be avoided* by the local exchange carrier. (Emphasis added.)

Under this provision, a retail rate may be discounted only if a portion of the rate is attributable to the cost avoided. In other words, if the retail rate does not cover the cost in question, no discount can be based upon the supposed avoidance of that cost. If a retail rate is below cost to begin with, one cannot attribute to it costs which might be avoided. If the cost is not in the rate in the first place, it cannot be deducted.

Moreover, regardless of any arguments over a word here or a word there in the Act, the Constitutional mandate is clear: the government cannot require companies to

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[2] The Decision allows this arbitrage by permitting "sham unbundling," discussed below with regard to Issue No. 31.

sell any service below cost in a competitive market — especially to its competitors. The Takings Clause of the U.S. Constitution prohibits the Arbitrator and the Commission from forcing GTE to operate a segment of its business at a loss, even if the firm happens to be profitable elsewhere in another segment of its business. Brooks-Scanlon Co. v. Railroad Comm'n of Louisiana, 251 U.S. 396, 399 (1920); Bullock v. Florida, 254 U.S. 513, 520-21 (1921). The Commission can not order GTE to provide services below cost without providing compensation. See also Northern Pac. Ry. Co. v. North Dakota, 236 U.S. 585, 595 (1915); Gibbons v. United States, 660 F.2d 1227, 1233 (7th Cir. 1981) ("Brooks-Scanlon and Bullock define the basic limitations upon a modern railroad's public service obligation in the face of financial loss. . . . The constitutional principle embodied in these decisions retains its vitality; a railroad cannot be compelled to continue unprofitable operations indefinitely") (citation omitted).

Previously the Commission may have been able to "compensate" GTE for below-cost priced services by setting other rates correspondingly above cost. But in a competitive market, this approach will not work, because competitors will underprice above-cost priced services, depriving the company of any cross-subsidy to support the below-cost priced services.

The Commission should adopt GTE's position on the discounted resale of below-cost priced services and mitigate the state's liability for takings under the constitution.

ISSUES 30, 33, 34, 40, 43, 39, 41: NETWORK ELEMENTS - What network elements should the Commission require GTE to provide - subloops, local switching, transport, tandem switching, dark fiber, operator systems?

The Arbitrator briefly discussed Issue 30 at pages 6 through 8 of the Decision, and then jumped to pages 33 through 38 for a discussion of the issues dealing with specific network element questions. The Decision is consistent with the Act and GTE's position on some of these points. It violates Section 251(c)(3) of the Act in several respects, however, and must be rejected in these particulars.

The FCC's rules on the extent of unbundling are infected with a fundamental misreading of the Act's provisions in section 251(c)(3), (d)(2) and section 3(45), (48), (51). Displayed so as to highlight the distinct elements and limitations of the incumbent local exchange carriers' ("ILEC") duties, the Act provisions are as follows:

> ILECs have a duty to provide to other telecommunications carriers nondiscriminatory access to network elements on an unbundled basis
>
> (1) *at* any technically feasible *point*
> (2) for the provision of a "telecommunications service,"
> (3) *where the failure to provide access* to such network elements *would "impair the ability" of the other carrier to provide its telecommunications service;*
> (4) where the network elements are proprietary in nature, access by the other carrier must be "necessary" to its provision of its telecommunications service.
>
> "Telecommunications service" is the provision to the public of "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."
>
> "Network element" means
>
> (1) A *facility* or *equipment* used in the provision of a *telecommunications service*;
> (2) Features, functions, and capabilities provided *by such facilities and equipment*, including
> (a) subscriber numbers,
> (b) databases,
> (c) signaling systems,

(d) information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Subloop Unbundling

GTE interprets the Decision as adopting GTE's position, which is consistent with the Act. To the extent that the proposed Agreement comports with these positions, it should be adopted by the Commission.[3]

Local Switch Unbundling

The Arbitrator simply adopted the FCC's order and rule. The FCC, however, fundamentally misapplied Section 251(c)(3) and thereby purported to mandate the unbundling of switching features beyond the requirements of the Act. The Commission must reject this position and the corresponding portions of the proposed Agreement.

As can be seen, above, in the display of the pertinent provisions of the Act, GTE has no duty to provide unbundled switching features unless its failure to provide them would "impair" AT&T's ability to provide the *telecommunications service* it contemplates. Switching features known as "vertical services" are not "telecommunications services," because they do not constitute the transmission of customer information between points controlled by the customer. Rather they are "enhanced services." Thus, AT&T does not need these features in order to be able to provide telecommunications services. Under the Act, therefore, GTE cannot be compelled to provide them on an unbundled basis.

[3] See pages 76 through 78 of GTE's Brief.

Moreover, as to any "vertical services" which might constitute telecommunications services, the Act does not compel "access to" them because this absence of access will not "impair" AT&T's ability to offer them. AT&T will only seek "access to" GTE's vertical services where AT&T is not providing service through its own switch. Where AT&T uses its own switch for local service, that switch will also provide vertical services and all other features AT&T may desire. Where - if ever - AT&T uses GTE unbundled local switching, on the other hand, AT&T may make use of the already tariffed vertical telecommunications services under the resale provisions of the Act (Sec. 251(c)(4)). Any failure to "unbundle" these services will not, therefore, impair AT&T's ability to offer them.

Transport Unbundling

Similarly, transport is already available under GTE's access tariff. Therefore, any failure to "unbundle" it will not impair AT&T's ability to offer any telecommunications service using interoffice transport, and - under the Act - GTE cannot be compelled to "unbundle" transport.[4]

The Arbitrator also misapplied the "technically feasible" provision of Section 251(c)(3), saying that "there was no showing that it is not technically feasible to unbundle dedicated transmission or common transmission." Under the Act's express provisions, technical feasibility is relevant only to the point of interconnection, i.e., where

[4] Where a service is already available under tariff, AT&T's demand to "unbundle" it is nothing more than an attempt to obtain a lower rate. The Act does not authorize such price breaks.

the requesting carrier physically obtains access to a network element. The Act does not compel GTE to grant an AT&T request just because it might be technically feasible. Congress was very specific about the unbundling it was requiring of ILECs to aid their competitors, and it did not present AT&T with a blank check in this regard.

Tandem Switching

The Arbitrator misses - or simply casts aside - a crucial element of this issue: GTE's ability to bill and be paid for tandem switching. The Agreement must provide a means for this to occur, or it will amount to giving AT&T the service for free - a clear, unconstitutional taking. The arrangements proposed by GTE are in common use in the industry and should be adopted by the Commission.[5]

Dark fiber

The Arbitrator erred by resolving this issue based on (an erroneous interpretation of) state law rather than the Act. Whether or not dark fiber must be provided as a network element is to be decided solely under the provisions of the Act. Moreover, the Washington Supreme Court case cited by the Arbitrator did not decide that dark fiber is a telecommunications service under Washington law, let alone a "network element" under the Act. All that the Supreme Court decided was that DDS could not be denied registration because it was obtaining dark fiber from an unregistered source, TCI.[6] Dark

[5] See GTE's Brief, page 87.

[6] *In Re Electric Lightwave, Inc.*, 123 Wn.2d. 530, 545-546, 869 P.2d 1045, 1054 (1994).

fiber is not a network element under the Act for the reasons discussed in GTE's Brief (pages 83-84).

Operator Systems

GTE has agreed, as a business matter, to treat its Operator Services and Directory Assistance as network elements subject to unbundling. The Arbitrator's Decision is nonetheless wrong. The Arbitrator erroneously decided that GTE's Operator and Directory Assistance *services* are network elements and must be provided on an "unbundled basis." Again the Arbitrator relied on FCC mistakes, misapplying Section 251(c)(3) of the Act.

Directory Assistance does not constitute a telecommunications service under the Act's definitions. Operator Service includes providing assistance in completing calls, which might be characterized as the "transmission" of customer information and, therefore, a telecommunications service. It also, includes activities such as busy call verify and call interrupt, which clearly do not constitute transmission of information.

In any event, operator and directory assistance services are not network elements under the Act because they are not a "facility or equipment;" they are people (operators). Congress did not intend to - and the Act does not - dragoon ILECs' employees into the service of AT&T and other competitors. Only certain portions of ILECs' physical networks actually used to transmit calls are subject to the unbundling requirement. Since operator services and directory assistance do not constitute

"network elements" under the Act, the Commission may not compel GTE to unbundle them in this case.[7]

Furthermore, even if an aspect of operator or directory assistance services were a network element within the meaning of the Act, its unbundling could not be compelled because AT&T will not be "impaired" in providing any telecommunications service if it does not have access to GTE operator or directory assistance services. Rather, AT&T can and will provide its own operator services. That is the whole basis of AT&T raising Issues 17 and 18 and requesting "customized routing."

Finally, the Arbitrator erroneously relied on Section 251(b)(3) of the Act to resolve these issues. It is Section 252(*c*)(3) which creates the ILECs' obligation to provide "access to network elements." Section 251(*b*)(3) provides the "dialing parity" obligation for all local exchange carriers. While Section 251(*b*)(3) mentions "access to * * * operator services [and] directory assistance," it does not create a duty to unbundle GTE's operator and directory assistance services or anything else. The subsection must be read in its entirety and interpreted as a whole:

> The duty to provide *dialing parity* to competing providers of *telephone exchange service and telephone toll service*, and the duty to permit all *such providers* to have nondiscriminatory *access to* telephone numbers, *operator services, directory assistance*, and directory listing, *with no unreasonable dialing delays.* (Emphasis added.)

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[7] This is not to say that GTE is not interested in providing these services to interested companies; it is. The point is simply that the Act does not apply to this matter and the Commission may not, therefore, dictate a contract for them in this case.

Clearly this section concerns just what its title says - "dialing parity," the ability to "route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications services providers." Section 3(a)(39). It is *not* an unbundling section; only Section 252(c)(3) creates an unbundling duty. There is no open issue about such dialing parity; in fact, GTE is already providing it in Washington pursuant to tariff.

ISSUE 42: INTERCONNECTION POINTS - What are the appropriate interconnection points?

The Arbitrator appears to order a "bona fide request" process for AT&T requests to interconnect at points other than end offices, tandem offices and mid-span fiber meets. This is acceptable. The Arbitrator's dictum that GTE has the burden of proving non-feasibility is not, however, acceptable. There is no such requirement in the Act. The Act merely states that interconnection must be allowed at technically feasible locations; it does not speak to burden of proof. Any allocation of burden of proof must go to the moving party, i.e., AT&T. This is in accord with general principles of law, which hold that "a claimant generally has the burden of proving the facts necessary to sustain his or her claim." State v. Anderson, 72 Wn. App. 253, 260, 863 P.2d 1370, 1374 (1993), rev. den. 879 P. 2d 292, 124 Wn. 2d 1010 (1994).

ISSUE 27: RELATIVE QUALITY LEVELS - Should the contract include language requiring GTE to deliver at least the same level of quality to AT&T as it does to itself or its affiliates with respect to wholesale services, network elements, ancillary functions and interconnection?

The Arbitrator exceeded the Act's provisions when he decided that AT&T may require GTE to make investments to increase service levels.

Section 251(c)(2)(C) requires ILECs to make interconnection[8] available which is "at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." With regard to network elements, the Act requires "nondiscriminatory access" to the network elements * * * on rates, terms, and conditions that are * * * nondiscriminatory.". (Sec. 251(c)(3)). Similarly, with regard to making retail services available for resale, the Act requires only that ILECs "not * * * impose unreasonable or discriminatory conditions or limitations." (Sec. 251(c)(4)(B)).[9] GTE agrees that it will provision network elements and resale services in the normal course of its business, so that AT&T, in effect, receives the same telecommunications service levels as do GTE's retail customers.[10] The Arbitrator went beyond this point, however, and purported to empower AT&T to require GTE to provide even higher service levels, so long as AT&T pays the extra costs. (But, see AT&T's proposed contract to the contrary, Section 11.5.) Certainly, *if* the Act authorized AT&T to request higher service levels, AT&T would have to pay their cost. Otherwise, an unlawful taking of GTE's property would occur. But the Act contains no provision enabling AT&T to require GTE to provide it higher service

[8] This interconnection is for the completion of calls made between the two companies' end use customers.

[9] This is the same duty applicable to all local exchange carriers under Section 251(b)(1).

[10] GTE Brief, pp. 88-89.

levels. Congress could easily have included such a duty, if that were its intent. It did not, and neither the Arbitrator nor the Commission may rewrite the Act in this case.

ISSUE 2: FCC PROXY PRICES - Should the Arbitrator adopt the FCC proxy prices?

The Arbitrator correctly rejected the FCC's proxy prices.

INCREMENTAL COST PRICING

On pages 12 through 14 of the Decision the Arbitrator generally discussed several aspects of the pricing issues presented to him. His conclusion is simply that he can employ "the Commission's stated preference for incremental cost pricing" and that GTE will not thereby be prevented from "recovering all of its costs in a post-Act environment." As discussed below with regard to specific pricing issues, however, the Arbitrator's Decision does not even allow GTE to recover its incremental costs, let alone "all of its costs" in providing network elements and services to AT&T.

ISSUES 4 & 5: TRANSPORT & TERMINATION - Should the parties use "bill and keep" on a temporary or permanent basis? If not, what are the appropriate rates for transport and termination of traffic?

The Arbitrator only partially resolved these issues. He decided that the parties should use bill and keep until "one party proves that the traffic is not in reasonable balance." That is, in effect, GTE's position, but the Arbitrator neglected to provide how traffic balance would be determined and what rate would apply if traffic were determined to be out of balance. GTE's proposal covered these details and should be adopted.[11]

[11] GTE Brief, pp. 130, 68-69 (traffic balance would be determined based on traffic studies requested by either party; see GTE's Ex. 14, p. 22).

Otherwise, the Decision will have the effect of unlawfully denying GTE compensation for transport and termination.

