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June 4, 1996

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

Dear Ms. Bayo:

Re: Docket No. 950985-TP
Resolution of petition(s) to establish nondiscriminatory rates, terms and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, Florida Statutes

Please find enclosed for filing an original and fifteen copies of GTE Florida Incorporated's Motion for Reconsideration of Commission's Order in the above matter. Also enclosed is a diskette with a copy of the Motion in WordPerfect 5.1 format. Service has been made as indicated on the Certificate of Service. If there are any questions with regard to this matter, please contact me at 813-228-3087.

ACK 1
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Very truly yours,

Anthony P. Gillman/dm

Anthony P. Gillman

APG:tas
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of petition(s) to establish nondiscriminatory rates, terms, and conditions for interconnection involving local exchange companies and alternative local exchange companies pursuant to Section 364.162, F.S.	)	Docket No. 950985-TP Filed: June 4, 1996

GTE FLORIDA INCORPORATED'S
MOTION FOR RECONSIDERATION OF COMMISSION'S ORDER

GTE Florida Incorporated (GTEFL), in accordance with P.S.C. Rule No.25-22.038(2), moves the Florida Public Service Commission (Commission) for reconsideration of its decision rendered on May 20, 1996 requiring GTEFL to implement a "bill-and-keep" compensation interconnection arrangement with Metropolitan Fiber Systems of Florida, Inc. (MFS). See Order No. PSC-96-0668-FOF-TP (Order). In support of this motion, GTEFL states the following:

Background and Summary

Under Section 364.162, incumbent local exchange carriers must negotiate mutually acceptable prices, terms and conditions of interconnection with alternative local exchange carriers (ALECs). If an agreement cannot be reached among the parties, the Commission is authorized to establish nondiscriminatory rates, terms, and conditions of such interconnection. Fla. Stat. §364.162(2). Although GTEFL entered into good faith negotiations with MFS, the parties could not reach an agreement. As such, MFS filed a petition requesting the Commission to establish terms of local interconnection with GTEFL.

Subsequent to filing that petition, but prior to the hearings held in this case, GTEFL and MFS entered into a partial agreement resolving many of the technical issues involved with interconnection between the companies (Order, Attachment A). The Commission approved that partial interconnection agreement at the hearing (Order at 4). GTEFL is not seeking reconsideration of that ruling.

The primary dispute in this docket involves the compensation arrangement for interconnection. GTEFL proposed an interconnection arrangement referred to as an originating responsibility plan (ORP). Under that plan, the carrier serving the customer originating a call sees that the call is completed and that other firms involved in either transporting or terminating the call are compensated for use of their networks. GTE proposed to charge its existing switched access rate less the residual interconnection charge, the carrier common line charge and the information surcharge. This rate would have covered the company's long run incremental costs and provided contribution to its joint and common costs. GTEFL's proposed charge was also low enough that competitive entry would not in any way be impeded, yet sufficient enough to allow GTEFL to recover its costs of furnishing interconnection as required by Florida law.

In contrast, MFS proposed a bill and keep arrangement wherein no money would be exchanged between the carriers for terminating the other carrier's calls. Under this arrangement, it is assumed that the amount of traffic terminated by each company would be relatively equal and that the costs incurred by each respective company would be the same. MFS proposed that such an arrangement should be implemented for eighteen months and then replaced with a per minute charge.

In its Order, the Commission rejected GTEFL's proposal and ordered GTEFL and MFS to implement a bill and keep arrangement, referred in the Order as "mutual traffic exchange" (Order at 12). Although MFS requested that bill and keep should only be implemented on a temporary basis, the Commission placed no time limitations on its Order. However, the Commission afforded both GTEFL and MFS the opportunity to file a new petition if the traffic "is imbalanced to the point that (the company) is not receiving benefits equivalent to those it is providing through mutual traffic exchange" (Order at 20). Although GTEFL and MFS both have the opportunity to seek a change to the bill and keep mechanism, there is no provision for either company to recoup any deficiencies in cost recovery.

