BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. and GTE NORTHWEST, INCORPORATED Pursuant to 47 U.S.C. Section 252.	))))))))	DOCKET NO. UT-960307 COMMISSION ORDER APPROVING INTERCONNECTION AGREEMENT

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I. INTRODUCTION

A Summary

This order:

- Adopts the resolutions in the Arbitrator's Decision & Report with the exception of his resolution of Issue 27 (Higher Level of Service) and Issue 50 (Collocation of Remote Switching Units).
- Adopts the resolutions in the Decision Makers's Resolution of Contract Language Disputes with the exception of his resolution of the SS7 Network Interconnection issue..
- Makes various changes to both documents correct scrivener's errors and to make them more consistent with the recent Eighth Circuit decision.
- Approves the fully-negotiated provisions of the parties' proposed contract.

B Procedural History

March 11, 1996. AT&T notified GTE of its desire to negotiate an interconnection agreement.

August 19, 1996. AT&T petitioned for arbitration.

September 24, 1996. GTE responded to the petition.

October 2, 1996. The Commission established Docket UT-960324 to resolve issues relating to GTE's assertion that its ConTel service area qualifies for the rural company exemption.

November 4 and 5, 1996. Arbitrator Karl Craine conducted the arbitration hearing.

November 15, 1996. The parties filed their final briefs.

December 11, 1996. The Arbitrator issued his Report & Decision pursuant to the Telecommunications Act of 1996 ("the Act").

December 20, 1996. AT&T petitions for reconsideration of the Report & Decision; GTE files appeals the Report & Decision to the Federal District Court for the Western District of Washington.

February 4, 1997. The Arbitrator issued a Supplemental Report clarifying part of the Report & Order.

February 7, 1997. AT&T filed a Request for Approval and Modification of Arbitrated Agreement.

February 18, 1997. GTE filed Comments on AT&T's Request for Approval and Modification of Arbitrated Agreement.

April 30, 1997. The Commission accepted the parties' proposal to appoint a "Decision Maker" to resolve contract language disputes. It appointed Karl Craine to serve as the Decision Maker.

May 2, 1997. The Decision Maker heard oral arguments on the contract language issues.

June 2, 1997. The Decision Maker issued his Resolution of Contract Language Disputes document.

July 25, 1997. Effective date for AT&T's Request for Approval of Interconnection Agreement, with Objections and Requests for Modification of the Recommendations of the Arbitrator/Decision Maker; effective date for GTE's Memorandum in Opposition to AT&T's Request for Approval of Interconnection Agreement and Requests for Modifications of the Decision Maker's Award, and in Support of GTE Northwest's Requests for Modifications of Decision Maker's Award. Both parties proposed that the Commission reject portions of the Arbitrator's Report & Decision and the Decision Maker's Resolution of Contract Language Disputes. The resulting deadline for the Commission's order is August 25 (the first business day after August 24).

August 1, 1997. GTE filed Further Comments and Request of Modification in Light of Eighth Circuit's Opinions.

August 2, 1997. AT&T filed a Reply in Support of its Request for Approval of Interconnection Agreement and for Modification of the Recommendations of the Arbitrator/Decision Maker.

August 15, 1997. AT&T filed its Reply to GTE Northwest's Further Comments and Request for Modification in Light of Eighth Circuit's Opinions.

August 20, 1997. The Commission considered the Interconnection Agreement and the issues the parties raised in their various filings. It heard staff recommendations and oral argument from Daniel Waggoner for AT&T and Timothy J. O'Connell for GTE.

C Decision Notes

Generic Pricing Proceeding. In this proceeding, the Commission's task is to establish interim rates. It will not establish permanent rates until it concludes its generic pricing proceeding, *In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale*, Docket No. UT-960369, et al. The first phase of that proceeding has focused on methodology. To the extent the methodology decisions in this order differ from the decisions in Docket No. UT-960369, they simply reflect differences arising from the nature of the two proceedings and the evidence before the Commission. The Commission will establish its "permanent" pricing policies in Docket No. UT-960369.

Federal Rules & Policies. The FCC adopted rules to implement the Act in Order No. 96-325. A variety of parties appealed the FCC's order and the Eighth Circuit Court of Appeals temporarily stayed some of the rules. The stay was effective at the time the Arbitrator issued his Report & Decision and was still effective when the Decision Maker resolved the contract language disputes. Both of those documents complied with the rules which were effective at the time.

Shortly before the parties filed the contract, the Eighth Circuit issued two opinions resolving appeals of the FCC's order. The Court's vacation order differs from its temporary stay, and the parties had an opportunity to argue the impact of the decision, so the Commission has made changes to the Arbitrator's Report & Decision, and the Decision Maker's Resolution of Contract Language Disputes, which the Commission believes necessary for this order to comply with the Eighth Circuit Decision.

The bulk of the changes arise from the Arbitrator's consistent use of the FCC's "technical feasibility" test for resolving unbundling issues. That test is not consistent with Section II.G.1.c of the Eighth Circuit's decision. Now that the Eighth Circuit has required different findings, the Commission has modified the Arbitrator's discussion of the following issues: Issues 17 & 18: (Customized Routing for DA and OS); Issue 33: (Subloop Unbundling); Issue 39: (Dark Fiber); Issue 40: (Transport Unbundling); Issue 41: (Operator Systems); and Issue 43: (Tandem Switch Unbundling). The Commission's analysis did not change the outcome for any of those issues.

D Basis for Decision

The Commission bases its decision on the full record, including the parties' submissions, the Arbitrator's Report & Decision, the Arbitrator's Supplemental Report, and the Decision Maker's Resolution of Contract Language Disputes. The Commission's findings of fact reflect the preponderance of the evidence.

E Arbitrated vs. Negotiated Provisions

Issue. AT&T notes that about 29 provisions which GTE listed as "fully negotiated" for the March 4 filing are not on GTE's "fully negotiated" list for this filing.

Discussion. The Commission need not determine whether any of the 29 provisions belong on the "fully negotiated" list unless, under the tighter statutory standard for approving terms after arbitration, the Commission would conclude that it should not approve the agreement. None of the 29 provisions at issue here contain terms that fail to meet the tighter standards.

Conclusion. There is no need for the Commission to determine whether any of the 29 provisions should be on the "fully negotiated" list.

F Staff Recommendation

David Griffith, Commission Staff, Gregory Trautman, Attorney General's Office, and Karl Craine, Decision Maker, reviewed the Interconnection Agreement and the issues the parties raised in their various filings. Staff recommended the following changes:

Issue 27 (Higher Level of Service). Revise the Report & Decision to reflect Eighth Circuit decision that GTE has no obligation to provide a higher level of service than it provides to itself.

Issue 50 (Remote Switching Units). Revise the Report & Decision to allow collocation.

Attachment 2 Section 13.5.1 (SS7 Interconnection). Revise Decision Maker's Resolution of Contract Language Disputes and the Interconnection Agreement to remove restriction on access only for local service.

G Summary of Changes

The full text of changes the Commission has made to the Arbitrator's Report & Decision, Decision Maker's Resolution of Contract Language Disputes, and Interconnection Agreement appears in Appendix A.

II. ARBITRATION ISSUES

Issue 1: Definition of a "Retail Offering" (AT&T)

AT&T's Request. AT&T asks the Commission to expand the Arbitrator's definition of a "retail offering" to include services which GTE provides under special contracts. This issue arises because the Resolution Contract Language Disputes document deleted the words "contract or" from Attachment 14, Appendix 1, Section 1.2 and Annex 2 of the contract.

Report & Decision. Issue 1 dealt with the proper methodology for calculating the wholesale discount rather than the scope of services available for resale.

Supplemental Report & Decision. AT&T asserted that the Report & Decision should clearly show that GTE must provide an additional discount for package and volume discount services; otherwise, GTE could limit or avoid its wholesale obligations by moving customers to those services. The Supplemental Report & Decision clarified the point by adding the following language: "To the extent GTE offers package or volume discounts, AT&T may purchase the service at the lower of the wholesale price (full retail rate minus the wholesale discount) or the package/volume discount price."

Resolution of Contract Language Disputes. The Arbitrator selected GTE's language because contract rates typically reflect discounts from the retail rate.

AT&T's Argument. The "contract or" language is necessary to ensure that AT&T can obtain, at a discount, services which GTE offers under individual contracts. It is consistent with the Eighth Circuit's decision to uphold 47 C.F.R. 51.613(a)(2).

GTE's Argument. Attachment 14 contains pricing provisions with Appendix 1 addressing resale of local services. Since that particular part of the contract addresses pricing rather than availability, AT&T's "contract or" language would suggest that AT&T should be able to obtain the full wholesale discount from contract rates. That would conflict with the Arbitrator's ruling that AT&T may obtain the higher of a contract's volume discount or the wholesale discount, but not both.

Discussion. It is important to look at the contract as a whole rather than simply the one section at issue. In Section 24 of the General Terms & Conditions, the parties specifically address the scope of services available for resale:

> Upon request by AT&T in accordance with Section 25.1 and subject to the restrictions contained in Section 25.3 hereunder, GTE shall make available to AT&T at the applicable rate set forth in Attachment 14, any Telecommunications Service that GTE currently offers or may hereafter offer at retail to subscribers that are not telecommunications carriers.

Section 25.1 addresses the ordering process and Section 25.3 addresses restrictions on resale. Section 25.3 starts by elaborating on the general scope of services available for resale:

> To the extent consistent with the applicable rules and regulations of the FCC and the Commission, AT&T may resell all GTE Local Services as defined in GTE's tariffs. …

This reference to GTE's tariffs is consistent with GTE's position that individual contracts involve volume or term discounts from tariffed rates. GTE correctly asserts that AT&T's "contract or" language in the pricing section is not necessary for AT&T to resell contract services and could create the impression that the parties intended to apply the full wholesale discount to the contract price. The existing GTE language more clearly specifies that the wholesale discount applies only to the full retail rate.

This result is consistent with 47 C.F.R. 53.613(a)(2). That rule applies to promotional rates rather than contract rates. It is not a sufficiently similar situation because ILEC's are much more likely to circumvent the resale provisions through long-term promotions than individual contracts for customers.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 1: Avoided Cost Measurement (GTE)

GTE's Request. GTE asks the Commission to focus on the costs which GTE would avoid for individual wholesale transactions (very few). The result would be for the Commission to adopt either GTE's initial study or GTE's Modified Study (to reflect a pure Uniform System Of Accounts approach).

Report & Decision. The Arbitrator concluded that it is more appropriate to measure costs at an operational level and exclude costs which a wholesaler avoids when it does not conduct retail operations.

GTE's Argument. It appears that the Arbitrator improperly focused on "avoidable" costs for the following types of costs:

Advertising. GTE 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. While those are the bulk of the advertising expenses in Account 6613, GTE does advertise wholesale services and the Arbitrator should not have factored all of Account 6613 into the wholesale discount.

Operator Services & Directory Assistance. Since operator services and directory assistance do not relate to all retail services, it was not appropriate to factor the entire amount of Accounts 6621 and 6622 into a uniform wholesale discount for all services. Even for R1 and B1 services, the evidence shows that their rates do not cover Account 6621 and 6622 expenses. Even if the rates did cover the expenses, AT&T's plans to perform the functions is irrelevant because they are functions GTE performs and GTE has no obligation to revise the functions in a retail service to suit AT&T's preferences as a reseller. Finally, Account 6622(Number Services) also covers other activities.

Sales Expenses. The Arbitrator's decision is acceptable with the understanding that Account 6612 includes some wholesaling expenses from GTE's existing wholesaling businesses and the understanding, as the Arbitrator stated, that GTE will incur some "new wholesaling costs" relating to wholesaling of local services.

Uncollectible Expenses. The Arbitrator concluded that GTE's uncollectible expenses "should be relatively small" and then adopted AT&T's "100 percent avoided" position on the issue. The 100 percent position is contrary to the evidence.

Discussion. The Arbitrator's decision is consistent with FCC Order No. 96-325. It remains a permissible outcome under the Eighth Circuit's decision because

nothing in the decision supports GTE's contention that this Commission must focus on the costs GTE would avoid for a single wholesale transaction.

GTE correctly notes that the Act refers to "costs that will be avoided" by the ILEC. That phrase could refer to the costs GTE would avoid in a single transaction, but that interpretation would not be consistent with the Act.

