FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

November 22, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (GREER, REITH, NORTON, SHELFER, STAVANJA, WIDELL)

DIVISION OF LEGAL SERVICES (BROWN, CANZANO, BARONE, PELLEGRINI)

RE: DOCKET NO. 960847-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH GTE FLORIDA INCORPORATED CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. 960980-TP - PETITION BY MCI TELECOMMUNICATIONS CORPORATION AND MCI METRO ACCESS TRANSMISSION SERVICES, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH GTE FLORIDA INCORPORATED CONCERNING RESALE AND INTERCONNECTION UNDER THE TELECOMMUNICATIONS ACT OF 1996.

AGENDA: DECEMBER 2, 1996 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960847TP.RCM

CRITICAL DATES: FEDERAL TELECOMMUNICATIONS DEADLINE, DECEMBER 11, 1996

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LIST OF ACRONYMNS

Act	Telecommunications Act of 1996
ALEC	Alternative Local Exchange Carrier
AT&T	AT&T Communications of the Southern States, Inc.
BR	Brief of Evidence
CCL	Carrier Common Line
EXH	Exhibit
GTEFL	GTE Florida Incorporated
IXC	Interexchange Carrier
LEC	Local Exchange Carrier
LRIC	Long Run Incremental Cost
LTR	Local Transport Restructure
MCI	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
RIC	Residual Interconnection Charge
SLC	Subscriber Line Charge
TR	Transcript
TELRIC	Total Element Long Run Incremental Cost
TSLRIC	Total Service Long Run Incremental Cost

CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), P.L. 104-104, 104th Congress 1995, sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

On March 11, 1996, AT&T Communications of the Southern States (AT&T) requested that GTE Florida Incorporated (GTEFL) begin negotiations for an interconnection agreement pursuant to Section 252 of the Act. On August 16, 1996, AT&T filed a petition for arbitration of unresolved issues pursuant to Section 252 of the Act. The Initial Order Establishing Procedure, in Docket No. 960847-TP, established the key procedural events and a hearing was set for October 14 - 16, 1996. See Order No. PSC-96-1053-PCO-TP, issued August 16, 1996.

On April 3, 1996, MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (collectively MCI) requested GTEFL begin negotiations. On August 28, 1996, MCI filed its petition for arbitration with GTEFL, and also filed a motion to consolidate its arbitration proceeding with the AT&T/GTEFL arbitration proceeding. Docket No. 960980-TP was established for MCI's petition. On September 13, 1996, MCI's motion to consolidate was granted. See Order No. PSC-96-1152-PCO-TP.

As stated in the order regarding consolidation, the following guidelines were established to govern these proceedings:

1) The parties shall identify two categories of issues: those that are common to the AT&T/GTEFL petition and the MCI/GTEFL petition; and those that are unique to each petition.

2) All parties shall participate fully in the litigation of the issues that are common to both petitions. The Commission's decision on the common issues shall be binding on all parties.

3) Only the parties directly involved will participate in the litigation of the issues that are unique to only one of the petitions. The non-affected petitioner shall not present testimony, conduct cross-examination, or file a brief with respect to the issues that affect only another petitioner. The Commission's decision on the unique issues shall be binding only on the parties who litigated the issue.

On September 27, 1996, FCC Order 96-325 was temporarily stayed. Oral arguments were heard on October 3, 1996, and a stay was granted on October 15, 1996 on Section 252(i) and the pricing portion of the Order. The stay has been upheld by the United States Supreme Court.

On October 14-16, 1996 a hearing was held for the consolidated dockets.

EXECUTIVE SUMMARY

Issue 1 addresses what services provided by GTEFL, if any, should be excluded from resale. Staff is recommending that GTEFL should be required to offer for resale any services it provides at retail to end user customers who are not telecommunications carriers. These services include all grandfathered services (both current and future), promotions that exceed 90 days, AIN Services (both current and future), Public Pay Telephone lines, Semi-Public Pay Telephone lines, non-LEC coin and coinless lines, Lifeline and LinkUp services, 911/E911 and N11 services, operator services, directory assistance, nonrecurring charges, and contract service arrangements (both current and future).

Issue 2 addresses if GTEFL should be prohibited from imposing restrictions on the resale of GTEFL services. Staff is recommending that no restrictions should be allowed except for the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from GTEFL. Staff does not believe that GTEFL has sufficiently rebutted the FCC's presumption against tariff limitations in general, other than the ones specified.

Issue 3 addresses the appropriate wholesale rates for GTEFL to charge when AT&T or MCI purchase GTEFL's retail services for resale. Staff is recommending that GTEFL be required to offer retail services at a wholesale discount rate of 13.04%.

Issue 4(a) addresses if GTEFL should be required to implement a process and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are at least equal in quality to those that GTEFL provides itself and its affiliates. Staff is recommending that GTEFL, AT&T and MCI should adhere to the service restoration intervals, direct measures of quality, service assurance warranties, and other quality assurance measures as delineated in AT&T's and MCI's proposed agreements in this proceeding. To the extent that the proposed agreements do not contain all the specific standards and quality measures requested or needed, the parties should jointly develop and implement processes and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are equal in quality to those that GTEFL provides itself and its affiliates. These processes and standards should be included, as completely as possible, in the arbitrated agreements submitted for approval in this proceeding, but in no event later than February 28, 1997.

Issue 4(b) addresses if GTEFL should be required to provide AT&T and MCI loop testing information prior to the establishment of service to an AT&T or MCI customer. Staff is recommending that to the extent GTEFL documents the results of its loop testing, GTEFL should provide those results to AT&T and MCI.

Issue 5 addresses the appropriate contractual provisions for liability and indemnification for failure to provide service in accordance with the terms of the arbitrated agreement. Staff is recommending that the Commission decline to require or arbitrate liability and indemnification provisions in the AT&T and MCI interconnection contracts with GTEFL. The Commission should also find that it is without authority to require or arbitrate provisions for liquidated damages in those contracts.

Issue 6 addresses whether or not GTEFL should be required to provide real-time and interactive access via electronic interfaces. This issue also addresses if the process requires the development of additional capabilities, in what time frame should they be deployed, what the costs involved are, and how those costs should be recovered. Staff is recommending that GTEFL be required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance. The processes that require the development of additional capabilities should be developed by GTEFL by January 1, 1997. If GTEFL cannot meet that deadline, it should file a report with the Commission by December 31, 1996, that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. GTE, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. These electronic interfaces should conform to industry standards where such standards exist or are developed.

In addition, staff recommends that the parties should be responsible for their share of costs to develop and implement additional capabilities. However, where a carrier negotiates for the development of a system or process which is exclusively for itself, that carrier should pay the full costs on the basis of TSLRIC. GTEFL should provide cost studies for each interface as it is developed. The cost study should be filed with this Commission, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

Issue 7 addresses whether or not it is technically feasible to route 0+ and 0- calls to an operator other than GTEFL's, to route 411 and 555-1212 directory assistance calls to an operator other than GTEFL's, or to route 611 repair calls to a repair center other than GTEFL's when AT&T or MCI resells GTEFL's local exchange service or purchases unbundled local switching. If the process requires the development of additional capabilities, in what time frame should they be deployed, and how should any incurred costs be recovered? Staff is recommending that it is technically feasible to route operator and directory assistance calls to AT&T and MCI. GTEFL should be required to provide customized routing using line class codes, on a first-come, first-served basis.

In addition, GTEFL should file with this Commission an implementation schedule by which customized routing, using line class codes, will be available to AT&T and MCI. The schedule should include deadlines for any network modifications that need to be made, along with a description and the purpose of each modification. This information should be filed within 60 days from the issuance date of the order in this proceeding.

Staff further recommends that GTEFL file a TSLRIC cost study for implementing the switch's customized routing capabilities. The study should only include costs for providing customized routing that are beyond those capabilities that currently reside in the switch. The cost study should be filed within 90 days from the issuance date of the order in this proceeding.

Issue 8 addresses whether or not GTEFL should be required to provide AT&T and MCI with the billing and usage recording services that AT&T and MCI have requested. If this process requires the development of additional capabilities, in what time frame should they be deployed, and how should any costs incurred be recovered? Staff is recommending that GTEFL provide the carrier access billing system (CABS) or CABS-like billing services based on the local service billing standards adopted by the Open Billing Forum (OBF). Any additional capabilities should be developed when local service billing standards are adopted by the Open Billing Forum. The costs to develop and provide CABS as determined by the Open Billing Forum should be borne by GTEFL, but recovered in rates charged to all carriers requesting the service. Additional costs for other billing and recording service requirements specific to AT&T or MCI should be borne by AT&T or MCI.

Staff further recommends that GTEFL should provide cost studies for billing and usage recording services as requested by AT&T and MCI. The cost study should be filed, along with a proposed recovery mechanism, 60 days before the implementation of the billing and usage recording service.

Issue 9 addresses the type of customer authorization that is required for access to customer account information and transfer of existing services. Staff is recommending that GTEFL not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the operational support systems (OSSs). MCI and AT&T should issue a blanket letter of authorization to GTEFL which states that it will obtain the customer's permission before accessing the OSSs. GTEFL should develop a real-time operational interface to deliver OSSs to ALECs, and the interface should only provide the customer information necessary for MCI and AT&T to provision telecommunications services.

In addition, staff recommends that each party bear its own share of the cost of developing and implementing such systems and processes because these systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs should be recovered from the carrier who is requesting such customized system.

Issue 10 addresses the appropriate rates, terms, and conditions for call guide pages, directory distribution, and inclusion of AT&T's and MCI's logos on the directory cover. Staff is recommending that AT&T and MCI pay $2.49 for the secondary distribution of directories. In addition, GTEFL should include limited space for AT&T and MCI customer information in its directory, at no charge.

Staff further recommends that GTEFL allow AT&T and MCI to purchase one additional page for listing their product information, at the same rate GTEFL pays to list its product information. GTEFL should not be required to include MCI's logo on its directory cover.

Issue 11 addresses if GTEFL should be required to provide AT&T and MCI access to GTEFL's directory assistance database. If the process requires the development of additional capabilities, in what time frame should they be deployed, and how should any costs incurred be recovered? Staff is recommending that GTEFL provide AT&T and MCI access to its directory assistance database.

In addition, GTEFL should be required to provide directory assistance database information via magnetic tape by January 1, 1997. GTEFL should file with this Commission a date by which access to its DA database will be provided via a real-time electronic interface. This information should be provided 60 days from the date of this order. A TSLRIC cost study dealing with access to its DA database, should be filed 120 days before access is provided.

Issue 12 addresses how PIC changes should be made for AT&T's and MCI's local customers. Staff is recommending that GTEFL be prohibited from making any PIC change for a customer that receives its local exchange service from a local exchange carrier other than GTEFL. GTEFL should forward the request of the customer to their local exchange carrier and provide the customer a contact number for their local carrier.

Issue 13(a) addresses items that are considered to be network elements, capabilities, or functions and the technically feasibility for GTEFL to provide AT&T and MCI with such elements. Staff is recommending that all the elements listed are considered to be network elements as defined by § 3(29) of the Act. The following items are technically feasible for GTEFL to provide on an unbundled basis:

Network Interface Device
Loop Distribution
Local Switching
Operator Systems
Dedicated Transport
Common Transport
Tandem Switching
Signaling Link Transport
Signal Transfer Points
Loop Concentrator/Multiplexer (AT&T only)
Loop Feeder (AT&T only)
Multiplexing/Digital Cross-connect (MCI only)
DA Service
911 Service
AIN Capabilities
Operations Support Systems

With regards to the SS7 network, GTEFL should be allowed to use mediation mechanisms as necessary.

Issue 13(b) addresses the price of each of the items considered to be network elements, capabilities, or functions. Staff is recommending that the Commission set rates as outlined in the staff analysis and that GTEFL should file TSLRIC cost studies, for all rates that are designated interim, 60 days from the date of the order.

Issues 14 addresses whether or not GTEFL should be prohibited from placing any limitations on AT&T's and MCI's ability to combine unbundled network elements with one another, or with resold services, or with AT&T's, MCI's or a third parties facilities, to provide telecommunications services to consumers in any manner AT&T or MCI chooses. Staff is recommending that GTEFL be required to allow AT&T and MCI the ability to combine unbundled network elements in any manner they choose, including recreating existing GTEFL services as provided in Section 251(c)(3) of the Act and the FCC's Order.

Issue 15 addresses whether or not GTEFL should be required to provide AT&T and MCI with access to GTEFL's unused transmission media; and how should costs that are incurred be recovered? Staff is recommending that GTEFL be required to lease dark fiber to AT&T and MCI solely for interconnection purposes under the same terms and conditions as those contained in GTE's agreement with MFS and memorialized in Commission Order No. PSC-96-1401-FOF-TP. The Commission should take official recognition of Order No. PSC-96-1401-FOF-TP, issued November 20, 1996. The cost for dark fiber should be recovered through a non-discriminatory tariff or contract terms from GTE.

Issue 16 addresses the points at which AT&T and MCI should be permitted to interconnect with GTEFL. Staff is recommending that GTEFL be required to provide interconnection at any technically feasible point requested by AT&T and MCI.

Issue 17 addresses the access that should be provided by GTEFL for its poles, ducts, conduits, and rights-of-way; and how should any costs incurred be recovered? Staff is recommending that GTEFL be required to provide nondiscriminatory access to its poles, ducts, conduits, and rights-of-way. GTEFL should allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself. In addition, GTEFL should charge AT&T and MCI a pro rata share of the TSLRIC costs for supplying the facilities requested.