The fact that the Commission is considering a "capacity based charge" in another docket does not legitimize the Arbitrator's failure to completely resolve the issue as submitted to him in this case. If AT&T wanted to avail itself of the interconnection tariff the Commission has compelled GTE to file in another docket, AT&T could have deleted this issue from its arbitration petition. Since AT&T raised it, however, and since GTE provided evidence on the issue and proposed a resolution consistent with its right to compensation under the Act, the Commission must resolve the issue accordingly *in this case.*

ISSUE 3: INTERCONNECTION & NETWORK ELEMENTS - How should the Arbitrator calculate the costs of interconnection and network elements? What are the resulting prices?

The Arbitrator committed critical errors by adopting the Hatfield Study. The result is that he unconstitutionally and in violation of the Act orders prices which do not cover GTE's forward looking incremental, joint and/or common costs and which do not cover the actual costs GTE will incur to provide interconnection[12] and network elements to AT&T.

As noted above with regard to the Arbitrator's cursory general discussion of various aspects of the pricing issues, he decided to use "incremental" costs to determine network element rates. GTE employed incremental costs as an element of its pricing proposal, as well, but with critical additional elements, which the Arbitrator

[12] As discussed with regard to Issues 4 and 5, the Arbitrator failed to specify rates for interconnection.

ignored: forward looking joint and common costs, and actual costs not covered by the prices based on incremental and forward looking joint and common costs.

The Act and the Constitution require that network element rates cover GTE's actual costs. For reasons of economic theory, however, GTE, agreed to and proposed a forward looking incremental cost methodology for use in setting rates, with the key caveat that the shortfall versus actual cost be covered by an end user surcharge. Without this caveat, the use of "incremental" costs alone violates the Constitution's and Act's requirements to cover actual costs.

The Hatfield Model, of course, does not even purport to cover GTE's actual costs; rather, it disavows any such intent. Moreover, it does not purport to cover even *GTE's* forward looking incremental, joint and common costs. Instead, it produces wholly fictitious "costs" based on numerous assumptions, guesses, speculations and arbitrary inputs.[13] The Hatfield Model's supposed use of GTE data is extremely limited, and Hatfield then arbitrarily discounts those amounts.

In his Supplemental Report, the Arbitrator refused to consider the *admitted fact* that the Hatfield Model is based on huge discounts to GTE's actual cost data. The Commission cannot ignore this fact, however. The Commission must reject AT&T's proposed agreement if it does not comply with the Act, specifically the requirement of Section 252(d) that rates for network elements cover GTE's actual costs.

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[13] The Arbitrator's conclusion (top of page 19) that Hatfield's fictitious nature "is not a fatal flaw" in meeting the Act's requirement that rates cover *GTE*'s costs is unexplained, inexplicable and erroneous.

In addition, certain elements of the Arbitrator's Decision demonstrate that the Hatfield prices cover neither GTE's incremental nor actual costs. The Arbitrator used the trite label "black box" and complained that GTE and its vendors maintain the confidentiality of their proprietary cost information.[14] It is because this is *real* information about GTE's *actual costs* that the company and its vendors treat it as proprietary. Hatfield, on the other hand, was not bothered by such concerns because it relied on fictional cost data.

The Arbitrator's apparent dismissal of GTE's actual fill factor in favor of "objective fill" used in another case is blatantly improper.[15] The Arbitrator is obliged by the Act and due process to base his decision on the evidence in this case - not some other case. In any event, the Arbitrator fails to fully address the fill factor issue and, as a result, fails to cover all relevant costs. When the Commission decided to use "objective fill" in the determination of incremental costs, it also decided to treat the difference between such cost level and the real, actual fill costs to the company as a "shared cost," to be recovered in the ultimate pricing decision.[16] But neither the Hatfield Model nor the

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[14] GTE submitted a large amount of confidential information pursuant to the protective order and stood ready to answer any question from the Arbitrator. If the Arbitrator attempted to study the company's cost studies and was unable to understand them, he did not follow up with in depth inquiries of the company, but rather arbitrarily reject GTE's cost studies.

[15] Similarly improper is the Arbitrator's reliance on the Commission's limited use of a Hatfield Model in the U S WEST rate case. (Decision, top of p. 19).

[16] Docket No. UT-950200 [U S WEST rate case], Fifteenth Supplemental Order, p. 88.

Arbitrator's decision picked up this additional cost; it just disappeared.[17] The plain result is to unlawfully deny GTE full recovery of its costs.

[17] This is reflected in the Arbitrator's circular comment that when AT&T ran GTE's loop model using objective rather than actual fill, the result was lower.

The "input errors" referenced by the Arbitrator were minor and, in fact, biased GTE's cost results downward. Tr. p. 631-32 And, finally, the Arbitrator's assertion that GTE could have "run the Hatfield Model with inputs more to its liking" misses the crucial fact that Hatfield's flaws consist not just of erroneous inputs, but critical mistakes in its very structure.[18]

The Arbitrator failed to acknowledge that the Hatfield Model discounts GTE's actual costs by *77 percent*,[19] let alone explain how rates set so far below reality could possibly meet the requirements of the Act and avoid an unconstitutional taking.

While the Commission may be more carefully examining the latest version of the Hatfield Model in its "generic cost docket," it cannot let such blatantly inadequate rates stand even as interim prices. Such rates will still effect an unconstitutional taking (for which the Commission would be liable) and - as found by the Eighth Circuit - irreparably harm GTE.[20] The Commission must reject the Hatfield study and utilize GTE's cost study results - at least for interim rates.

ISSUE 1: SERVICES FOR RESALE - What is the proper methodology for determining the prices for GTE resold services?

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[18] GTE Brief, pp. 21-28.

[19] GTE Brief, p. 27.

[20] GTE Brief, pp. 11-12.

The Arbitrator adopted the FCC's methodology and its assumptions as to avoided costs, resulting it a discount rate which violates the Act.

The proper "methodology" under the Act for determining wholesale discounts is clear. For the Commission's convenience, following are the Act's provisions (emphasis added):

> Section 252(d)(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES
>
> For purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of *retail rates* charged to subscribers for *the telecommunications service* requested, excluding the *portion thereof attributable to any* marketing, billing, collection, and other *costs that will be avoided* by the local exchange carrier.

Thus, the starting point is the current retail rate. Then, for each such rate it must be determined (a) if any portion of that rate is "attributable to" (b) any cost "that will be avoided" by the ILEC when it provides the service for resale. In other words, the discount cannot be based on (a) a cost which is not covered by the retail rate in the first place or (b) a cost which will not actually be avoided by the ILEC. The Arbitrator properly addressed several alleged avoided costs on an individual basis, but in some instances he reached results which violate the Act.

The Arbitrator used the FCC's accounting records method of determining the amount of costs avoided. It is not clear whether the Arbitrator meant to use the correct "will be avoided" standard (see Decision p. 21) or the FCC's stayed and incorrect "avoidable" approach (Decision pp. 20, 22).

The Arbitrator adopted AT&T's position that 100% of GTE's advertising expenses will be avoided. The facts are to the contrary. GTE will not avoid - i.e., will not cease to

incur - one cent of advertising expense just because AT&T will be reselling GTE's services. Nevertheless, GTE offered to treat retail advertising expenses as avoided, resulting in most of Account 6613 being treated as avoided for the purpose of calculating the wholesale discount. However, there are advertising expenses in that account that relate to services other than the ones AT&T will be reselling.[21] In other words, these expenses are not in GTE's retail rates today, and will not be avoided when AT&T resells GTE's services. Thus, the Arbitrator was in error - and violates Section 252(d)(3) - when he declared 100% of Account 6613 to be avoided and required that the wholesale discount be calculated on that basis.[22]

The Arbitrator also declared 100% of the Operator Services and Directory Assistance Services expenses (Accounts 6621 and 6622[23]) to be avoided because

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[21] GTE Brief, pp. 44, 57-58; transcript (Tr.), pp. 276-277.

[22] The Arbitrator's only explanation of his decision is the statement at page 21 that "at this point in the development of a competitive market, there is no need for an incumbent to advertise wholesale services." The Act does not provide for the Arbitrator to assume away facts or substitute his notions for reality. The fact is that GTE does currently advertise wholesale services, and since those expenses are included in Account 6613, the account cannot be deemed 100% avoided for purposes of discounting rates for retail services.

[23] Tr. p. 275.

AT&T intends to provide these services itself; i.e., AT&T does not intend to resell GTE's operator and directory assistance services. This decision ignores facts and violates the Act in several respects.

As noted above, the first element of the Act's wholesale discount criteria is that the cost in question be covered by the retail rate in question in the first place. AT&T contended at most that operator and directory assistance costs were attributable to local service (i.e., R1 and B1 service) rates. It did not contend that operator and directory assistance service costs were attributable to any of the other resale services, such as private lines and vertical services. Therefore, it is plainly inappropriate to deem operator and directory assistance services to be avoided for the purpose of calculating a single discount rate that will apply across all services.

Second, the evidence was unrefuted that GTE's operator and directory assistance services' costs are not covered by the R1 and B1 rates. Rather, the fact is that GTE has separate tariffed rates for these services. Thus, since theses costs are not in the local service rates in the first place,[24] they cannot be deemed avoided for purposes of fixing a wholesale discount for those services. And, even if it were correct that some of these costs were covered by the local service rates, they would not be avoided when AT&T resold the service. AT&T takes retail services as-is for resale; the

[24] The Commission is well aware of this rate design fact. For example, in the recent U S WEST rate case, the determination whether directory assistance rates covered that service's costs took into account only the separately tariffed, per call directory assistance rate. No revenues from basic local service were attributed to directory assistance service. Docket UT-950200, Fifteenth Supplemental Order, p. 124 (incorporating Docket No. UT-930957, etc., Fourth Supplemental Order, pp. 17, 18 (referring to the rate per "billable call" generating enough revenue to cover the cost of directory assistance)).

Act does not provide for AT&T to require that GTE redesign its retail services for AT&T's benefit. If GTE's tariffed local services include operator and directory assistance service, AT&T will get those services when it resells GTE's local services.[25]

In addition, the account which includes directory assistance costs, Account 6622 Number Services, also covers other activities. This account includes "costs incurred in providing customer number and classified listings, " including "preparing or purchasing, compiling, and disseminating those listing through directory assistance or other means." (47 CFR 32.6622.) AT&T, the FCC and the Arbitrator ignored the "or other means" and simply - but erroneously - decided that 100 percent of these expenses will be avoided.

GTE's avoided cost study properly treats operator and directory assistance service expenses and should be adopted.

[25] See also the discussion below regarding Issue 17.

The Arbitrator indicated that he adopted AT&T's position on "sales expenses" (Decision, p. 21). AT&T's position was "All are avoided" (Decision, p. 20). But the Arbitrator stated: "GTE will avoid sales expenses for retail sales" (Decision, p. 21). Account 6612 is at issue here, and it contains expenses that will not be avoided, e.g., expenses relating to GTE's current wholesale lines of business.[26] Thus, GTE interprets the decision as meaning that only the avoided retail expenses covered by Account 6612 will be considered in setting the discount, and since the Arbitrator later agreed that GTE will incur "new wholesaling costs" as an offset to avoided retail sales expenses (Decision, p. 22), the overall result on this point is acceptable.

[26] Tr. pp. 275-276.

Lastly, however, the Arbitrator appeared to adopt AT&T's position that 100% of uncollectible expense will be avoided, even though he stated that GTE's uncollectible expense with AT&T "should be relatively small" (Decision, p. 22). "Relatively small" is not the same as zero. And the uncontradicted evidence is that GTE has always experienced a level of uncollectibles with AT&T.[27] This portion of the Arbitrator's Decision is thus contrary to the evidence and must, therefore, be modified.

Due to the several violations of the Act in the Arbitrator's Decision with regard to avoided costs, the Commission should adopt GTE's Original Avoided Cost Study.[28] If the Commission determines, however, to employ a pure USOA approach, it should adopt GTE's Modified Study.[29]

ISSUE 49: CONDITIONS FOR COLLOCATION - Under what conditions should collocation occur?

The Arbitrator's tariffed based resolution of this issue should be adopted.

ISSUES 50 & 52: NECESSARY EQUIPMENT - What equipment is "necessary" for interconnection or access to unbundled network elements?

The Arbitrator's resolution of this issue comports with the facts and the Act and should be adopted. In AT&T's contract submission, it requests the Commission to overrule the Arbitrator on this point and compel GTE to allow AT&T to collocate switches, referring to its brief and its petition for reconsideration. The Commission must

[27] GTE Brief, p. 59.

[28] GTE Brief, pp. 41-42.

[29] GTE Brief, pp. 42-45.

reject AT&T's request. Switches are not necessary for interconnection or access to unbundled elements.[30]

ISSUE 51: DIRECT COLLOCATOR-TO-COLLOCATOR CONNECTIONS - Must GTE allow AT&T to directly connect its facilities to other collocators?

[30] GTE Brief, pp. 118-121.

The Arbitrator violated the Act by exceeding the scope of its collocation provision and requiring GTE to allow AT&T to use its collocated equipment to connect to other collocated companies' equipment. Collocation is a clear taking of GTE's property and can only be effected within the precise confines of Congress' authorization. Congress clearly authorized collocation for the sole purpose of interconnecting with GTE and accessing GTE's network elements - not interconnecting with other companies.[31]

ISSUES 55 & 57: ACCESS TO RIGHTS OF WAY - Should AT&T have access to GTE's poles, ducts, conduits, and rights-of-ways at parity with GTE?

[31] GTE Brief, pp. 121-122. Although GTE is not required by the Act to do so, it has agreed to make the connections between collocators. Therefore, when the Commission rejects the Arbitrator's unlawful decision on this point, AT&T can pursue a negotiated agreement (outside the Act) with GTE for this service.

The Arbitrator violated the Act by relegating GTE to a mere licensee of its own poles, ducts, conduits and rights-of-way. Section 251(b)(4) of the Act (which applies to all local exchange carriers, not just ILECs) simply requires LECs to "afford access to the poles, ducts, conduits and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms and conditions that are consistent with section 224." Section 224(f)(1) states that "a utility shall provide * * * nondiscriminatory access to any pole, duct, conduit or right-of-way." Neither section says anything about access "at parity" with the owner's use of its own property. As we have seen, when Congress means to specify "parity," it knows the words to use and does so.[32] The Act does not deprive GTE of the ability to reasonably reserve space for its own use.[33]

ISSUE 56: DEFINITION OF RIGHTS-OF-WAY - Does the term "rights-of-way" include all possible pathways for communications with end-users?