The Act requires ILECs to become wholesalers for the purpose of creating retail competition. Retail competition cannot exist if the retail margin available to competitors consists of the few costs an ILEC would avoid for a single wholesale transaction. That is a "pro-competitor" interpretation which is not consistent with the Act's basic goal of creating a competitive market. It also is not consistent with the various provisions prohibiting discrimination against CLECs.

The interpretation consistent with the Act is the FCC's "pro-competition" interpretation. It is promotes competition by assuming, for pricing purposes, that an ILEC's wholesale operation will want to maximize wholesale profits by serving CLECs and resellers in addition to the ILEC's retail operation. The ILEC's wholesale operation will, or at least should, avoid entire categories of retailing costs in focusing on wholesaling activities.

With respect to specific cost categories, the place to refine the analysis of those items is the generic cost proceeding rather than this late phase of the arbitration proceeding. It does not appear than any errors in the Arbitrator's analysis are of sufficient magnitude to require changes in rates which will be effective only for a short period of time.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 1: FCC Avoided Cost Figures (GTE)

GTE's Request. GTE asserts that the Commission may not rely on FCC avoided costs figures in setting the wholesale discount.

Report & Decision. The Arbitrator concluded that he could not adopt either party's proposal. He analyzed each of the individual cost components with a resulting discount, using national numbers, of 18.8 percent. He invited the parties to propose an alternative using Washington figures, but they did not do so.

GTE's Argument. When the Eighth Circuit vacated the FCC's proxy price rule, it eliminated any validity the FCC's discount figures may have had.

Eighth Circuit Decision. The Court did not address the validity of the FCC's methodology or the data it used:

> Having concluded that the FCC lacks jurisdiction to issue the pricing rules, we vacate the FCC's pricing rules on that ground alone and choose not to review these rules on their merits. *(footnote omitted)*

1997 WL 403401 (July 18, 1997) at 19-20.

Discussion. The Eighth Circuit specifically did not rule on the validity of the FCC's methodology, inputs, or resulting price figures. Its decision to vacate the FCC's pricing rules on jurisdictional grounds does not invalidate the Arbitrator's reliance on the FCC's wholesale discount figures.

The Arbitrator appropriately concluded that he could not adopt either party's offer. He had an obligation to produce an interim discount which would comply with the Act and did not have time to reopen the record for the purpose of taking additional evidence on the issue. That situation—lack of sufficient information in a conventional record to make a timely decision—is a situation which Congress contemplated when it wrote the Act. The Act allows a state commission to "proceed on the basis of the best information available to it from whatever source derived" when necessary. 47 U.S.C. 252(b)(4)(B). In this case, neither party presented the information the Arbitrator needed to resolve the issue and, at that point in the proceeding, it would have been pointless to ask for more.

The best information in this case was the extensive discussion in the record of the FCC's methodology, inputs, and resulting discount figures. The inputs may have been national averages, but the Arbitrator gave the parties an opportunity to substitute Washington-specific data. They did not do so.

Conclusion. The Commission adopts the Arbitrator's resolution .

Issue 3: Nonrecurring Charges (AT&T)

AT&T's Request. AT&T asks the Commission to reverse the Arbitrator decision allowing GTE to collect non-recurring charges from AT&T.

Report and Decison. The Arbitrator selected GTE's nonrecurring charges because the Hatfield model does not calculate them.

Supplemental Report & Decision. The Arbitrator clarified his resolution of Issue 3 by stating that, while the Hatfield Model may capture nonrecurring costs, the interim rates resulting from the Arbitration would not be effective long enough for GTE to recover nonrecurring costs.

AT&T's Argument. The Hatfield Model produces prices which recover the costs which GTE recovers through nonrecurring charges. Allowing GTE to charge

Hatfield Model prices plus nonrecurring charges allows double recovery of nonrecurring costs.

Discussion. AT&T's position on this issue would effectively prevent GTE from recovering nonrecurring costs.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 3: Cost Model Selection (GTE)

GTE's Request. GTE asks the Commission to reject the Hatfield study and base interim rates on GTE's cost study results.

Report & Decision. The Arbitrator concluded that the Hatfield Model was the better cost model.

Supplemental Report. Arbitrator refused to consider new evidence about the relationship between the Hatfield Model results and GTE-specific costs.

GTE's Argument. The Act and Constitution require the Commission to set interconnection and network element rates at a level which will cover GTE's actual costs. GTE is willing to use a forward looking incremental cost methodology for setting rates, provided that the Commission establish an end user surcharge to cover the shortfall below actual costs. The Commission cannot use the Hatfield Model because it does not reflect actual costs and does not even reflect GTE's incremental costs. Specific problems with the Arbitrator's initial and supplemental decisions are:

New Evidence. The Arbitrator should have considered the new evidence and found that the Hatfield Model understates GTE's actual costs by 77 percent.

GTE's Model. The Arbitrator should not have tritely dismissed GTE's model as a "black box" and criticized its use of proprietary information because the model uses actual cost information rather than fictional information.

Fill Factors. The Commission should use GTE's actual fill factors. If it does not, it should allow GTE to recover the difference between objective fill factors and actual fill factors, as it has in the past, by treating the difference as a shared cost (and providing for recovery through an end-user surcharge). The cost simply disappears under the Hatfield Model and the Arbitrator's decisions.

Input Errors. The Arbitrator mentioned minor errors which biased GTE's costs downward. His assertion that GTE could have run the Hatfield Model with inputs more to its liking misses the point that the Hatfield Model also contains structural errors.

Discussion. It would not be appropriate to consider GTE's new evidence after the Arbitrator issued his Report & Decision. It also would be premature to modify the interim rates before completion of the generic cost proceeding.

With respect to GTE's specific arguments:

New Evidence. The Arbitrator could not have given AT&T an opportunity to respond to the new evidence, reconsidered the issue, and then revised the Report & Decision within the statutory time frame.

GTE's Cost Study. The time when any party can reasonably expect the Commission to accept a cost study which is not open to inspection has past. In this case, the Arbitrator noted that:

- Neither AT&T nor staff could verify most of the key inputs (e.g. prices for equipment) because GTE did not verify them; GTE and its vendors require secrecy agreements which take inspection of the model out of the public arena.

- GTE did not produce the model in computer readable format until shortly before the hearing (and that did not include the switching model); the model was in compiled form which prevents analysis of internal formula and calculations

Those two problems prevent the Commission from concluding that the Arbitrator "tritely" rejected the model. Given those problems, the only findings the Arbitrator could have made about the model's results would be: "GTE's model produced the following results. …." The Arbitrator could not have found that: "GTE's costs are …." The Arbitrator's inability to confirm the model's results supports his reliance on the Hatfield Model.

Fill Factors. The Act did not remove the Commission's ability to exclude actual costs which exceed reasonable costs. That is the purpose of objective fill factors.

Input Errors. Regardless of whether GTE's input errors where significant, the Arbitrator had ample reason to reject GTE's model.

Conclusion. The Commission adopts the Arbitrator's analysis of the cost models and the resulting interim rates.

Issues 4 & 5: Transport & Termination (GTE)

GTE's Request. GTE asks the Commission to reject the Arbitrator's selection of AT&T's compensation proposal and select its proposal.

Report & Decision. The Arbitrator adopted the "Bill & Keep" method for transport and termination compensation.

GTE's Argument. The Arbitrator should have specified a method for determining whether traffic is out of balance and established the price. Since GTE's proposal covered those details, the Commission should adopt it.

Discussion. Bill & Keep is the Commission's preferred outcome on this issue and is consistent with the Act. From ILEC historical use of Bill & Keep, the Commission concludes that the FCC's presumption of traffic balance is reasonable. The Commission does not believe that traffic balance will be much different between ILECs and CLECs. If it is, the Commission does not believe that competition will develop to the point where an out-of-balance condition would be a significant problem during the time frame for the interim rates from this proceeding. If it does, GTE can pursue the issue at the time.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issues 9 & 16: Services for Resale (GTE)

GTE's Request. GTE asks the Commission to eliminate "below-cost" (*i.e.* residential) services from the list of services GTE must make available to AT&T at the wholesale discount.

Report & Decision. The Arbitrator concluded that the Act does not exclude "below-cost" services from resale requirements.

GTE's Argument. The record shows that competitors will arbitrage discounts to below-cost retail rates against lows prices for the network elements needed to recreate above-priced services and that they will by-pass GTE's intraLATA toll service. Competitors will capture the subsidy flowing to below-cost services without contributing to the subsidy by paying above-cost retail rates. Below cost services do not cover the costs which GTE would avoid in a wholesale transaction. Regardless of the Act, the Commission cannot require GTE to provide services below cost in a competitive market.

Discussion. It has been a long time since GTE's last rate case, but it is more probable than not that GTE's residential services contribute to recovery of shared costs. Even accepting GTE's factual assertion, the Arbitrator correctly notes that the Act

does not exempt "below cost" services from the resale requirements. That is appropriate because, at an appropriate discount level, GTE is no worse off selling residential service at the wholesale level than selling it at the retail level. As a practical matter, any subsidy would flow to the residential customer rather than the CLEC because the need to be competitive with GTE's residential rates will encourage CLEC's to pass the subsidy along rather than attempting to capture it by charging higher rates than GTE's rates.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 11: Resale Restrictions (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and impose all of the restrictions in GTE's offer. This would, for example, prohibit resale of shared tenant services.

Report & Decision. The Arbitrator concluded that the only reasonable restriction was the restriction against resale of residential service to business customers.

GTE's Argument. The Arbitrator's decision to adopt AT&T's "no unreasonable restriction" position shows the weakness of baseball style arbitration.

Discussion. The Arbitrator correctly concluded that the residential-to-business scenario is the only one GTE presented which raises public policy concerns sufficient to justify a restriction against resale.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issues 13-15: Payphone Service (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision to require resale of payphone services.

Report & Decision. The Arbitrator concluded that GTE must offer pay phone services for resale because payphone service providers are not telecommunications carriers.

GTE's Argument. GTE does not offer payphone services at retail to the public. Instead, it only offers them to "a variety" of payphone service providers.

Discussion. The Arbitrator correctly resolved the issue because payphone service providers, as non-carriers, are a segment of the public.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issues 17 & 18: Directory Assistance & Operator Services (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision to require custom routing to AT&T's operator services and directory assistance platforms.

Report & Decision. The Arbitrator adopted the FCC's reasoning and required GTE to provide custom routing when technically feasible.

GTE's Argument. The Act does not require GTE to redesign its retail services and, in any event, the evidence shows lack of technical feasibility. GTE asserts that the contract language expands the issue to repair calls, but that was not an issue during the contract language resolution phase of the proceeding and GTE did not provide a citation to support the assertion.

Discussion. GTE correctly notes that the Arbitrator's decision addressed only directory assistance and operator services calls. However, GTE did not show that there is a problem with the agreement which the Commission should resolve.

The Commission views customized routing as an issue of access to a network element (transmission to AT&T's operator services platform) rather than a change in a retail service. There does not appear to be a proprietary element claim, so there is no need for the Commission to address the "necessity" standard. The Commission concludes that failure to provide access would worsen AT&T's ability to compete because an inability to use its own operator services platforms would adversely affect both costs and service quality.

The Commission does not have a sufficient factual record to resolve the technical feasibility issue for any specific switch. It was more appropriate for the Arbitrator to apply a presumption of feasibility and require unbundling than it would have been for him to prevent unbundling when technically feasible through a blanket ruling against it.

If, for a particular switch, unbundling is not feasible, GTE has no obligation under the Act or the FCC order to unbundle. GTE may assert lack of feasibility and, if AT&T does not agree, the parties can resolve the issue through their dispute resolution process.

Conclusion. The Commission modifies the Arbitrator's "Decision" section to comply with the Eighth Circuit decision. It then adopts the Arbitrator's resolution.

Issues 19 & 20: Branding Directory Assistance (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision to require access in a manner that allows AT&T to use its brand name.

Report & Decision. The Arbitrator concluded that the confidentiality provisions of the Act do not prevent GTE from providing access to the database. He also concluded that it would be technically feasible for GTE to provide access under AT&T's brand.

GTE's Argument. GTE's agreement to provide the database and daily updates via magnetic tape should have resolved the issue.