Issue 18 addresses whether or not the term "rights-of-way" in Section 224 of the Act include all possible pathways for communicating with the end user. Staff recommends that the term "rights-of-way" in Section 224 of the Act does not include all possible pathways for communicating with the end user.

Issue 19 addresses whether or not GTEFL should be required to provide interim number portability solutions including remote call forwarding, flex-direct inward calling, route index portability hub, and local exchange route guide reassignment. Staff is recommending that GTEFL provide the following interim number portability solutions:

a. Remote Call Forwarding
b. Direct Inward Dialing
c. Directory Number Route Index
d. Route Index Portability Hub
e. Local Exchange Routing Guide to the NXX Level

Issue 20 addresses the cost recovery mechanism to provide interim local number portability in light of the FCC's recent order. Staff is recommending that the Commission address the cost recovery for interim number portability in Docket No. 950737-TP. Until completion of that proceeding, the Commission, on an interim basis, should require each carrier to pay for its own costs in the provision of the interim number portability solutions listed in Issue 20.

In addition, the Commission should require each telecommunications carrier to this proceeding to track its cost of providing the interim number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

Issue 21 addresses whether or not GTEFL should be prohibited from placing any limitations on interconnection between two carriers collocated on GTEFL's premises, or on the types of equipment that can be collocated, or on the types of uses and availability of the collocated space. If any costs are incurred, how should those costs be recovered? Staff is recommending that GTEFL be able to impose those limitations as provided in §51.305 and §51.323 of the FCC's rules on interconnection and collocation. Staff further recommends that the Commission require GTEFL to comply with §51.323 of the FCC's Rules on standards for physical collocation and virtual collocation. However, as stated in §251 (c)(6) of the Act, §51.323 of the FCC's Rules, and ¶¶580 and 594 of the FCC's Order, staff recommends that AT&T and MCI be granted the ability to:

1. Interconnect with other collocators that are interconnected with GTEFL in the same central office. (FCC Order at ¶594)

2. Purchase unbundled dedicated transport from GTEFL between the collocation facility and AT&T's or MCI's network. (§51.323(g))

3. Collocate transmission equipment such as optical terminating equipment and multiplexers in a GTEFL central office. (FCC Order at ¶580)

4. Select physical over virtual collocation, where space and/or other considerations permit. (§251 (c)(6) of the Act)

In addition, Staff is recommending that the party requesting collocation should bear the costs associated with the collocation request. The Commission should set permanent collocation rates based on GTEFL's TSLRIC cost studies. The rates cover GTEFL's TSLRIC costs and provide some contribution toward joint and common costs.

Issue 22 addresses the compensation mechanism for the exchange of local traffic between AT&T and GTEFL. Staff is recommending a reciprocal rate of $.00125 per minute for tandem switching and $.0025 per minute for end office termination.

Issue 23 addresses whether or not any interstate access charges should be collected on a transitional basis from carriers who purchase GTEFL's unbundled local switching element, and the time frame any transitional period should last. Staff is recommending that existing Florida law and policy should apply. No additional charges should be assessed for unbundled Local Switching over and above those approved in Issue 13(b) of this recommendation for that element. Under the Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in DN 950985-TP, the company terminating a toll call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

Issue 24 addresses whether or not GTEFL should be required to provide notice to its wholesale customers of changes to GTEFL's services and if so, in what manner and in what timeframe? Staff is recommending that GTEFL provide internal notice 45 days or more in advance of a change, then GTEFL should provide 45 days notice to its wholesale customers. If GTEFL provides internal notice less than 45 days in advance of a change, wholesale customers should be noticed concurrently with GTEFL's internal notification process. GTEFL should not be held responsible if it modifies or withdraws the resold service after the notice is provided; however, GTEFL should notify the resellers of these changes as soon as possible.

Issue 25 addresses the term of the agreement. Staff is recommending that the Commission establish the term of this agreement to be 3 years, with successive one-year renewal options.

Issues 26 addresses whether or not the agreement can be modified by subsequent tariff filings. Staff is recommending that GTEFL should not be allowed to modify the agreement via subsequent tariff filings, unless the agreement specifically references the tariff.

Issue 27(a) addresses if it is technically feasible or otherwise appropriate for GTEFL to brand operator services and directory services calls that are initiated from MCI reselling GTEFL's services. Staff is recommending that GTEFL should provide branding or unbranding for operator and directory service calls for MCI.

Issue 27(b) addresses the type of branding requirements that are technically feasible or otherwise appropriate when GTEFL's employees or agents interact with MCI's customers with respect to a service provided by GTEFL on behalf of MCI. Staff is recommending that GTEFL be required to use unbranded leave-behind materials.

Issue 28 addresses the time frame that GTEFL should provide CABS-like billing for services and elements purchased by MCI. Staff is recommending that GTEFL be required to provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of the order in this proceeding. GTEFL can continue to use its CBSS billing system, but the output from the CBSS system should be translated into the CABS-like format. In the interim, GTEFL should provide bills for resale and unbundled elements to MCI using its CBSS and CABS billing systems.

Issue 29 addresses the appropriate rates, terms, and conditions for access to code assignments and other numbering resources. Staff is recommending that GTEFL be required to furnish competing LECs access to code assignments on a non-discriminatory basis and that there should be no charge for this service.

Issue 30 addresses whether or not the agreement be approved pursuant to the Telecommunications Act of 1996. Staff is recommending that the arbitrated agreements be submitted by the parties for approval under the standards in Section 252(e)(2)(B). The Commission's determination of the unresolved issues should comply with the standards in Section 252(c) which include the requirements in Section 252(e)(2)(B).

In addition, staff is presenting an alternative recommendation that proposes the Commission's arbitration of the unresolved issues in this proceeding has been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Telecommunications Act of 1996. Pursuant to Section 252(e), the parties should submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. The agreement shall include the issues on which the parties were able to negotiate agreement, as well as the unresolved issues arbitrated by the Commission. In their submission the parties should identify those portions of the agreement that they negotiated and those portions that the Commission arbitrated. In the post-hearing procedure described in Issue 31, the Commission should review the negotiated portions of the agreement under the standards of Section 252(e)(2)(A) and the arbitrated portions of the agreement under the standards of Section 252(e)(2)(B) and Section 252(c).

Issue 31 addresses the appropriate post-hearing procedures for submission and approval of the final arbitrated agreement. Staff is recommending that the parties submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after the agreements are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision.

In addition, staff is presenting an alternative recommendation which states that the parties should submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the negotiated portions of the submitted agreements pursuant to the standards in Section 252(e)(2)(A) and the arbitrated portions of the submitted agreements pursuant to the standards in Sections 252(e)(2)(B) and 252(c) within 30 days after they are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision.

Issue 32 addresses whether or not these dockets should be closed. Staff is recommending that these dockets remain open until permanent rates are established for all interim rates.

DISCUSSION OF ISSUES

ISSUE 1: What services provided by GTEFL, if any, should be excluded from resale? **(SHELFER)**

RECOMMENDATION: GTEFL should be required to offer for resale any services it provides at retail to end user customers who are not telecommunications carriers. These services include all grandfathered services (both current and future), promotions that exceed 90 days, AIN Services (both current and future), Public Pay Telephone lines, Semi-Public Pay Telephone lines, non-LEC coin and coinless lines, Lifeline and LinkUp services, 911/E911 and N11 services, operator services, directory assistance, nonrecurring charges, and contract service arrangements (both current and future).

POSITION OF PARTIES

AT&T: The Act and the FCC Order require GTEFL to offer for resale at wholesale rates any telecommunications service that GTEFL provides at retail to subscribers who are not telecommunications carriers. The Act and the FCC Order do not provide for any exceptions to GTEFL's obligation.

GTEFL: The Commission should exclude from resale below-cost services; promotions; future AIN services; public and semi-public payphone lines; and non-telecommunications services. GTEFL will resell, but not at wholesale rates, services already priced at wholesale; operator services and directory assistance; non-recurring charge services; and future contracts.

MCI: The Act requires GTEFL to offer for resale any telecommunications service that it provides at retail to end use customers who are not telecommunications carriers. Thus no retail services should be excluded from resale. Specifically, residential service, promotions, contract services, and Lifeline and LinkUp services must be made available for resale.

STAFF ANALYSIS: Section 251(c)(4) of the Act requires local exchange companies (LECs) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This is further clarified in the FCC Order. (FCC 96-325, ¶871) The primary dispute in this issue is over what services are retail services.

It should be noted that GTEFL has agreed to offer grandfathered services and discounted calling plans at wholesale rates. (Wellemeyer TR 1464)

GTEFL's Position

GTEFL states that it will offer for resale, at a discount, all of the services currently available at retail, except those categories which would undermine the long-term competitive objectives of the Act. GTEFL argues that these exceptions are permissible under the FCC Order because GTEFL has proven that they are reasonable and nondiscriminatory as required in Section 51.613(b) of the Rules.

Witness Wellemeyer contends GTEFL will offer all the services it currently offers on a retail basis except for: below-cost services, promotional services, new AIN services, operator services and directory assistance, non-recurring charge services, public and semi-public payphone lines, and COCOT coin and coinless lines. (TR 1434, 1446-1447)

GTEFL has stated that it will offer for resale at wholesale rates new contract service arrangements, currently tariffed AIN services, grandfathered services and discount calling plans. (Wellemeyer TR 1464)

AT&T's Position

AT&T argues that the Commission should require GTEFL to offer for resale all of its retail telecommunications services at wholesale rates without resale restrictions. Witness Sather contends that if the Commission allows GTEFL to restrict the types of services available for resale it will stifle competition. AT&T states that GTEFL has a financial incentive to maintain its monopoly by limiting competition through imposing restrictions on the resale of local services. Witness Sather asserts that unlike BellSouth, GTEFL does not have to satisfy the Act's fourteen point checklist in order to enter the interLATA market. Therefore, the witness argues that GTEFL has nothing to lose and everything to gain by denying or delaying competition in the local exchange market. (Sather TR 517)

AT&T witness Sather contends that under the FCC Order GTEFL may deny AT&T the right to purchase these services only if it can prove to this Commission that these withheld services are narrowly tailored, reasonable, and non-discriminatory. (FCC 96-325, ¶939) AT&T argues that GTEFL has failed to meet this burden. (BR p.7)

AT&T's witness Kaserman states local exchange telephone markets currently stand as the last remaining segment of the telecommunications industry to fall to competitive market forces. Witness Kaserman contends that they now represent the final source of significant monopoly power in this sector of the economy. The witness argues that as a result, the consumer benefits of policies that will successfully promote competition in these markets are likely to be quite substantial. (Kaserman TR 645)

Witness Kaserman states that consumers will benefit immediately and directly from retail competition both in reduced costs and expanded service offerings. AT&T asserts that unlike facilities-based entry which requires substantial investment, retail-stage entry will enable competitive market forces to surface rapidly and on a geographically widespread basis. Witness Kaserman contends that successful promotion of retail competition will provide additional benefits by paving the way for a more rapid growth of facilities-based competition, just as it did in the long distance industry. AT&T's witness Kaserman states that resale competition will yield both immediate and long term benefits to consumers. (TR 647-648)

Witness Sather argues that GTEFL is not subject to the provision of Section 271 of the Act which prohibits the Bell companies from reentering the interLATA market until a certain level of competition is realized. AT&T states that in fact, GTEFL is already selling both local and long distance services within its regions and has begun joint marketing of these services in several areas. Witness Sather asserts that because GTEFL is the sole provider of both local and long distance service, it has a competitive advantage. (TR 650)

<u>MCI's Position</u>

MCI's witness Price argues that the FCC addressed in its Order the need for resale competition. (Price TR 795) Specifically,

> Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further in some areas and for some new entrants, we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks. In light of the strategic importance of resale to the development of competition, we conclude that it is especially important to promulgate national rules for use by state commissions

> in setting wholesale rates... (FCC 96-325, ¶ 907)

MCI also contends that GTEFL's position regarding the exceptions to resale does not comply with the Act. Section 251(c)(4) of the Act states that ILECs have a duty:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a state commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

MCI argues that the Act makes no exceptions to this resale obligation. Thus, there is no basis for GTEFL to refuse to offer any retail service for resale. (BR p.6)

MCI agrees with AT&T that all of the telecommunication services offered to end users must be made available to resellers at a wholesale discount. Witness Price contends that this includes Centrex, optional plans, grandfathered services, promotions and contract services. (All contract services must be available for resale. This includes government and state agency contracts as well as an "umbrella" contract that allows other entities to participate and obtain the benefits of a master contract.) (Price TR 798)

In addition, MCI's witness Price argues that ancillary services must be made available for resale. This includes custom calling services, CLASS features, and all Centrex features. The witness acknowledges that while some of these features may not be regulated, they are telecommunications services. MCI states that if some features are not discounted, the ILECs' reseller competitors effectively will be denied the opportunity to market to a significant group of customers because the lack of a discount on these features will reduce resellers' margins to inadequate levels. (TR 799)

MCI states that GTEFL takes the position that it will not offer certain services for resale because these services are not services provided at retail to end user customers who are not telecommunications carriers or that its proposed prohibition on resale is a "reasonable and nondiscriminatory limitation" that is permitted under the Act. (Wellemeyer TR 1442, 1445, 1460) MCI argues that the Act does not permit "prohibitions" on the resale of retail telecommunications services. The "conditions or limitations" that can be imposed on a reasonable and nondiscriminatory basis thus refer to limitations that constitute something less than a total prohibition on resale. MCI contends that GTEFL ignores this statutory distinction, and treats a prohibition on resale as simply another type of condition or limitation. (BR p.7)

Witness Price asserts that an effective local resale market is essential to the development of full facilities-based local competition. He contends that in addition to promoting facilities-based competition, resale of local services provides independent benefits to consumers through retail competition. (TR 792)

MCI contends that the Act is designed to bring competition to local telecommunications markets. Witness Price argues that the Act recognizes that simply removing legal barriers to entry is insufficient to allow competition to evolve. Economic barriers to entry into local telephone markets will be reduced substantially with an effective resale policy. (TR 793)

The following services are in dispute and will be discussed individually.