The Arbitrator correctly resolved this issue.

ISSUE 53: RESERVING SPACE - May GTE reserve central office space for itself?

As with the issue of access to poles and conduits, the Arbitrator violated the Act by relegating GTE to a mere licensee of its own property. While the Arbitrator acknowledged that GTE needs to reserve space in its own buildings for future use, he then hamstrung the company with the requirement to allow any other firm to reserve the same amount of space. The effect is to squeeze GTE out of its own building. The Act

[32] Section 251(c)(2)(C) requires interconnection parity: interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself . . .."

[33] GTE Brief, pp. 96-97, 99-100.

neither calls for nor authorizes such a result.[34] Because collocation and reservation of space by another firm are plainly a physical taking of GTE's property, the scope of the occupation must be construed narrowly, so as to avoid takings which Congress did not authorize. The Act says nothing about other firms reserving space in GTE's buildings.

ISSUES 54 & 58: EXPANDING SPACE - Must GTE expand capacity for AT&T? If so, under what time frame?

[34] GTE Brief, pp. 123-125.

Issue 54 involves collocation under Section 251(c)(6) and Issue 58 involves access to poles, ducts, conduits, and rights-of-way under Section 251(b)(4).[35] Both sections require only use of existing facilities; neither requires GTE to expand or build new facilities for AT&T. While the Arbitrator thus has no authority under the Act to compel GTE to expand its facilities for AT&T's use, GTE's proposed contract provisions nevertheless agreed to take AT&T space need forecasts into account when planning central office modifications and to make space available on poles by rearrangements, if possible.[36] The Commission may not require more under the Act.

ISSUE 7: INSIDE PLANT - What method should the Arbitrator use to price collocation?

The Arbitrator properly resolved this issue. GTE's FCC's physical collocation tariff is available to AT&T.

ISSUE 8: OUTSIDE PLANT - What method should the Arbitrator adopt for access to poles, conduits, and rights-of-way?

The Arbitrator's resolution of this issue is acceptable.

ISSUE 31: ASSEMBLY OF NETWORK ELEMENTS - To what extent should the Commission allow AT&T to combine network elements? ISSUE 32:

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[35] The Decision's resolution of the issues gets the issue numbers backwards (p. 31). With regard to Issue 54, it mentions "outside facilities," and with regard to Issue 58, it speaks of :renovations and leasing or construction new premises."

[36] GTE Agreement, Art. X, App. I, sec. 2.5, 6.4; Art. IX, sec. 1.1.

REPLICATION OF INCUMBENT SERVICES - May GTE prohibit AT&T from assembling network elements to replicate existing GTE services?

The Arbitrator violated the Act by authorizing AT&T to "combine" network elements when AT&T does not provide any network elements of its own, and by enabling AT&T to thereby evade GTE's access charges.

Seizing on the fact that the Act's different pricing standards for network elements and resold retail services will likely yield different rate levels, AT&T seeks to arbitrage these differences to its financial advantage and GTE's financial detriment. AT&T seeks the opportunity to in this manner pursue both lower total charges from GTE and the appropriation of access charges GTE would otherwise receive.[37] The Arbitrator quoted the FCC's erroneous reliance on the word "combine" in Section 251(c)(3).[38] That

[37] If AT&T resells GTE's local service, GTE retains access charges for toll calls originated from and terminated to AT&T's end users. If AT&T reassembles unbundled elements, it bills the access charges to interexchange carriers.

[38] The Arbitrator also observed that more than one element would be needed to replicate resale services, and concluded that network elements are not, therefore, substitutes for resale services. Decision, p. 41. This misses the point altogether. It is the combination of network elements that produces the substitute for resale services, and this is exactly what the Arbitrator would authorize AT&T to do. The Arbitrator's further comment on that page as to arbitrage and "apples and oranges" makes no sense and proves nothing.

section must, however, be read and applied in its entirety. Congress stated that ILECs have:

> The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory *access to network elements on an unbundled basis at any technically feasible point* on rates, *terms and conditions* that are *just, reasonable*, and nondiscriminatory *in accordance with* the terms and conditions of the agreement and the *requirements of* this section and *section 252.* An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows the requesting carrier to combine such elements in order to provide such telecommunications service. (Emphasis added.)

It is obvious on a complete reading of the section that Congress contemplated physical connections between the requesting carrier's facilities and the network element to which the ILEC would provide "access." Otherwise, the reference to "access . . . at any technically feasible point" would be meaningless. Were AT&T to simply recombine supposedly unbundled network elements, there would be no physical connection. It would simply be a paper transaction - a paperwork substitute for buying the retail service for resale.

It is clearly a just and reasonable term and condition to specify that AT&T (or any other requesting carrier) cannot employ such a subterfuge, i.e., to require that AT&T actually provide some of its own network elements, which it would connect to GTE's network elements in order to combine the companies' respective elements and provide

a telecommunications service. In sections 251(c)(4) and 252(d)(3) Congress specified the rate to which GTE is entitled when its retail services are resold by another carrier. GTE is entitled to protect that right by reasonable terms and conditions. Similarly, GTE is entitled to preserve its access charge revenues from such subterfuges. Sec. 251(g).

Congress imposed upon the ILECs the separate duties of (1) unbundling their networks into discrete elements (sec. 251(c)(3)) and (2) making available for resale their retail services (sec. 251(c)(4)). The Act imposes distinct pricing standards for unbundled network elements and for services to be resold. Unbundled network elements are priced at cost plus a reasonable profit. Sec. 252(d)(1). Retail services made available for resale are priced at a wholesale rate, which is based on the retail rate less avoided costs. Sec. 252(e).

The Arbitrator violated the Act by ignoring this clear distinction between unbundling and resale. Rather, he would give new entrants the option of buying retail services under one pricing formula, or purchasing all the network functions needed to provide that same service under a wholly different pricing formula. The Act's unbundling standards would thus become a substitute for--rather than an alternative to--buying retail services at wholesale rates.

As GTE and others have pointed out in their filings in the Eighth Circuit appeal of the FCC Order, Congress did not intend this plainly implausible result. Indeed, members of Congress who submitted an amici curiae brief in that proceeding agree with GTE.

The language of the Act, on its face, precludes the nonsensical outcome of making telecommunications the first industry in the world to have two sets of wholesale

rates for exactly the same thing that are dramatically different. Nevertheless, if the Commission has any remaining doubts about sanctioning this obvious arbitrage potential, they are laid to rest by the legislative history of the pricing provisions in the Act.

The bill that eventually became the Telecommunications Act of 1996 was a compromise based on separate Senate and House measures (S. 652 and H.R. 1555, respectively). The Senate bill did not discuss specific pricing standards for resale, but did require ILECs to make available discrete parts of their networks to competitors at prices "based on the cost . . . of providing the unbundled element," which "may include a reasonable profit." S. 652, § 101(a) (proposed § 251(d)(6)). On the other hand, the House set forth only an expansive "just, reasonable, and nondiscriminatory prices" guideline for unbundled network facilities, H.R. 1555, § 101(a) (proposed § 242(a)(2), but directed ILECs to "offer services, elements, features, functions, and capabilities for resale at wholesale rates." (Id. (proposed § 242 (a)(3)(A))

The Conference Committee which reconciled the House and Senate bills was aware that the specific pricing standards in the respective measures addressed different circumstances. To this end, the House Report indicates that its resale pricing formula was primarily intended to address the situation of a non-facilities-based carrier who wishes to offer the same service an ILEC provides. H.R. Rep. 204, 104th Cong., 1st Sess. 72 (1995). The legislators were well aware of the historical state regulatory practice of setting rates of some services (e.g., toll and discretionary services) well above cost as a means of maintaining basic local rates at below-cost levels. If the Senate's "cost plus profit" approach were applied to resale, resellers could cherry-pick

the more lucrative customers to which the ILEC must charge above-cost rates, leaving the ILEC with no way to recover the losses sustained in providing below-cost services.

Instead, the pricing provisions that appear in the Act reflect the Conference Committee's clear delineation between an CLEC's right of "access to network elements on an unbundled basis" for the provision of its own facilities-based services, and an CLEC's right to buy the ILEC's retail services at wholesale for the purpose of resale. This history affirms GTE's understanding that section 251(c)(3) of the Act ("Unbundled Access") contemplates that a firm taking unbundled items will itself provide some network functionality, rather than just seek to replicate the same service offered at wholesale.

The Arbitrator's Decision would reverse the result of the congressional debate--as now settled in the Act--over the application of the more favorable "cost plus profit" standard to services offered for resale. It would allow AT&T to pay by the "cost plus profit" standard, but without building any of its own facilities. This approach eviscerates the statutory distinction between resale and unbundling and the associated, respective pricing standards. Regardless of its skill in the marketplace, AT&T would be able to undercut GTE's prices for its above-cost services. It would also suppress the facilities-based competition that is the ultimate ideal of the Act. No new entrant will build its own facilities if it can make almost risk-free profits with little investment. AT&T will bear no additional risk by taking the unbundled service, relative to buying that same service at wholesale. GTE will still do all the work in the unbundling scenario because it will need to put the unbundled elements together at AT&T's discretion.

The Commission must correct the Arbitrator's violation of the Act and preclude the arbitrage of unbundled element rates by AT&T when AT&T provides no network elements of its own.

ISSUE 29: DIRECTORY "CONSUMER INFORMATION PAGES" - Should the Commission require GTE to provide AT&T with the same number of directory pages as it uses for its own service information?

The Arbitrator correctly resolved this issue.

ISSUES 45 - 47: OPERATIONS SUPPORT SYSTEMS - What process and time frame should the Commission require for implementing the long-term solution?

The Arbitrator effectively ducked the real-world issue here. GTE is working to provide AT&T and all other CLECs access to GTE's OSS. The question is how GTE is to provide such access until standardized national gateways are developed. GTE's systems were not developed for access by more than one company. Demanding "immediate" access to those systems, and agreeing with that demand in the abstract, is a simple solution -- and, as are many simple solutions, it is wrong. The Commission should reject the Arbitrator's failure to address the practical difficulties raised by AT&T's demand. GTE's practical solutions to these issues, pending the expeditious development of nationally standardized gateways, is the better resolution of these issues.

ISSUE 23: PIC CHANGES - How should GTE handle (Preferred Interexchange Carrier) PIC changes and charges?

The Arbitrator correctly resolved this issue.

ISSUES 17 & 18: DIRECTORY ASSISTANCE & OPERATOR SERVICES - Should the Commission require GTE to provide custom routing to AT&T's operator services or directory services platforms?

As to Issue 17, the Arbitrator ignored the fact that the Act does not require GTE to redesign its retail services. (GTE Brief, pp. 69 - 70). In addition, as to both issues, the Arbitrator simply failed to address the evidence put before him. The uncontradicted evidence was that such routing with the currently available technology (the use of Line Class Codes) is incompatible with GTE's current switches, as a general matter. The Arbitrator's unreasoned decision on this issue should be rejected.

The Commission should also note the narrow scope of this issue: the customized routing of Operator Service and Directory Assistance calls. In Part II, below, this issue will serve as a good example of the blatant over-reaching presented by AT&T's proposed contract. Without explanation, without leave of the Commission to expand the issues arbitrated, without the agreement of GTE, and without a shred of proof as to the applicability of this option, AT&T's contract expands customized routing to also include repair calls. The Commission should not condone this manipulation of its process.

ISSUES 19 & 20: DIRECTORY ASSISTANCE DATABASE - Must GTE provide access to its directory assistance database in a way that enables AT&T to provide directory assistance under its own brand name?

GTE has agreed to provide AT&T its Directory Assistance database and daily updates via magnetic tape. This resolves the issue. The Commission should not, however, impose this obligation in an immutable form. In the medium term, GTE will

develop an appropriate gateway for AT&T and other CLECs to access GTE's database.

ISSUE 48: NUMBER PORTABILITY - Is portability hub route indexing and LERG reassignment technically feasible?

The Arbitrator correctly decided this issue.

ISSUE 26: DIALING PARITY - Which contract language should the Commission adopt?

The Arbitrator correctly decided this issue.

ISSUE 21: BRANDING - Should the Commission require GTE to accommodate AT&T's branding requests?

The Arbitrator's decision is in error for imposing this requirement on GTE, which is not required by the Act. (GTE Brief, pp. 75 -76). As a practical matter, however, AT&T and GTE have resolved this issue.

ISSUE 25: TESTING - Should the Commission require GTE to test each loop and report results to AT&T?

The Arbitrator correctly decided this issue.

ISSUE 22: DIRECTORY DISTRIBUTION - Should GTE make secondary distributions of directories to AT&T's customers without charge?

The Arbitrator correctly decided this issue.

ISSUE 44: OPERATIONS SUPPORT SYSTEMS - How should GTE recover OSS costs?

The Arbitrator concluded that GTE should subsidize AT&T's use of GTE's systems. The nub of the Arbitrator's rationale appears to be the otherwise unexplained

statement that "it would be appropriate for GTE, as the incumbent and primary carrier, to bear the bulk of the costs." Decision, at 49. The Arbitrator provides no other logical explanation for why GTE should be compelled to underwrite one of the world's largest corporations.

The Arbitrator is wrong. The party causing costs should bear those costs. In this case, it would be appropriate to spread those cost among the various CLECs which are, as a group, causing these costs. Forcing GTE to bear these costs is, however, wrong as a matter of the construction of the Act, sound public policy and simple fairness. The Arbitrator should be reversed.

ISSUE 6: NUMBER PORTABILITY - What pricing method and prices should the Arbitrator adopt for number portability?

The Arbitrator decided this issue correctly.

ISSUES 13 - 16: PAY PHONE SERVICE - Should the Commission require GTE to offer pay phone lines to AT&T at wholesale rates?