Discussion. While GTE may feel that its offer adequately resolved the issues, it would not be appropriate to rule in GTE's favor because the Arbitrator's decision accurately reflects GTE's obligations under the Act.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 24: Release of Customer Information (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision requiring GTE to release customer information without the customer's written consent.

Report & Decision. The Arbitrator required the parties to follow procedures for the interexchange market pending a final rule from the FCC.

GTE's Argument. The Act clearly allows GTE to require written customer authorization before releasing the information AT&T will need to establish an account for the customer.

Discussion. The Arbitrator appropriately deferred to the FCC, which had a rulemaking open, on this issue.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 27: Relative Quality Levels (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's conclusion that GTE must provide a higher level of service to AT&T if AT&T is willing to pay the additional cost.

Report & Decision. The Arbitrator based his decision in favor of AT&T on 47 C.F.R. 311 which required ILEC's to accommodate requests for a higher level of service to the extent technically feasible.

GTE's Argument. The Act does not require GTE to provide a higher level of service to carriers requesting a higher level of service. Even if it did, AT&T's contract proposal (Section 11.5) is contrary to the Arbitrator's award.

Contract Language. Section 11.5 reads:

> If AT&T requests a standard higher than GTE provides to itself, such request shall be made as a Bona Fide Request pursuant to Attachment 12, and GTE shall provide such standard to the extent technically feasible. AT&T shall pay the incremental cost of such higher standard or other measurement of quality.

Eighth Circuit Decision. The Eighth Circuit concluded that the Act does not require ILEC's to accommodate requests for a higher level of service. It invalidated 47 C.F.R. 51.305(a)(4) and 51.311(c).

Staff Recommendation. Since the contract already requires use of the BFR process for higher standards of quality, staff does not believe that GTE's requested changes are necessary.

Discussion. The Eighth Circuit rejected the FCC's interpretation of the Act as requiring ILEC's to provide a higher level of service to the extent:

- it is technically feasible, and
- the CLEC is willing to pay for the necessary improvements.

Iowa Utilities Board, et. al. v. FCC, 1997 WL 403401 (July 18, 1997) at 45-46. To the extent the Report & Decision requires GTE to respond to a bona fide request by AT&T to provide a higher level of service, it is not consistent with the Eighth Circuit's decision. It does not appear that the contract needs revision beyond changing "shall" to "may" in Section 11.5 because GTE can respond to a BFR by declining to provide a higher level of service.

Conclusion. The Commission modifies the Arbitrator's discussion of this issue to comply with the Eighth Circuit decision and changes the outcome. It also changes "shall" to "may" in Section 11.5 of the contract.

Issue 30: Unbundling (GTE)

GTE's Request. GTE asks the Commission to disregard the FCC's interpretation of the Act and adopt a more restrictive interpretation.

Report & Decision. Issue 30 was a general issue which the Arbitrator did not specifically resolve. The Arbitrator's discussion of Issue 30 reads:

> **Issue.** What network elements should the Commission require GTE to provide?
>
> …
>
> **Decision.** GTE should provide network elements pursuant to the Arbitrator's decisions on unbundling.

GTE's Argument. The FCC's rules, which the Arbitrator adopted in resolving unbundling issues, are infected with a fundamental misreading of the Act's provisions in section 251(c)(3), 251(d)(2), 3(45), 3(48), and 3(51). A proper reading of the statute would produce, as a general concept, the following limitations on an ILEC's duties:

> ILEC's 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.

Eighth Circuit Decision. The Eighth Circuit favored the FCC's broader interpretation of the Act over similar narrower definitions from ILEC's appealing the FCC's order.

Discussion. The Arbitrator's approach to the general unbundling issue is consistent with the FCC's order and the Eighth Circuit decision.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 31: Assembly of Network Elements by AT&T (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and restrict AT&T to the network elements GTE desires to provide.

Report & Decision. The Arbitrator applied the FCC's reasoning in declining to impose restrictions on AT&T's ability to combine elements.

GTE's Argument. While GTE listed Issue 31 in its objections, the primary concern regarding AT&T's ability to combine elements is "sham unbundling" which the parties addressed under Issue 32.

Eighth Circuit Decision. The Eighth Circuit did not limit access to network elements to the elements GTE desires to provide.

Discussion. The Arbitrator appropriately declined to impose restrictions on AT&T's ability to combine elements into services.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 31: Assembly of Network Elements by GTE (GTE)

GTE's Request. GTE asks the Commission to eliminate contract language obligating it to combine elements for AT&T.

Report & Decision. The Arbitrator did not address restrictions on GTE's obligation to combine elements for AT&T because the GTE did not raise the issue.

GTE's Argument. The Arbitrator cited portions of the FCC 96-325 which require an ILEC to combine services for a CLEC. His statement of the element packages AT&T requested implies that GTE would have an obligation to assemble the packages.

Staff Recommendation. Staff opposes GTE's request on the grounds that any contract language requiring GTE to combine elements is fully negotiated language.

Eighth Circuit Decision. The Eighth Circuit vacated 47 C.F.R. 51.315(c)-(f) because those subsections illegally required ILECs to combine elements for CLECs.

Discussion. The Arbitrator's "Issue" and "Decision" sections of Issue 31 reads:

> **Issue.** To what extent should the Commission allow AT&T to combine network elements?
>
> …
>
> **Decision.** GTE may not prohibit AT&T from replicating its services. See page 6. To the extent GTE otherwise proposed to restrict GTE's ability to combine elements, those restrictions also are contrary to the Act.
>
> *Issue 31* AT&T Prevails

The Arbitrator's resolution of this issue is confusing because it contains an unnecessary reference to 47 C.F.R. 315, an unnecessary reference to the supporting paragraph from FCC 96-325(c), and a typographical error in second sentence of the "Decision" section. In the context of the "Issue" section, and the first sentence of the "Decision" section, the second sentence should have read: "To the extent GTE otherwise proposed to restrict **AT&T's** ability to combine elements, those restrictions also are contrary to the Act." If the Arbitrator did not properly state the issue, GTE should have raised the point during the reconsideration phase of the proceeding. It is too late to do so now.

Conclusion. The Commission corrects the typographical error, deletes the unnecessary reference to 47 C.F.R. 315(c), and deletes the unnecessary reference to paragraph 293. To the extent the contract requires GTE to combine network elements for AT&T, the language is fully negotiated language. GTE did not show that the Commission should reject the language under the very narrow grounds for rejecting fully negotiated language.

Issue 32: Replications of Incumbent Services (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and prevent AT&T from reassembling network elements to replicate GTE services.

Report & Decision. The Arbitrator concluded that the Act did not prohibit replication of ILEC services.

GTE's Argument. "Sham unbundling" violates the Act's separation of resale from access to network elements. It would allow price arbitrage to GTE's detriment.

Eighth Circuit Decision. The Eighth Circuit concluded that the FCC reasonably interpreted the Act as allowing a CLEC to replicate ILEC services. It also rejected the ILEC argument that a CLEC must own some of its own facilities.

Discussion. The Arbitrator's decision is consistent with the Eighth Circuit decision.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 34: Local Switch Unbundling (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's conclusion that vertical switching features are network elements and conclude that they are enhanced services.

Report & Decision. The Arbitrator relied on 47 C.F.R. 51.319(c)(1) in concluding that vertical functions are elements rather than services. They are elements because they are part of the functionality of the switch.

GTE's Argument. The FCC misapplied Section 251(c)(3) because GTE has no obligation to provide switching features unless its failure to provide them would impair AT&T's ability to provide a telecommunications service. Vertical features are not telecommunications services because they do not constitute transmission of customer information between points controlled by the customer. To the extent any vertical features might be telecommunications services, GTE's failure to provide them will not impair AT&T's ability to offer the features because AT&T can either provide them with its own switch or purchase them from GTE under the resale provisions of the Act.

Eighth Circuit Decision. The Eighth Circuit concluded that vertical features are network elements. It specifically held that operator services, directory assistance, caller I.D., call forwarding, and call waiting are subject to unbundling.

Discussion. The Arbitrator's discussion of this issue is consistent with the FCC's rule and the Eighth Circuit decision.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 39: Dark Fiber (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's ruling that dark fiber is a network element.

Report & Decision. The Arbitrator relied on the Commission's decision *In the Matter of the Application of Electric Lightwave, Inc.for an Order Authorizing Registration of Applicant as a Telecommunications Company,* Docket No. UT-901029 in concluding that dark fiber is a network element.

GTE's Argument. The Arbitrator based his resolution of this issue on an erroneous interpretation of state law.

Discussion. The Arbitrator should have cited the Commission's Third Supplemental Order in Docket No. UT-901029 rather than the court decision resolving an appeal from that order. In Docket No. UT-901029, the Commission determined that dark fiber was a telecommunications service. Third Supplemental Order, Docket No. UT-901029 at 15. The Commission then determined that Electric Lightwave, Inc. could offer dark fiber because the incumbent, U S WEST Communications, Inc., was not offering the service.

Even in the absence of Docket No. UT-901029, this commission would conclude that dark fiber is a network element. As a form of spare capacity, "dark" fiber is not fundamentally different than "dead" copper. Once either transmission media runs underground or on poles, it ceases being "inventory" for general use. It is committed to carrying traffic on a specific route. At that point, it becomes an element of the carrier's network.

Neither form of transmission media is a proprietary element so there is no need to consider whether it is "necessary" to unbundle them. There is greater impairment to a CLEC's ability to provide competing services from withholding "dark" fiber than "dead" copper because the CLEC can match fiber's capacity to its needs by attaching higher or lower capacity electronics to the fiber. A mismatch between electronic capabilities and CLEC needs would increase costs or reduce its ability to provide competing services. Fiber is an element which GTE should unbundle for use with AT&T's electronics.

Conclusion. The Commission corrects the citation error and modifies the Arbitrator's "Discussion" section to apply the "necessary" and "impairment" standards rather than the "technical feasibility" standard. The Commission then adopts the Arbitrator's resolution.

Issue 40: Transport Unbundling (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision to unbundle transport.

Report & Decision. The arbitrator performed a two step analysis which first concluded that transport was a network element and then concluded that GTE should unbundle transport because the record did not show it would be technically infeasible to do so.

GTE's Argument. Transport is available under GTE's transport tariff, so any failure to provide it will not impair AT&T's ability to offer a telecommunications service requiring transport. It was not appropriate for the Arbitrator to focus on technical

feasibility because the technical feasibility standard only applies at the point of interconnection. It does not apply to unbundling.

Eighth Circuit. The Eighth Circuit ruled in GTE's favor when it concluded that the technical feasibility standard relates only to points of interconnection. On the other hand, it ruled against GTE when it affirmed the FCC's interpretation of the "necessary" and "impairment" standards.

FCC Order No. 97-295 (August 18, 1997). The FCC issued this order as part of its reconsideration of Order No. 96-325. In ¶33, the FCC affirmed its conclusion that both dedicated and shared transport are network elements. The FCC also concluded that its transport decision is consistent with the Eighth Circuit decision.

Discussion. While the Arbitrator correctly concluded that GTE should unbundle both dedicated and shared transport, the Report & Decision does not comply with the Eighth Circuit decision because it focuses on technical feasibility rather than the impact on AT&T's ability to compete. A change to the proper analytical approach does not change the outcome.

Conclusion. The Commission modifies the Arbitrator's "Decision" section to comply with the Eighth Circuit decision. It then adopts the Arbitrator's resolution.

Issue 41: Operator Systems (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision requiring GTE to unbundle directory assistance and operator services.

Report & Decision. The Arbitrator relied on 47 C.F.R. 51.319(g) in requiring GTE to unbundle directory assistance and operator services to the extent unbundling is technically feasible.

GTE's Argument. Section 251(b)(3) does not create an obligation to unbundle operator and directory assistance services. Those services are not network elements under the Act because they are not facilities or equipment; they are people. Even if they were elements, a failure to provide the elements would not "impair" AT&T's ability to provide a telecommunications service because AT&T can, and will, provide its own operator and directory assistance services.

Eighth Circuit Decision. The Eighth Circuit affirmed the FCC's conclusion that directory assistance and operator services are network elements.

Discussion. The Arbitrator's decision is consistent with FCC's rules and the Eighth Circuit decision.