<u>Below-Cost Service</u>

GTEFL contends that at this time, GTEFL's only below-cost service is local residential service (including flat, measured, and Lifeline options). (Wellemeyer TR 1465) Witness McLeod asserts that these services receive contribution from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are priced above incremental cost. GTEFL argues that if it were required to offer its below-cost services on a wholesale basis, then other carriers would (1) obtain avoided-cost discounts for both below-cost and above-cost services, and (2) be able to pocket the contributions from the above-cost services that had been used to price the other services below-cost. Accordingly, GTEFL states that it could not cover its total costs unless these services are excluded from GTEFL's wholesale offerings or are repriced to cover their costs. (McLeod TR 1275-1276)

GTEFL's witness Wellemeyer states that also considered in developing the resale rates for basic exchange service is the fact that resellers do not generally endeavor to sell only the basic local service, but rather the entire bundle of services currently offered by GTEFL. GTEFL argues it loses considerable contribution associated with any complementary services, notably intraLATA toll, and this lost contribution is properly included as an opportunity cost in developing the proposed resale rates. (TR 1438, 1465)

GTEFL disagrees with AT&T's and MCI's analogies to resale in the local market with the development of resale in the interLATA market. (Sather TR 520; Price TR 865) GTEFL asserts that interLATA carriers were not compelled to price any of their services below-cost -- which is the very point of GTEFL's argument. (BR p.4)

GTEFL's witness McLeod contends that offering below-cost service for resale would be contrary to the Act's emphasis on the ILECs entitlement to recover their costs of providing services to the alternative local exchange carriers. (McLeod TR 1321) GTEFL states that Section 364.151(2), Florida Statutes requires that in no event should flat-rate local service be resold before July 1, 1997.

GTEFL also states that it will agree to offer new contract services for resale. However, witness Wellemeyer indicates that pricing for these services will be established on a nondiscriminatory individual case basis and will reflect the avoidance of any costs that would only be associated with the retail provision of the same service. (TR 1448)

AT&T argues that the Act and its implementing regulations do not exempt services that are provided at below-cost from GTEFL's duty to offer any retail telecommunications service for resale at wholesale rates. (§251(c)(4)(A); §51.605(a), §51.613(a)) AT&T contends that the Act preempts any bar placed by a Florida statute on the resale of below-cost services because such a bar is in direct conflict with the requirements of the Act. (BR p.9)

AT&T's witness Sather suggests that there should be no financial impact on GTEFL as a result of reselling services whether they are below-cost or not, since the rate for wholesale is the retail rate minus avoided costs. (Sather TR 531-532) AT&T argues that GTEFL's below-cost services are not actually below cost because they receive contribution from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are priced above incremental cost. (Wellemeyer TR 1435) Witness Sather concludes that GTEFL should be financially indifferent under that scenario whether they made a wholesale or retail transaction. (Sather TR 532)

MCI argues that GTEFL's rationale for refusing to provide residential service is based on a misreading of the FCC Order. GTEFL's witness Wellemeyer stated that "it is noteworthy that the FCC "declined to limit" resale offerings to exclude below-cost services but did not prohibit a resale restriction. (Wellemeyer TR 1518-1520) MCI contends that the Order from which witness Wellemeyer quoted out of context, provides that:

> Subject to the cross-class restrictions discussed below, we believe that below-cost services are subject to the wholesale rate obligation under section 251(c)(4). First, the 1996 Act applies to any "telecommunications service" and thus, by its terms, does not exclude these types of services. Given the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain services where the 1996 Act does not specifically do so. (FCC 96-325, ¶956)

MCI argues that it is questionable whether the FCC, by rulemaking, could have limited the ILECs' resale obligation where the Act did not specifically do so. MCI contends that it is clear that this Commission, by Order, cannot limit that obligation. (BR p.8)

MCI also disagrees with GTEFL that resale should be limited because GTEFL would be prevented from recovering its total costs if it were required to resell services that are provided below cost. (McLeod TR 1321) MCI argues that GTEFL's inability to recover its total costs does not have any validity in light of the avoided cost pricing standard for resold services. MCI contends that as long as MCI is permitted to resell residential service only to residential customers -- a cross-class selling restriction which MCI accepts (Price TR 799) -- GTEFL is no better and no worse than it is today. (TR 850-851)

The FCC Order provides that below-cost services are subject to the wholesale rate obligation under Section 251(c)(4). Specifically, the Order states:

> First, the 1996 Act applies to a "telecommunications service" and thus, by its terms, does not exclude these types of services. Given the goal of the 1996 Act to encourage competition, we decline to limit the resale obligation with respect to certain services where the Act does not specifically do so. Second, simply because a service may be priced at below-cost levels does not justify denying customers of such service the benefits of resale competition. We note that, unlike the pricing standard for unbundled elements, the resale pricing standard is not based on cost plus a reasonable profit.

> The resale pricing standard gives the end user the benefit of an implicit subsidy in the case of below-cost service, whether the end user is served by the incumbent or by a reseller, just as it continues to take the contribution if the service is priced above cost. So long as resale of the service is generally restricted to those customers eligible to receive such service from the incumbent LEC... (FCC 96-325, ¶956)

Based on the requirements of the FCC Order, staff believes that below-cost services are subject to resale so long as resale of the service is restricted to those customers eligible to receive the service. Staff also believes that the Act preempts Section 365.151(2), Florida Statutes, because Florida's prohibition on resale of flat-rate local service before July 1, 1996 directly conflicts with the Act.

Promotions and Contract Service Arrangement

GTEFL states it would be denied the opportunity to respond to competition unless all such offerings are excluded from GTEFL's services offered for resale. (TR 1445) Witness Wellemeyer contends that GTEFL should not be required to offer services such as promotions on a wholesale basis, since this would prevent GTEFL differentiating its retail services from those of competing carriers. GTEFL argues that a competitor will be able to offer any service it wants on any terms and conditions it desires to attract new customers, and GTEFL needs this same flexibility to respond to competition on a retail basis and give its customers more choices. (TR 1435)

Witness Wellemeyer offers that GTEFL would have absolutely no incentive to develop additional promotions and other new services that would benefit customers because AT&T would take and use them for its own marketing and economic advantage. GTEFL contends that this result is contrary to the purpose of the Act by limiting choices to customers. Witness Wellemeyer also states that GTEFL should not be required to offer at wholesale rates those services that have no avoided retail costs. (TR 1436, 1466-1467)

Witness Wellemeyer states that it is noteworthy that if all avoided costs are properly reflected in the wholesale price for the underlying service, then promotional offerings have no anti-competitive implications, regardless of the duration of the offering. (TR 1445)

GTEFL has agreed to resell future contracts at a price that reflects the costs avoided by selling at wholesale. (Wellemeyer TR

1523) Witness Wellemeyer states that existing contract services will not be offered for resale because the rates reflect specific terms and conditions that are unique to that contract service arrangement. (TR 1522)

AT&T argues that promotions are retail services offered at special prices. (Sather TR 522) AT&T disagrees with GTEFL that the Act only requires it to offer for resale services that it sells at retail prices, which GTEFL reasons does not include promotions and contract service arrangements because they are sold at rates discounted from the regular retail price. (McLeod TR 1350) AT&T contends that the Act requires GTEFL to offer for resale all services it "provides at retail" whether or not the services are provided at a discounted price. (Section 251(c)(4)(A))

MCI and AT&T agree that the FCC Order held that all promotions must be available for resale, but that the wholesale discount can be applied to the ordinary retail rate (rather than the promotional rate) if the promotion is for less than 90 days and the LEC does not use successive promotions to avoid the wholesale rate obligation. (Section 51.613(a)(2), Price TR 922, Sather TR 534)

MCI's witness Price states that granting exceptions to the requirement that all services be made available at wholesale discounts may lead to abuse. MCI contends that states should be alert to this possibility and be prepared to take corrective action against ILECs that abuse the exception. (TR 799)

Promotions are actually part of Issue 2, which deals with resale restrictions. However, since the parties have addressed promotions within this issue, for consistency staff will also.

Staff contends that the Order is clear that promotional or discounted offerings, including contract and other customer-specific offerings, should not be excluded from resale. (FCC 96-325, ¶ 948) The FCC Rules require that an ILEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if (a) such promotions involve rates that will be in effect for no more than 90 days; and (b) the ILEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates. (§51.613(a)(2))

<u>AIN Services ("In Contact" Services)</u>

GTEFL has agreed to resell its currently tariffed advanced intelligent network (AIN) services at a wholesale discount. (Wellemeyer TR 1445-1445) GTEFL argues that any manipulation of the current means of providing AIN service must consider network security and integrity concerns. Witness Wellemeyer states that issues involving trigger access to a competing carrier's network platform and services must be resolved before GTEFL could offer carte blanche access to any AIN service that might yet be developed. (TR 1444-1445)

AT&T contends that "in contact" services are retail services that utilize AIN triggers within GTEFL's switch to allow customized call handling, such as having calls delivered to one location at specified times and to another location at a different time. Witness Sather argues that these services are required to be resold under the Act. (Sather TR 523)

MCI does not address AIN services.

Staff agrees with AT&T that both current and future AIN services are subject to resale. These services are sold to customers who are not telecommunications providers. Section 251(c)(4) of the Act requires incumbent local exchange companies to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. There are no exceptions that would apply to the resale of AIN services.

<u>Public and Semi-Public Pay Telephone Lines</u>

GTEFL argues that public payphone lines are not retail service offerings, and therefore, are not required under the Act to be resold. (TR 1445, Section 251(c)(4)(A)) GTEFL contends that on a public pay phone, the offering is the capability to make a phone call. Witness Wellemeyer suggests that there is no way to offer the call at resale. GTEFL states that the line itself is not what is offered as public phone service today. (TR 1468)

Witness Wellemeyer also contends that for semi-public pay phones GTEFL does not agree to offer for resale the coin station apparatus in that it is essential to the service offering as it is currently defined. GTEFL states that if it cannot be required to sell equipment, it cannot be required to resell the entire service. Witness Wellemeyer argues that semi-public pay telephone lines are not currently priced to support maintenance and collection activities without substantial support from toll collections. (TR 1446)

AT&T contends that GTEFL's rationale for refusing to resell public pay telephone lines and semi-public pay telephone lines is no more consistent with the Act than its refusal to offer other services for resale. AT&T and MCI argue that these are telecommunications services offered at retail to persons who are not telecommunications carriers, and thus fall within the resale requirement of the Act. (Section 251(c)(4)(A); FCC 96-325, ¶871)

Staff agrees with AT&T and MCI that public and semi-public pay telephone lines are subject to resale based on the Act and the FCC Order. Staff recognizes GTEFL's dispute that semi-public pay telephone requires a coin access line and a coin station, and that MCI and AT&T will self-provide them. GTEFL states that because it cannot be required to sell equipment, it cannot be required to resell the entire service. (BR p.6) Staff agrees that whether GTEFL resells its equipment is up to the Company; however, the coin access line is a service which GTEFL offers to customers other than telecommunications carriers.

Section 251(c)(4) of the Act requires incumbent local exchange companies to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The FCC Order states that independent public payphone providers are not telecommunications carriers. (FCC 96-325, ¶876) Therefore, public and semi-public pay telephone lines should be resold.

<u>Other Services</u>

GTEFL contends that it will offer for resale, but not at wholesale rates, any service already priced at wholesale rates. Such services include special access, private line services tariffed under the special access tariff, COCOT coin and coinless lines. Operator and directory assistance services will also not be offered at wholesale rates. (Wellemeyer TR 1446)

GTEFL argues that special access and private line services offered under the special access tariff, and COCOT coin and coinless line services, are already priced at wholesale. (TR 1446) GTEFL notes that the FCC Order states that even though ILECs' access tariffs do not prevent end users from purchasing the service, the language and intent of section 251 of the Act clearly demonstrates that these exchange access services should not be considered services an ILEC "provides at retail to subscribers who are not telecommunications carriers" under section 251(c)(4). (FCC 96-325, ¶873) GTEFL states that it similarly considers nonLEC pay telephone providers to be wholesale providers, and GTEFL has priced its offerings accordingly. (BR p.8)

GTEFL contends that operator services and directory assistance should be resold but not at wholesale rates. Witness Wellemeyer argues that because the provision of these services requires the same activities to be performed whether offered on a retail or a resale basis, GTEFL does not believe there are avoided costs for these services. GTEFL states that except for the DA call allowance bundled with the basis local service offering, the costs for these services are recovered through separate rates, and are not included in the rates for other services offered for resale. (TR 1446)

Witness Wellemeyer also asserts that non-recurring charges should not be sold at wholesale rates. GTEFL states that there are no associated costs that can reasonably be expected to be avoided for these offerings, so no discount is warranted. The rates for primary service ordering and installation should not be based on the application of an avoided cost discount to the associated retail rate, but rather on an appropriate study reflecting the costs of the wholesale provisioning process. (TR 1447)

AT&T contends that whether GTEFL avoids no cost in reselling these services is a wholesale pricing issue, and not a justification for refusing to resell these services at wholesale rates. AT&T argues that the Act requires GTEFL to offer for resale at wholesale prices any telecommunication service "provided at retail" to subscribers who are not telecommunications carriers. (Section 251(c)(4)(A))

MCI did not provide testimony regarding nonrecurring services.