The Arbitrator focused on the FCC's biased and erroneous Order, and ignored the plain language of the Act. ILECs need only offer for resale "telecommunications services." Act, § 251(c)(4)(A). That is a defined phrase, specifically including only "the offering of telecommunications for a fee directly to the public[39]." Act, § 3(a)(51). This Commission knows that GTE's various pay phone offerings are not offered to the public, but to a variety of pay phone operators. In other words, those services are not offered

[39] The remaining portion of the definition, dealing with "other classes of users," is not relevant. It is undisputed that GTE's various public pay phone line offerings are not available to the public.

“at retail,” and the Act does not, therefore, require them to be discounted. (GTE Brief, pp. 66 - 67). This Commission should not tolerate a results-oriented re-working of the Act to satisfy AT&T's desires.

ISSUE 12: NOTICE OF NEW SERVICE - What is a reasonable period for advance notice of new services?

The Arbitrator decided this issue correctly.

ISSUE 11: RESALE RESTRICTIONS - What resale restrictions should the Commission allow GTE to impose?

The Arbitrator's decision is a good example of the weakness of the so-called "baseball style" arbitration decision rule. The Arbitrator's decision ignores the several subtleties presented by this issue. The Arbitrator's decision should be rejected for all the reason's identified in GTE's Post-Hearing Brief, at 62 - 66.

ISSUE 59: TERM OF THE AGREEMENT - What should be the term of the agreement?

The Arbitrator's decision is simply not reasonable. Locking these parties into an agreement for a five-year period will preclude a flexible response to the evolving telecommunications market. This is not speculation. The Commission issued its first interconnection order in 1995. Are agreements reflecting that order still on the cutting edge of telecommunications competition in 1997? Does anyone seriously contend that such agreements would be competitive in the year 2000? A five year term is simply inappropriate.

The Arbitrator's decision also ignored the one-sided nature of AT&T's request. AT&T desires a five year term -- but only if such a term favors AT&T, because it would reserve the right to unilaterally cancel the agreement on 90 days notice. The Commission should not approve such an over-reaching proposal.

The reasonableness of GTE's proposal is demonstrated by every other arbitration decision involving GTE in the Pacific Northwest. Every other case has approved a shorter, more reasonable period.

ISSUE 60: IMPACT OF TARIFF FILINGS - What should be the impact of other tariff filings on the contract?

The Arbitrator correctly decided this issue.

ISSUE 62: IMPACT OF OTHER CONTRACTS - Should the agreement include a "Most Favored Nations" clause?

The Act favors fair negotiation, not the ability to engage in give and take and then ignore the resulting bargain struck. That is what AT&T would have the Commission approve. The Commission should have no part of an outcome which destroys the foundation of negotiation: the ability to hold parties to their word. No "most favored nations" provisions should be approved.

ISSUE 24: RELEASE OF CUSTOMER INFORMATION - What authorization may GTE require before releasing customer account information to AT&T?

The Arbitrator evaded this issue. The Act could not be more clear, notwithstanding how little AT&T likes it. GTE may not be compelled to release CPNI

without written customer authorization. For all the reasons identified in GTE's Post-Hearing Brief, at 102 - 104, AT&T's demand must be rejected.

ISSUE 63: BONA FIDE REQUEST PROCESS - Which contract language should the Arbitrator adopt?

The Arbitrator was unfair and inconsistent on this issue. Having repeatedly invoked the self-imposed "baseball rule" to GTE's detriment, the Arbitrator failed to adopt GTE's reasonable proposal. The Commission should.

ISSUE 66: RECIPROCAL OBLIGATIONS - Should the agreement impose reciprocal obligations upon both parties beyond reciprocal compensation for transport and termination?

The Arbitrator appeared to agree with GTE that its reciprocity proposal is fair and pro-competitive, but declined to adopt it. The Commission should approve GTE's proposal.

ISSUE 67: BILLING - Should the Commission require GTE to provide billing and usage recording services for resold services, interconnection, and network elements? If so, under what terms and conditions?

The Arbitrator correctly decided this issue.

ISSUE 28: PERFORMANCE COMMITMENTS - Must GTE deploy its resale and unbundling offerings in specific time frames, with service guarantees, and provide for remedial measures for substandard performance?

The Arbitrator correctly decided this issue.

ISSUE 64: RESPONSIBILITY FOR LOST REVENUES - Should GTE be financially responsible for uncollectible or unbillable revenues resulting from GTE work errors, software alterations, or unauthorized attachments to loop facilities?

The Arbitrator correctly decided this issue.

ISSUE 61: DISPUTE RESOLUTION - Should the agreement include an accelerated dispute resolution procedure for "service affecting" disputes?

The Arbitrator correctly decided this issue.

ISSUE 65: ADDITIONAL TERMS - Are there any other terms the Arbitrator should add to the contract?

The Arbitrator's decision simply does not comply with the Act. If a contractual provision was not covered in this arbitration, and GTE does not agree to the provision, the provision may not be imposed upon GTE in the agreement, under the plain terms of the Act.

The issues to be resolved by the Arbitrator are only those set forth in the petition and response, which have not been resolved by the parties by the time the matter is submitted to the Arbitrator for decision. Sec. 252(b)(4)(A), (C).[40] The Act could not be more clear as to the petitioner's duty to clearly set forth disputed issues in its petition:

> A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documents concerning-

[40] In fact, the parties are free to negotiate agreements on issues at any time, subject to the requirement to submit their agreements or amendments to prior agreements to the Commission under section 252(e)(1) and (4).

(i) the unresolved issues;
(ii) the position of each of the parties with respect to those issues; and
(iii) any other issue discussed and resolved by the parties.

Sec. 252(b)(2)(A)(emphasis added).

If there were any doubt that Congress meant for this duty to have significance, that doubt is eliminated within the same subsection 252(b). The Act **expressly** limits the State commission's authority in the arbitration:

(4) ACTION BY STATE COMMISSION.-

(A) The State commission shall limit its consideration of any petition filed under paragraph (1) (and any response thereto) to the issues set forth in the petition and in the response, if any, filed under paragraph (3).

The Act is unequivocal: if an issue is not contained within the petitioning party's petition, it is not a proper subject for the arbitration, and therefore cannot be imposed as part of an arbitrated “agreement.”

AT&T’s attempt to have “any other issues” be controlled by its proposed contract is a bold attempt to circumvent the Act’s explicit requirement. AT&T may well argue that Issue 65 was arbitrated to permit AT&T to claim whatever it dreamed up later. The difficulty with such an argument is that it is flatly inconsistent with the plain language of the Act. The requirement of section 252(b)(2)(A) for the petitioner to submit all relevant documentation concerning "the unresolved issues" and the "position of each of the parties with respect to those issues" clearly contemplates a straight forward, organized approach such as the parties’ matrix. The intent is plainly to put both the Commission

and the respondent on notice as to what issues must be addressed and resolved in the arbitration. Therefore, Congress expressly limited the Commission's arbitral authority "to the issues set forth in the petition and in the response, if any". Section 252(b)(4)(A). Those are the "open issues" which the Commission is directed to resolve by arbitration. Section 252(c). AT&T may not evade the Act's requirements simply by asking the Arbitrator to approve whatever other issue AT&T might chose to cover in its contract. AT&T's contract provisions, unless a result of a decision on an issue properly arbitrated, cannot be imposed on GTE.

II. ANALYSIS OF PROPOSED CONTRACT

In this portion of these comments, GTE addresses the proposed contract filed by AT&T in this docket on February 7, 1997. In this section, GTE does not generally dispute the Arbitrator's order (other than a few instances when the proposed contract language emphasizes the error of the Arbitrator's resolution). Rather, in this section GTE analyzes AT&T's proposed contract for its adherence to the Arbitrator's order, the Act and sound public policy. As will be seen below, in numerous instances AT&T's proposed contract is unfairly one-sided and over-reaching. In several instances, AT&T is attempting to circumvent the Arbitrator's decision of issues AT&T lost. In even more instances, AT&T is seeking to include in the agreement provisions with which GTE does not agree -- and were not raised in the arbitration process. As explained above, this is improper.

The Commission will note that AT&T's proposed contract contains a variety of type faces. AT&T's "Explanation of Contract Marking" as a general matter accurately sets out the meanings of the different type faces. The Commission will note that the vast majority of this proposed agreement is submitted to it in plain text -- under the parties' scheme, denoting agreed-to provisions. GTE offers two preliminary observations in that regard: First, the large volume of agreed-to language exists only because GTE has attempted to continue the negotiation process in good faith. GTE submits that this agreement is further evidence of one of its continuing arguments throughout this process. Negotiation between the parties is the single best way to facilitate prompt and efficient entry of competition into the local telecommunications market. Second, GTE has agreed to much of this contract as a good faith attempt to

comply with the Arbitrator's decision and the directives of this Commission. By doing so, however, GTE does not retract its respectful arguments that the Arbitrator is in numerous cases flatly wrong. After the Arbitrator's Decision is overturned -- in this phase of this proceeding, or some other -- GTE will consider this involuntary "agreement" rescinded. GTE will, however, promptly enter into negotiations to conclude an agreement consistent with the Act.

GTE objects to one seemingly offhand statement in AT&T's "Explanation of Contract Marking," which appears to suggest that GTE has unilaterally withdrawn from positions agreed to in Michigan negotiations. GTE has modified positions it accepted in Michigan -- as has AT&T. It should not be surprising that some agreements in Michigan would reflect the panoply of conditions (from network engineering to a unique regulatory environment) specific to Michigan. Moreover, the agreement between AT&T and GTE in Michigan was filed relatively early on in the series of proceedings arising throughout the nation to implement the Act. As GTE has moved through these issues, GTE's position has continued to evolve, in the vast majority of instances, leading to agreement with AT&T or other CLECs. There is a reason why AT&T did not attempt to document this supposed retreat from previous agreements by simply putting the Michigan agreement before the Commission: any comparison would make clear that the disputed language in this agreement is a fraction of that presented in Michigan. For example, in the Main Agreement alone, as filed in Michigan, GTE had disagreed with Sections 3.3, 3.4, 10.4.1, 29.5.1, 29.8.3, and 38.6.1. GTE has now agreed with those provisions as filed with this Commission. GTE has moved forward in good faith as represented by the agreed-to language in this agreement.

AT&T's proposed contract consists of a "Main Agreement" and fifteen separate attachments. While the sections of the Main Agreement are consecutively numbered, the provisions of each attachment are independently organized. Because the potential for resulting confusion is obvious, GTE's comments will attempt to follow as closely as possible the organization of AT&T's proposed contract.

A. MAIN AGREEMENT

1. Introductory Paragraphs

Sixth Recital

GTE's proposed language recognizes that this is not an "agreement" in the sense that it was voluntarily produced by the parties. Rather, this is an "arbitrated agreement" (as that term is used in Section 252 of the Act), where each party specifically reserves its rights to contest both the provisions set forth in the document and the underlying Decision in accordance with Section 252(e)(6).

"Now, Therefore" clause

GTE's proposed language recognizes that this not an "agreement" in the sense that it was voluntarily produced by the parties. Rather, this is an "arbitrated agreement" (as that term is used in Section 252 of the Act), where each party specifically reserves its rights to contest both the provisions set forth in the document and the underlying decision in accordance with Section 252(e)(6). GTE's filing of the document is not a voluntary act but rather in compliance with the Commission's decision.

2. General Terms and Conditions

Section 1 - Provision of Local Service, UNEs, and Interconnection

As this proposed language recognizes, this is already covered by GTE's obligations set forth elsewhere in the Agreement. Therefore, this language is redundant. With specific regard to AT&T's proposed language, this language goes beyond the scope of the Act (*i.e.*, AT&T has no right to "relocate or modify" GTE's local services or unbundled network elements.

Sections 6 - 8

GTE seeks only to impose liability on AT&T for those environmental liabilities that occur as a result of activities of AT&T on GTE premises or that are caused by work required by AT&T pursuant to the Act and the contract. An example would be liabilities resulting from the disturbance of asbestos, not previously in a friable condition,[41] as a result of having to perform a cable pull through the basement of a GTE building to meet an AT&T collocation request. Absent obligations under the Act and the contract, GTE could simply decline the request if the only way to comply with the collocation request was to disturb asbestos. Since GTE does not have the option to decline such a request under the Act and the Commission's Order, AT&T should be liable for the costs of any environmental remediation required because of its collocation request. Expecting GTE to bear such costs, when the costs are caused by AT&T's requirements, is unreasonable and not contemplated by the Act, which requires that the CLEC bears the costs of their requests for collocation, unbundled elements, etc.

Sections 9.3 and 9.4 -Regulatory Matters

[41] Asbestos is generally only a problem under environmental laws if it is "friable."

GTE's proposed language recognizes that this not an "agreement" in the sense that it was voluntarily produced by the parties. Rather, this is an "arbitrated agreement" (as that term is used in Section 252 of the Act), where each party specifically reserves its rights to contest both the provisions set forth in the document and the underlying Decision in accordance with Section 252(e)(6). This language further recognizes that judicial review, if it overturns provisions of either the Decision or the FCC's First Report and Order, will necessitate modification of provisions of the Agreement. Furthermore, In what GTE is sure is merely a good-faith clerical error, Section 9.3 of AT&T's proposed contract includes in AT&T's version of GTE's proposed language an erroneous citation to this proceeding. Obviously, the case number in the proposed contract is some other proceeding and the correct citation is "UT-960307."

Section 10: Overview

Section 10 of AT&T's proposed contract appears to overlook one thing: AT&T lost this issue before the Arbitrator. Only Issue 64 addressed these issues of liability, indemnification and damages. In resolving that issue, the Arbitrator specifically rejected AT&T's attempt to impose liability conditions on GTE which go beyond the limitations of liability contained in GTE's existing tariffs. Decision, at 58. Having lost that issue, AT&T nonetheless proposes language which goes far beyond the liability provisions in established tariffs. AT&T's entire Section 10 should be rejected, and GTE's reasonable terms -- consistent with tariffs approved by this Commission -- should be adopted.

Section 10.2 - Liabilities of GTE

AT&T's proposed language inappropriately attempts to expand GTE's potential liability well beyond those payments AT&T makes under this Agreement, to the

payments made under other regulatory requirements (*e.g.*, access charges). This is inappropriate because (amongst other reasons) AT&T should not be able to reduce its validly incurred charges unrelated to this Agreement as a result of any dispute relating to this Agreement.