Conclusion. The Commission modifies the Arbitrator's "Decision" section to comply with the Eighth Circuit decision. It then adopts the Arbitrator's resolution.

Issue 42: Interconnection Points (GTE)

GTE's Request. GTE asks the Commission to remove language stating that GTE has the burden of showing lack of technical feasibility.

Report & Decision. The Arbitrator found an "inherent presumption" of technical feasibility.

GTE's Argument. The Act does not require GTE to show lack of feasibility and the burden should remain with the moving party (AT&T) pursuant to general legal principles requiring a claimant to prove the claim.

Eighth Circuit. The Eighth Circuit invalidated the FCC's presumption favoring unbundling because it invalidated the FCC's reliance on technical feasibility as a grounds for determining *what* elements an ILEC must unbundle (*i.e.* on the grounds that unbundling the element is technically feasible). The Eighth Circuit did not address the presumption of feasibility for determining *where* an ILEC must allow interconnection (*i.e.* on the grounds that interconnection at that point is technically feasible).

Discussion. Actually, GTE would be the claimant because it would be the one claiming lack of technical feasibility. GTE is the party with the greatest information about its network structure, facilities, equipment, and the resulting capabilities. It is common under those types of circumstances to place the burden of proof on the party with the information.

While sections 251(c)(2) and 251(c)(3) are silent about the burden of proving technical feasibility or lack of technical feasibility, the Arbitrator's statement is consistent with the specific provisions of section 251(c)(6). It requires ILEC's to prove to the state commission that physical collocation is not practical for technical reasons or because of space limitations.

Particularly in light of section 251(c)(6), there is good support for the Arbitrator's statement in the FCC's Order No. 96-325 at paragraph 554. It states in relevant part:

> 554. … Moreover, because the obligation of incumbent LECs to provide interconnection or access to unbundled elements by any technically feasible means arises from sections 251(c)(2) and 251(c)(3), we conclude that incumbent LECs bear the burden of demonstrating the

> technical unfeasibility of a particular method of interconnection or access at any individual point.

The Eighth Circuit did not vacate that part of the FCC's order. It is quite appropriate for this commission to place the burden of proving lack of technical feasibility on the ILEC.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 43: Tandem Switch Unbundling (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision requiring GTE to unbundle tandem switching.

Report & Decision. GTE did not appear to contest feasibility, so the Arbitrator concluded that this was a pricing issue rather than an unbundling issue.

GTE's Argument. The Arbitrator did not specify a method for compensating GTE for tandem-to-tandem switching. GTE proposes common arrangements in the industry, and the Commission should adopt them.

Discussion. The Arbitrator addressed the issue the parties presented: whether the Commission should require unbundling. To the extent the parties could not agree on a price, the appropriate time for GTE to raise the issue was the contract language resolution phase. It would not be appropriate for the Commission to resolve the pricing issue at this late stage of the proceeding.

Conclusion. The Commission modifies the Arbitrator's "Decision" section to comply with the Eighth Circuit decision. It then adopts the Arbitrator's resolution.

Issue 44: OSS Cost Recovery (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and place cost responsibility for AT&T's use of GTE's systems on AT&T.

Report & Decision. The Arbitrator concluded that the Commission should apportion costs based on relative customer numbers because all customers benefit from competition bringing more consumer choices to the market. GTE, as the carrier initially with the bulk of the customers, should initially bear the bulk of the costs.

GTE's Argument. The Arbitrator's solution requires GTE to subsidize AT&T's use of GTE's systems.

Discussion. GTE characterizes this as a "which carrier pays" issue when it actually is a "which customers pay" issue. The focus on carriers can easily lead to a pro-competitor decision contrary to the Congress' desire for pro-competition decisions.

From the pro-competition perspective, the Arbitrator correctly noted that the Act intends competition to benefit customers rather than carriers. Competition, by creating choices for all customers, will put pressure on GTE to offer better service at lower prices. To the extent GTE offers better service at lower princes, customers remaining with GTE will benefit from competition. All customers should share in the cost of mechanisms—like access to OSS systems—which are necessary for competition to take place.

At the beginning of the process, ILEC's have the bulk of the customers. The customers who happen to choose AT&T should not pay the full cost of mechanisms which benefit all customers by giving all customers a choice of carriers. It is most appropriate for each company to contribute to the costs in proportion to their market share. In that way, each customer will pay approximately the same amount for the contribution that access to OSS systems make to competition.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issues 45 & 47: Operations Support Systems (GTE)

GTE's Request. GTE asks the Commission to address the practical difficulties of immediate access to Operations Support Systems (OSS) by adopting its position on the issue.

Report & Decision. The Arbitrator concluded that GTE should offer immediate access.

GTE's Argument. The Arbitrator effectively ducked the issue.

Discussion. This was a difficult issue for the Arbitrator to resolve during the span of the arbitration and it is even more difficult for Commission to resolve at this stage of the proceeding. The solution GTE prefers, a relatively slow transition tied to development of national standards, is not acceptable. The alternative may lack details, but it puts the onus on GTE to cooperate in implementing a good interim solution as quickly as possible.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 50: Remote Switching Units (AT&T)

AT&T's Request. AT&T asks the Commission to reverse the Arbitrator at pages 23-24 of the Report & Decision, and at page 1 of the Supplemental Report & Decision, so that AT&T may collocate Remote Switching Units (RSUs) in central offices. It also asks the Commission to modify Attachment 3, Section 2.2.4 of the Agreement to reflect the reversal.

Report and Decision. The Arbitrator focused on whether RSUs are "necessary" in determining that the Commission should not require GTE to collocate them.

Supplemental Report & Decision. The Arbitrator determined that reconsideration would be appropriate only for correcting mistakes or clarifying the decision. There was no apparent mistake or need for clarification with respect to Issue 50.

AT&T's Argument. The Arbitrator's decision is not consistent with the Commission's recent decisions in other arbitrations starting with MCI/GTE, Docket No. UT-960338, *Order Modifying Arbitrator's Report* at 9 (April 3, 1997). The Commission's MCI/GTE decision is consistent with the FCC's interpretation of the term "necessary" in §251(c)(6) of the Act. The FCC concluded that "necessary" includes equipment "used" or "useful" for interconnection.

The FCC interpretation was one of the issues which ILECs raised with the Eighth Circuit. The Eighth Circuit affirmed the interpretation and rejected GTE's "taking" argument.

AT&T's Evidence. AT&T cites the testimony of Todd Bohling (AT&T Exhibit 25) at 14-15 for the proposition that RSUs are "necessary" for AT&T to interconnect at parity with GTE. Mr. Bohling listed the following cost and service quality benefits from collocation of RSUs:

- Avoid line haul costs from collocation cage to AT&T's switch
- Avoid inefficient use of transmission facilities and equipment
- Improve response time for customers
- Avoid echo, delay, noise, and other performance degradation from cascading back-to-back digital loop carrier configurations.

GTE's Argument. GTE asserts that a decision requiring GTE to collocate RSUs would result in the following errors:

Legal Error. The Staff recommendation which led to the Commission's decision in Docket No. UT-960338 inappropriately interprets "necessary" to mean "practical" and AT&T now asks the Commission to further require collocation anytime it is "possible" to collocate a piece of equipment.

Context Error. The Staff recommendation incorrectly asserts that CLEC's would have to locate switching equipment close to the ILEC's cental office and accept

some or all network elements at voice grade levels. Staff's concerns about band width and loop lengths do not exist in modern networks. In this case, the evidence does not support a finding of technical inferiority and cost benefits alone do not make equipment "necessary" under the statute.

Evidentiary Error. GTE's witness Peelman "dispositively" rebutted AT&T's only claim of a technical "need" for collocation of RSUs.

Technical Error. AT&T did not make Staff's loop length argument because it is antiquated. Loop lengths no longer cause the service deterioration problems which occurred before the advent of fiber optics and digital loop concentrator transmission equipment.

In any event, requiring GTE to collocate equipment is an unconstitutional "taking" of its property.

GTE's Evidence. GTE cites the testimony of Michael Peelman (Tr. 73-75). Mr. Peelman focused on the impact of back-to-back or cascading digital loop concentrators have on V.34 modem speeds of 28.8 kbps. They slow to about 24 kbps with multiple analog to digital conversions, but collocating RSUs will not change the number of analog to digital conversions.

Staff Analysis. The Commission takes official notice of Bellcore Notes on the LEC Networks (SR-TSV-002275) Issue 2, April 1994, at 7-14. While the number of analog to digital covnersions would not change, a digital loop carrier adds a second noise source at 18.0 dBrnCO which an RSU does not add. A second 18.0 dBrnCO noise source would increase noise beyond the 20 dBrnCO acceptable noise limit into a marginal situation requiring further analysis and investigation.

Eighth Circuit Decision. The Eighth Circuit affirmed the FCC's interpretation of the "neccessary" and "impairment" standards. It rejected GTE's constitutional taking argument because GTE will receive compensation.

Staff Recommendation. Staff recommends collocation of RSUs.

Findings of Fact. As a new carrier, AT&T will start with a few widely-spaced switches with relatively long transmission distances to/from GTE's switches. GTE did not rebut AT&T's assertions that RSUs are superior to digital loop carrier connections. Even if GTE had rebutted that assertion, the result of an inability to collocate RSUs would be inefficient use of transmission facilities for calls which the RSU could directly route rather than sending to AT&T's host switch. Those factors

which would unnecessarily raise AT&T's costs and make it harder for it to deliver the quality of service it could deliver through an RSU.

Decision-Making Standard. The FCC rules contemplate a two step analysis:

Necessity. 47 C.F.R. 51.5 defines "necessary" in terms of usefulness rather than indispensability. There is no need for the CLEC to show an absence of alternatives.

Functionality. 47 C.F.R. 51.323(c) requires a finding that the equipment is not a switch.

Discussion. Collocation of remote switching units ("RSUs") is "useful" for interconnection under 47 C.F.R. 51.5 because RSUs provide line and trunk connections. A RSU is not a "switch" under 47 C.F.R. 51.323(c) because it requires a host to perform essential functions, including:

- Programming to define lines and trunks;
- Routing;
- Creation and use of engineering and billing data;
- Access to OSS systems (*e.g.* maintenance monitoring, engineering data, and recent changes); and
- SS7 signaling.

Even when a RSU has "standalone" capabilities, it needs its "umbilical cord" to the host for full switching functionality. In the standalone mode, it can only:

- Perform functions which the host has downloaded to the RSU for processing in the RSU;
- Route calls "internally" between lines attached to the RSU;
- Store some rudimentary engineering and billing data for subsequent uploading to the host;
- Use rudimentary internal non-SS7 signaling.

While a RSU is not a switch, it can perform some functions which could enable a CLEC to avoid access charges. A CLEC should not use physically collocated RSUs to avoid payment of access charges.

Conclusion. AT&T appropriately suggests that the Commission amend the last sentence of Attachment 3, Section 2.2.4 to read as follows:

> ... AT&T may collocate the amount and type of equipment in its collocated space that is necessary for interconnection functions (which include interconnection with GTE's network and other collocated carriers or access to GTE's unbundled network elements, including but not limited to transmission equipment, multiplexing equipment, and remote switching units ("RSUs"); provided, however, that AT&T may not collocate enhanced services equipment or fully equipped switching equipment (host class 5 switches), nor may it use physically collocated RSUs to avoid payment of access charges.

Issue 51: Direct Collocator-to-Collocator Connections (GTE)

GTE's Request. GTE asks the Commission to reject the Arbitrator's decision to require direct collocator-to-collocator connections.

Report & Decision. The Arbitrator concluded that 47 C.F.R. 51.323(h) requires direct connections.

GTE's Argument. Congress authorized collocation only for interconnecting with GTE and accessing GTE's network elements. Collocation for other purposes would be an illegal taking of GTE's property.

Eighth Circuit Decision. The Eighth Circuit did not vacate 47 C.F.R. 51.323(h). It did reject GTE's taking argument.

Discussion. The Arbitrator appropriately required direct collocator-to-collocator connections.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 53: Reserving Central Office Space (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision to limit GTE's ability to reserve space for itself.

Report & Decision. The Arbitrator relied on 47 C.F.R. 51.323(f) in concluding that GTE may not reserve space for itself on more favorable terms than it offers to other carriers. He also preferred the FCC's "specific plan" concept to GTE's five year time frame.