Staff does not believe GTEFL provided sufficient evidence to determine whether these services are priced at wholesale or not. Staff is persuaded by AT&T's argument regarding GTEFL's refusal to resell these services at wholesale rates. Based on Section 251(c)(4) of the Act, the ILEC is required to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Therefore, GTEFL should resell such services as special access, private line services tariffed under the special access tariff, COCOT coin and coinless lines, operator and directory assistance services.

<u>Summary</u>

Staff concludes that, based on the Act and the Order, ILECs are required to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This includes all grandfathered services (both current and future), promotions that exceed 90 days, AIN Services (both current and future), Public Pay Telephone lines, Semi-Public Pay Telephone lines, Lifeline and LinkUp services, 911/E911 and N11 services, operator services, directory assistance, nonrecurring charges, and contract service arrangements (both current and future).

ISSUE 2: Should GTEFL be prohibited from imposing restrictions on the resale of GTEFL services? **(SHELFER)**

RECOMMENDATION: No restrictions should be allowed except for the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from GTEFL. Staff does not believe that GTEFL has sufficiently rebutted the FCC's presumption against tariff limitations in general, other than the ones specified.

POSITION OF PARTIES

AT&T: The Act and the FCC Order prohibit incumbent LECs from imposing unreasonable or discriminatory conditions or limitations upon the resale of telecommunications services. The FCC Order provides that resale restrictions are preemptively unreasonable except as specified in the Order.

GTEFL: No. The exceptions set forth in response to Issue 1 should apply. Cross-class selling should also be prohibited, and GTEFL's use and user restrictions should continue. These restrictions are reasonable and nondiscriminatory.

MCI: Yes. The Act prohibits GTEFL from imposing unreasonable or discriminatory conditions or limitations on the resale of services. No restrictions should be allowed except for user restrictions which permit residential service, grandfathered services, and Lifeline and LinkUp services to be sold only to end users who would be eligible to purchase the service directly from GTEFL.

STAFF ANALYSIS: Section 251(c)(4)(A) of the Act states that it is the duty of the incumbent local exchange carrier to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Section 251(c)(4)(B) also states that it is the duty of the incumbent LEC

> not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Section 51.613 of the FCC's rules states that restrictions may be imposed on cross-class selling and short term promotions. Regarding cross-class selling, Section 51.613(a)(1) provides that:

> A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

The FCC has established that resale restrictions are presumptively unreasonable. Specifically, Paragraph 939 of the Order provides:

> We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC's underlying tariff. . . . Given the probability that restrictions and conditions may have anti-competitive results, we conclude that it is consistent with the pro-competitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4). . . .

Thus, the FCC concludes that resale restrictions, including those in the LECs' tariffs, are presumptively unreasonable.

Although Section 51.613(a)(2) regards restrictions on promotional offerings, the parties and staff address this in Issue 1.

GTEFL states that to the extent that this issue overlaps with Issue 1, regarding exclusions from resale, GTEFL refers the Commission to its position there. GTEFL contends that Section 51.613 states that an ILEC shall not impose restrictions on resale except as explicitly allowed. Specifically, the FCC Rules allows restrictions to cross-class selling and withdrawn services. The Rule also provides that ILECs may impose a use and user restriction if it proves to the state commission that the restriction is reasonable and nondiscriminatory. (§51.613; Wellemeyer TR 1443-1444)

GTEFL argues that some of its current tariffs restrict the entities which can buy the tariffed service or the uses to which the service may be put. GTEFL contends that these restrictions were created to curb increases to basic local rates by generating contribution from other classes of customers. GTEFL states that if non-cost factors are entirely removed from rates, there would be no need for use or user restrictions. GTEFL asserts that when it elected price regulation, its rates were not rebalanced to reflect their true costs. Instead, GTEFL argues, a rate structure was imposed that freezes or strictly limits rate changes for particular services for years to come. GTEFL contends even MCI agrees that the use and user restrictions that "were necessary under the prior regulatory regime," (Price TR 865), remain appropriate until rates are rebalanced. (BR pp.9-10)

GTEFL contends that the Commission may impose these restrictions under the Act because GTEFL has made the requisite showing that they are reasonable and nondiscriminatory. (§51.613) AT&T asserts that the FCC Order provides that all resale restrictions are presumptively unreasonable and that GTEFL has the burden to prove to the Commission that a particular resale restriction is reasonable and non-discriminatory. (§251(c)(4)(B); §51.513(b); Sather TR 799) MCI argues that GTEFL does not attempt to rebut the presumption that any limitations on resale in its tariffs are unreasonable. (BR p.12)

AT&T and MCI argue that the only use and user restrictions that GTEFL should be permitted to maintain are certain cross-class restrictions, in particular those which would limit resale of residential services to end users who are not eligible to purchase these services from the ILEC (i.e., residential service, grandfathered services and Lifeline/LinkUp). (Sather TR 528; Price TR 799)

AT&T contends that GTEFL's pricing scheme of use and user regulation is obsolete because GTEFL is no longer subject to rate of return regulation. (Sather TR 527-528) AT&T argues that the relationship between costs and revenues to pricing local exchange service has changed from what it was under rate of return regulation because of declining costs and capped local exchange rates. AT&T's witness Sather asserts that these restrictions serve no legitimate purpose and limit competition. (TR 528) AT&T and MCI argue that the Act and its implementing regulations do not permit use and user restrictions in the competitive resale market. (Sather TR 527-528; Price TR 865)

MCI states that to avoid potential controversy in the future, the Commission should rule that existing tariff restrictions do not apply to limit the resale of GTEFL's services. MCI argues, in particular, that GTEFL has agreed to resell discounted calling plans; however, the Commission should make it clear that any minimum usage requirements in those tariffs do not apply to individual end users who obtain service from a reseller, but apply only to the reseller on an aggregate basis. (Wellemeyer TR 1464, BR p.12) MCI contends that this is consistent with the FCC Order:

> ...it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in the aggregate, under the relevant tariff meets the minimal level of demand. (FCC 96-325, ¶ 953)

The FCC has established that resale restrictions are presumptively unreasonable. Section 51.613 of the FCC's rules states that restrictions may be imposed on cross-class selling and short-term promotions by state commissions. Staff finds persuasive AT&T's and MCI's arguments that certain cross-class selling restrictions are appropriate, in particular those which would limit resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from GTEFL. Accordingly, staff recommends that no restrictions should be allowed except for the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from GTEFL. Staff does not believe that GTEFL has sufficiently rebutted the FCC's presumption against tariff limitations in general, other than the ones specified.

ISSUE 3: What are the appropriate wholesale rates for GTEFL to charge when AT&T or MCI purchase GTEFL's retail services for resale? (**SHELFER**)

RECOMMENDATION: GTEFL should be required to offer retail services at a wholesale discount rate of 13.04%.

POSITION OF PARTIES

AT&T: The appropriate wholesale rates for local service resale should equal the retail rate charged to subscribers less the portion attributable to costs that will be avoided by GTEFL. This equates to GTEFL's retail rates less 36.15%. This reduction shall apply to all services, including both recurring and non-recurring service charges.

GTEFL: Wholesale rates should be based on avoided, not avoidable, costs. Thus, prices for resold services should equal retail rates minus net avoided costs. AT&T's and MCI's methodology should be rejected because it is based solely on the pricing requirements of the FCC Order which has been stayed and has no effect.

MCI: Section 252(d)(3) of the Act requires wholesale rates to be based on the retail rates for the service less costs that are avoided by GTEFL as a result of offering the service on a wholesale basis. The application of this standard produces wholesale rates for GTEFL that are 17.68% below the current retail rates.

STAFF ANALYSIS: The Act directed state commissions to determine the appropriate methodology for local exchange companies to set wholesale discount rates for retail services. Section 252(d)(3) of the Act requires:

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

There are two key differences among the parties. First, they differ as to how the phrase "will be avoided" should be construed. AT&T and MCI agree with the FCC's conclusion that the wholesale discount should be calculated on the basis of "costs that reasonably can be avoided when an ILEC provides a service for resale...". (Section 51.609(b)) Under this interpretation the avoided costs are those that an ILEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers. GTEFL disagrees with the FCC's, AT&T's and MCI's interpretation of the Act. GTEFL believes that it is unreasonable to assume that it will cease retail operations and function only as a wholesale provider. GTEFL contends this is a misrepresentation of the intent of the Act. GTEFL argues that the Act requires it to consider as avoided costs those costs that actually "will be avoided," not costs that "could be avoided" if the Company were a wholesale-only provider. (Wellemeyer TR 1399, 1459)

The second area of disagreement concerns what expense accounts are avoidable and how much will be avoided. The FCC Order identifies six accounts that presumably should be avoided: Product Management (account 6611), Sales (account 6612), Product Advertising (account 6613), Call Completion (account 6621), Number Services (account 6622), and Customer Services (account 6623). In accordance with the FCC, AT&T and MCI have treated these accounts at 90-100% avoided. The FCC Order, however, provides that its criteria are intended to leave state commissions broad latitude in selecting costing methodologies. It further states that the rules for identifying avoided costs by USOA expense accounts are cast as rebuttable presumptions, and the FCC did not adopt as presumptively correct any avoided cost model. (FCC 96-325, ¶909)

GTEFL's avoided cost study analyzes avoided costs separately for each of five major service categories. The avoided costs for residential services are $0.83 per line per month; avoided costs for business services are $1.06 per line per month. Since the amount of the avoided costs per line is the same for all rate groups, the effective discount rate varies by rate group. For example, if the monthly residential rate in a given rate group is $10.00, the avoided cost discount is $0.83, or 8.3%. For the remaining service categories, the avoided cost discount rates are:

Usage Services	7.1%
Vertical Services:	
Business	5.5%
Residential	6.6%
Combined	6.2%
Advanced Services	15.3%

AT&T and MCI have proposed that the Commission set one wholesale rate for both residential and business services. AT&T's proposed wholesale discount rate is 36.15% and MCI's is 17.68%. (TR 1401)

Analysis of AT&T's Avoided Cost Study

AT&T initially proposed a 30.9% discount as a result of its Avoided Retail Cost Model. (Lerma TR 562) Witness Lerma stated that in response to the avoided cost studies submitted by GTEFL, it provided the AT&T simplified avoided cost ("ASAC") study which complies with both the Act and the FCC Order. Witness Lerma stated during cross examination that the "ASAC" study was the study AT&T was using to base its recommendation. (TR 609) AT&T proposes that the Commission adopt a permanent wholesale discount of 36.15% applicable to all of GTEFL's retail service rates. AT&T contends that its simplified cost study identifies all retail costs that will be avoided by GTEFL. (Lerma TR 591, 596)

AT&T's witness Lerma contends that the "ASAC" study identified costs and revenues associated with retail activities in the combined local, toll, and private line services market. He states that the end result is a percentage that should be used to uniformly reduce GTEFL's local, toll, and private line service retail rates in order to reflect relevant retail costs avoided. (TR 572)

Witness Lerma argues that the "ASAC" study relies on ARMIS reports that GTEFL filed with the FCC for 1995. AT&T states the specific data that it uses are primarily obtained from the ARMIS 43-03 (Joint Cost Report). AT&T contends that this report provides the regulated annual operating results of GTEFL for every account in the FCC's Part 32 Rules. Witness Lerma asserts that data from ARMIS is used in the calculation of avoided depreciation expense and provides regulated financial and operating data separated in accordance with Parts 36 and Part 69 of the FCC's Rules. (TR 573)

AT&T identified in its "ASAC" study the accounts that are presumed avoided based on the FCC's Order. (FCC 96-325, ¶¶917, 918) Witness Lerma states that also included in this study is an amount of avoided costs pertaining to return and related income taxes consistent with the FCC Order. (FCC 96-325, ¶913) AT&T argues that in this paragraph, the FCC states that "in AT&T's model, the portion of return on investment (profits) that was attributable to assets used in avoided retail activities was treated as an avoided cost." AT&T stated that it finds these approaches are consistent with the Act. In addition, certain costs are reflected in the ASAC study that are not presumed avoided in the FCC Order, but which are left for state consideration. Witness Lerma contends that AT&T has included costs for USOA accounts 6610 (Marketing), 6620 (Service expense), 6220 (operator systems), 6533 (operations testing), 6534 (operations plant administration), and 6560 (the portions of depreciation expense pertaining to operator systems and general support assets). AT&T argues that the "ASAC" studies reflect those costs based on direction provided in Section 51.609(d). That rule states that:

> [c]osts included in accounts 6110-6116 and 6210-6565 ... may be treated as avoided retail costs and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonable by avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

[Staff notes that Section 51.609(d) has been stayed.]

AT&T states that accounts 6621 (call completion services) and 6622 (number services) are costs that are avoided because these are operator service-related. Witness Lerma contends that the FCC states that these costs are avoided "because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties." (FCC 96-325, ¶917) AT&T argues that when resellers perform their own operator services, the LEC's wholesale business would not require the use of any operator systems, and likewise, GTEFL would incur no operator systems equipment costs in the provision of its wholesale business. Witness Lerma asserts that there is a component of depreciation expense included in account 6560 that is related to operator systems. AT&T states that this too can reasonably be avoided. (TR 575)

AT&T states that GTEFL proposes to treat many of these costs as not avoided. For example, GTEFL's supposedly FCC-compliant cost study treats as avoided costs: 95.10% of GTEFL's product advertising costs; 64.24% of its sales costs; 41.45% of its customer service expenses; 1.76% of product management costs; and none of the call completion costs. (EXH 35) AT&T states that in addition GTEFL will avoid operator services costs to the extent that AT&T provides its own operator services (call completion and number service). AT&T argues that all of these costs are retail-related, having been incurred in a nearly 100% retail context. (BR p.21)

GTEFL argues that operator services costs are not avoided because operator services provide their own revenue stream, separate and apart from wholesale services. AT&T contends that GTEFL's argument is irrelevant because GTEFL operator services are, by its own admission, *solely retail functions and not related to* the provision of wholesale services to AT&T. (Wellemeyer TR 1432).