In ordering a bill and keep arrangement, the Commission has overlooked, failed to properly consider and/or misconstrued the significance of certain evidence in this docket. See *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962). This decision also relies on speculation, conjecture and an incorrect interpretation of Florida law in several respects. See *Tamiami Trail Tours, Inc. v. Bevis*, 299 So. 2d 22, 24 (Fla. 1974). The Commission's findings also lack the requisite foundation of competent and substantial evidence and are therefore arbitrary in nature. *Duval Util. Co. v. Florida Public Service Commission*, 380 So. 2d 1028, 1031 (Fla. 1980).

Specifically, the Order should be reconsidered because: 1) the Commission misinterpreted Florida law by failing to impose an interconnection charge; 2) the evidence presented does not support the Commission's finding that a bill and keep mechanism will be sufficient to permit recovery of the costs of interconnection; 3) the evidence presented

does not support the Commission's finding that costs of measurement and billing are excessive; 4) the bill and keep mechanism is discriminatory and therefore unlawful; e) the bill and keep arrangement ordered by the Commission violates the Takings Clause of the United States and Florida Constitutions; 5) in ordering bill and keep, the Commission failed to consider GTEFL's interests and forces GTEFL to subsidize the market entry of its competitors; and 6) the evidence presented does not support the Commission's rate for intermediary handling of local traffic. Each legal deficiency is addressed below.

A. The Commission Misinterprets Florida Law by Failing to Impose an Interconnection Charge.

Under the bill and keep arrangement ordered by the Commission, neither GTEFL nor MFS will pay the other anything for terminating calls originated by the customers of the other carrier. As such, no *charges* for local interconnection are imposed on either interconnecting party. GTE contends that Florida law mandates the Commission to establish a charge for local interconnection. The statute provides:

> In setting the *local interconnection charge*, the commission shall determine that the *charge* is sufficient to cover the cost of furnishing interconnection.

Fla. Stat. §364.162(4) (emphasis added). In other parts of this same subsection, references are also made to "rates" and "prices." *See* Fla. Stat. §364.162(1), (2) and (3).

When a statute is clear and unambiguous it must be afforded its plain and obvious meaning. As held by the Supreme Court in *Streeter v. Sullivan*, 509 So.2d 268 (Fla. 1987):

> The first rule of statutory interpretation is that "[w]hen the language of the statue is clear and unambiguous and conveys a clear and definite meaning, *there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.*"

Id. at 271 (emphasis added; citations omitted). Similarly, the Court in *Citizens v. Public Service Commission*, 425 So.2d 534 (Fla. 1982), set forth another controlling tenet of statutory construction. The Court in that case held that "words of common usage, when used in a statute, should be construed in their plain and ordinary sense." *Id.* at 542. Thus, the Commission has no right to ignore the plain meaning of a statutory provision in favor of some other construction. The plain meaning of the statute must control. *St. Petersburg Bank and Trust Co. v. Hamm*, 414 So. 2d 1071 (Fla. 1982).

The statutory provisions in question are clear and unambiguous, using plain words with well known and common meanings. The statute clearly requires the Commission to establish a "charge" for local interconnection. A charge means "the price set or asked" *Webster's II New Riverside University Dictionary,* 249 (1984).[1] Likewise, *Webster's* defines "rate" to be a "cost per unit of a service or commodity" or a "charge or payment calculated by means of a particular ratio, scale or standard." *Id.* at 975. The Commission acknowledges that neither the definition of rate or charge makes any mention of "in-kind" exchange or any other form of bartering which is being imposed upon GTEFL in this case (Order at 18). However, by requiring bill and keep, the Commission has included these forms of compensation within these definitions, and in doing so, deviates from their plain

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[1] Under Florida law, plain and ordinary meaning of words in a statute can be ascertained by reference to a dictionary. *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992); *Newberger v. State*, 641 So. 2d 419, 420 (Fla. 2d DCA 1994).

and common meanings. Therefore, as a matter of law, the Order in this docket does not comply with Florida law.[2]

B. The Evidence Presented Does Not Support the Commission's Finding That a Bill and Keep Mechanism Will Be Sufficient to Recover Costs of Interconnection.