GTE's Argument. A five year planning horizon is reasonable.

Discussion. The Eighth Circuit did not address 47 C.F.R. 51.323(f) and hence did not vacate it. While GTE purports to fear that the Arbitrator's decision will "squeeze" it out of its own buildings, the Arbitrator's decision allows GTE to reserve

space when it has specific plans. GTE's proposal would allow it to freeze competitors out of central offices by citing vague plans for expansion over a five year time period. With the shrinking size of communications equipment, the Arbitrator's approach is more realistic and consistent with the Act.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issues 54 & 58: Expanding Space (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and rule that GTE has no obligation to expand facilities.

Report & Decision. For inside facilities (Issue 54), the Arbitrator merely required GTE to take AT&T's needs into account when planning for expansion. For outside facilities (Issue 58), the Arbitrator required GTE to make good faith efforts to expand capacity. Both decisions mirror the FCC's views on the subject.

GTE's Argument. The Act does not require GTE to expand facilities.

Discussion. The Eighth Circuit did not address this issue and the FCC's reasoning on the subject is persuasive. It was appropriate for the Arbitrator to adopt the FCC's reasoning and results for these issues. There is a clerical error in the outcome summary (Issue 54 incorrectly refers to outside facilities and Issue 58 incorrectly refers to inside facilities) which the Commission should correct.

Conclusion. The Commission reverses the issue numbers in the outcome summary and then adopts the Arbitrator's resolution.

Issues 55 & 57: Access to Rights-of-Way (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator's decision to require access at parity and prohibit GTE from reserving space for itself on more favorable terms than it allows other carriers to reserve space.

Report & Decision. The Arbitrator based his decision on the FCC's definition of "nondiscriminatory" access.

GTE's Argument. The Arbitrator violated the Act by relegating GTE to a mere licensee of its own poles, conduits, and rights-of-way. The Act does not require access at parity.

Discussion. The Eighth Circuit did not address the FCC's interpretation of "nondiscriminatory" access. The FCC's interpretation is more consistent with the competitive goals of the Act than GTE's interpretation.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 59: Term of the Agreement (GTE)

GTE's Request. GTE asks the Commission to reject the Arbitrator's five year term.

Report & Decision. The Arbitrator found five years more reasonable than two years because a transition to a fully competitive market in two years is not likely.

GTE's Argument. This agreement will not be "competitive" five years from now because the market is changing so rapidly.

Discussion. The Arbitrator appropriately noted that the market is not likely to be fully competitive at the end of two years. While the time period is shorter than the term resulting from other arbitrations, it does not involve a matter of public policy. The arbitrations are independent proceedings, so the Commission will adopt the five year term.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 60: Most Favored Nation Clause (GTE)

GTE's Request. GTE asks the Commission to refrain from approving a "most favored nation" provision.

Report & Decision. Since the FCC's Most Favored Nation rule was subject to the Eighth Circuit stay, the Arbitrator simply required the parties to conform to the prevailing court decision on the issue.

GTE's Argument. The Commission should explicitly reject the Most Favored Nation concept because it does not bind the CLEC to the agreement.

Eighth Circuit Decision. The Eighth Circuit vacated the FCC's "Pick and Choose" rule.

Discussion. The Arbitrator appropriately deferred resolution of this issue to the courts.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 63: Bona Fide Request Process (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and adopt GTE's proposal.

Report & Decision. The Arbitrator found GTE's language to be inconsistent with his substantive decisions, and could not identify AT&T's proposal in the contract, so he instructed the parties to develop language consistent with the individual decisions on unbundling.

GTE's Argument. Under the "baseball" arbitration rule, the Arbitrator should have adopted GTE's offer because it was the better offer.

Discussion. Since part of GTE's language was inconsistent with the Arbitrator's substantive decisions, the Arbitrator appropriately declined to adopt GTE's offer. In the absence of a clear understanding of AT&T's proposal, the Arbitrator's most reasonable course of action was to direct the parties to develop language to implement the substantive decisions.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 64: Reciprocal Obligations (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator and impose reciprocal collocation and other obligations on AT&T.

Report & Decision. While the Arbitrator was sympathetic to GTE's position on this issue, he did concluded he did not have authority to require reciprocity.

GTE's Argument. Failing to require reciprocity would be unfair.

Discussion. GTE still has not shown that the Commission has authority to impose all of an ILEC's obligations on AT&T.

Conclusion. The Commission adopts the Arbitrator's resolution.

Issue 65: Additional Terms (GTE)

GTE's Request. GTE asks the Commission to reverse the Arbitrator on this issue and rule that it is beyond the scope of the Commission's arbitration authority.

Report & Decision. The Arbitrator adopted AT&T's language on points which the Arbitrator did not specifically award to GTE.

Resolution of Contract Language Disputes. The Decision Maker concluded that the Arbitrator's resolution of Issue 65, in the context of the dispute between the parties at the time he resolved the issue, merely established AT&T's proposed agreement as the base document for drafting a joint document.

GTE's Argument. The Act limits the Commission's jurisdiction to the issues the parties raised at the beginning of the process. The Commission cannot use the Arbitrator's decision on Issue 65 as a basis for resolving additional issues.

Discussion. The Decision Maker's Resolution of Contract Language Disputes document appropriately clarifies the import of the Arbitrator's decision on Issue 65. At this point, it does not matter which party's offer served as the basis for their joint filing. The joint filing is the agreement now before the Commission. The Commission is not considering issues which were not part of the arbitration or contract language dispute resolution process. This issue is moot.

Conclusion. The Commission adopts the Arbitrator's resolution and the Decision Maker's clarification.

III. CONTRACT LANGUAGE ISSUES

Section 10.3: Consequential Damages (AT&T)

AT&T's Request. AT&T asks the Commission to include language making either party liable to the other for consequential damages arising from willful misconduct, gross negligence, or actions which result in bodily injury, death, or damage to personal property.

Resolution of Contract Language Disputes. The Decision Maker concluded that the provisions were either inappropriate or unnecessary.

AT&T's Argument. The absence of the language is contrary to the public interest because it destroys the economic incentives necessary to induce an ILEC to comply with the agreement.

GTE's Argument. The prices which GTE charges its end-user customers, and which serve as the basis for GTE's wholesale prices, do not cover indemnity for consequential damages. For the reasons in the discussion above, the Decision Maker properly declined to subject GTE to greater liability than its bears under its tariffs or which parties typically bear in commercial transactions.

Discussion. AT&T correctly notes that ILEC's lack the economic incentives which underlie voluntary commercial agreements, but AT&T did not show that other incentives—like regulatory intervention—are not sufficient to reasonably ensure compliance.

Conclusion. The Commission will refrain from adding AT&T's consequential damages provisions to the agreement.

Section 23.8: Government Approval (GTE)

GTE's Request. GTE asks the Commission to insert language delaying the effective date of the agreement until the Commission has established (1) a mechanism which provides GTE with an opportunity to recover its historic costs; and (2) a competitively-neutral universal service support mechanism.

Resolution of Contract Language Disputes. The Decision Maker rejected these provisions as incompatible with the competitive goals of the Act.

GTE's Argument. GTE's language conforms with the Act.

Discussion. The Decision Maker correctly noted that GTE's language would thwart the legislative intent for a rapid transition to a competitive market.

Conclusion. The Commission refrains from adding GTE's language to Section 23.8.

Section 43: Number Portability (AT&T)

AT&T's Request. AT&T asks the Commission to modify sections 43.3.5, 43.3.5.1, and 43.3.5.2 of the agreement to delete provisions giving GTE 30 percent of terminating access charges when AT&T terminates a toll call under the interim number portability provisions.

Resolution of Contract Language Disputes. The Decision Maker concluded that it was too late to fix any factual errors in the Report & Decision. Given the timing of the issue, GTE's 30 percent offer was more favorable than the terms it would be appropriate to impose on GTE.

AT&T's Argument. At page 57 of its initial petition, AT&T argued that the Arbitrator should adopt meet point billing pursuant to the New York Method for pricing interim number portability. The Arbitrator decided instead to price according to GTE's Washington tariff. The Arbitrator should have allocated terminating access charges, but did not do so. *See* Report & Decision at 50. When the issue arose during the contract language resolution phase, the Decision Maker overcompensated GTE in violation of section 252(d)(2) of the Act because GTE receives full compensation for its role in routing the call through its porting charge. It should not receive a bonus payment for routing toll calls.

The language the Decision Maker adopted for section 43.3.5 makes no sense because the Decision Maker adopted conflicting language from both parties. To the extent the Commission adopts GTE's position on this issue, the Commission should modify the formulae in Sections 43.3.5.1 and 43.3.5.2 to incorporate and interstate/intrastate access revenue split because the rates differ significantly.

GTE's Argument. GTE's current compensation for terminating a call for an IXC consists of: 1) entrance facilities (flat rated, billed to IXC) between an IXC POP and serving wire center; 2) transport and tandem switching (flat rated or per MOU, billed to IXC) between the serving wire center and end office; 3) end office switching (per MOU) at the end office; and 4) CCL or RIC (per MOU) for loop and other costs allocated to access charges by regulator bodies. While GTE switches the call to the terminating customer under the current scenario, it switches the call to the CLEC under an interim number portability scenario so that the CLEC can switch it to the terminating customer.

The interim number portability scenario involves a second end office switching function which GTE and AT&T should share because GTE, as the recording company for billing purposes, cannot bill the IXC for both end office switching functions. GTE should keep all of the compensation for the functions GTE performs. This includes the RIC and CCL because those charges enable GTE to fully recover loop and other allocated costs on a statewide average basis.

Discussion. AT&T correctly notes that the Decision Maker adopted competing language from both parties for Section 43.3.5. That section should have read:

> 43.3.5. ~~In the event a toll call is completed through an interim service provider's number portability arrangement (e.g., remote call forwarding, FLEX DID, etc.) to a Customer of the new Carrier of Record, the new Carrier of Record is entitled to applicable end office terminating switched access charges (e.g., local switching, line termination, carrier common line, residential interconnection charge, etc.) The company forwarding the call will be considered to be adequately compensated through the charges it receives for porting the number.~~ To compensate AT&T for applicable access revenues associated with terminating interLATA or intraLATA toll calls to AT&T subscribers whose telephone numbers have been ported from GTE, GTE shall pay AT&T seventy percent (70%) of the terminating access revenues as determined on a LATA basis by the following formulae. Such formulae shall be updated on a quarterly basis at the request of either Party.

With that correction, the Decision Maker correctly noted that AT&T should have pursued all factual errors in the Report & Decision when it filed for reconsideration. It is too late to do so now.

Conclusion. The Commission should adopt the Decision Maker's analysis of this issue and then correctly express the resulting language for Section 43.3.5.

Signature Page: Signatures (AT&T)

AT&T's Request. AT&T asks the Commission to require GTE to execute the agreement with, perhaps, disclaimers similar to the agreements GTE signed with AT&T in California, Hawaii, and Florida.

Resolution of Contract Language Disputes. The Decision Maker declined to require GTE to sign and noted that the Commission could do so in it approval order.

Discussion. Since the Commission is entering an order approving the contract, the presence or absence of GTE's signature does not make a difference.

Conclusion. There is no need to require GTE to sign the contract.

Attachment 2 Section 13.5.1: SS7 Interconnection (AT&T)

AT&T's Request. AT&T asks the Commission to remove language from Attachment 2, Section 13.5.1 which restricts "SS7 Network Interconnection" to interconnection "for the purpose of providing local exchange or exchange access services."

Resolution of Contract Language Disputes. The Decision Maker treated this as an interconnection issue under §251(c)(2).

AT&T's Argument. In addition to improperly narrowing the language of paragraphs 190 and 191, the Decision Maker's analysis incorrectly reduces this issue to a Section 251(c)(2) issue when it also involves section 251(c)(3). AT&T cites paragraph 356 in support of its position that section 251(c)(3) requires GTE to provide unbundled access to SS7 Network Interconnection for any telecommunications service.

GTE's Argument. The Decision Maker correctly analyzed paragraph's 190 and 191. Paragraph 356 is not relevant to this issue because other provisions of the Agreement address unbundling under section 251(c)(3).