Witness Lerma also asserts that accounts 6533 (testing) and 6534 (plant administration) include costs incurred in testing facilities and cost incurred in the general administration of plant operations. In its study, AT&T deducted 20% of the costs in these accounts as directly avoided; however, AT&T estimates that 50% of its own overall Testing and Plant Administration costs involve end-user testing and trouble-shooting. (TR 576) AT&T argues that GTEFL has provided no evidence to support that AT&T's estimates are unreasonable. AT&T argues that GTEFL has identified 0.0% of its testing and plant administration costs as avoidable in a wholesale environment. (EXH 36, A-462)

In its study, AT&T indicates that GTEFL will avoid 24.7% of its indirect costs. (Lerma TR 577) AT&T contends that these indirect costs include costs associated with executive, planning, accounting, finance, human resources, legal, uncollectibles, furniture, and other similar items and functions. (BR p.24)

AT&T argues that although its factor and GTEFL's are not dissimilar, application of GTEFL's factor to GTEFL's concept of the directly avoided cost pool results in dramatically different avoided indirect costs. AT&T contends that this result emphasizes the need to eliminate all reasonably avoided direct costs, because failure to do so is magnified in the avoided indirect cost calculation and will result in wholesale rates incapable of sustaining competition and benefiting Florida consumers. (BR p.25)

Finally, AT&T states that its study deducts all uncollectible costs (account 5301) as indirectly avoided costs. (TR 577) AT&T argues that in a resale environment, the liability for all end user uncollectibles transfers in total to the reseller. GTEFL's avoided cost study does not treat uncollectibles as 100% avoided. AT&T contends that if this were allowed resellers would absorb not only the costs of their own uncollectibles but also a portion of the uncollectibles incurred by GTEFL in connection with its retail customers. (BR p.25)

GTEFL contends that neither AT&T nor MCI produced any studies analyzing the specifics costs which GTEFL would avoid. (Price TR 875-876, 882-883; Lerma TR 598) Instead, GTEFL argues they relied on the FCC's methodology. (Price TR 870; Lerma TR 591, 598) GTEFL's witness Wellemeyer asserts that the FCC did not provide support for those presumptions. GTEFL offers that the FCC methodology is incorrect in it substitution of an avoidable cost standard for the avoided cost standard as stated in the Act. (TR 1459) Because the Eighth Circuit's Stay has rendered the FCC's rules ineffective, GTEFL states there is no longer any justification for accepting AT&T's avoided cost arguments. (BR pp.13-14)

GTEFL's witness Wellemeyer asserts that AT&T and MCI do not have sufficient data, nor have they sought it, to conduct meaningful analysis of costs that GTEFL can reasonably avoid. GTEFL states that the analysis of data more detailed than reported in the ARMIS reporting system is necessary to make reasonable judgments about specific work functions that will or will not be avoided in a wholesale environment. GTEFL contends that in failing to attempt the necessary analysis, AT&T and MCI have failed to identify significant amounts of cost that even they agree are not avoided. Witness Wellemeyer argues that GTEFL's studies are both based on this kind of analysis. (TR 1458)

GTEFL contends that AT&T has excluded 100% of all product management expenses (account 6611) assuming that GTEFL will not have any costs relating to product development. GTEFL states that during cross examination AT&T's witness Lerma admitted that wholesales providers incur product development costs; however, he offered no evidence as to why GTEFL would not incur these same costs in reselling local services to AT&T. (Lerma 606-607) GTEFL argues that not only is AT&T assuming that GTEFL will exit the retail business, but it apparently assumes GTEFL will exit the wholesale business as well. (TR 1433; BR p.14)

GTEFL argues that AT&T's assumption that GTEFL will avoid 100% of the sales function (account 5512) is also unrealistic. GTEFL contends that it is illogical to assume GTEFL will no longer incur sales expenses in a wholesale environment. (BR p.15) GTEFL also disagrees with AT&T's assumption that it will avoid 100% of call completion services (account 6621) and number services (account 6622). (Lerma TR 575) Witness Wellemeyer offers just because a reseller may provide its own operator or directory assistance service does not mean that GTEFL will avoid these costs. GTEFL argues that operator services expenses are not avoided, since they are separate tariff rates for operator services, and the associated expenses are not included in the rates for other retail services offered for resale. (TR 1432) GTEFL asserts that the same holds true for directory assistance -- it will still have to provide directory assistance to ALECs and end users, therefore, GTEFL will not avoid these costs. (BR p.15)

GTEFL also disagrees with AT&T's avoidance of 100% of customer services (account 6623) GTEFL contends that AT&T's adjustment to carrier access expenses has no evidentiary value since it was based upon Bell Atlantic data from Pennsylvania. (EXH 14; Lerma TR 632-

633) GTEFL states that there is no dispute that the ordering activities will still be required to provide services to ALECs on a wholesale basis. (BR p.16)

Staff agrees with GTEFL that costs associated with operator and directory assistance services should not be 100% avoided merely because AT&T will be providing its own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail services offered to customers be made available for resale. Staff would argue that if AT&T wants to purchase pieces of services, it should buy unbundled elements instead and package these elements in a way that meets its needs.

Staff believes it is reasonable to assume that GTEFL will incur expenses associated with product management (account 6611), sales functions (account 5512), and customer services (6623) as a wholesale provider. In the course of doing business as usual, staff believes it is reasonable to assume GTEFL will incur some costs in these accounts.

Staff does not believe that all uncollectible costs (account 5301) should be allocated as indirectly avoided costs.

In addition, staff does not believe it is reasonable to assume that GTEFL will operate as only a wholesale provider when in fact it will still be operating as a retailer. Since AT&T made this assumption, staff does not believe that AT&T's cost study accurately reflects avoided costs.

Bases on the reasons stated, staff believes AT&T's cost study should be rejected. Staff does not believe that AT&T's cost study is in compliance with the Act since it has removed all retail-related costs. The Act requires that portions attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier should be excluded. The Act does not require all retail costs to be considered avoided.

Analysis of MCI's Avoided Cost Study

MCI has proposed a wholesale discount rate of 17.68%. (TR 807) MCI contends that its approach to calculating GTEFL's avoided costs is conservative and tends to understate the amount of the appropriate discount. (TR 805) Witness Price states that the FCC's Order establishes minimum criteria for the avoided cost methodology based broadly on the MCI study. (TR 795) The witness indicates that the costs in certain USOA accounts are identified as directly avoided, while costs in other accounts are treated as indirectly avoided. The avoided indirect costs are calculated by determining the ratio of directly avoided costs to total costs and then applying that proportion to the total indirect costs for the accounts. (TR 803)

Witness Price contends that ARMIS data provide a sufficient basis for an aggregate discount across all services. MCI states that these data are broadly consistent across ILECs and are reported in a format that is familiar. Witness Price argues that service-by-service data are much harder to come by. MCI asserts that even if more detailed information were publicly available on a product-by-product basis, the consistency of the information would be questionable due to the numerous allocations and assumptions the ILEC would have to make to develop the product-specific information. (TR 808)

MCI argues that Section 252(d)(3) of the Act provides the methodology for determining the wholesale price for resold telecommunications. MCI contends that the purpose of calculating wholesale rates in this manner is to quantify and deduct costs of GTEFL that are not incurred in the provision of service at wholesale. (Price TR 796, 851)

MCI contends that its approach to calculating GTEFL's avoided costs is conservative, and tends to understate the amount of the appropriate discount. MCI states that it made a conservative assumption that indirect costs are avoided in proportion to the ratio of avoided direct costs to total direct and indirect costs, rather than the ratio of avoided direct costs to total direct costs. (Price TR 872) Witness Price indicates that MCI's study did not consider some additional categories of cost which MCI's original filing at the FCC had demonstrated would in fact be avoided. (Price TR 805-806, 926-927)

GTEFL argues that because the FCC Order has been stayed there is no longer any justification for accepting MCI's avoided cost arguments. (BR p.14) Witness Wellemeyer contends that the continued use of the FCC's presumptive factors is inappropriate give that analysis of GTEFL's avoided costs is available. GTEFL asserts that MCI has improperly calculated the avoided cost discount rate based on total expenses rather than total revenues for retail services that are to be offered on a wholesale basis for resale. GTEFL argues that this is in conflict with the Act. (TR 1450)

GTEFL contends that MCI does not have sufficient data available to it to conduct a reliable analysis of costs that can reasonably be avoided. Witness Wellemeyer states that analysis of data more detailed than that available from ARMIS is needed to make reliable judgments about specific work functions that will or will not be avoided. (TR 1452)

As GTEFL argued in AT&T's cost analysis, GTEFL disagrees that operator services and directory assistance should be avoided at 100%. (BR p.15)

Staff would note that MCI's study only included those accounts that the FCC established as presumed avoided. Since MCI assumed, as did AT&T, that GTEFL would operate only as a wholesale provider, staff does not believe that MCI's cost study accurately reflects the appropriate avoided costs. Other than referencing the criteria identified in the FCC Order, MCI has not provided any independent evidence to substantiate the costs it claims will be avoided.

As stated earlier, staff disagrees that costs associated with operator and directory assistance services should be 100% avoided because resellers may be providing their own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail service offered to customers be made available for resale. Staff would argue that if MCI wants to purchase pieces of services, they should buy unbundled elements instead and package these elements in a way to meet its needs.

Analysis of GTEFL's Avoided Cost Study

GTEFL defines avoided retail costs as the difference in total costs with and without the offering of service for resale, i.e, the costs avoided when a service is offered through wholesale, rather than retail, distribution channels. Witness Wellemeyer contends that this definition is consistent with the Act, and properly positions wholesale prices for competitive markets. GTEFL states that setting wholesale prices too high could result in undercutting the ability of resellers to recover a sufficient retail markup to allow for a viable resale market. GTEFL argues, on the other hand, if the adjustment for avoided retail costs is too large, the ILEC will not be compensated for its true costs. Witness Wellemeyer offers that facilities-based alternative local exchange carriers (ALECs) could be placed at a competitive disadvantage in pricing their retail service if ALEC resellers are able to purchase wholesale local exchange services below cost. GTEFL contends that appropriately-set wholesale prices will encourage facilities-based competition. (TR 1404)

Witness Wellemeyer offers that GTEFL's definition of avoided costs also recognizes the fact that while some retail costs are avoided for certain activities, a similar activity is often required to offer the same service on a wholesale basis for resale. For example, GTEFL states that some incremental retail customer billing activities may be avoided when the service is offered instead for resale, but a wholesale billing function must still be performed. GTEFL contends that the avoided billing cost is the difference between the costs of these two activities. (TR 1404)

GTEFL asserts that when a service is offered at wholesale instead of at retail, the resulting avoided costs can be separated into two components. First, GTEFL suggests that total costs are decreased because it is no longer necessary to provide some incremental retailing functions in support of the service. Second, witness Wellemeyer contends that total costs are increased to the extent that it becomes necessary to provide substitute wholesaling functions in support of resale services. Therefore, GTEFL states that avoided retail costs are equal to: (1) cost associated with displaced retail activities (affected retail costs) minus (2) added costs associated with replacement wholesale activities (substitute resale costs). (TR 1404)

Witness Wellemeyer contends that the first component of avoided cost was calculated by examining all activities involved in the provision of retail services, and identifying the costs of performing those activities that are affected when services are provided on a wholesale, rather than a retail, basis (affected costs). GTEFL asserts that some activities are required regardless of whether the service is offered on a retail or a wholesale basis, so the associated costs would be unaffected (unaffected costs). GTEFL states that these activities were ignored in the Avoided Cost Study since none of the associated costs will be avoided. (TR 1405)

GTEFL suggests that the second component was calculated by first identifying the existing wholesale services similar in nature to those in each of the retail service categories. Witness Wellemeyer states that then using these services as proxy for the new wholesale distribution channel, the cost of substitute wholesale activities required when services are offered on a wholesale, rather than a retail, basis was analyzed. GTEFL contends that the cost of substitute activities for the residential services category was assumed to be the same as the cost of the same activities currently performed in providing wholesale special access service to interexchange carrier customers. In the study, GTEFL states the total cost of affected activities required to provide special access services was calculated to be $0.53 per line per month ($0.53 represents the additional costs GTEFL will incur as a result of becoming a wholesaler of these services instead of a retailer). GTEFL asserts that the amount for this component represents the increase in total costs when a residential basic service is offered on a wholesale basis. (TR 1406)

GTEFL contends that the avoided costs were calculated as the first component, affected retail costs, less the second component, substitute resale costs. Witness Wellemeyer states that the costs avoided when residential service was provided on a wholesale basis were calculated as $1.36 minus $0.53, or $0.83 per line per month. (TR 1406)

GTEFL states its Avoided Cost Study was based on actual annual results for GTEFL operations's total domestic telephone operations for 1995. GTEFL contends that the data is reported in a managerial accounting framework reflecting the results of the business as it is managed, rather than according to traditional financial accounting rules. Witness Wellemeyer contends that this necessary data is not recorded on a state specific basis, so data specific to operations in this state is not available from GTEFL's records. GTEFL asserts this is because the vast majority of the affected activities are performed on a centralized basis from regional and national service centers located throughout the country. GTEFL offers that each of these workcenters handles one or more specific retailing functions for a number of different states. (TR 1407)