Section 364.162(3) essentially imposes two requirements upon the Commission. As argued above, the first requirement is that a "charge" be set. The second requirement is that this charge must be "sufficient to cover the cost of furnishing interconnection." In Section A of this Motion, GTEFL argued that the Commission failed to meet the first requirement. As noted below, by ordering a bill and keep mechanism to be implemented, the Commission has failed to comply with the second requirement as well.

The Commission acknowledges that a bill and keep approach will not recover one party's costs of interconnection if the relative amount of tariff terminated is sufficiently out of balance that it exceeds the transaction costs of billing on a per minute of use basis (Order at 16). However, the Commission also admits that the evidence relating to the question of whether traffic will be in balance was lacking. Specifically, the Commission notes that "no empirical evidence or studies were provided" by the ALECs to support their assumptions that traffic would be in balance. Indeed, the only empirical evidence

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In its Order, the Commission has attempted to sidestep this issue by stating that a bill and keep mechanism is "sufficient in economic terms to cover" the incumbent LECs' costs of providing interconnection (Order at 19). Although GTEFL disputes this statement (see Section B of this Motion), cost recovery is but one aspect of the statute. Although it is indisputably clear that the costs of interconnection must be recovered, the statute is equally clear that such recovery of must be achieved through the imposition of a "charge."

introduced was that traffic would be out of balance.[3] In considering the evidentiary record on this issue, the Commission found:

> Based on the record, the existing evidence on traffic balance is inconclusive. Although practical experience with local interconnection in New York was provided by MFS, there has not been any practical experience regarding local interconnection in Florida. Since there is no empirical evidence available as the traffic balance in Florida, *it is highly speculative to predict whether traffic will be imbalanced to the LECs' or the ALECs' detriment.* We believe that a supposition that the LECs or the ALECs will terminate significantly more traffic than they originate through local interconnection is unfounded at this time.

Order at 15 (emphasis added). Thus, although finding that it is highly speculative to predict whether traffic will be in balance, the Commission still ordered a compensation arrangement which permits recovery of costs only if the traffic is in balance.[4]

The Commission's conclusion simply does not logically follow from its own analysis of the evidentiary record. Because the traffic must be in balance (or at least sufficiently close not to exceed transactions costs) in order to permit recovery of costs, there must be substantial evidence proving that the traffic will be close to being in balance. Thus, if there is no credible evidence that the traffic will be in balance (as acknowledged by the

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[3] Empirical data was provided by MFS and United/Centel. MFS conducted a study in New York demonstrating that it terminated 60% of the interconnected calls, while the incumbent LEC terminated only 40%. Although not considered by the Commission as being a valid indicator, United/Centel witness Ben Poag introduced evidence showing a significant imbalance with respect to existing EAS routes (Order at 14).

[4] A bill and keep arrangement would permit recovery of costs only if the traffic is in balance and the costs of each respective carrier are the same. Although evidence regarding its costs of interconnection was introduced by GTEFL, MFS introduced no evidence of its costs. As such, the record in this case also lacks any evidence that the interconnection costs of GTEFL and MFS are equal.

Commission), then there is also no credible evidence that the interconnection costs will be recovered. If there is no credible evidence that interconnection costs will be recovered, then the Commission has not complied with Section 364.162(3), which mandates the Commission to establish a charge sufficient to cover those costs.