Discussion. AT&T makes a better argument at this point than it did during the oral arguments on contract language. It correctly asserts that paragraph 356 interprets section 251(c)(3) as allowing carriers to use network elements for any telecommunications service. In that light, it is more reasonable to interpret section 251(c)(2) as a hurdle limiting interconnection to carriers with local operations and section 251(c)(3) as allowing carriers qualifying for interconnection to then use network elements for any telecommunications service.

In this case, AT&T qualifies for interconnection, so the Commission should determine whether AT&T is acquiring SS7 components as network elements. In section 32.9 of the General Terms & Conditions, the parties include Signal Transfer Points (STPs) and other SS7 components in the list of network elements which GTE will make available to AT&T.

The parties put specific language governing GTE's provisioning of network elements in Attachment 2. The language governing SS7 components is under the label "SS7 Network Interconnection." The label is misleading because Attachment 2 governs provisioning of network elements rather than interconnection. A misleading label should

not prevent AT&T from using SS7 network elements to provide any telecommunications service.

Conclusion. The Commission should remove the phrase limiting AT&T's use of the elements to local exchange or local exchange access services.

Attachment 2 Section 14: Dark Fiber (GTE)

GTE's Request. GTE asks the Commission to limit AT&T to 25 percent of GTE's dark fiber capacity.

Resolution of Contract Language Disputes. The Decision Maker noted that the 25 percent limit went beyond Arbitration Issue 39. The Decision Maker concluded that the restriction was neither necessary nor desirable.

GTE's Argument. GTE's language will ensure that it can provide dark fiber on a competitively neutral basis, ensure that carriers use fiber efficiently, and ensure network reliability.

Discussion. GTE's argument remains unpersuasive.

Conclusion. The Commission adopts the Decision Maker's resolution of the issue.

IV. JURISDICTIONAL & PROCEDURAL FINDINGS

1. The Washington Utilities and Transportation Commission is an agency of the state of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities and practices of telecommunications companies in the state.

2. AT&T and GTE are each engaged in the business of furnishing telecommunications service with the state of Washington as public service companies.

3. The Washington Utilities and Transportation Commission is designated by the Telecommunications Act of 1996 as the agency responsible for arbitrating and approving interconnection agreements between telecommunications carriers within the state of Washington, pursuant to Sections 251 and 252 of the Act.

4. GTE was, until recently, the exclusive provider of switched local exchange service in its Washington exchanges, is an incumbent local exchange carrier, and is currently the dominant provider of switched local services within the territory of its Washington exchanges.

5. AT&T provides switched intraLATA and interLATA exchange service in Washington and seeks to competitively provide local exchange service in the intrastate territory of GTE.

6. This arbitration and approval process was conducted pursuant to and in compliance with the Commission's *Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996,* Docket No. UT-960269, June 27, 1996. The arbitrator's adoption of "best offer" arbitration was reasonable and was consistent with the authority delegated to the arbitrator in the Commission's Order on Arbitration Procedure, June 28, 1996. No party objected to adoption of "best offer" arbitration.

V. CONCLUSIONS OF LAW

1. The arbitrated provisions of the Agreement, after the modifications necessary to comply with this order, meet the requirements of Section 251 of the Telecommunications Act of 1996 and the pricing standards in Section 252(d) of the Act. They also comply with Federal Communications Commission regulations which the Eighth Circuit did not vacate in its July 18, 1997, opinion.

2. The negotiated provisions of the Agreement do not discriminate against a telecommunications carrier not a party to the agreement. They also are consistent with the public interest, convenience, and necessity.

3. The Agreement is otherwise consistent with Washington law and with the orders and policies of this Commission.

VI. ORDER

THE COMMISSION ORDERS:

1. The Agreement filed by the parties on July 25, 1997, is approved subject to modifications necessary to comply with this order.

2. AT&T shall revise and file an Agreement which complies with this order within two weeks after the effective date of this order.

3. In the event that the parties revise, modify, or amend the agreement, the revised, modified, or amended agreement shall be a new negotiated agreement under the Act and the parties shall submit it to the Commission for approval, pursuant to 47 U.S.C. § 252(e)(1) and relevant state law, before the agreement takes effect.

4. The Agreement approved in this Order shall be effective on September 25, 1997.

DATED at Olympia, Washington and effective this 25th day of August 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

APPENDIX A

(Full Text After Commission Changes)

Arbitrator's Report & Decision

Issues 17 & 18: Directory Assistance & Operator Services

The Issue. Should the Commission require GTE to provide custom routing to AT&T's operator services or directory services platforms?

AT&T's Position. Yes. Custom routing is technically feasible.

GTE's Position. No. The Act does not require GTE to change its retail services for AT&T's benefit.

Resale Scenario. When AT&T resells a GTE service, AT&T receives the same service as GTE's retail customers, but at a wholesale rate. GTE routes operator and directory assistance calls for its retail customers to GTE operators.

Network Element Scenario. GTE would have to add new switch capacity and condition its existing switches to provide custom routing. It would need separate trunk groups for routing calls to AT&T's platforms, and unique line class codes for AT&T's customers to "tag" the calls. The feasibility of customer routing depends on the switch. There is a need for a long-term solution, time for developing national standards, and time for engineering for new switching products. There is no evidence which would allow the Arbitrator to set an implementation schedule.

FCC Rules. §51.5 (Technical Feasibility) requires an incumbent claiming adverse network reliability impacts to prove "specific and significant" adverse impacts to the state commission by "clear and convincing" evidence.

FCC Order. ¶418 requires the incumbent to prove technical unfeasibility for particular switches:

> We conclude that customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. … An incumbent LEC must prove to the state commission that customized routing in a particular switch is not technically feasible.

~~**Decision.** GTE did not identify any particular switch in Washington which cannot custom route the calls. It has the burden of proof, so AT&T prevails.~~

Decision. The Commission views customized routing as an issue of access to a network element (transmission to AT&T's operator services platform) rather than a change in a retail service. There does not appear to be a proprietary element claim, so there is no need for the Commission to address the "necessity" standard. The Commission concludes that failure to provide access would worsen AT&T's ability to compete because an inability to use its own operator services platforms would adversely affect both costs and service quality.

The Commission does not have a sufficient factual record to resolve the technical feasibility issue for any specific switch. It is more appropriate to apply a presumption of feasibility and require unbundling than it would be to prevent unbundling when technically feasible through a blanket ruling against it.

If, for a particular switch, unbundling is not feasible, GTE has no obligation under the Act or the FCC order to unbundle. GTE may assert lack of feasibility and, if AT&T does not agree, the parties can resolve the issue through their dispute resolution process.

Issue 17	AT&T prevails. GTE must route Operator Service and Directory Assistance calls to AT&T's platform pursuant to the FCC order when AT&T purchases services for resale under §251(c)(4).
Issue 18	AT&T prevails. GTE must route Operator Service and Directory Assistance calls to AT&T's platform pursuant to the FCC order when AT&T purchases network elements under §251(c)(3).

Issue 27: Relative Quality Levels

Issue. Should the contract include language requiring GTE to deliver at least 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?

AT&T's Position. GTE must provide services, elements, ancillary functions, and access at least equal in quality to the services, elements, ancillary functions, and access which GTE provides to itself. GTE must provide them subject to the same conditions and within the same provisioning time intervals. If AT&T requests a higher-than-standard level of access or quality of element, GTE must accommodate the request to the extent it is technically feasible.

GTE's Position. For wholesale services, network elements, and ancillary services, GTE need only avoid discriminating against one new entrant with respect to

other new entrants. GTE need deliver the same level of quality to a new entrant as it delivers to itself only with respect to interconnection. GTE has agreed to handle AT&T transactions in the normal course of its business, so AT&T will receive GTE's normal level of service and there is no need for special contract language on the point.

The Act. §251(c)(2) requires all incumbent local exchange carriers to provide connections "at a quality level least equal to the connections the incumbent provides for itself or other carriers." §251(c)(3) and §251(c)(4) simply prohibit discrimination.

Eighth Circuit Decision. The Eighth Circuit vacated §51.311(c) which required incumbents to accommodate requests for a higher level of service. It did not vacate the remainder of the rule.

FCC Rules. §51.311 governs the relative quality of access and network elements. It directly prohibits incumbents from discriminating in their own favor:

- Unless a carrier requests a higher-than-standard level of service or a lower-than-standard level of service, an incumbent must provide the same level of service to all carriers.

- To the extent technically feasible, the standard level of service an incumbent provides to other carriers must be as high as the level of service the incumbent provides to itself.

- ~~To the extent technically feasible, an incumbent must accommodate a request for a higher-than-standard level of service.~~

~~The incumbent has the burden of persuading the state commission that it is not technically feasible to comply with the rule.~~

FCC Order. In ¶312 the FCC addresses access to network elements in explaining its reasoning for §51.311:

> We conclude that the obligation to provide "nondiscriminatory access to network elements on an unbundled basis" *(Footnote Omitted)* refers to both the physical or logical connection to the element and the element itself. In considering how to implement this obligation in a manner that would achieve the 1996 Act's goal of promoting local exchange competition, we recognize that new entrants, including small entities, would be denied a meaningful opportunity to compete if the quality of the access to unbundled elements provided by incumbent LECs, as well as the quality of the elements themselves, were lower than what the incumbent LECs provide to themselves. Thus, we conclude it would be insufficient to define the obligation of incumbent LECs to

> provide nondiscriminatory [*351] access" to mean that the quality of the access and unbundled elements incumbent LECs provide to all requesting carriers is the same. As discussed above with respect to interconnection, *(Footnote Omitted)* an incumbent LEC could potentially act in a nondisciminatory manner in providing access or elements to all requesting carriers, while providing preferential access or elements to itself. Accordingly, we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself. *(Footnote Omitted)*

Similarly, ¶970 explains the reasoning with respect to services:

> We conclude that service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale. This requirement includes differences imperceptible to end users because such differences may still provide incumbent LECs with advantages in the marketplace. Additionally, we conclude that incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's subsidiaries, affiliates, or other parties to whom the carrier directly provides the service, such as end users. This equivalent timeliness requirement also applies to incumbent LEC claims of capacity limitations and incumbent LEC requirements relating to such limitations, such as potential down payments. We not *(Sic)* that common carrier obligations, established by federal and state law and our rules, continue to apply to incumbent LECs in their relations with resellers.

~~**Decision.** The Act requires parity at the standard price and allows a new entrant to request a higher level of service. A higher level of service implies a higher cost of service, and GTE cannot discriminate in favor of AT&T, so a correspondingly higher price is implicit in AT&T's proposal. Also implicit is a bona fide request process to define the terms of any higher level of service. With those implicit considerations, AT&T's position is consistent with the Act while GTE's position is not.~~

Decision. The Commission cannot adopt either party's offer:

AT&T. Under the Eighth Circuit's interpretation of the Act, GTE has no obligation to provide a higher level of service.

GTE. GTE must provide at least the same level of service as it provides to itself and the contract should contain language requiring that level of service.

The Commission simply requires that the contract comply with of 47 C.F.R. 51.311.

Issue 27 ~~AT&T prevails. The contract should include terms requiring GTE to provide services, elements, ancillary functions, and access at least equal in quality to the services, elements, ancillary functions, and access which GTE provides to itself. GTE must provide them subject to the same conditions and within the same provisioning time intervals. If AT&T requests a higher-than-standard level of access or quality of element, GTE must accommodate the request to the extent it is technically feasible and AT&T is willing to pay the additional cost.~~ Neither party prevails. Contract terms must relating to this issue must comply with 47 C.F.R. 51.311.

Issue 31: Assembly of Network Elements

Issue. To what extent should the Commission allow AT&T to combine network elements?

Party Positions. The parties propose the following combinations.

GTE OFFER	AT&T OFFER
AT&T may lease and interconnect to whichever of these unbundled network elements AT&T chooses, and may combine these unbundled elements with any services or facilities that AT&T may itself provide, pursuant to the following terms: Interconnection for access to unbundled elements shall be achieved via expanded interconnection/collocation arrangements. a) AT&T shall maintain at the wire center at which the unbundled services are resident. (Sic) b) Each loop or port element shall be delivered to AT&T collocation arrangement over a loop/port	AT&T desires a standard set of five combinations: Unbundled Network Element Platform with Operator Systems • Unbundled Network Element Platform without Operator Systems • Loop Combination • Loop/Network Combination • Switching Combination No. 1 It desires three additional combinations under a bona fide request process: Switching Combination No. 2

GTE OFFER	AT&T OFFER
connector applicable to the unbundled services through other tariffed or contracted options. c) AT&T may combine unbundled network elements with AT&T's own facilities. AT&T shall not combine unbundled network elements purchased from GTE to bypass resale offerings.	• Switching Combination No. 3 • Switched Data Services.