GTEFL allows that in order to identify the retail cost affected by the offering of services through wholesale rather than retail distribution channels, all of GTEFL's workcenters were examined to determine which activities would be affected. Witness Wellemeyer states that the resale of existing retail services is defined as the sale of services to a reseller for sale to its end user customers, without any change in the nature of the product by the reseller. He contends that the changes in workcenter costs that result from offering services on a wholesale, rather than a retail, basis arise solely from activities associated with the distribution of services, and not from production activities. (TR 1408)

Witness Wellemeyer defines a workcenter as a collection of activities that exhibit: (1) common functions; (2) a common unit measure of demand; (3) a common unit measure of resource consumption; (4) a common geographic uniqueness; and/or (5) a common management structure. GTEFL argues that most of the workcenters are defined based on common functions or work activities. (TR 1408)

GTEFL states that the affected workcenters are uniquely associated with one of the three lines of business organizations within GTEFL Telephone Operations. GTEFL contends that the three lines of business are Consumer, Business and Carrier. The Consumer line serves the residence and small business markets; the Business line serves the balance of the business market, including national accounts; and the Carrier line is responsible for the wholesale relationship with other telecommunications providers (this wholesale relationship currently consists primarily of switched access services, special access services, billing and collection, and operator service agreements). (TR 1409)

GTEFL states that workcenters are identified for all Network Operations and Corporate General and Administrative functions. Witness Wellemeyer contends that these workcenters were reviewed but are generally not included in the analysis of affected costs because the functions are required for wholesale and retail service provision alike. GTEFL asserts that Uncollectibles was defined as a workcenter for the purpose of this analysis, and included as such in the Avoided Cost study. (TR 1409-1410)

Witness Wellemeyer offers that once the affected workcenters were identified for study, the total annual costs were determined from the books and records for each affected workcenter. GTEFL contends that the workcenter costs include labor costs, support and supervision, data processing, training and other employee-related expenses. In addition, GTEFL states that the data processing costs were included net of system development and enhancement costs. The development and enhancement costs are "one-time"costs associated with the design and implementation of systems, and were therefore excluded from the Avoided Cost Study. GTEFL asserts that projected development and enhancement costs for systems to support the wholesale distribution channel have also been excluded from the Study because these costs should be recovered from the ALEC who causes them. (TR 1410)

GTEFL states that some of the identified workcenter costs were adjusted to include certain payroll overheads not accounted for by the workcenter (i.e., health insurance, payroll taxes and management incentives). Witness Wellemeyer contends that these costs are managed separately from the workcenter costs, but are properly included in the Study, as they would be affected by the offering of resale services in the same way as the related direct labor costs. In addition, GTEFL states that an adjustment was made to workcenter costs to remove any non-recurring costs associated with service ordering activities. GTEFL contends this was done because GTEFL prepared an independent analysis of service ordering and service connection charges. (TR 1411)

Witness Wellemeyer states that once the non-recurring costs were separately identified, the next step was to assign the remaining workcenter costs to the service categories. GTEFL contends that the target retail service categories are Residential, Business, Usage, Vertical, Advanced and "Other". The Other category was further divided among Directory, Customer premises Equipment (CPE), CALC and Other. (TR 1412)

GTEFL contends that Residential (includes both flat rate and measured rate services) and Business (includes flat and measured rate services, CentraNet and PBX) are simply local residential and business services. Witness Wellemeyer states that the Usage category includes intraLATA toll, discount calling plans, local measured usage, Zone Usage Measurement (ZUM), and extended area service (EAS). GTEFL asserts that Vertical includes such features as call waiting and last number redial (offered to both business and residential customers). GTEFL states that the Advanced services category includes such services as ISDN PRI, Frame Relay, Digital Channel Service, DS-1, and various other dedicated channel services including private line. (TR 1413)

GTEFL states that for residential, business and advanced services, avoided costs were divided by the number of lines. GTEFL contends that for usage, avoided costs were divided by the number of minutes. GTEFL notes that per unit affected costs for vertical services were not calculated, because data for the second component of avoided costs, substitute resale costs, was not available. (TR 1416) Witness Wellemeyer contends that the best alternative cost available for vertical services was basic exchange service. (TR 1421) Consequently,

- the avoided cost discount rate for residential vertical features was set equal to the avoided cost discount of local residential service, 6.6%;

- the avoided cost discount rate for business vertical features was set equal to the avoided cost discount of local business service, 5.5%; and;

- the avoided cost discount rate for vertical features not segregated in the tariff as either residential or business was set equal to the composite avoided cost discount of local residential and business services, 6.2%.

Witness Wellemeyer contends that in the case of basic exchange access services an adjustment to costs should be made to acknowledge the foregone contribution associated with complementary services, such as intraLATA toll service. GTEFL contends that the

ALEC reseller is more likely to package and self-provision than purchase intraLATA toll from GTEFL for resale. Therefore, GTEFL states that the "bundle" of services resold includes not only basic exchange access, but also profitable intraLATA toll. (TR 1422)

GTEFL argues that for all basic local exchange services the proposed wholesale rates should be determined, using the pricing rules and the contribution analysis as follows:

(1) the retail price, <u>less</u>
(2) the avoided costs per line from the Avoided Cost Study, <u>plus</u>
(3) toll opportunity cost (toll contribution), <u>less</u>
(4) access opportunity gain (access contribution).

GTEFL acknowledges that there are two exceptions that may affect the assessment of foregone toll contribution under this resale scenario. First, GTEFL states that it is possible that an ALEC reseller has self-provided toll service to the end user prior to the time resale was initiated. In this case, GTEFL argues it would not experience any further foregone toll contribution. Second, GTEFL states that the ALEC reseller may not actually self-provision toll service. In this case GTEFL would continue to provide intraLATA toll and again there would be no opportunity loss. (TR 1425)

GTEFL contends that since the analysis assumes that the ALEC reseller will self-provide intraLATA toll 100 percent of the time, it is proper to establish a credit rate equal to the opportunity cost it included in the calculation of the resale price for each basic exchange access service. GTEFL argues that the toll provider credit should vary over time with changes in the levels of the underlying toll and access contributions. Witness Wellemeyer states that as local, toll and access rates rebalance over time, the toll provider credit should be adjusted whenever toll and access rates are adjusted. GTEFL asserts that ultimately the toll provider credit will be replaced entirely by rebalanced rates for both retail and resale services. (TR 1426)

Based on the Avoided Cost Study, GTEFL suggests that the discount rate for the Usage service category is 7.1%. Witness Wellemeyer states that since there are no additional opportunity costs associated with offering these usage services for resale, the proposed rates are based on the retail price less avoided costs. (TR 1426)

GTEFL contends that since retail services have not been offered for resale for any length of time, their substitute costs cannot be measured directly. Instead, GTEFL used as proxies costs associated with current wholesale offerings. Witness Wellemeyer states that the offering of residential, and business, and advanced services for resale was assumed to be analogous to the current wholesale provision of special access service. In addition, the wholesale offering of retail usage services was assumed to be analogous to the current provision of originating and terminating switched access. These services constitute GTEFL's most accurate information on the cost of the wholesale provision of line-based and usage-based services. (TR 1417)

Witness Wellemeyer states that the per unit affected retail costs for each retail service category are:

Residential	$1.36 per month per line
Business	$1.60 per month per line
Usage	$.01006 per minute
Advanced	$4.30 per month per line

GTEFL proposes that the results of the study for the Vertical features category be expressed as a set of discount rates to be applied to the respective retail prices:

Residential vertical features	6.6%
Business vertical features	5.5%
Composite	6.2%

GTEFL states that the composite discount rate is applied to vertical feature offerings that are not specified in the tariff as either residence or business features. GTEFL allows that since there are no additional opportunity costs associated with offering vertical features for resale, the proposed rates are based on the retail price less avoided costs. (TR 1427)

In order to address the FCC Order, GTEFL submitted a modification of the MCI avoided cost study. GTEFL states it developed allocators for direct expenses in the model, based on analysis of actual costs. GTEFL contends revenues for services to which the avoided cost discount rate is not to be applied were identified and subtracted from operating revenues to determine the appropriate revenue base for calculating the resale discount rate. In its modified avoided cost study GTEFL used the same workcenter cost detail used in its Avoided Cost Study; therefore, the study is not state-specific. GTEFL states it did not avoid carrier access expenses (account 6623) since these services are not offered for resale, and the associated expenses are not included in the retail rates for services that are offered for resale. GTEFL contends that public telephone expenses (account 6623) are not avoided costs because they are unrelated to the retail services being discounted. Service ordering costs (account 6623) were not avoided because GTEFL contends it will still be required to provide ordering activities when providing retail services. GTEFL did not avoid Operator Services because it states that the associated expenses are not included in the rates for other retail service offered for resale. GTEFL asserts it did not avoid Product Management expenses since product planning are required regardless of whether the products are offered at retail. (1432-1433) GTEFL also identified plant-related expenses, return and taxes as attributable to avoidable land and support assets, and included as avoidable cost.

GTEFL contends its modification to certain inputs to the ARMIS-based model used in preparing this study properly identifies avoided costs in accordance with the FCC's proposed avoided cost criteria. GTEFL states that it strongly believes that its Avoided Cost Study best reflects the intent of the Act, and offers this modified study as an alternative to be used only if the FCC rules on avoided costs are held to be lawful. (TR 1429) GTEFL's results of its modified avoided cost study using the ARMIS-based model is one discount factor of 11.25%.

GTEFL contends that AT&T had few, if any, specific criticisms of the manner in which GTEFL's Avoided Cost Study was conducted. GTEFL contends that the opposition to the study was primarily because it did not comply with the FCC's rules. (Lerma TR 581-583). GTEFL states that while MCI's witness Price advanced certain broad criticisms, they were not based on any review of the study. (Price TR 855) GTEFL asserts that MCI's criticism was that the study was too precise. (Price TR 857)

AT&T states that GTEFL's version of competition under the Act requires that a reseller, such as AT&T, reimburse GTEFL for revenues it might lose due to competition. AT&T contends that GTEFL's witness Wellemeyer testified that in the case of basic local exchange services GTEFL seeks to <u>add to</u> (not deduct from) retail rates what he termed "toll opportunity cost[s]." (Wellemeyer TR 1424) AT&T argues that as witness Wellemeyer admitted on cross examination, these "toll opportunity costs" are not costs at all, but are simply revenues that might be lost because of competition for basic local service. AT&T asserts that the Act, however, requires that wholesale prices reflect the retail price for a service reduced by retail costs that will be avoided. Thus, AT&T contends that GTEFL's methodology violates the Act. (BR p.15)

AT&T's witness Lerma contends that GTEFL's Avoided Cost Study produces unreasonably low percentage discounts applicable to retail rates. (TR 568) AT&T states that it has several concerns including the fact that the study uses national retail cost data and units as a basis for determining avoided costs per line that are subsequently applied to GTEFL's residential and business local retail rates. (TR 580) AT&T argues that the average national avoided costs calculated in the study for each service category may not be representative of the state specific costs that underlie GTEFL's retail telephone rates in Florida. Witness Lerma contends that the study is based on data from national work centers that GTEFL has determined are involved in retail functions that would not be present in a resale transaction. (TR 581)

AT&T argues that for some of the marketing and customer service categories that the FCC presumed are completely avoided, only small or unreasonably low percentages are treated as avoided. Witness Lerma states that this is true for accounts 6611 (product management), 6612 (sales), 6622 (number services) and 6623 (customer services). AT&T contends that for 6621 (call completion), which the FCC has presumed completely avoided, GTEFL's study produces zero avoided costs. (TR 581)

AT&T's witness Lerma also indicates that there are no indirect costs (general and administrative costs, corporate operations costs, or general support costs) included in this study. AT&T argues this is contrary to the FCC Order. (TR 581) AT&T also contends that GTEFL's treatment and adjustment of "foregone contributions" is not contemplated by the FCC Order which specifically states in paragraph 914 that "an avoided cost study may not calculate avoided costs based on non-cost factors or policy arguments, nor may it make disallowances for reasons not provided for in Section 252(d)(3)." (TR 582)

AT&T contends that GTEFL's methodology of substitute costs is flawed. Witness Lerma states that since retail services have not yet been offered for resale for any length of time, their substitute costs cannot be measure directly. AT&T states that GTEFL's substitute costs associated with offering service on a wholesale, rather than retail basis, were calculated by determining the affected costs of an existing wholesale service similar in nature to the service to be offered at resale. AT&T contends that GTEFL indicated that the proxies it used were based on the current wholesale provision of access services. AT&T also states that for vertical services GTEFL was unable to identify an existing service whose cost would approximate the wholesale cost of providing vertical features. Instead, AT&T states, GTEFL applied avoided cost relationships associated with basic exchange services. (TR 583)

Therefore, AT&T argues that GTEFL's methodology to identify new recurring wholesale costs is flawed because of a lack of direct cost measurements. Additionally, witness Lerma argues that the percentages of substitute costs that result are unreasonable. AT&T contends that based on the avoided cost results these substitute cost offsets represent as much as 41% of the current retail costs that are being avoided and, accordingly, are poor proxies for this exercise. Witness Lerma also states that where access costs are used as a proxy for substitute retail costs, it is difficult to accept that any retail functions performed in the provision of access service involve such a high level of cost. (TR 583)