Section 10.3 - Consequential Damages

Limitations of liability for consequential damages, from any cause, are quite common in contracts and are commercially reasonable. The prices that GTE charges its end-user customers, which are the basis for the discounted wholesale prices to be charged to AT&T under the Agreement, are not set at a level to cover indemnity for consequential damages. If AT&T wishes GTE to indemnify AT&T for these types of damages, GTE's prices to AT&T must be increased accordingly.

Section 10.5 - Obligation to Defend

GTE's proposed language requires an Indemnitee to be consulted if a compromise or settlement would *adversely* affect the Indemnitee. An Indemnitee also has the right to employ separate counsel if the claimant request equitable relief. AT&T's propose language, by contrast, is far broader and refers to ambiguous "other rights" and "other relief". GTE has been unable to divine from AT&T what is meant by this ambiguous language, and therefore opposes it.

Section 11 - Service Parity and Standards

Section 11.3

GTE has proposed language that would require GTE to deliver services, etc., at parity with what GTE delivers to itself and to its own customers, as well as specific performance and service quality standards, set out in Attachment 12 to the Agreement.

The performance standards set out in Attachment 12 also contain certain penalties for failure to meet the performance criteria. Absent this language, AT&T's would arguably be permitted to "double dip," *i.e.*, to obtain payment of performance penalties from GTE under the provisions of Attachment 12 and seek additional monetary damages or other remedies under other provisions of the contract. AT&T should not be permitted to recover twice for the same item.

Section 11.5

AT&T's proposed contract again ignores a fact AT&T finds unpleasant: **AT&T lost this issue in arbitration.** The Arbitrator's rationale was straightforward, and on this issue correct: "A higher level of service implies a higher cost of service, and GTE cannot discriminate in favor of AT&T, so a correspondingly higher cost is implicit in AT&T's proposal." Decision, at 10. In case there was any doubt on the issue, the Arbitrator's award made a fair resolution explicit:

> If AT&T requests a higher-than-standard level of access or quality of an element, GTE must accommodate the request to the extent it is technically feasible and AT&T is willing to pay the additional cost.

Decision, at 11. As the requesting party, AT&T must pay the cost of any higher standard which is requested. AT&T's proposed language "prorated on a competitively neutral manner" is simply a blatant attempt to impose such cost on other CLECs, and probably on GTE itself, rather than accepting the cost of its own request. AT&T should not be permitted to ignore the Arbitrator's decision on the issues it lost.

Section 18 - Branding

Section 18.2

Providing branding modifications requested by AT&T will require substantial time, effort, and expense by GTE. Ultimately, AT&T is likely to provide its own OS/DA services from its own platform. As proposed, there is no incentive in the AT&T Agreement to prohibit AT&T from requiring GTE to reconfigure its network only to be abandoned by AT&T a short time later. GTE, therefore, proposes contract language which will fairly compensate GTE for its expenses incurred in reconfiguring its network. GTE's language also obligates AT&T to carefully consider its branding requests by requiring AT&T to use those GTE OS/DA services that it has reserved, for the duration of the agreement.

Section 23 - Miscellaneous

Section 23.3

Since this is an "arbitrated agreement" under Section 252(b), rather than a voluntary agreement under Section 252(a)(1), there is no requirement that the parties actually execute the Agreement. *Compare* Section 252(a)(1) (an ILEC may "enter into" a voluntary and binding agreement) *with* Section 252(e)(1) ("an interconnection agreement adopted by ... arbitration" [emphasis added]).

Section 23.9

Since this is an "arbitrated agreement", *i.e.*, it is the equivalent of a Commission order as it merely effectuates the terms of the Decision, jurisdiction over the Agreement is properly limited to the Commission. It would obviously be poor public policy, and inconsistent with the Commission's responsibilities both under the 1996 Act and state law, for every trial court in the state to have the ability to pass on the parties' regulatory responsibilities under the Agreement.

Section 23.12

AT&T's proposed language is in conflict with GTE's proposed language in Section 9.4. The inherent infirmity in AT&T's language is that it attempts to impose obligations upon GTE which do not exist in the Act. For example, in the First Report and Order, the FCC's determined that operations support systems (OSS) are network elements which an ILEC must provide to competing carriers, and set forth certain rules pertaining thereto. However, whether OSS is, in fact, a network element under the Act is an issue squarely before the Eighth Circuit. If the Eighth Circuit were to rule that OSS is not a network element, then GTE would be under no obligation to provide OSS to AT&T. However, AT&T's proposed language in this section attempts to resurrect such an obligation -- as a contractual obligation rather than a statutory obligation -- by making it incumbent upon GTE to "renegotiate" with respect to the provision of OSS. While in such circumstances GTE would certainly be willing to discuss the provision of OSS to AT&T -- even outside of any statutory obligation -- there can be no obligation independent of the Act which would require GTE to come to any agreement with AT&T regarding OSS. Thus, any duty to "renegotiate" would be inconsequential at best.

Section 23.15

See discussion of Section 23.9.

3. Part I: Local Services Resale

Section 24 - Telecommunications Services Provided for Resale

AT&T's proposed addition respecting "service support functions" is, at best, ambiguous. GTE's obligation in a resale environment is provision the service to AT&T's customers in essential the same manner in which the service is provisioned to GTE's

customers. This will obviously involve the use of the same "service support functions" whether the customer is that of AT&T's or GTE's. To the extent that AT&T's proposed language requires this, it is superfluous of GTE's obligations under the Act. However, to the extent that AT&T's proposed language means something else, then it goes beyond GTE's obligations under the Act, was not requested by AT&T in its petition for arbitration, was not considered by the Commission and was certainly not granted to AT&T.

Section 25.5.1

AT&T's proposed language in this section is governed by other provision of the Agreement, and hence introduce ambiguity into the Agreement by setting forth potentially disparate obligations in different places. Specifically, (1) the features and functionalities attendant number portability are governed by Attachment 8, and (2) quality standards are governed by Attachment 12.

Section 26.6 - Telephone Relay Service

AT&T's "at no additional charge" language again overlooks a fact AT&T would rather ignore: AT&T lost this issue. Decision, at 6. Moreover, AT&T's proposed language is facially unclear. It is not clear whether AT&T is requesting telephone relay service for the purpose of resale or whether it seeks to have GTE continue to provide such service to AT&T's customers. Regardless of how AT&T wishes to proceed, the phrase "at no additional charge" fails to convey any idea whatsoever of the price that GTE must charge for the service. In contrast to AT&T's ambiguous language, GTE's alternative language states the applicable price, based on the reasonable assumption

that qualifying AT&T customers will continue to receive such service from GTE at the same price at which GTE provides the same service to its own qualifying customers.

Section 26.7 - Voice Mail Related Services

GTE will accept this section in its entirety if the section is modified to open with the phrase: “If GTE agrees to provide voice mail services to AT&T. This additional phrase is necessary because voice mail and voice mail related services are not “telecommunications services,” therefore neither the Act nor the Decision obligates GTE to provide such services for resale.

Section 26.8 - Voluntary Federal Customer Financial Assistance Programs

AT&T is asking for information in an electronic format that GTE does not (1) maintain electronically, and (2) maintain in a centralized location. Although the fact of a customer’s qualification for and participation in LifeLine type programs is generally noted on the customer service record, which will be transmitted to AT&T in accordance with the other requirements of the contract relating to customer service records, any application forms, letters from the appropriate federal agency, etc. are maintained on file by GTE in a paper format, usually in the local business office serving that customer.

In addition, it is senseless to require GTE to provide information to AT&T concerning certification procedures. As a LEC, AT&T will have to understand and comply with these procedures for its own new customers. That is part of the business of being a LEC and AT&T has the same access to that information as GTE does - from the appropriate federal or state agency. AT&T asking GTE to provide information on certification procedures is like asking GTE to provide advice to AT&T on legal or regulatory matters in general.

Section 28 - Routing to Directory Assistance, Operator and Repair Services

Section 28.1

The Decision requires GTE to provide customized routing for local directory assistance and operator services only, and GTE has agreed to do so. GTE's proposed recovery of costs is as specified by the Decision.

Furthermore, AT&T's proposal in this section is highly improper in its introduction of customized routing for repair calls. AT&T simply did not present this issue in arbitration. It thus cannot be imposed on GTE over GTE's objections in this proceeding, for all the reasons discussed in Part I, regarding Issue 65, above. Moreover, AT&T's attempt to insert this provision at this late date displays that it is not yet ready to be a local telephone company in Washington. Customized routing of repair calls may be something to consider in those areas of the country where special routing of repair calls is offered at all (typically through "411" or "711" dialing). GTE simply does not offer this for itself anywhere in the Northwest; as the Commission is well aware, GTE offers repair service through the use of 800 numbers. AT&T is certainly welcome to do the same.

Section 28.2

Pursuant to the FCC order and the Decision, GTE should be allowed to recover any costs incurred for implementing customized routing for AT&T. Of course, GTE does not demand that AT&T pay such costs "up front," and its language cannot reasonably be read to suggest such a requirement. AT&T must be required, however, to pay these costs.

Section 28.3

GTE is only required to provide customized routing for Local Directory Assistance and Operator Services, where technically feasible. AT&T's request to have GTE develop alternative forms of customized routing is not consistent with the Decision. Pursuant to the Decision, GTE is also allowed to recover any costs incurred for implementing customized routing for AT&T.

Section 28.4

See 28.1 above.

Section 28.6

Emergency Calls: GTE does not currently maintain the data AT&T is requesting in a separate electronic file. GTE has indicated to AT&T during negotiations that we are willing to work on a solution to extract this information from GTE's files and provide it to AT&T in an electronic format if AT&T is willing to pay for such extraction. GTE, however, cannot commit to the language AT&T has requested as the information does not currently exist in the format requested and AT&T has not agreed to pay for the service to be rendered (the extraction) as required by the Act.

Section 28.7

GTE's proposal clarifies AT&T's duty to reimburse GTE for any costs associated with rerouting.

Section 30 - Pay Phone Lines & Pay Phone Services

GTE will offer for resale the same services it offers to purchasers of public access lines and pay phone services. AT&T's requests exceed this requirement.

4. Part II: Unbundled Network Elements

Section 32 - Unbundled Network Elements

Sections 32.4

AT&T's use of unbundled network elements is governed by the Act and the FCC's Rules. AT&T use cannot exceed that permitted by the Act and the FCC's Rules, *i.e.*, even if the element happens to be capable of providing a particular use. In addition, some networks elements may be capable as a general matter of providing a particular use, but may not be so in specific instances. *See* discussion regarding Attachment 2, which recognizes that no telecommunication carrier's network (including AT&T's) meets the technical specifications which AT&T attempts to impose upon GTE.

Section 32.7

Pursuant to the First Report and Order, GTE should be allowed to recover any costs incurred for combining various unbundled network elements as requested by AT&T.

Section 32.8

Pursuant to the First Report and Order, GTE should be allowed to recover any costs incurred for combining various unbundled network elements as requested by AT&T. In addition, according to section 251(d)(1) of the Act, GTE should be allowed to recover its costs plus a reasonable profit.

Section 32.10.3.1

The AT&T proposed language that GTE objects to is totally unnecessary, burdensome, and over-reaching. It would permit AT&T to go on fishing expeditions, even when there is no indication of any service quality or other problems. The contract already provides for performance criteria and service standards, and contains penalties

for failure to meet service standards. AT&T agreed to remove this language from the arbitrated agreement in California.

GTE's obligation is to provide service on a nondiscriminatory basis, which GTE intends to do. From a practical standpoint, and contrary to AT&T's proposed language, the priorities for every carrier in every circumstance cannot be "equal". Rather, GTE is responsible to establish processes by which service is provided on a nondiscriminatory basis. For example, a nondiscriminatory process might include a "first come, first served" prioritization. Under AT&T's proposed language, AT&T could arguably object to such a prioritization, and instead demand that each carrier be serviced in sequence (perhaps on an alphabetical basis, beginning with "A", with AT&T therefore first). While in a particular circumstance, this form of prioritization might make sense -- and be nondiscriminatory -- in other circumstances it could lead to nonsensical results. The bottom line is that if AT&T objects to a particular GTE process as discriminatory, there are more that sufficient avenues for AT&T to raise such an objection without the ambiguous language proposed for this section.

Sections 32.10.3.2

AT&T's proposed language is ambiguous -- if not meaningless -- at best. In reality, of course, GTE's obligations are spelled out in the Act, the FCC's Rules (to the extent to which they are effective and applicable), the Decision and the Commission's existing orders. Nothing requires GTE to ensure that AT&T will be successful in its attempt to obtain customers, either from GTE or other CLECs.

5. Part III: Ancillary Functions

Sections 34.1, 34.2,34.3, 35.1, 35.2, 35.3, 35.4 - GTE Provision of Ancillary Functions/Standards for Ancillary Functions

GTE has the same objection to this language as it did for the substantially identical language in the Unbundled Network Elements section discussed above. It is completely unnecessary and burdensome and is an example of AT&T overkill - asking for performance standards, reporting on those standards, penalties if the standards are not met, and then a license to go fishing and ask GTE to send it broad categories of information, even when there is no evidence of a problem. AT&T's complaint that GTE will not provide ancillary functions to AT&T equal to what it provides GTE end-user customer is nonsensical. As GTE has pointed out to AT&T many times, GTE simply does not provide ancillary functions (i.e., collocation, rights of way, conduit pole, attachments, etc.) to its end-user customers.

6. Part IV: Interconnection

Section 37 - Interconnection Points and Methods

Section 37.6.3 - Interconnection Activation Date

Interconnection services may in most cases be provided within a set time period, often within a period as short as 15 days, but depending on whether facilities are already present and the type of interconnection requested by AT&T, new facilities may need to be constructed, which would require additional time. AT&T has not shown a willingness to recognize this basic fact, but wishes to hold GTE to an unreasonable period, unless AT&T "agrees" otherwise. GTE needs more assurance that it will be given a reasonable period of time to fulfill interconnection requests.