The Act. §251(c)(3) requires an incumbent to provide elements in a manner that allows requesting carriers to combine the elements into services.

~~**FCC Rules.** §51.315(c) requires incumbents to combine elements in any technically feasible combination that will not harm the other carriers.~~

> ~~Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:~~
>
> ~~(1) technically feasible; and~~
>
> ~~(2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.~~

~~**FCC Order.** In ¶293, the FCC concludes that Congress did not want incumbents to impede entry by declining to combine elements when new entrants might not have the capability to do so:~~

> ~~We agree with AT&T and Comptel that the quoted text in section 251(c)(3) bars incumbent LECs from separating elements that are ordered in combination, unless a requesting carrier specifically asks that such elements be separated. We also conclude that the quoted text requires incumbent LECs, if necessary, to perform the functions necessary to combine requested elements in any technically feasible manner either with other elements from the incumbent's network, or with elements possessed by new entrants, subject to the technical feasibility restrictions discussed below. We adopt these conclusions for two reasons. First, in practice it would be impossible for new entrants that lack facilities and information about the incumbent's network to combine unbundled elements from the incumbents' network without the assistance of the incumbent. If we adopted NYNEX's proposal, we believe requesting carriers would be seriously and unfairly inhibited in their ability to use unbundled elements to enter local markets.We therefore reject NYNEX's contention that the statute requires requesting carriers, rather~~

> ~~than incumbents, to combine elements. We do not believe it is possible that Congress, [*326] having created the opportunity to enter local telephone markets through the use of unbundled elements, intended to undermine that opportunity by imposing technical obligations on requesting carriers that they might not be able to readily meet.~~

Decision. GTE may not prohibit AT&T from replicating its services. *See* page 2. To the extent GTE otherwise proposed to restrict ~~GTE's~~ AT&T's ability to combine elements, those restrictions also are contrary to the Act.

Issue 31 AT&T prevails.

Issue 33: Subloop Unbundling

Area of Agreement. The parties agree to address subloop unbundling through a bona fide request process.

Issue. Should the Commission order GTE to unbundle the Network Interface Device (NID), Loop Distribution, Loop Feeder, and Loop Concentrator/Multiplexer Capabilities?

AT&T's Position. Yes. GTE should offer subloops, subject to market demand on an individual case basis.

GTE's Position. GTE is willing to offer subloops when technically feasible, GTE maintains control over its network facilities, AT&T takes adequate safety precautions (*e.g.* grounding and surge protection), and GTE receives full compensation.

FCC Rules. The rules do not require subloop unbundling.

FCC Order. The FCC did not feel that it had sufficient information to resolve technical feasibility issues for subloop unbundling on the national level. In ¶391, it left the issue to the states:

> … the technical feasibility of subloop unbundling is best addressed at the state level on a case-by-case basis at this time.

~~**Decision.** Subloop unbundling, to the extent it is economically feasible, will result in a more efficient network. It is an area in which individual circumstances play a large role in determining technical feasibility. If unbundling a specific part of a specific loop is technically feasible, and makes economic sense, GTE should provide the subloop.~~

Decision. While the parties focused on the BFR process and technical feasibility, the Commission cannot require GTE to offer more than it desires to offer

unless the Commission first determines that subloops qualify for unbundling when technically feasible. GTE did not assert that subloops are proprietary in nature, so there is no need for the Commission to consider whether it is "necessary" to unbundle them. A failure to unbundle subloops would worsen AT&T's ability to provide competing services by requiring AT&T to unnecessarily duplicate existing facilities. That would unnecessarily raise AT&T's costs, so the Commission concludes that subloop unbundling meets the "impairment" standard.

The potential conflict between the parties under this issue relates to technical feasibility because AT&T will decline to pursue unbundling when it is not economically feasible. Technical feasibility for a particular subloop component is an issue for the parties to pursue under their dispute resolution process.

Issue 33 GTE should unbundle the NID, Loop Distribution, Loop Feeder, and Loop Concentrator/Multiplexer Capabilities to the extent technically feasible.

Issue 39: Dark Fiber

The Issue. Is dark fiber a network element?

GTE's Position. No. "Dark fiber" is not a network element because GTE does not "use" it to provide telecommunications service. Requiring GTE to provide dark fiber would disrupt its planning process. Fiber is easy to damage and has such large capacity that damage can have very serious customer impacts. GTE would need full control of any AT&T connections to its dark fiber.

AT&T's Position. Yes. ~~AB15~~

FCC Rules. §3(45) defines "network element" as a facility or equipment "used in the provision" of a telecommunications service.

FCC Order. In ¶450 the FCC declined to determine whether dark fiber is a network element:

> We also decline [*32] at this time to address the unbundling of incumbent LECs' "dark fiber." Parties that address this issue do not provide us with information on whether dark fiber qualifies as a network element under sections 251(c)(3) and 251(d)(2). Therefore, we lack a sufficient record on which to decide this issue.

Washington Law/Policy. When a carrier leases dark fiber to another carrier, it provides a telecommunications service. *See In Re Electric Lightwave, Inc.,* ~~123 Wn.2d 530, 545, 869 P.2d 1045 (1994)~~ UT-901029, 3rd Supplemental Order at 15.

~~**Discussion.** While the FCC declined to rule on dark fiber because it lacked a sufficient record, this Commission has resolved the issue and the Court let the decision stand. The Commission's decision is compatible with the Act because fiber is "used in the provision" of telecommunications services. Fiber is "dark" when it lacks the electronics necessary to transmit/receive light and put it in actual service. There is no technical problem attaching an incumbent's fiber to a new entrant's electronics, so it is technically feasible to offer "dark" fiber as a network element.~~

~~**Decision.** In Washington, dark fiber is a network facility.~~

Decision. As a form of spare capacity, "dark" fiber is not fundamentally different than "dead" copper. Once either transmission media runs underground or on poles, it ceases being "inventory" for general use. It is committed to carrying traffic on a specific route. At that point, it becomes an element of the carrier's network.

Neither form of transmission media is a proprietary element so there is no need to consider whether it is "necessary" to unbundle them. There is greater impairment to a CLEC's ability to provide competing services from withholding "dark" fiber than "dead" copper because the CLEC can match fiber's capacity to its needs by attaching higher or lower capacity electronics to the fiber. A mismatch between electronic capabilities and CLEC needs would increase costs or reduce its ability to provide competing services. Fiber is an element which GTE should unbundle for use with AT&T's electronics.

Issue 39 AT&T prevails. GTE must offer dark fiber as a network element.

Issue 40: Transport Unbundling

Issue. Should the Commission require GTE to unbundle dedicated and common local transport?

AT&T's Position. Yes. It is technically feasible.

GTE's Position. GTE proposes to provide dedicated and common transport through its existing access tariff. GTE opposes offering them as "network elements" at a lower price.

FCC Order. In ¶262, the FCC specifically included transport trunks in its definition of the "network element" term:

> We conclude that the definition of the term "network element" broadly includes all "facilities or equipment used in the provision of a telecommunications service," and all "features, functions, and capabilities that are provided by means of such facility or equipment, including

> subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." *(Footnote Omitted)* This definition thus includes, but is not limited to, transport trunks … .
>
> In ¶440, the FCC specifically requires incumbents to unbundle transmission facilities:
>
> > We require incumbent LECs to provide unbundled access to shared transmission facilities between end offices and the tandem switch. *(Footnote Omitted)* Further, incumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing [*22] carriers. This includes, at a minimum, interoffice facilities between end offices and serving wire centers (SWCs), SWCs and IXC POPs, tandem switches and SWCs, end offices or tandems of the incumbent LEC, and the wire centers of incumbent LECs and requesting carriers. The incumbent LEC must also provide, to the extent discussed below, all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier levels (e.g. OC-3/12/48/96) that the competing provider could use to provide telecommunications services. We conclude that an incumbent LEC may not limit the facilities to which such interoffice facilities are connected, provided such interconnection is technically feasible, orthe *(Sic)* use of such facilities. In general, this means that incumbent LECs must provide interoffice facilities between wire centers owned by incumbent LECs or requesting carriers, or between switches owned by incumbent LECs or requesting carriers. For example, an interoffice facility could be used by a competitor to connect to the incumbent LEC's switch or to the competitor's collocated equipment. We agree with the Texas Commission that a competitor should have the ability to use interoffice [*23] transmission facilities to connect loops directly to its switch. We anticipate that these requirements will reduce entry barriers into the local exchange market by enabling new entrants to establish efficient local networks by combining their own interoffice facilities with those of the incumbent LEC.

~~**Decision.** While GTE may prefer to price transport as a service under tariff, transmission is a network element. There was no showing that it is not technically feasible to unbundle dedicated transmission or common transmission.~~

Decision. Both dedicated and shared transport trunks are network elements because they are facilities which GTE uses to provide telecommunications services. GTE did not assert that they are proprietary elements so the Commission need not address the “necessity” standard. GTE must unbundle transport because a failure to do so would worsen AT&T’s ability to compete by requiring AT&T unnecessarily duplicate transport facilities.

Issue 40 AT&T prevails. GTE shall unbundle dedicated transport and common transport as network elements.

Issue 41: Operator Systems

Issue. Do Operator Service and Directory Assistance systems qualify as network elements?

AT&T's Position. Yes. GTE uses them for providing telecommunications service.

GTE's Position. No. It is not technically feasible for all switches.

FCC Order. In ¶536, the FCC requires incumbents to unbundle operator service and directory assistance systems:

> We note that several competitors advocate unbundling the facilities and functionalities [*151] providing operator services and directory assistance from particular resold services or the unbundled local switching element, so that a competing provider can provide these services to its customers supported by its own systems rather than those of the incumbent LEC. *(Footnote Omitted)* Some incumbent LECs argue that such unbundling, however, is not technically feasible because of their inability to route individual end user calls to multiple systems. *(Footnote Omitted)* We find that unbundling both the facilities and functionalities providing operator services and directory assistance as separate network elements will be beneficial to competition and will aid the ability of competing providers to differentiate their service from the incumbent LECs. We also note that the Illinois Commission has recently ordered such access. *(Footnote Omitted)* We therefore find that incumbent LECs must unbundle the facilities and functionalities providing operatr *(Sic)* services and directory assistance from resold services and other unbundled network elements to the extent technically feasible.

Decision. While the parties focused on usefulness and technical feasibility, the Commission cannot require GTE to offer more than it desires to offer unless the Commission first determines that a failure to unbundle would impair AT&T's ability to provide competing services. GTE did not assert that operator systems are proprietary in nature, so there is no need for the Commission to consider whether it is "necessary" to unbundle them. A failure to unbundle operator systems would worsen AT&T's ability to provide competing services by requiring AT&T to unnecessarily duplicate existing systems. That would unnecessarily raise AT&T's costs, so the Commission concludes that operator systems meets the "impairment" standard.

The potential conflict between the parties under this issue relates to technical feasibility. To the extent it is not technically feasible for a particular switch, GTE has the burden of proving lack of technical feasibility. It has not done so for particular switches or switches in general on this record.

Issue 41 AT&T prevails. GTE must unbundle Operator Services and Directory Assistance.

Issue 43: Tandem Switch Unbundling

Issue. Should the Commission require GTE to provide tandem-to-tandem switching?

AT&T's Position. Yes. It is technically feasible to unbundle tandem switching.

GTE's Position. Only if AT&T interconnects at the GTE tandem, and:

- AT&T enters into one of the existing intraLATA toll compensation mechanisms, or
- Signaling and AMA record standards support recognition of multiple tandem switching events.

FCC Order. In ¶425, the FCC concluded that ~~it is technically feasible to unbundle~~ tandem switching qualifies for unbundling:

> We also affirm our tentative conclusion in the NPRM that it is technically feasible for incumbent LECs to provide access to their tandem switches unbundled from interoffice transmission facilities. We note that some states already have required incumbent LECs to unbundle tandem switching. *(Footnote Omitted)* Parties do not contend, pursuant to section 251(d)(2)(A), that tandem switches are proprietary in nature. With regard to section 251(d)(2)(B), we find that competitors' ability to provide telecommunications service would be impaired without unbundled access to tandem switching. Therefore, we find that the availability of unbundled tandem switching will ensure that competitors can deploy their own interoffice facilities and connect them to incumbent LECs' tandem switches [*11] where it is efficient to do so.