The Commission's analysis on this issue is as legally deficient as it is logically flawed. The Commission is bound to rely upon evidence that is "sufficiently relevant and material that a reasonable man would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1st DCA 1957). *See also Agrico Chem. Co. v. State of Fla. Dep't of Environmental Reg.*, 365 So.2d 759, 763 (Fla. 1st DCA 1978); *Ammerman v. Fla. Board of Pharmacy*, 174 So.2d 425, 426 (Fla. 3d DCA 1965). The evidence must "establish a substantial basis of fact from which the fact at issue can reasonably be inferred." *DeGroot*, 95 So. 2d at 916. Furthermore, the Commission's Order cannot be based upon speculation or supposition. *Tamiami Trail Tours, Inc. v. Bevis*, 299 So. 2d 22, 24 (1974). The Commission's analysis provided in support of its decision on bill and keep fails to meet these legal and evidentiary standards. Indeed, one of the pillars supporting the decision (balance of traffic) was described as "highly speculative" (Order at 15).

In an apparent attempt to cure the legal deficiencies noted above, the Commission has afforded MFS and GTEFL the opportunity to file a petition to change the bill and keep mechanism if either believes that the traffic is imbalanced to the point that it is not receiving benefits equivalent to those it is providing through mutual traffic exchange (Order at 20). If such a petition is filed, the parties must provide to the Commission: 1) monthly

MOU data for terminating local traffic; 2) financial impacts due to the traffic imbalance since the implementation of mutual traffic exchange; and 3) estimated costs which would be incurred due to the additional processing and software required to measure usage (Order at 20).

The fact that the Order permits GTEFL to file a subsequent petition does not cure the legal deficiencies with the Commission's decision. First, as a condition of coming back before the Commission, GTEFL must begin measuring the minutes of local traffic termination. Thus, the same costs which many parties alleged would be saved under a bill and keep arrangement will still be incurred by GTEFL. However, the Commission affords GTEFL no opportunity to recover these costs, to which it is statutorily entitled. Also, although GTEFL must provide information regarding the financial impact of bill and keep, the Commission has not implemented any type of true-up mechanism to permit the recovery of any shortfalls created by the bill and keep compensation arrangement.

The Commission's finding that no evidence exists on whether the traffic would be in balance compels adoption of GTEFL's proposed ORP compensation arrangement. Under an ORP, it does not matter whether the traffic is in balance. Furthermore, an ORP will preclude one company from benefitting financially from a significant imbalance in the traffic flows, as is permitted under bill and keep arrangements. Therefore, GTEFL urges the Commission to reconsider its Order and adopt GTEFL's proposed ORP plan.

C. The Evidence Presented Does Not Support the Commission's Finding That Costs of Measurement and Billing are Excessive.

In justification of its Order, the Commission concluded that the expense to measure and bill local terminating traffic would be significant and that this expense would be avoided under bill and keep. This conclusion was not based upon substantial evidence and as such cannot stand. *Duval Util. Co. v. Florida Public Service Commission*, 380 So. 2d 1028, 1031 (Fla. 1980). Indeed, the Commission's decision in this regard is doubly arbitrary because the Commission refused to even consider competent evidence introduced by GTEFL at the hearing refuting the Commission's findings in this regard.

The Commission ignored evidence presented by GTEFL that the costs of measurement will not be avoided under a bill and keep arrangement. GTEFL witness Bev Menard explained that the company will measure and bill the number of minutes of toll and local traffic respectively on trunk groups (T. 1104-1105). Indeed, the only functional difference between a bill and keep and a mutual compensation plan is whether or not a price will be imposed on the termination of local calls. Under the ORP arrangement advocated by Dr. Ed Beauvais, if GTE terminates one hundred calls on behalf of MFS, fifty of which are toll and fifty of which are local, GTE will charge MFS switched access rates for the fifty toll calls and its proposed local interconnection charge for the remaining fifty. Under bill and keep, the same measurement and billing will take place. The only difference is for the local calls, the charge will be zero.

The Commission also failed to address the specific cost numbers introduced by GTEFL showing that the cost of measurement and billing would be minuscule. Dr.