Section 37.8 - Nondiscriminatory Interconnection

GTE's major objection to AT&T's proposed language is that it would require GTE to share the cost of "higher quality" interconnection, whether GTE wants or has any use for such higher quality for the services it provides. The requesting party - AT&T - should bear the cost of its request, as required by the Act.

Section 37.10 - 911 Service

Section 37.10.1

GTE disputes the words "and the 10 Digit POTS number for each PSAP" because GTE does not maintain a list of PSAP 10-digit numbers, therefore GTE would have to create a process to obtain and forward these to AT&T. The process would involve GTE hiring persons to perform the tasks of telephoning Directory Assistance, compiling the lists, then periodically telephoning Directory Assistance to ask for updates. In addition, an automated delivery system to an AT&T contact would have to be established. GTE believes that AT&T could perform the same function internally at a lower cost.

GTE's deletions of references to Repair Services are consistent with the order. GTE's proposed language is also more precise in that is requires customized routed calls to be delivered directly to AT&T's directory assistance and operator services platform and not through an access tandem.

GTE has proposed the last sentence of this section because the selective routers were installed to handle a certain maximum quantity of trunks. With wireless companies, Private Switch companies and CLECs requiring access to the selective routers, the capacity of the selective routers will soon be exhausted. The fee proposed by the last sentence charges a portion of the selective router costs to enable GTE to

expand the processing capacity (or purchase a new one if expansion is not viable) to be able to serve these new customers. The pro-rata fee is being applied to all carriers using the selective routers.

Section 37.10.3.6

GTE does not provide this service to itself. The routing of overflow 911 traffic to GTE Operator Services will not result in a more efficient handling of 911 overflow traffic because (1) GTE Operator Services will often be located in a geographic region other than the 911 call and will not be familiar with the proper routing of the regional 911 traffic, (2) such overflow calls will not result in the ANI being forwarded to the PSAP, thus eliminating the automatic retrieval of the Automatic Location Identification (ALI) that identifies the calling party's telephone number, address and responsible Emergency Response Agencies, and (3) the 9-1-1 caller can more often reach the correct PSAP faster by hanging up and re-dialing, than by discussing their location with the operator and helping the operator to search databases for the PSAP which may be responsible. Thus, GTE believes that sending overflow calls to an operator rather than requiring the 9-1-1 caller to redial would reduce the level of 9-1-1 service and does not recommend this policy.

Section 38 - Transmission and Routing of Telephone Exchange Service Traffic

Sections 38.3.3, 38.3.4

Trunk Group Architecture: AT&T's proposed language contradicts itself. The first sentence says that a Tandem connection will permit completion to all End Offices that subtend that Tandem, as well as all other End Offices subtending other Tandems in the LATA; in other words, a single tandem connection to serve the entire LATA and no

necessity to connect directly to each Tandem of the other party. The second sentence then states the opposite; *i.e.,* that each party must interconnect at each of the other party's Tandems. This simply makes no sense. GTE has agreed to provide LATA-wide access from a single access tandem, conditioned upon AT&T entering into the same type of intraLATA toll compensation agreement with GTE as GTE has with other LECs.

Section 38.4 - Signaling

The initial statement in this section is too broad. Since GTE Northwest Incorporated is not an interexchange carrier, CCIS signaling between switches (SPs and SSPs) interconnected to the GTE network can only be provided on an intraLATA basis via a GTE STP pair serving that LATA.

Section 38.4.1

The statement that "Each Party shall charge the other Party equal and reciprocal rates for CCIS signaling in accordance with the pricing schedule" does not acknowledge that both Party's costs for providing signaling may not be the same. Arbitrator Berg acknowledged this in UT-960338, in the Supplemental Decision of February 7, 1997. Correspondingly, for all the same reasons as identified by Arbitrator Berg, AT&T should pay the established port charge for STP connections. GTE has proposed the following alternative language for this section to AT&T which AT&T has accepted in compliance filings for Oklahoma and Florida:

> "Each Party shall pass Calling Party Number (CPN) information on each call that it originates over the Local/IntraLata Trunks. Until GTE installs the capability to use actual CPN information, all calls exchanged shall be billed either as Local Traffic or IntraLATA Toll Traffic based upon a percentage of local usage (PLU) factor calculated based on the amount of the actual volume (or best estimate) during the preceding three months. The PLU will be reevaluated every three (3) months."

This revision is necessary because GTE does not currently have the ability to bill based upon the CPN. If AT&T wishes to bill on that basis, GTE has no objection, but GTE cannot bill on the basis of CPN, but will use the PLU, just as GTE and other LECs have billed for years using the PLU for interstate calls. During the California negotiations the subject matter experts for both GTE and AT&T recognized this and accepted the above revised language.

Section 39.2.4

This is another demonstration of AT&T's lack of understanding of interconnection issues. On the one hand AT&T insists on having LATA-wide access with a single access Tandem connection - then it turns around and states the opposite - that it must connect to every access tandem. AT&T must resolve this issue consistently, rather than leaving GTE to guess which one it really means.

Section 43.3.6 - Transiting Traffic

Section 43.3.6.4

AT&T's proposed language is unacceptable because it purports to make GTE pay AT&T transport and termination charges for calls which GTE end users did not originate. Under the transiting scenario in this section, GTE's only responsibility is to tandem switch traffic between the trunk groups of the third party and the trunk groups of AT&T.

Section 43.3.6.5

GTE's proposed language correctly specifies the respective obligations of each Party. This language allows for the condition set forth in § 43.3.6.4 but does not require it.

Section 43.3.6.6

GTE's proposed language correctly states the obligations of AT&T to compensate the third party LEC based on the third party LEC's rates, and not GTE's. GTE, as provider of the tandem switching and transport functions, would bill AT&T for the elements.

Signature Page

See discussion of the Sixth Recital and "Now, Therefore" clause, above.

B. ATTACHMENT 2

Section 4.2.1.3 & 4.2.1.3.1

The Decision requires customized routing for local directory assistance and operator services only. GTE's deletions of references to Repair services are consistent with the Decision. In addition, with respect to GTE's proposed cost recovery language, this language is necessary because pursuant to the Act, GTE should be allowed to recover its costs and a reasonable profit for any function performed by GTE for AT&T.

Section 4.2.1.4

Pursuant to the Act, GTE should be allowed to recover its costs and a reasonable profit for any function performed by GTE for AT&T.

Section 4.2.1.6

Pursuant to the Act, GTE should be allowed to recover its costs and a reasonable profit for any function performed by GTE for AT&T.

Section 4.2.1.9

Pursuant to the Act, GTE should be allowed to recover its costs and a reasonable profit for any function performed by GTE for AT&T.

Section 4.2.1.28

GTE's proposed language is more precise than AT&T's. The Decision requires customized routing for local operator services only. Furthermore, GTE's language specifies the routing requirements for situations where intraLATA presubscription may or may not be available at a particular central office.

Section 4.2.1.30

The Decision requires customized routing for local directory assistance and operator services only. AT&T's proposed language to use customized routing to route incoming calls to AT&T provided voice mail systems is inconsistent with the Decision.

Section 5.1.1

The technical feasibility limitation requested by GTE is consistent with the requirements of the Act.

Section 5.1.2

Providing customized operator services modifications requested by AT&T will require substantial time, effort, and expense by GTE. Ultimately, AT&T is likely to provide its own OS/DA services from its own platform. As proposed, there is no incentive In the AT&T Agreement to prohibit AT&T from requiring GTE to reconfigure its network only to be abandoned by AT&T a short time later. GTE, therefore, proposes contract language which will fairly compensate GTE for its expenses incurred in reconfiguring its network. GTE's language also obligates AT&T to carefully consider its

branding requests by requiring AT&T to use those GTE OS/DA services that it has reserved, for the duration of the agreement.

Section 5.1.2.15

See discussion of Section 5.1.2, above.

Sections 6.1.1, 6.2.2

See discussion of Section 5.2.1, above.

Section 6.2.2

GTE's language is consistent with AT&T's obligations under the Act.

Section 8.2.10

This language is unacceptable because GTE does not man its wire centers on a seven days a week 24 hours a day basis, and cannot provide AT&T access on such basis. If AT&T's request is within the context of physical collocation, where POT is within the AT&T cage, then this language should be clarified.

Section 8.2.11

This language is unacceptable because GTE will provide dedicated transport systems (*e.g.*, S.S.) to AT&T and such systems will meet the technical specification of the underlying equipment which GTE utilizes in these transport systems. If AT&T requests dedicated transport provided as a system, at technical standard which are not provided as a standard in the GTE's equipment, then AT&T should be required to pay for such dedicated transport systems on an individual case basis.

Section 8.2.12

GTE does not provide electronic provisioning control of dedicated transport. To do so would potentially allow one customer to "bump" the facilities of another customer.

Section 11.3.2.11

As communicated to AT&T, this provision would be acceptable to GTE if GTE's proposed language is included and the word," card numbers" in line 3 is deleted. GTE has proposed these changes to conform with the party's understanding that when a customer chooses to change their local service provider to a provider other than GTE, such customer's GTE line based calling card number is to be canceled. A new line based calling card will be provided by the new service provider. Since the GTE calling card number is no longer valid it would no longer make sense, and AT&T likely would not want, GTE to maintain the line based calling card number in such customer's data.

Section 11.7.1.3

GTE's proposed language requires AT&T to pay the cost of this service, since these costs are not subsumed in the prices which AT&T will be paying for resale services and unbundled network elements.

Figure 2 (and all other figures)

GTE opposes the use of all of AT&T's figures because, although AT&T takes the position that they are merely illustrative, GTE is concerned that they may introduce ambiguity into the Agreement. It is the language of the Agreement which sets forth the parties' respective obligations. Consequently, if the Commission permits these Figures to remain in the Agreement, it should be with the caveat that they may only be used for illustrative purposes and not in any interpretation of the Agreement for, by example, an Arbitrator in accordance with Attachment 1.

Section 11.7.2.1

The additional language proposed by GTE is necessary to assure that GTE is able to recover its costs for making Service Creation Environment resources available to AT&T.

Section 12.2.15

In accordance with the Act and the First Report and Order, AT&T is required to pay all costs not already subsumed in the underlying cost and price of the service requested.

Section 12.3.4

AT&T's proposed language is ill-defined and overly broad. Pursuant to MECAB guidelines, there are specific instances where the tandem will produce records which enable the end office company (i.e., AT&T) to bill. GTE supports the guidelines as set forth in MECAB.

Section 12.3.5

The additional language proposed by GTE is necessary to ensure that GTE is able to recover its costs in making overflow routing of traffic through Tandem Switching available to AT&T.

Section 13.1

Section 13.1.1, 13.1.2.12, 13.1.2.14, 13.1.2.15

GTE has requested the use of the term "designed" prior to "Network Elements" in these provisions to clarify that only specifically fashioned Network Elements are to be included under cooperative testing. A designed network element is a service where GTE is required to review the facility and add or remove network equipment in order to meet the standard technical specifications for the service. In such cases, the GTE

Special Services Center will produce a circuit design layout record from which the GTE technician will build the facility to the specifications.

For example, a designed network loop is a service provided by GTE that is engineered to technical specifications by adding or removing certain network equipment to bring the facility into compliance with the technical specifications. Designed loops include: 4 wire voice grade, 4 wire DATA, 4 wire DATA with conditioning and 4 wire DSI loops. Voice grade loops are not designed services.

Another example of a network element which is not designed is a NID. A NID is not specifically designed by GTE to meet any particular performance specifications. Rather, a NID is merely a piece of equipment which GTE uses in its Network. GTE will cooperatively test only those Network Elements which have been designed/engineered to definite specifications. The testing will be to ensure that such engineered/designed elements meet the specification that they have been designed to fulfill.

Section 13.1.2.16

AT&T's proposed Section 13.1.2.16 is too broad and would allow AT&T to reject any Network Element, even if such Network Element has not been engineered to meet any particular specifications. For example, a NID is not specifically designed by GTE to meet any particular performance specifications. Rather, a NID is merely a piece of equipment which GTE uses in its Network. To allow AT&T to reject a NID under this provision would be nonsensical because the NID has not by itself been designed to meet any particular specification.

GTE proposes the following language to clarify AT&T's proposed language. Insert the term "designed" prior to Network Element" in lines 1 and 3 and replace

“requirements stated herein” at the end of this provision with “technical or performance requirements for such designed Network Element.” GTE’s proposed revisions would narrow the scope of this provision to encompass only designed Network Elements which can be tested to ensure that they meet the specifications for which they have been designed or engineered to meet.

This provision would be acceptable with the insertion of “traceable timing” after “stratum 1" in line 9. This revision is necessary because GTE does not deploy stratum 1 in all end offices and the revision clarifies the fact that network synchronization can be traced back to a stratum 1 source which may be located in a different central office.

Section 13.5.1

AT&T’s language is overly broad. GTE will provide connectivity to components of the GTE SS7 network on an intraLATA basis via interconnection with a GTE STP pair serving the desired LATA, with the exception of access to GTE’s 800/888 (toll -free calling) database, which can be accessed via interconnection to any GTE STP pair.

C. ATTACHMENT 3

Section 2.1.1

The language proposed by AT&T and GTE is not substantively different. Therefore, GTE withdraws its proposed language and accepts AT&T’s proposal in this section.

Section 2.2.1

GTE's language follows the Decision. The Decision requires GTE to provide collocation at "GTE's proposed central offices, serving wire centers and tandem switches and at CEV's (controlled environmental vaults), huts and cabinets." AT&T's

language goes beyond the Commissions order and requires GTE to provide collocation at all "buildings and structures" owned or leased by GTE that house network facilities. In addition, AT&T's language dealing with reservation of future space is redundant; the reservation of future space is covered in section 2.2.1.1.

Section 2.2.1.1

GTE is required by the order to provide collocation for interconnection equipment on terms that are nondiscriminatory. The GTE proposed language reflects this duty. It prohibits GTE from reserving space for the type of equipment that AT&T may collocate for interconnection functions without allowing AT&T and other CLECs to reserve space for the collocation of the same type of equipment. The AT&T proposed language for this section goes beyond the scope of GTE's duty to provide nondiscriminatory collocation for interconnection equipment. It would allow AT&T to reserve space for equipment that is not for interconnection purposes, if GTE needs to reserve space for non-interconnection equipment. This is clearly beyond the scope of the duty imposed on GTE by the Act or the Commission's order. The GTE proposed language should therefore be adopted.