AT&T also contends that the same concerns AT&T had with GTEFL's original Avoided Cost Study are also applicable to the Modified Study. Witness Lerma states that the modified study was based on the same workcenter cost detail used in the Avoided Cost Study. He asserts that GTEFL did not consider any costs avoided for the entire public service category, which includes services that are not excluded from resale per the Act. AT&T also states that there are no avoided costs included in this study for operator services expenses or for product management expense. AT&T argues these are accounts that are presumed avoided in the FCC Order and will be avoided in a wholesale environment. (TR 584) AT&T acknowledges that GTEFL will avoid operator systems and depreciation of operator systems (accounts 6220 and 6560) to the extent that AT&T provides its own operator systems when reselling services. (BR p.21) However, AT&T disagrees with GTEFL's argument that operator services costs are not avoided because operator services provide their own revenue stream, separate and apart from wholesale services. (Wellemeyer TR 1432)

AT&T contends that GTEFL's Avoided Cost Study does not treat uncollectible as 100% avoided. AT&T argues that if the permanent wholesale rate includes a portion of these uncollectible costs, resellers would absorb not only the costs of their own uncollectibles but also a portion of the uncollectible costs incurred by GTEFL in connection with its retail customers. (BR p.25)

AT&T argues that GTEFL has provided no rationale for, no validation of, and no support for GTEFL's alleged workcenter analysis. AT&T states that all GTEFL has done in this analysis is look at a subset of the USOA cost accounts, and make unverifiable assertions as to whether or not GTEFL will avoid such costs. (BR p.23)

AT&T suggests that GTEFL's "lost revenues" would subsidize other services which GTEFL purportedly prices below cost. (Wellemeyer TR 1465) AT&T states that resale is the quickest means to obtain local service competition. AT&T argues that in the absence of any competition, GTEFL is poised to achieve in less than twenty months what it took MCI twenty years to achieve -- i.e., a 20% share of the long distance market. (Gillan TR 55) AT&T asserts that given GTEFL's unique position, and its aggressively anti-competitive factors, this Commission should not adopt wholesale rates that place market entrants at an even greater competitive disadvantage. (Gillan TR 71)

AT&T argues that GTEFL attempts to increase its wholesale rates by costs GTEFL states that it does not incur now but would incur as a wholesaler. AT&T contends that the Act makes no provisions for the inclusion of additional costs, let alone speculative and subjective costs. AT&T states that GTEFL articulates no basis, and provides no documentation, justifying inclusion of the proposed costs. AT&T suggests that without any legitimate reference point from which to calculate the "additional" wholesale cost of basic services, GTEFL simply substitutes unexplained proxy costs based on its provision of special access service. AT&T argues that neither it, nor the Commission, nor GTEFL can demonstrate the validity of these proposed costs. AT&T suggests that the Commission should reject GTEFL's proposed inclusion of these amounts. (BR p.16)

AT&T argues that the Commission, in the context of a proceeding to establish rates for unbundled network elements, stated that "the mere possibility [of revenue loss] would not give rise to an immediate rate increase." MCI agrees. MCI argues that the Commission has previously rejected a make-whole approach to pricing unbundled elements and should reject it again as an approach to pricing wholesale services. (<u>See</u> Order No. PSC-96-0811-FOF-TP; BR p.16)

AT&T's witness Lerma also asserts that GTEFL's Modified Study has used an inappropriate formula to determine the percentage of indirect costs that are attributable to avoided direct retail costs. AT&T contends that this is based on a ratio of directly avoided costs to total costs. AT&T states that the FCC's criteria for cost studies provide that indirect costs "are presumed to be avoided in proportion to the avoided direct expenses." (FCC 96-325, ¶918) Witness Lerma offers that the ratio should be based on directly avoided costs divided by total direct costs. He believes this is appropriate because it is not reasonable to include in the denominator the same expenses to which the ratio will be applied. AT&T further argues that because of low amounts of directly avoided costs calculated by GTEFL in its study, the inclusion of indirect costs in the denominator results in an even smaller amount of indirect costs as avoided. (TR 584)

MCI contends that GTEFL's Avoided Cost Study significantly understates the appropriate discount. Witness Price states that there is no argument that GTEFL will continue to be a retail provider of telecommunications services or that it will incur retailing costs. MCI argues that by only looking at the costs that GTEFL will no longer incur, as GTEFL suggests, the resulting discount would overstate the wholesale rates, place GTEFL in an unfair competitive position in the retail market, and deny to end users the benefits that resale competition could otherwise bring. (Price TR 854)

MCI asserts that GTEFL's study excludes only a portion of GTEFL's retailing costs, on the theory that GTEFL will continue to be a retail service provider and will continue to incur those retailing costs. Witness Price argues that what GTEFL's approach ignores is that these retailing costs can and will be recovered through its retail rates, and under the Act should not be recovered through its wholesale rates. (TR 854-855, 878-879) MCI asserts that in preparing its avoided cost study GTEFL left in entire categories of costs that have nothing to do with the provision of wholesale services -- including such things as advertising, aircraft costs, development costs for new ventures, and advanced product planning for GTEFL's video services product line. (Wellemeyer TR 1514-1515) MCI states that GTEFL's study even assumes that none of GTEFL's general and administrative costs will be avoided by offering services at wholesale rather than retail. Witness Price argues that this approach to identifying avoided costs ignores the clear intent of the Act to deduct the costs associated with retailing when setting the wholesale price for a service. (TR 851)

MCI argues that GTEFL's witness Wellemeyer's approach also does not even attempt to calculate a Florida-specific discount. (Price TR 855) Instead, MCI contends that GTEFL bases its analysis on nationwide figures, and thereby produces the same residential discount ($0.83/line/month) and business discount ($1.06/line/month) for each of GTEFL's 28 states. (Wellemeyer TR 1420, 1513)

MCI states that GTEFL's methodology produces a residential discount of only 6.6% and a business discount of only 5.5%. (Wellemeyer TR 1421-1422) MCI contends that these are well below the 11.25% discount that witness Wellemeyer calculated when he purported to use the FCC's avoided cost methodology. (TR 1433), and even further below the 17.68% discount produced by MCI. (Price TR 807)

MCI contends that GTEFL recognizes that when it loses a local customer to competition, GTEFL likely will lose the opportunity to profit from the sale of intraLATA toll service to that customer as well. MCI argues that GTEFL labels this loss of toll contribution (net of access charge contribution) an "opportunity cost" and proposes to adjust the discount downward to keep in GTEFL's pockets the same contribution that GTEFL would have received if it had not lost the customer. (Wellemeyer TR 1423-1424, 1511-1513) MCI asserts this mathematical gyration produces a business discount of only $0.30 per line per month. MCI states that this is less than a 1% discount when compared to an average business line rate in the range of $33 per month. (TR 1512). MCI argues that this "make whole" approach advocated by witness Wellemeyer is not only inconsistent with the Act, but it is inconsistent with sound public policy. MCI asserts that this approach would ensure that competition puts no downward pressure on GTEFL's rates -- GTEFL would remain indifferent to whether it loses a customer or not because its contribution would be protected in either event. (Price TR 858-859)

Staff agrees with GTEFL that all other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that GTEFL will operate in a hypothetical world, only as a wholesale provider of services. Staff also agrees with GTEFL that since it will provide both retail and wholesale services, it is unreasonable to assume that it only performs wholesale functions. Therefore, staff believes AT&T and MCI's basic methodology should be rejected.

Staff acknowledges AT&T's and MCI's concerns regarding GTEFL's treatment of the product management, advertising, number services (directory assistance), call completion (operator services), and customer services accounts. However, other than stating that these accounts are presumed to be avoided under the FCC Order, staff would argue that AT&T and MCI did not provide convincing rationale or evidence that these costs should be 100% avoided.

Staff disagrees with AT&T and MCI that call completion and number services accounts should be treated as 100% avoided by GTEFL, even if AT&T and MCI were to provide their own operator services. Even in a resale environment, staff believes that GTEFL will continue to perform these functions; therefore, these costs will not be avoided as a result of an ALEC reselling a LEC's retail service. Staff does not believe Section 251(c)(4) of the Act imposes on an ILEC the obligation to disaggregate a retail service into more discrete retail services as requested by AT&T and MCI. The Act only requires that any retail services offered to customers be made available for resale. It does not require these services to be split. Staff would argue that if AT&T and MCI want to purchase pieces of services, they should buy unbundled elements instead and package these elements in a way that meets their respective companys' needs.

Since the analysis in GTEFL's recommended cost study was based on data for total GTEFL domestic telephone operations, it is not possible to identify state-specific costs. GTEFL stated that the workcenters often handle one or more specific retailing functions for a number of different states, with the vast majority of such functions being performed on a centralized basis from regional and national service centers located throughout the country. While staff does not endorse GTEFL's total telephone operations analysis for purposes of this proceeding, we recognize that it may not be meaningful to break out some of the workcenters to a state-specific level.

There are several other areas of GTEFL's recommended cost study that caused staff concern. They are: (1) GTEFL has not considered indirect costs (such as general and administrative costs); (2) GTEFL has used substitute costs for services it cannot directly measure (such as resale); and (3) GTEFL has included of opportunity costs. Staff believes that in order to determine an appropriate wholesale discount indirect costs must be considered since it is reasonable that there will be some reduction in overhead costs in a wholesale environment.

Staff believes that GTEFL will incur costs associated with certain wholesale functions, and that it is appropriate to net such costs with GTEFL's avoided retail costs. However, we question the reasonableness of the proxies used by GTEFL. As noted above, GTEFL's substitute costs were calculated based on special and switched access, existing wholesale services assumed to be similar in nature to the services to be offered at resale. In addition to having doubts as to the reasonableness of the procedures used to derive the proxy costs, we do not believe there is an adequate basis to conclude that the proposed proxies will be representative of the costs associated with the services to be resold.

Finally, we believe GTEFL's inclusion of "opportunity costs" is unacceptable. In actuality these "opportunity costs" are not really costs but contribution that may be foregone if toll revenues decline due to resale. This Commission has previously indicated that a LEC has no entitlement to such revenues and that a make whole provision is inappropriate. Consequently, staff believes that GTEFL's recommended avoided cost model should not be adopted.

Staff believes GTEFL's modified avoided cost study is basically in compliance with the Act. Unlike the study sponsored by AT&T and MCI, it attempts to estimate those costs which GTEFL actually will forego due to offering a service at wholesale instead of at retail. The FCC's Order considers account 6621 (Call Completion) and 6622 (Number Services) as presumptively avoidable; however, the Order also indicates that this is a rebuttable presumption. Staff believes that GTEFL has adequately supported its claim that it will continue to incur some of these costs. Accordingly, we believe these costs should not be treated as avoidable.

On balance staff believes that GTEFL's modified avoided cost study is the most reasonable option. However, while staff believes that GTEFL's treatment of key accounts has been adequately supported and is appropriate, we believe that two adjustments are warranted.

First, since it is GTEFL's position that public telephone services should not be available for resale at a discount, the Company excluded their associated revenues from the revenue base for computing the resale discount. In Issue 1, staff has recommended that these services must be made available for resale; accordingly, in our analysis we included public telephone revenues.

Second, in GTEFL's analysis it considered only 9.0834% of account 5301 (Uncollectibles - Telecommunications) as avoidable. Based on data contained in the Company's supporting work papers to its avoided cost studies, we estimated what portion of account 5301 was attributable to retail services (versus carrier services) and included the resulting, higher uncollectibles amount.

Applying these adjustments to GTEFL's modified avoided cost study yields a wholesale discount percentage of 13.04.

Staff believes separate wholesale discounts should be set for residential and business services to more accurately reflect the costs associated with the service. However, staff did not have sufficient data in this docket to determine different rates. Consequently, staff recommends that GTEFL should be required to offer retail services at a wholesale discount rate of 13.04%.

Staff believes that its proposed wholesale discount rate complies with the intent of the Act to establish rates that exclude those portions of retail costs "that will be avoided" by GTEFL. Staff's determination of avoided costs in this proceeding strikes a balance between the parties' different interpretations of avoided costs. Staff's proposed wholesale discount is based on GTEFL's retail costs that can reasonably be avoided in the provision of wholesale service.

ISSUE 4(a): Should GTEFL be required to implement a process and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are at least equal in quality to those that GTEFL provides itself and its affiliates? **(NORTON)**

RECOMMENDATION: Yes. Staff recommends that GTEFL, AT&T and MCI should adhere to the service restoration intervals, direct measures of quality, service assurance warranties, and other quality assurance measures as delineated in AT&T's and MCI's proposed agreements in this proceeding. To the extent that the proposed agreements do not contain all the specific standards and quality measures requested or needed, the parties should jointly develop and implement processes and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are equal in quality to those that GTEFL provides itself and its affiliates. These processes and standards should be included, as completely as possible, in the arbitrated agreements submitted for approval in this proceeding, but in no event later than February 28, 1997.

POSITION OF PARTIES

AT&T: Quality standards are necessary to ensure that GTEFL provides non-discriminatory levels of service for resale, interconnection, and unbundled network elements. The Act requires the quality of these services provided by GTEFL to AT&T must be at least equal to the quality of that which GTEFL provides to itself.

GTEFL: There is no reason for a mandate. GTEFL has already agreed to provide service to ALECs in a nondiscriminatory manner at the quality levels that apply to its own services.

MCI: Yes, GTEFL should be required to implement a process and standards to ensure that MCI receives services that are at least equal in quality to what GTEFL provides to itself or its affiliates. In addition, GTEFL should meet a series of specified technical standards and performance measures tailored to the competitive environment.