Beauvais testified that the cost of measuring and billing was a mere $0.0003 (Beauvais Direct, p. 21). Although that number was not Florida-specific, Ms. Menard testified about costs numbers that were specific to Florida. The cost of billing was included in GTEFL's long run incremental cost study which was introduced into evidence as Exhibit 28. Although the actual number is confidential, Ms. Menard noted that the cost was not only consistent with Dr. Beauvais' estimates, but was lower (T.1105).[5]

D. The Order's Bill and Keep Scheme is Discriminatory.

Florida law explicitly requires the prices, terms, and conditions of local interconnection to be non-discriminatory, whether interconnection arrangements are negotiated among co-carriers or established by the Commission after unsuccessful negotiation. Fla. Stat. §§364.16(2) & (3); 364.162(2) & (6). These interconnection-specific directives are reinforced by the traditional common carrier prohibitions against discrimination and unreasonable preferences that remain embodied in Chapter 364. Fla. Stat., §§364.08, .09 & .10(1). While the Commission recognizes its statutory obligation to establish non-discriminatory interconnection rates and terms (Order at 3), it ignored this requirement in actually devising the interconnection compensation method as between GTEFL and MFS.

At its Agenda Conference held in May, the Commission approved an interconnection agreement between GTEFL and Intermedia Communications, Inc. of

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[5] Because the billing cost number was confidential, Ms. Menard did not disclose it on the record. However, the number appears on lines 4 and 5 of page 1000002 of Exhibit 28.

Florida (ICI). That decision established a reciprocal compensation mechanism under which the companies will pay each other GTEFL's terminating switched access rate, less the otherwise applicable residual interconnection charge and common carrier line elements, on a per-minute-of-use basis. On an interim basis, ICI and GTEFL will not be required to compensate each other for more than up to 105% of the total minutes of use of the provider with the lower minutes of use in a particular month. The Commission has approved this same method of payment for BellSouth, Continental Cablevision, Time Warner, ICI, Teleport Communications Group, Inc. and Sprint Metropolitan Network, Inc. (Order No. PSC-96-0082-AS-TP, issued Jan. 17, 1996.)

The new Order at issue, however, establishes a different method of compensation--bill and keep--under which no charges at all will be assessed as between GTEFL and MFS. This means that GTEFL will assess interconnection payments for one co-carrier (and vice-versa), while carrying another co-carrier's traffic without payment. In other words, different rates (or no rate at all in the MFS/GTEFL case) will apply to carriers taking the same local call termination service.

Under longstanding law interpreting the common carrier non-discrimination provisions, this type of discriminatory rate structure would be permissible only if there were some legitimate distinction between the customers to which the different rates apply. *See, e.g., Intrastate Tel. Access Charges for Toll Use of Local Exchange Services*, 85 FPSC 2:160. No such distinction can be made in this case. All of the co-carriers involved are receiving the same service. In any case, no party came forward with any evidence--let

alone the requisite competent and substantial evidence--that would support the disparate interconnection treatment the Commission has mandated.

Indeed, given the manifest nature of the discrimination in this instance, it is surprising the Commission did not feel compelled to at least attempt some explanation justifying the disparate interconnection compensation methods it has approved. The Order is silent on this matter, aside from a perfunctory acknowledgment of its statutory duty to establish non-discriminatory rates, terms, and conditions for interconnection (Order at 3). This bare recitation does not satisfy the Commission's substantive duty to assure non-discriminatory treatment as among interconnectors. As such, the Commission is obliged to eliminate the impermissible discrimination wrought by the Order at issue, and find that the initially approved interconnection rates as between ICI and GTEFL will apply to interconnection between MFS and GTEFL, as well.

E. The Bill and Keep Arrangement Ordered by the Commission Violates the Takings Clause Under the United States and Florida Constitutions.

The Commission's Order violates the Fifth and Fourteenth Amendments to the United States Constitution, as well as the Florida Constitution, Article 1, Section 9, that proscribes confiscation of GTEFL's property without just compensation. GTEFL unquestionably has property rights in the switches, loops, and transmission wire that make up its local telephone infrastructure. Property rights have been described as the right "to possess, use and dispose" of property. *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). To the extent that the government requires GTEFL to allow third parties

to occupy GTEFL's property through the transmission of competitors' signals, the government significantly impinges upon each of these rights.