Section 2.2.3

GTE's language is more appropriate because it clearly states that if GTE must provide escort service, it will be at AT&T's expense. It is not reasonable to require GTE to bear the cost of providing the escort service. AT&T has not previously objected to paying this fee when it is required.

The AT&T proposed language in the first line ("any type") would allow AT&T to collocate equipment beyond what is allowed by the Act. Section 251(c)(6) of the Act

requires collocation only of equipment "*necessary* for interconnection or access to unbundled elements" (emphasis added). U.S.C. § 251(c)(6). In interpreting this section, the FCC stated that ILECs should not be required "to allow collocation of equipment without restriction." First Report and Order, para. 581. The AT&T language disregards the restriction contained in the Act and would allow AT&T to collocate any type of equipment as long as AT&T states that it is the type of equipment that could be used for interconnection functions. In addition, if AT&T is allowed to collocated any type of equipment it chooses without restriction as to whether it is "necessary" for interconnection the space available for collocated could be quickly exhausted. This would prevent other CLECs from collocating their equipment in GTE'S structures. The AT&T language "any type" should be rejected and the GTE proposed phrase "the amount and type" and the word "necessary" should be adopted by the Commission as it is consistent with the Act.

The Arbitrator explicitly found that AT&T could not collocate remote switching modules and that GTE "may limit use of collocation space to permissible equipment." The GTE proposed language reflects this decision. The FCC has explicitly found that enhanced services equipment are not necessary for interconnection functions. In its First Report and Order the FCC stated:

> Section 251(c)(6) requires collocation only of equipment "necessary for interconnection or access to unbundled elements." Section 251(c)(2) requires incumbent LECs to provide "interconnection" for the "transmission and routing of telephone exchange service and exchange access," and section 251(c)(3) requires incumbent LECs to provide access to unbundled network elements "for the provision of a telecommunications service." Section 251(c)(6) therefore requires incumbent LECs to provide physical or virtual collocation only for equipment "necessary" or used for those purposes. We find that section

> 251(c)(6) does not require collocation of equipment necessary to provide enhanced services. First Report and Order, para. 581.

In addition, the GTE Telephone Operating Companies Tariff FCC No.1 restricts enhanced premises equipment in section 17.1.1. Similarly, the same section of the FCC tariff restricts the collocation of customer premises equipment. As the Commission has found and AT&T has agreed that GTE's collocation tariff will govern collocation, the GTE proposed language should be adopted for this reason alone.

AT&T's proposed language "in its collocated space within GTE's central office" would allow AT&T's to collocate remote switching modules in GTE's buildings and structures other than central offices. This is clearly in contradiction to the Arbitrator's decision. The Arbitrator stated "AT&T may not collocate remote switching units." AT&T proposed language should therefore be rejected.

Section 2.2.14

AT&T's language is inappropriate because GTE can not in all instances plan and provide notice 5 days in advance of performing work in an area within its central office that could affect the general area in which AT&T has collocated equipment. GTE's language provides for one days notice which provides AT&T a reasonable amount of notice in order to allow it to closely monitor their collocated equipment during any work that is required to be performed.

Section 2.2.15

AT&T's language is inappropriate because of the potential impact that deviation from GTE's normal safety and engineering practices could have on the network. For example, deviation from GTE's normal grounding requirements could introduce noise

into the network and degradation of signal transmission quality. GTE's language provides for the construction of collocated space in GTE's normal manner in compliance with GTE's collocation tariff. Under the GTE language, if AT&T requires special construction procedures, these can be handled on a case by case basis, taking into account the potential impact any procedures may have on the network.

Section 2.2.23.3.8

AT&T seriously misconstrues C.F.R. section 51.323(j). This section merely indicates that a collocating CLEC may construct its own facilities within the collocation space provided by GTE, not that the CLEC has the right to construct the collocation arrangement itself (*i.e.*, the cage, the power facilities, etc.). Nothing in the Agreement would prevent AT&T from constructing or installing its own equipment or facilities. The provisions of section 2.2.23.3.8.1 of Attachment 3, however, have to do with the construction of the collocation space itself, not the construction of AT&T's facilities within the space. Nothing in the Act or the FCC's regulations give AT&T the right to do that and thus AT&T's entire justification for why it "needs" documentation of bids falls apart. GTE's rates for the construction of collocation facilities are set out in GTE's tariffs -- or such rates might be determined by the Commission just as the Commission might determine other rates. Given that, the specific terms and conditions of GTE's arrangements with its contractors are simply irrelevant and this is just an example of AT&T's over-reaching.

Sections 3.1.4, 3.1.7, 3.1.8, 3.2.2, 3.2.5, 3.4.1, 3.5.1, 3.6.7, 3.9.1, 3.9.2, 3.10.1, 3.10.2, 3.12.1, 3.12.2, 3.12.3, 3.17.1

AT&T's proposed definition of "facility" and its refusal to adopt GTE's proposed definitions for the terms "Facility" and "Structure" is nonsensical. Throughout Section 3 of Attachment 3, AT&T apparently proposes using the term "facility" for three distinct purposes. First, the term by AT&T is used to describe items that are attached to poles, placed in conduits or ducts or placed on Rights of Way (see e.g. Section 3.1.6, 3.1.7 and 3.4.1). Second, the term is used to describe poles, conduits, ducts and Rights of Way (see e.g. Section 3.9.2 and 3.11.2). Finally, the term "facility" is used in its general "everyday" meaning (see e.g. Section 3.6., line 3 "and related facilities"). Instead of proposing language that would clarify what the term "facility" means in a given section, AT&T proposes a definition that makes the use of the term ambiguous and confusing. In the first sentence of the AT&T proposed definition, the use of the word "any" yields the absurd result that "facilities" could be anything owned by anyone. AT&T's definition even encompasses items that have nothing to do with the providing of exchange services and are owned by third parties. This is clearly an unreasonable definition and beyond the scope of the Act or this arbitration. In the second sentence, the phrase "include, but not limited to" and "or any other items" again effectively makes the term "facilities" broad enough to include virtually any item.

The definition proposed by GTE for the terms "Facility" and "Facilities" and "Structure" and "Structures" contained in sections 3.1.4 and 3.1.4.1 and the use of these terms throughout Section 3 of Attachment 3 should be adopted. The GTE language differentiates between "poles, conduits, ducts and Rights of Way" and the various attachments and hardware that are connected to them. The language clarifies the parties' responsibilities and eliminates any confusion as to what items are within the

scope of the agreement. AT&T's refusal to agree to this language is patently unreasonable.

Section 3.4.2(d)

Once AT&T makes a request for pole space and GTE approves the request, that pole space is reserved for AT&T, it is immediately available for AT&T's use, and GTE cannot lease that pole space to another carrier. If AT&T reserves the space, but does not occupy the space immediately, GTE is denied the benefit of that asset, but collects nothing for it under AT&T's proposed scenario. If a person rents a house or office space and the landlord holds that space open and available for the tenant, the landlord charges the tenant rent, whether he moves his furniture in or not. GTE is simply asking for normal commercial terms for the leasing of its assets.[42]

Section 3.4.3

Subsection (e)

[42] Note that the same logic would support advance payment for a pole attachment--charging for attachments from the date of approval.

Once AT&T makes a request for conduit space and GTE approves the request, that conduit is reserved for AT&T, it is immediately available for AT&T's use, and GTE cannot lease that conduit space to another carrier. If AT&T reserves the space, but does not occupy the space immediately, GTE is denied the benefit of that asset, but collects nothing for it under AT&T's proposed scenario. If a person rents a house or office space and the landlord holds that space open and available for the tenant, the landlord charges the tenant rent, whether he moves his furniture in or not. GTE is simply asking for normal commercial terms for the leasing of its assets.[43]

Subsection (f)

Cable equipment vaults in GTE's network are typically located directly underneath a switch. Providing access to these areas would constitute a threat to network integrity. GTE would be willing to offer the compromise it made in California, which was accepted by AT&T, and accept the cable vault language with the addition of the following qualifier: "(except where such vault is under a GTE switch, in which case entry will be considered on a case-by-case basis)."

Section 3.4.4

Although GTE will in most cases be able to provide answers prior to approval of a request, in some cases that will not be possible because environmental information may be retained in a different location and from different personnel than those that determine the availability of space. GTE has committed to respond to attachment

[43] Note that the same logic would support advance payment for a pole attachment--charging for attachments from the date of approval.

requests in a very short time frame and committing contractually to provide answers to environmental questions prior to approval of a request could delay the approval.

GTE's proposed additional language reflects the reality that environmental conditions can change daily and that GTE cannot continuously monitor conditions at a site or provide continuous updates of environmental conditions.

Section 3.5.3

AT&T's proposed one hundred and twenty day requirement is not reasonable. If AT&T's permission to attach to our facilities has been revoked, they should be required to remove their facilities as soon as possible. Sixty days should be ample time for AT&T to relocate their facilities. Given the number of attachment requests that GTE is likely to get, we are going to need all available space as soon as reasonably possible. It is not reasonable to allow AT&T to remain on GTE's structures after their permission has been revoked when other CLECs are waiting for space. In addition, AT&T's one hundred and twenty day time period could cause GTE to have to unnecessarily construct additional space, e.g. install taller poles.

The Commission found that "[b]efore denying access to outside facilities for lack of capacity, GTE must explore potential accommodations in good faith." GTE's proposed first sentence reflects this decision and should be adopted by the Commission. In the third proposed sentence, GTE is simply seeking to clarify that if the parties agree to modify or construct additional space for an AT&T attachment, such modifications should be at AT&T's expense. It is unreasonable to expect GTE to provide additional capacity without compensation.

In the second proposed GTE sentence, GTE seeks to be able to deny access if an AT&T proposed attachment would violate nondiscriminatorily applied safety, reliability and engineering principles. These principles are the same principles GTE applies to its own attachments. In addition, the FCC has recognized that ILECs should be allowed to restrict access based on safety concerns. First Order and Report, para. 1177.

Section 3.6.2

AT&T's language should be rejected by the Commission because, by its very nature, breaking out of conduits is a bad engineering practice. One of the purposes of manholes is to create a central location for numerous conduits to come together and then head them off in other directions. Therefore, manholes are the correct place to create breakouts. AT&T is asking for the right to create a hole in a conduit in between manholes simply because it is closer to where they ultimately want to terminate their cable. GTE would never do this because it would leave the remainder of that particular conduit run unusable and typically results in decreasing the usable life of that particular conduit. Additionally, if the conduit is encased in concrete or is surrounded by other conduits breaking out of the conduit could damage the surrounding conduits as well. In addition, the AT&T language refers to a precast knockout in a conduits. There is no such thing as a precast knockout in a conduit. Precast knockouts are places manufactured into the manhole where conduits are supposed to originate and terminate. They only exist in manholes. Additionally, cable is not racked in conduit, it is racked in the manhole. AT&T's languages shows that AT&T is confused about what a conduit is and what a manhole is.

Section 3.6.3

GTE's language calls for AT&T to pay for the provided escort service. It is standard practice to have a GTE escort on site when a company is working in GTE's manholes because the potential for damage to the network is greatly magnified in manholes and conduits as opposed to poles. It is also standard practice for the company doing the work to pay for GTE's escort's time since he/she has been pulled away from their normal duties with GTE to ensure that the work down by AT&T is done in a safe and correct manner. This is simply another way that GTE tries to ensure that its network remains reliable since it is accountable to the public and regulatory bodies if something goes wrong.

AT&T's requested language regarding racking and storage is overly broad. It does not even limit the amount of cable that can be racked and stored; for example, limiting the permissible storage to an amount of cable sufficient to make emergency repairs, etc. Manhole space is very limited, and AT&T should not be permitted to eat up space that may be needed for actual facility placement by GTE or other carriers. GTE would not object to language that would give AT&T the right to obtain space for racking and storage of a very limited amount of cable, which cable storage space would be given.

Section 3.6.5

GTE's objections to AT&T's language are that it requires GTE to affirmatively "offer" conduit or duct space, rather than to merely permit AT&T to use it upon request, and it would appear to require GTE to allow AT&T to use all such space. The Act does not require an ILEC to "offer" conduit or duct space for which it has not received a

request, and AT&T's language would imply that GTE has some obligation to reserve all this space for AT&T rather than making it available to other CLECs. This is clearly not what the Act intended.

In addition, AT&T's language which limits reserving no more than one innerduct for emergency purposes is inconsistent with the agreed to language at the end of section 3.2.5 which states that a full duct will be reserved for emergency and maintenance purposes. Specifically, AT&T's language requiring GTE to offer AT&T "the use of at least one inner duct" whenever two inner ducts are available, contradicts the agreed to language at the end of section 3.2.5. That language allows GTE to reserve one full duct in each conduit section for emergency and maintenance purposes. Requiring GTE to provide an inner duct where a full duct, except for the emergency duct, is not available would contradict that provision.

Section 3.6.6

GTE should not be made the middleman and AT&T should recover its capital costs directly from any entity subsequently occupying such inner duct.

Section 3.7

Section 3.7.1

AT&T's proposed language would create an affirmative duty on GTE to negotiate with landowners on AT&T's behalf to obtain permission to use a right of way or to increase the amount of space granted by a landowner in a right of way. The phrase "shall cooperate with AT&T in obtaining such permission" and the last AT&T proposed sentence of the section impose an affirmative duty on GTE to assist AT&T in its negotiations with the landowner who owns the ROW. There is no reason why AT&T

cannot conduct these negotiations on their own behalf. In addition, requiring GTE to negotiate for At&T is effectively requiring GTE to act as an agent for AT&T without compensation. Finally, the reference to section 3.6.1 is nonsensical. If a landowner refuses to expand a right of way, GTE cannot take any action that would expand the right of way without the landowners cooperation.