Decision. ~~This~~ The points GTE raises indicates that this is another pricing issue. GTE did not assert that tandem-to-tandem switching is a proprietary element, so the Commission need not address the "necessity" standard. GTE must unbundle tandem-to-tandem switching because a failure to do so would worsen AT&T's ability to compete by requiring AT&T unnecessarily duplicate tandem switching. ~~There is no reason to refrain from unbundling.~~

Issue 43 AT&T prevails. GTE shall unbundle tandem-to-tandem transport.

Issues 50 & 52: "Necessary" Equipment

The Issue. What equipment is "necessary" for interconnection or access to unbundled network elements?

AT&T's Position. New entrants should be able to collocate Remote Switching Units because it is technically feasible, they do not take more space than a SLC, and AT&T uses them for interconnection. They are "necessary" for efficient high quality service.

GTE's Position. AT&T should be able to locate only equipment necessary for interconnection or access to unbundled network elements. Necessary equipment includes transmission, concentration, and multiplexing equipment. It does not include switching equipment, enhanced services equipment, or customer premises equipment.

The Act. The incumbent must provide space for any equipment "necessary" for interconnection or access to unbundled network elements.

FCC Rules. §51.5 defines "equipment necessary for interconnection or access to unbundled network elements" simply as equipment "used" to interconnect or gain access.

§51.323(c) states: "Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services."

FCC Order. The FCC's reasoning for the definition is in ¶579:

> We believe that section 251(c)(6) generally requires that incumbent LECs permit the collocation of equipment used for interconnection or access to unbundled network elements. Although the term "necessary," read most strictly, could be interpreted to mean "indispensable," we conclude that for the purposes of section 251(c)(6) "necessary" does not mean "indispensable" but rather "used" or "useful." This interpretation is most likely to promote fair competition consistent with the purposes of the Act. …Even if the collocator could [*195] use other equipment to perform a similar function, the specified equipment may still be "necessary" for interconnection or access to unbundled network elements under section 251(c)(6). We can easily imagine circumstances, for instance, in whih *(Sic)* alternative equipment would perform the same function, but with less efficiency or at greater cost. A strict reading of the term "necessary" in these circumstances could allow LECs to avoid collocating the equipment of the interconnector's choosing, thus undermining the procompetitive purposes of the 1996 Act.

In ¶581, the FCC left the issue of whether §251(c)(6) covers specific switching equipment to the states:

> … At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements. *(Footnote Omitted)* We recognize, however, that modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually [*198] used for interconnection or access to unbundled elements.

~~**Decision.** Neither the Act nor FCC rules require an incumbent to allow a new entrant to collocate switching equipment inside the incumbent's central office. AT&T has the option of using either subloop unbundling alternatives or direct (copper) cable from GTE's central office to connect customers to a nearby AT&T switching location. AT&T and GTE should explore other alternatives, such as the use of digital cross connect systems (DCS) to eliminate the need for back to back subscriber loop carrier configurations.~~

Decision-Making Standard. The FCC rules contemplate a two step analysis:

Necessity. 47 C.F.R. 51.5 defines "necessary" in terms of usefulness rather than indispensability. There is no need for the CLEC to show an absence of alternatives.

Functionality. 47 C.F.R. 51.323(c) requires a finding that the equipment is not a switch.

Discussion. Collocation of remote switching units ("RSUs") is "useful" for interconnection under 47 C.F.R. 51.5 because RSUs provide line and trunk connections. A RSU is not a "switch" under 47 C.F.R. 51.323(c) because it requires a host to perform essential functions, including:

- Programming to define lines and trunks;
- Routing;
- Creation and use of engineering and billing data;
- Access to OSS systems (*e.g.* maintenance monitoring, engineering data, and recent changes); and
- SS7 signaling.

Even when a RSU has "standalone" capabilities, it needs its "umbilical cord" to the host for full switching functionality. In the standalone mode, it can only:

- Perform functions which the host has downloaded to the RSU for processing in the RSU;
- Route calls "internally" between lines attached to the RSU;
- Store some rudimentary engineering and billing data for subsequent uploading to the host;

- Use rudimentary internal non-SS7 signaling.

While a RSU is not a switch, it can perform some functions which could enable a CLEC to avoid access charges. A CLEC should not use physically collocated RSUs to avoid payment of access charges.

Issue 50 ~~GTE~~ AT&T prevails. AT&T may ~~not~~ collocate remote switching units.

Issue 52 GTE prevails. GTE may limit use of collocation space to permissible equipment.

Resolution of Contract Language Disputes

Attachment 2 Section 13: SS7 Interconnection

Proposed Language

13.5.1. SS7 Network Interconnection is the Interconnection of GTE Signal Transfer Points (STPs) with AT&T STPs or AT&T local or tandem switching systems, [1] for the purpose of providing local exchange or exchange access services. This connectivity enables the exchange of SS7 messages between AT&T local or tandem switching systems and GTE's local or tandem switching systems, and between AT&T local or tandem switching systems and other third-party local or tandem switching systems with signaling connectivity to the same STPs. This connectivity also enables the exchange of messages between AT&T local or tandem switching systems, and GTE [2] call-related databases.

Related Sections. [1] Attachment 11 contains conflicting proposals for the definition of "Interconnection."

Decision Sequence. [1] The Decision Maker resolved the dispute over the definition of Interconnection before resolving this issue.

Party Positions. [1] ***GTE.*** In paragraph 191 of Order No. 96-325, the FCC rejected the idea that an interexchange carrier like AT&T could use interconnection for the purpose of originating or terminating interexchange traffic. AT&T is inappropriately attempting to use interconnection under this agreement to supplement its interexchange network. ***AT&T.*** The Act requires incumbent carriers to provide nondiscriminatory access to network elements to ***any*** requesting telecommunications carrier. The Act does not limit access to functionalities solely for the purpose of providing local exchange or exchange access services. [2] Neither party addressed this language.

Discussion. [1] Paragraph 191 of the FCC's Order No. 96-325 does state that an interexchange carrier may not Interconnect under §251(c)(2) solely for the purpose of originating or terminating interexchange traffic:

> … As we stated in the NPRM, an IXC that seeks to interconnect solely for the purpose of originating or terminating its own interexchange traffic is not offering access, but rather is only obtaining access for its own traffic. Thus, we disagree with CompTel's position that IXCs are offering exchange access when they offer and provide exchange access as a part of long distance service. We conclude that a carrier may not obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating interexchange traffic, even if that traffic was originated by a local exchange customer in a different telephone exchange of the same carrier providing the interexchange service, if it does not offer exchange access services to others. …

However, paragraph 191 goes on to state that a traditional interexchange carrier, such as AT&T, may Interconnect under §251(c)(2) when the interexchange carrier also provides local exchange service:

> … As we stated above [in paragraph 190], however, providers of competitive access services are eligible to receive interconnection pursuant to section 251(c)(2). Thus, traditional IXCs that offer access services in competition with an incumbent LEC (i.e., IXCs that offer access services to other carriers as well as to themselves) are also eligible to obtain interconnection pursuant to section 251(c)(2). For example, when an IXC interconnects at a local switch, bypassing the incumbent LECs' transport network, that IXC may offer access to the local switch in competition with the incumbent. In such a situation, the interconnection point may be considered a section 251(c)(2) interconnection point.

Paragraph 191 does not resolve the issue of whether an interexchange carrier which also provides local exchange services may obtain access for originating or terminating interexchange traffic. For that question, it is better to turn to paragraph 190:

> … IXCs are permitted under the statute to obtain interconnection pursuant to section 251(c)(2) for the "transmission and routing of telephone exchange service and exchange access." … Thus, all carriers (including those traditionally classified as IXCs) may obtain interconnection pursuant to section 251(c)(2) for the purpose of terminating calls originating from their customers residing in the same telephone exchange (i.e., non-interexchange calls).

This interpretation of the Act permits interexchange carriers to participate in the local exchange market without providing an opportunity for interexchange carriers to set up token local exchange operations for the purpose of gaining access under

~~§251(c)(2) for their interexchange traffic. It is a more reasonable interpretation than AT&T's interpretation.~~

Discussion. [1] Paragraph 356 interprets section 251(c)(3) as allowing carriers to use network elements for any telecommunications service. In that light, it is more reasonable to interpret section 251(c)(2) as a hurdle limiting interconnection to carriers with local operations and section 251(c)(3) as allowing carriers qualifying for interconnection to then use network elements for any telecommunications service.

In this case, AT&T qualifies for interconnection, so the Commission should determine whether AT&T is acquiring SS7 components as network elements. In section 32.9 of the General Terms & Conditions, the parties include Signal Transfer Points (STPs) and other SS7 components in the list of network elements which GTE will make available to AT&T.

The parties put specific language governing GTE's provisioning of network elements in Attachment 2. The language governing SS7 components is under the label "SS7 Network Interconnection." The label is misleading because Attachment 2 governs provisioning of network elements rather than interconnection. A misleading label should not prevent AT&T from using SS7 network elements to provide any telecommunications service.

[2] Since SS7 is a mechanism for routing calls, it is not clear how the restrictive language GTE proposes would make any difference. GTE did not show that the Decision Maker should require it.

Selected Language

> 13.5.1. SS7 Network Interconnection is the Interconnection of GTE Signal Transfer Points (STPs) with AT&T STPs or AT&T local or tandem switching systems~~, for the purpose of providing local exchange or exchange access services~~. This connectivity enables the exchange of SS7 messages between AT&T local or tandem switching systems and GTE's local or tandem switching systems, and between AT&T local or tandem switching systems and other third-party local or tandem switching systems with signaling connectivity to the same STPs. This connectivity also enables the exchange of messages between AT&T local or tandem switching systems, and GTE databases.

Interconnection Agreement

Section 11.5: Higher Level of Service

> 11.5 If AT&T requests a standard higher than GTE provides to itself, such request shall be made as a Bona Fide Request

pursuant to Attachment 12, and GTE ~~shall~~ may provide such standard to the extent technically feasible. AT&T shall pay the incremental cost of such higher standard or other measurement of quality.

Section 43: Number Portability

43.3.5. ~~In the event a toll call is completed through an interim service provider's number portability arrangement (e.g., remote call forwarding, FLEX DID, etc.) to a Customer of the new Carrier of Record, the new Carrier of Record is entitled to applicable end office terminating switched access charges (e.g., local switching, line termination, carrier common line, residential interconnection charge, etc.) The company forwarding the call will be considered to be adequately compensated through the charges it receives for porting the number.~~ To compensate AT&T for applicable access revenues associated with terminating interLATA or intraLATA toll calls to AT&T subscribers whose telephone numbers have been ported from GTE, GTE shall pay AT&T seventy percent (70%) of the terminating access revenues as determined on a LATA basis by the following formulae. Such formulae shall be updated on a quarterly basis at the request of either Party.

Attachment 2 Section 13: SS7 Interconnection

13.5.1. SS7 Network Interconnection is the Interconnection of GTE Signal Transfer Points (STPs) with AT&T STPs or AT&T local or tandem switching systems~~, for the purpose of providing local exchange or exchange access services~~. This connectivity enables the exchange of SS7 messages between AT&T local or tandem switching systems and GTE's local or tandem switching systems, and between AT&T local or tandem switching systems and other third-party local or tandem switching systems with signaling connectivity to the same STPs. This connectivity also enables the exchange of messages between AT&T local or tandem switching systems, and GTE databases.

Attachment 3, Section 2.2.4: Collocation

2.2.4 ... AT&T may collocate the amount and type of equipment in its collocated space that is necessary for interconnection functions (which include interconnection with GTE's network and other collocated carriers or access to GTE's unbundled network elements, including but not limited to transmission equipment, multiplexing equipment, and remote switching units ("RSUs"); provided, however, that AT&T may not collocate enhanced services equipment or fully equipped switching equipment (host class 5 switches), nor may it use physically collocated RSUs to avoid payment of access charges.