Mandated use of GTEFL's facilities to allow interconnection for MFS by definition provides a permanent and physical access to GTEFL's tangible property. This interconnection allows MFS to move its traffic over GTEFL's network which is then physically invaded by the bits and bytes transmitted by MFS. Moreover, in carrying traffic originated by MFS or other ALECs, GTEFL will be required to make investments in physical property to accommodate such traffic in order to avoid degrading service generally and will be obligated to devote measurable network capacity to the carriage of this traffic. As a result, property in GTEFL's switching office and transport network is occupied by MFS or other ALEC-originated traffic, thereby denying GTEFL of the use of this property to serve its own customers. Despite this physical intrusion upon GTEFL's property, the Commission's bill and keep requirement provides GTEFL with no compensation.

GTEFL is entitled under the United States and Florida Constitutions to appropriate compensation for a physical taking of its property as has been ordered in this docket. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982). In *Loretto*, the Supreme Court held that a permanent physical occupation is a government action of such an intrusive character that it is a taking without regard to other factors that the court may ordinarily examine. *Id.* at 426. Further, the degree of physical intrusion is immaterial. Regulations that compel a property owner to suffer a physical "invasion of his property" constitute a *per se* taking "no matter how minute the intrusion." *Lucas v. South Carolina*

Coastal Council, 112 S. Ct. 2886, 2893 (1992). Therefore, the Commission's Order requiring GTEFL implement a bill and keep arrangement constitutes a *per se* violation of the Takings Clause of the United States and Florida Constitutions.

In addition to creating a physical intrusion upon GTEFL's property, the Commission's Order requiring bill and keep is unconstitutional for other reasons as well. The partly private, partly public character of local utilities creates its own particularized set of issues in takings analysis. In such cases, the "guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so *unjust as to be confiscatory*." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) (emphasis added); *see also Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944) (commissions must set rates which are just and reasonable so as to "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed."); *Bluefield Water Works and Improvement Co. v. Public Service Commission*, 262 U.S. 679, 692 (1923) (directing that rates must be set so as to allow a return that is equal to "investments in other business undertakings which are attended by corresponding risks and uncertainties.").

Under the cases cited above, the Commission's adoption of a bill and keep requirement passes constitutional muster only if GTEFL receives just compensation for providing interconnection to MFS. With the Commission's bill and keep arrangement, that does not occur. In fact, GTEFL receives no compensation for termination of MFS-originated traffic, regardless of the volume of traffic offered or the investment in physical

plant needed to accommodate it. A government imposed bill and keep arrangement that is not based on reciprocal compensation is confiscatory and therefore violates the Takings Clause of the United States and Florida Constitutions.

In the traditional analysis, government largely defined the rate and risks because utilities were public monopolies that provided an essential service and enjoyed relative immunity from market risks. This classical, regulated monopoly model represents the so-called regulatory compact, under which "[t]he utilities incur fewer risks, but are limited to a standard rate of return." *Id.* at 309. This regulatory compact for local telephone companies has been fundamentally altered by the legislative revisions made to Chapter 364 as well as the enactment of the Telecommunications Act of 1996. To the extent that it was permissible under a prior monopoly-based regime to force a telephone company to incur a loss on one part of its business in return for compensatory profitability for another part of business, such a policy no longer passes constitutional scrutiny under the new competitive regime. Neither this Commission nor any other governmental agency is permitted to impose confiscatory rates on one line of a company's business simply because the company theoretically can afford those losses by generating additional revenues with other lines of business. Such an action would permit the government to impose below-cost pricing on any profitable company.