Section 3.7.2

This subsection requires GTE to allow AT&T use of ROWs beyond when GTE's agreement with the property owner would permit such access. In addition, subsection 3.7.2.1 enumerates items that are not even ROW -- such as spare metallic or fiber optic cable. This goes far beyond the requirements of Section 2.2.1. In its Agreement with GTE in California, AT&T dropped all of subsection 3.7.2 and dropped the bolded language from subsection 3.7.1.

Section 3.11.1

GTE's concern with unauthorized attachments is not an imaginary one. GTE has entities that make unauthorized attachments to its poles on a frequent basis. Because of the number and remoteness of many of its poles, this is very hard to police. Although AT&T may not present a particularly great risk for unauthorized attachments, given GTE's nondiscrimination obligations, GTE must take a uniform approach on this issue with all attaching entities. If an entity that makes an unauthorized attachment only has to remove the attachment, there is no disincentive for the activity -- it just becomes a cost of doing business. It will often be cheaper to remove an unauthorized attachment than it would have been to pay the attachment fee for the period of time prior to

discovery. GTE must be able to impose a charge that will act as a disincentive for unauthorized attachments.

Section 3.11.2

The proposed GTE language prevents third parties from attaching to GTE facilities without GTE's permission. Any entity that wants space on GTE's poles or ducts should be required to sign a pole attachment agreement directly with GTE. The omission of this provision would allow AT&T or another carrier to buy up more space than they need and then sublease the space to a third party. This would prevent GTE from efficiently allocating the space among carriers and controlling the uses for which its facilities are employed.

Section 3.13.1

AT&T's proposed language would permit AT&T to sit back and refuse to "participate" in a modification, in order to avoid payment, and then enjoy the benefits of the modification at no cost. AT&T erroneously interprets of the FCC's Order as intending that an attaching party that incidentally benefits from a modification should not be responsible for the cost. Moreover, AT&T's proposed contract language does not require AT&T to remove its facilities to accommodate modifications where necessary. As such, AT&T purports to give itself the power to block further modifications -- to the detriment of GTE, or every other CLEC. Such a power is not consistent with the Act, the FCC Order, the Decision, or sound public policy.

GTE's proposed time period of thirty days notice provides more than a sufficient amount of time for AT&T to decide whether they want to participate in a modification. A

sixty day notice period also unreasonably complicates GTE's ability to plan for future medications.

GTE's language requires AT&T to pay the proportionate share of any costs incurred from a modification to the extent AT&T benefits from such modification. AT&T proposes language that would require AT&T to only pay for a modification if it agreed to participate in the modification. AT&T's language would allow AT&T to be a "free-rider" on any modification by refusing to participate in a necessary modification that will provide it with benefits. In addition, the Act imposes the cost of a modification on the parties benefitting from the modification. Act § 224(h); First Report and Order, para. 1166.

Section 3.14.1

GTE has no objection to submitting to arbitration the issue of whether AT&T has, in fact, committed a Material Default under the Agreement. *See* Main Agreement, Section 3.3. However, AT&T's refusal to pay or perform under the terms of this Attachment should not leave GTE without a remedy and therefore GTE should be permitted to declare AT&T in default.

Section 3.15.1

AT&T's proposed one hundred and twenty day requirement is not reasonable. The same reasons why AT&T should only be provided with sixty days to remove an attachment in the case of the revocation of the right to attach to a GTE facility (Section 3.5.3) apply here.

D. ATTACHMENT 4

Section 4 - General Ordering Requirements

Section 4.1

This action has been agreed to. All bold and double-underlined text should appear as plain text.

E. ATTACHMENT 6

Appendix C, Section 2.3

This section has been agreed to. All bold and double-underlined text should appear as plain text.

F. ATTACHMENT 8

Attachment 8 -- Overview

GTE disputes all references to "Flexible" or "Flex" Direct Inward Dialing. Although GTE agrees to the inclusion of language referring to Direct Inward Dialing or "DID", neither the FCC order nor the Decision require GTE to provide Flexible DID which is a specialized form of DID. GTE's dispute, therefore, is strictly in reference to the words "Flexible" or "FLEX".

Section 2.3.2

AT&T's proposed language presents, at best, a costly and inefficient and at worst, a technically infeasible plan for implementing Direct Inward Dialing trunks with SS7 signaling as an interim number portability solution. AT&T's proposed language is particularly troublesome considering the requirement to exchange SS7 TCAP messages for CLASS services. The difficulties of AT&T's plan are as follows: 1) No industry standards exist today for central office switch to central office switch SS7 signaling for Direct Inward Dialing (DID) trunks; 2) In spite of the lack of industry standards, it may be

possible to establish SS7 call setup signaling on that basis. However, the STPs which route SS7 TCAP messages for CLASS services cannot distinguish between ported and non-ported destination central office switches, using STP routing tables. CLASS services require the customer to build number screening tables (such as selective call forwarding, selective call rejection, VIP alert, automatic call-back and busy recall) will not function between central office switches unless a 10-digit global title translation (GTT) is implemented for each individually ported telephone number; 3) The implementation of these 10-digit GTT will require notification of the porter number, entry and further administration of a table entry in the STPs for every number ported to a CLEC; 4) AT&T's proposed language, therefore, would require 10-digit GTT in a number of STPs for an undetermined, and most likely very large quantity of ported numbers; 5) Capacity for additional 10-digit GTT is determined by two factors -- first, the amount of memory available for GTT tables in the particular STP, and second, the total capacity for GTT tables in the STP, as designed by the STP vendor (and therefore beyond GTE's control). Incremental memory for 10-digit GTT could be added (at the expense of the CLEC) to the STP, up to the STP vendor's ultimate memory capacity limitations. The determination of whether AT&T's solution exceeds particular STP vendor capabilities is therefore technically infeasible, cannot be made until considerable time, effort, and expense has been incurred for the investigation of the individual STP memory availability and ultimate STP capacity by vendor, for each STP pair in GTE's SS7 network, and compared against a forecast for number porting in the central office switches served by each STP.

Notwithstanding the above technical limitations, the implementation of AT&T's proposed language in practice would quickly become an administrative nightmare. Furthermore, the rapidly approaching advent of Permanent Number Portability will render the above AT&T solutions completely obsolete. Whereas the financial and human resources needed to implement, if even feasible, AT&T's disputed language are tremendous, the corresponding benefit of diverting such resources away from the development of Permanent Number Portability is limited. In contrast AT&T's proposal, GTE's proposed interim number portability solution of using multi-frequency signaling but not SS7 signaling, offers AT&T fully adequate short term number portability without the corresponding obstacles of using SS7 signaling. GTE's language simultaneously promotes cost efficient short term number portability and dedicated research of long term permanent number portability solutions. AT&T's language accomplishes neither.

Section 3.7

AT&T's proposed use of the word "ported" is inappropriate in this context. A "shadow" number is the number generated by the CLEC to correspond to a specific "ported" number of an ILEC. In the context of the disputed sentence, AT&T will be creating the shadow numbers corresponding to GTE's ported numbers.
Thus, the sentence should read " . . . AT&T's shadow number . . . ."

GTE's charging of a fee for verification services is consistent with the Decision. Finally, in accordance with national stipulations, the first sentence of Section 3.7 should read “AT&T shall have the right to utilize existing GTE 911 infrastructure for all 911 capabilities.”

G. ATTACHMENT 9

Section 2.1

GTE should not be required to provide access to fraud prevention, detection and control functionality within pertinent OSS as this could compromise network security.

H. ATTACHMENT 11

"Central Office Switch"

GTE's proposed definition is a more accurate and descriptive definition of Central Office Switch via its description of the class of the switch utilized.

"Combinations"

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition which should be utilized in the one set forth in the text of the Agreement.

"Directories Agreement"

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition which should be utilized in the one set forth in the text of the Agreement.

"Directories Service"

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition which should be utilized in the one set forth in the text of the Agreement.

"Effective Date"

AT&T's proposed language assumes that the Agreement may become effective *prior to* approval by the Commission in accordance with Section 252, which it may not. In contrast, GTE's language subsumes Commission approval prior to the effectiveness of the Agreement.

"Facility" and "Facilities"

See discussion of Attachment 3, Section 3.1.4.

"GTE"

This definition is not in dispute.

"Interconnection"

The use of the words "within networks" is incorrect. Interconnection is between networks.

"Local Traffic"

A definition of Local Traffic is necessary because it is used as a defined term throughout the body of the agreement (*e.g.*, section 37.4).

"LSR"

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition which should be utilized in the one set forth in the text of the Agreement.

"Quality Standards"

This definition merely refers to the Quality Standards set for in Attachment 12. GTE does not know AT&T's objection to this definition.

"Real Time"

GTE objects to the definition of Real Time proposed by AT&T because it would require virtually simultaneous recording or reporting of an event in circumstances where it is not technologically feasible to provide such reporting or recording.

"Service Order"

This term is specifically defined elsewhere in the Agreement (as noted in GTE's proposed language). Setting forth a potentially different definition in this Attachment creates a substantial risk of ambiguity. The definition which should be utilized in the one set forth in the text of the Agreement.

"Third Party Agreement"

This definition should be deleted. There is no reference to a "Third Party Agreement" in Section 5 of the main agreement.

"Work Locations"

AT&T's definition is too broad and would encompass all real estate owned, leased or licenced by GTE. GTE believes that in order to properly conform to the context in which this term is used, the term "Work Locations" should also include real estate owned, leased or licensed by AT&T and should be limited to such real estate that is used for the purposes of providing telecommunications services. For instance, under AT&T's proposed language GTE's administrative offices would be considered a "Work Location" whether or not it is used for the purpose of providing telecommunications services.

I. ATTACHMENT 14

Attachment 14, Page 2, § 1

For the purposes of this compliance filing in Washington, GTE does not dispute the last sentence of the second paragraph.

Attachment 14, Pages 2- 3, § 3

For the purposes of this compliance filing in Washington, GTE does not dispute this section. Therefore, GTE withdraws its proposed alternative language.

Attachment 14, Appendix 1, Page 5

GTE objects to the word "contract," because the universe of the retail offerings that are subject to this Agreement includes far more than the limited number offered on an individual contract basis. For this reason, GTE considers the reference to "contract" retail elements as grossly under-inclusive or, at best, redundant. The reference to "tariff" retail rate elements should suffice, since the retail services that are available for resale would all be reflected in GTE's tariff.

Attachment 14, Appendix 1, Annex 1, Page 6

See above comment to Appendix 1, Page 5.

Attachment 14, Appendix 1, Annex 2, Page 7

See above comment to Appendix 1, Page 5.

Attachment 14, Appendix 8, Page 17

GTE proposes to accept AT&T's proposed language (in the second paragraph) and withdraw GTE's alternative language if AT&T agrees to add the following proviso to its language: "However, AT&T is not thereby relieved of its obligation to independently verify and confirm the availability of a proposed route before authorizing GTE to commence "make ready" work."

As the last paragraph of Appendix 8 clearly states, “GTE shall not commence work on the request until it receives prior authorization from AT&T.” GTE’s newly proposed proviso flows logically and reasonably from the above statement. If GTE cannot commence “make ready” work on a route without “prior authorization” from AT&T, then, notwithstanding GTE’s advice that a route is available, AT&T cannot claim to be completely free of fault if it fails to independently verify the availability of the route and it turns out that the route is, in fact, not available. GTE’s proposed proviso attempts to make both parties, not just GTE, responsible for avoiding such a costly “mistake of fact.” Without GTE’s proposed proviso, AT&T may decline (unreasonably) to avail itself of an opportunity and a “last clear chance” to avoid wasteful expenditure on its behalf as a result of a prior non-intentional error on GTE’s part.

Regarding the third paragraph, it is GTE’s understanding that particular language was rendered redundant by the agreement reached between AT&T and GTE on the second half of the last sentence of the first paragraph, which reads “ . . ., where necessary, costs [shall be] allocated and prorated in a nondiscriminatory and competitively neutral manner in accordance with methodology approved by the FCC or the Commission.” In light of this provision, the dispute over the third paragraph should be regarded as moot.

J. ATTACHMENT 15

AT&T and GTE are in substantial agreement as to reciprocal compensation issues. Where the parties diverge is over the application of the Residual Interconnection Charge (RIC) on the interstate side and the Network Interconnection Charge (NIC) on the intrastate side, as well as the Carrier Common Line (CCL) Charge.

GTE's position is that these charges, and the costs they represent, are not included in the unbundled switching element charge, and that ILECs should be permitted to charge these rate elements in connection with intrastate and interstate toll calls where the GTE unbundled switch is used.

Section 2B(2)

AT&T's proposed language is redundant since the compensation arrangement is specified in Attachment 14, Appendix 4, section 2.

Section 2B(2)(e)(1) & (2)

AT&T's proposed language is redundant since the compensation arrangement in Attachment 14, Appendix 4, section 2 will apply, as specified in the heading for section 2B(2). Furthermore, AT&T's proposed language is incorrect since bill & keep compensation does not apply when there are symmetrical rates, but when the exchange of traffic is in balance.

Section 2B(3)(a)(1) & (4); section 2B(3)(b)(1); section 2B(3)(c)(1); section 2B(3)(d)(1) & (3); section 2B(3)(e)(1) & (3); section 2B(3)(f)(1); section 2B(3)(g)(1); section 2B(4)(a)(2); section 2B(4)(b)(2); section 2B(4)(c)(2); section 2B(4)(d)(2); section 2B(5)(a)(2); section 2B(5)(b)(2); section 2B(5)(c)(2); section 2B(5)(d)(2)

AT&T's proposed language on charging 75% of the Residual Interconnection Charge (RIC) is based on the portion of the FCC order which is currently stayed by the Court. Existing rules for applying switched access charges should apply (*i.e.*, 100% of the RIC).

III. PROPOSED ORDER

For the reasons identified in Part I, AT&T's proposed order must be rejected by the Commission. The Arbitrator's Decision upon which AT&T based this agreement is, in numerous regards, in conflict with the Act, sound public policy and elementary notions of simple fairness. The Commission should reject the proposed agreement, revise the Arbitrator's award, and direct the parties to submit a revised agreement.

Respectfully submitted this __ day of February, 1997.

GTE NORTHWEST INCORPORATED

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