Such a theory was rejected in *Brooks-Scanlon Co. v. Railroad Commission*, 251 U.S. 396 (1920). In that case, the Railroad Commission had sought to justify a below-cost rate for one company's railroad line on the ground that the company more than made up for the loss through its profits on its related timber and lumber business. The Commission

held that "although the railroad showed a loss, the test of the plaintiff's rights was the net result of the whole enterprise -- the entire business of the corporation." *Id.* at 399. The Supreme Court rejected this theory in unequivocal terms:

> A carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business of carriage. . . . The plaintiff may be making money from its sawmill and lumber business but it no more can be compelled to spend that than it can be compelled to spend any other money to maintain a railroad for the benefit of others who do not care to pay for it.

Id. The Court held that the plaintiff could not be required to offer such services "at a loss." As such, mandatory bill and keep arrangements which provide inadequate compensation is unconstitutional even if GTEFL is able to make up these losses from revenue generated from other services. Like other companies, GTEFL hopes to make money on its competitive services. But, like other companies, it cannot be required to spend revenue generated from such services in order to subsidize other services provided to other competitors below cost.

F. In Ordering Bill and Keep, the Commission Failed to Consider GTEFL's Interests and to the Extent That GTEFL Does Not Recover Its Costs, Forces GTEFL to Subsidize the Market Entry of Its Competitors.

In further justification of its Order, the Commission agreed with ALECS' claims that a bill and keep arrangement "provides the least ability for the LECs to use the compensation mechanism to impose unnecessary and anticompetitive costs on the entrants, making it the method least likely to result in unnecessary barriers to entry" (*Order* at 13). However, the record is devoid of any evidence that either GTEFL or

United/Centel would use (or could use) an ORP plan to impose barriers to entry. There was also no evidence that the costs of interconnection introduced by GTEFL or United/Centel were in any way unnecessary or anti-competitive. With no evidence that either GTEFL or United/Centel has been anti-competitive, the Commission has prejudged these companies by assuming that any mechanism other than bill and keep would be more likely to lead to anti-competitive behavior.

In prejudging GTEFL, the Commission disregarded its statutory mandate to "[e]nsure that *all* providers of telecommunications services are treated fairly." Fla. Stat. §364.01(4)(g) (emphasis added). Under Florida law, the Commission must not only consider the interests of ALECs, but also incumbent LECs. These parties have the same right under Florida law to be treated fairly. It is simply not possible for the Commission to ensure fair treatment of all providers when it assumes that one such provider will act anti-competitively.

It is also not fair to GTEFL to force it to subsidize the market entry of MFS and other ALECs. To the extent GTEFL does not recover its costs in furnishing interconnection, those costs must be recovered through local rates and other services ordered by GTEFL's customers (T. 667). Thus, GTEFL's ratepayers will be required to subsidize the entry of MFS and other well-financed companies (e.g., AT&T, MCI and Time-Warner) in the local marketplace. The Commission has not afforded fair treatment to all providers when the incumbent LECs are forced to subsidize the entry of their competitors into the marketplace.

G. The Commission's Establishment of a Rate for Intermediary Handling of Local Traffic Was Not Based Upon Substantial Evidence.

If GTEFL's access tandem is used for traffic transiting the tandem, tandem switching charges apply. As such, GTEFL proposed to charge $0.002 per minute of use to compensate for traffic transiting GTEFL's access tandem which does not go to an end office. This charge exceeded its costs and included a contribution to joint and common costs. The Commission rejected this proposal and established the much lower rate of $.00075 (Order at 24). The evidence presented at the hearing did not support the Commission's conclusion that this rate was sufficient to recover the total service long run incremental costs (TSLRIC) of providing this switching element. In fact, GTEFL's witness Bev Menard testified that she did not believe the $.00075 rate was adequate to recover those costs (T. 1089). As such, the Commission's decision in this regard was not based upon substantial evidence.

Respectfully submitted on June 4, 1996.

By: Anthony P. Gillman/dm

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Motion for Reconsideration of Commission's Order in Docket No. 950985-TP were sent via U.S. mail on June 4, 1996 to the parties on the attached list.

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