STAFF ANALYSIS: AT&T and MCI argue that GTEFL has an incentive not to provide service at a level of quality comparable to that which it provides itself. (Shurter TR 229-30; deCamp TR 1021-1022; Inkellis TR 1067) They assert that in order to be able to compete with GTEFL, they must be able to offer service at the same level of quality that GTEFL provides to its customers. (Shurter TR 211; deCamp TR 1021, 1025) To that end, MCI and AT&T have proposed that Direct Measures of Quality (DMOQs) and other standards and procedures be established, and periodic reports be submitted on the level of service provided. (deCamp TR 1025-1026, 1046-1048; Shurter TR 211)

MCI position:

MCI argues that GTEFL's proposal to simply use the existing quality of service standards applicable to end users is insufficient, and that it will either reduce the quality of MCI's service or force MCI to incur unnecessary costs in order to provide a competitive product, thus hindering competition. (deCamp TR 1025) Witness deCamp states that implementing the FCC concept of "parity" will require measurable and detailed technical standards, interfaces, and performance measures (such as installation intervals and maintenance and repair times). (TR 1025)

As to the specific DMOQs and other standards that should be set, MCI witness deCamp suggests that while these are best left to negotiations outside of contested proceedings, they, nevertheless, must be resolved in this proceeding. (deCamp TR 1025) MCI requests that the Commission order that these measures and standards be incorporated into the arbitrated agreement to be approved by the Commission in order to ensure that GTEFL recognizes its obligation to negotiate these matters. (MCI BR p.17) MCI also requests that the Commission "find as a matter of policy that adherence to these standards can be enforced through a system of credits for failure to meet the applicable standards." (Id.)

AT&T position:

AT&T witness Shurter testified that AT&T and GTEFL have agreed to jointly develop and deploy standards and procedures that would verify that AT&T is, in fact, receiving services, unbundled network elements, and interconnection at least at parity with GTEFL. (Shurter TR 210) However, GTEFL and AT&T have not agreed on a definition of "parity." AT&T states that parity must exist between the ILEC and new entrants, but that GTEFL believes parity need exist only between new entrants. (Shurter TR 209) AT&T requests that the Commission order GTEFL to provide AT&T with services, unbundled network elements, and interconnection at least equal in quality to those GTEFL provides itself. In addition, AT&T also requests that GTEFL be ordered to implement reasonable standards and procedures to ensure that this occurs. (Shurter TR 210-211)

AT&T has proposed performance standards throughout its proposed interconnection agreement with GTEFL. (EXH 33) For example, Section 9 of Attachment 4 of AT&T's proposed interconnection agreement is titled, "Performance Requirements," and states:

> 9.1 AT&T will specify on each order its Desired Due Date (DDD) for completion of that particular order. Standard intervals do not apply to orders under this Agreement. GTEFL will not complete the order prior to DDD or later than DDD unless authorized by AT&T. If the DDD is less than the following element intervals, the order will be considered an expedited order. [chart follows in original text]
>
> 9.2 Within two (2) business hours after a request from AT&T for an expedited order, GTEFL shall notify AT&T of GTEFL's confirmation to complete, or not complete, the order within the expedited interval. A Business Hour is any hour occurring on a business day between 8 a.m. and 8 p.m. within each respective continental U.S. time zone.
>
> * * *
>
> 9.5 GTEFL shall satisfy the following Direct Measures of Quality: (i) at least 90% of all orders must be completed by DDD; (ii) at least 98% of all orders must be completed by Committed Due Date; and (iii) at least 99% of all orders will be completed without error.

Neither AT&T nor MCI proposed credits for specific performance failures in this proceeding. AT&T has suggested in its brief that the use of DMOQs with third party arbitration clauses would relieve the Commission of having to handle disputes over the quality of resold services, interconnection or unbundled network elements provided by GTEFL. (AT&T BR p.28) Both AT&T and MCI have proposed general liability, indemnification and liquidated damages provisions in the interconnection agreements as remedies for GTEFL performance failures. GTEFL states that its current tariff provisions giving credit for service interruptions are adequate. (McLeod TR 1307) These matters are addressed in Issue 5.

GTEFL position

GTEFL witness McLeod testified that GTEFL already plans to provide "service quality that is non-discriminatory and equal to that which GTEFL provides to itself and its affiliates." (McLeod TR 1306) Witness McLeod's concern is that GTEFL is being asked "to adhere to different metrics and to different standards of performance for different ALECs." He further states that this would be onerous and that "it would not benefit the ALECs, for GTEFL already is committed to providing them non-discriminatory treatment with respect to the quality standards set in the public interest in each state." (McLeod TR 1306) GTEFL states that it believes that quality standards should no longer be considered an issue for resolution in this arbitration. (GTEFL BR p.17) GTEFL also states that it would establish processes to ensure non-discriminatory treatment of ALECs. (GTEFL BR p.18)

Staff Analysis

In its Order at Paragraph 224, with respect to interconnection, the FCC stated:

> We conclude that the equal in quality standard of section 251(c)(2)(C) requires an incumbent LEC to provide interconnection between its network and that of a requesting carrier at a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, and affiliate, or any other party. .... [T]his duty requires incumbent LECs to design interconnection facilities to meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, that are used within their own networks...[W]e further conclude that the equal in quality obligation imposed by section 251(c)(2) is not limited to the quality perceived by end users. The statutory language contains no such limitation, and creating such a limitation may allow incumbent LECs to discriminate against competitors in a manner imperceptible to end users, but which still provides incumbent LECs with advantages in the marketplace....

With respect to unbundled elements, Paragraph 313 of the Order states:

> Accordingly, we require incumbent LECS to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves, and allow for an exception to this requirement only where it is technically infeasible to meet.

> We expect incumbent LECS to fulfill this requirement in nearly all instances where they provision unbundled elements because we believe the technical infeasibility problem will arise rarely.

With respect to services offered for resale, Paragraph 970 of the Order states:

> 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.

Section 51.305, C.F.R., provides that an ILEC "shall provide ... interconnection ... that is at a level of quality that is equal to that which the incumbent LEC provides itself." Section 51.311, C.F.R, provides that "the quality of the access to [an] unbundled element ... shall be at least equal in quality to that which the incumbent LEC provides to itself." Section 51.603, C.F.R., requires that a LEC "make its telecommunications services available for resale on terms and conditions that are reasonable and nondiscriminatory," and "must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same time intervals that the LEC provides these services to others, including end users."

Based on the above, staff disagrees that the Act and related provisions of the Order and Rules should be construed to mean that GTEFL is only required to achieve parity among ALECs with respect to standards and processes. Staff recommends that GTEFL, AT&T and MCI should adhere to the service restoration intervals, direct measures of quality, service assurance warranties, and other quality assurance measures as delineated in AT&T's and MCI's proposed agreements in this proceeding. To the extent that the proposed agreements do not contain all the specific standards and quality measures requested or needed, the parties should jointly develop and implement processes and standards that will ensure that AT&T and MCI receive services for resale, interconnection, and unbundled network elements that are equal in quality to those that GTEFL provides itself and its affiliates. These processes and standards should be included, as completely as possible, in the arbitrated agreements submitted for approval in this proceeding, but in no event later than February 28, 1997.

ISSUE 4(b): Should GTEFL be required to provide AT&T and MCI loop testing information prior to the establishment of service to an AT&T or MCI customer? (**REITH)**

RECOMMENDATION: Yes. To the extent GTEFL documents the results of its loop testing, GTEFL should provide those results to AT&T and MCI.

POSITION OF PARTIES

AT&T: Yes. Access to loop testing will permit AT&T to ensure that local service purchased from GTEFL and resold to an AT&T customer is operational and that the service quality is at least equal to that which GTEFL provides itself.

GTEFL: No. GTEFL does not routinely perform loop testing on its own lines. When it does perform loop tests, it does not retain the results. If AT&T and MCI want routine testing and tracking, they must pay for creation of the systems to perform such functions.

MCI: Yes, in any case in which GTEFL would have performed loop testing if the loop was to be used by GTEFL in the provision of its own local exchange service.

STAFF ANALYSIS: AT&T and MCI are requesting that GTEFL provide them with loop testing information to verify that the end-to-end service meets certain quality standards. (Shurter TR 221; MCI BR p.17) Witness Shurter asserts that if GTEFL tests its loops and documents the results of that test, GTEFL should provide those results to AT&T. If GTEFL does not document the test results, there is no need to provide them to AT&T. (TR 288)

GTEFL maintains that it does not routinely test every loop on a new installation. Witness Hartshorn states that GTEFL will provide the same quality of service to ALEC customers as it provides itself. Witness Hartshorn believes that GTEFL should not be required to satisfy unique, different or higher standards for each ALEC. (TR 1146)

Staff believes that Section 251(c) of the Act compels GTEFL to provide interconnection, unbundled elements and resold services to all carriers at the same quality that GTEFL provides for itself. Staff agrees that to the extent GTEFL tests loops and documents the results, GTEFL should provide those results to AT&T and MCI. Therefore, staff recommends that to the extent GTEFL documents the results of its loop testing, GTEFL should provide those results to AT&T and MCI.

ISSUE 5: What are the appropriate contractual provisions for liability and indemnification for failure to provide service in accordance with the terms of the arbitrated agreement? **(PELLEGRINI)**

RECOMMENDATION: The Commission should decline to require or arbitrate liability and indemnification provisions in the AT&T and MCI interconnection contracts with GTEFL. The Commission should also find that it is without authority to require or arbitrate provisions for liquidated damages in those contracts.

POSITION OF PARTIES

AT&T: GTEFL is the only party in a position to prevent the errors that lead to unbillable or uncollectible revenues. Thus, GTEFL should compensate AT&T for revenue losses caused by GTEFL errors.

GTEFL: GTEFL's current tariff provisions giving credit for service interruptions should continue to govern its relations with other carriers. The Commission must reject AT&T's and MCI's proposed indemnification provisions because the unknowable costs of unlimited consequential damages have not and cannot be factored into the rates charged to AT&T and MCI.

MCI: The appropriate contractual provisions for liability and indemnification are set out in the testimony of Mr. Inkellis. Without such provisions, GTEFL will have no incentive to honor its contractual commitments to MCI, and in fact would have a financial incentive not to meet those commitments.

STAFF ANALYSIS: As discussed in Issue 4a, AT&T and MCI have requested that GTEFL be required to provide new entrants with services and elements at least equal in quality to those which it provides itself. In this issue, AT&T and MCI have requested that the Commission establish appropriate contract language for Aliability and indemnification in the event that services are not provided according to the terms of the arbitrated agreements.

MCI proposes that the following liability and indemnification provisions be inserted into its interconnection contracts with GTEFL:

LIMITATION OF LIABILITY

Neither Party shall be liable to the other for any lost profits, or revenues or for any indirect, incidental, special or consequential damages arising out of or related to this Agreement or the provision of service

> hereunder. Notwithstanding the foregoing, a Party's liability shall not be limited in the event of its willful or intentional misconduct, including gross negligence, <u>its repeated breach of any one or more of its material obligations under this Agreement, or its acts or omissions causing bodily injury, death or damage to tangible property, or with respect to the Indemnifying Party's indemnification obligations under the Agreement</u>.
>
> **<u>INDEMNITY</u>**
>
> Each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage, expense (including reasonable attorney's fees) to third parties, relating to or arising out of negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement, <u>or the failure of the Indemnifying Party to perform its obligations under this Agreement</u>. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.

(Inkellis TR 1065-66) MCI construes this language to impose reciprocal obligations. (Inkellis TR 1067) MCI states that GTEFL opposes the language that is underlined. (Inkellis TR 1065)

MCI argues that GTEFL has substantial incentives to be negligent in providing interconnection services to MCI, and that, accordingly, it is necessary, to ensure MCI's effective entry into the local exchange market, to subject GTEFL to substantial financial obligations in the event of its failure to perform under the agreement. (Inkellis TR 1067) MCI believes that "repeated breaches of material terms" is tantamount to a standard of willful or intentional misconduct or gross negligence, a standard, it states, GTEFL accepts. (Inkellis TR 1068) It notes that willful or reckless breaches are difficult to prove up, and so what it is seeking to accomplish is to establish an equivalent standard whereby a pattern of negligent failures in the competitive environment can be cast as intentional misconduct. (Inkellis TR 1082) MCI might make a claim if it saw "a regular pattern of failure to meet blocking standards or if the standard was missed by a substantial amount on several occasions and we felt that we were being damaged in the marketplace, losing the ability to get and keep customers." (Inkellis TR 1088) Further, MCI observes that its proposal, which would not impose liability for a single breach or from breach of a minor provision, would afford GTEFL protection unavailable under common law, which would hold GTEFL liable for any reasonably foreseeable consequential damages resulting from a breach of contract. (Inkellis TR 1072)

MCI acknowledges that the Commission need not arbitrate breach of contract protections. (Inkellis TR 1097) Furthermore, it concedes that if the Commission decides not to arbitrate such protections and it is unable to reach agreement with GTEFL, it would still have a common law remedy. (Inkellis TR 1098) MCI envisions its claims to be resolved in some, but not all, instances through ADR. (Inkellis TR 1085) Finally, MCI argues that its proposal advances the public policy established by Congress, while GTEFL's position subverts the creation of competition in the local exchange market. (Inkellis TR 1076)

AT&T proposes similar language that addresses the same issues with respect to liability and indemnification. (EXH 33, sec. 10.3, 10.4) In his testimony, AT&T witness Shurter states that GTEFL should accept liability for unbillable or uncollectible revenues that result from GTEFL's actions or inactions, such as work errors, alterations of software, or unauthorized physical attachment to loop facilities. (Shurter TR 211) AT&T argues that GTEFL should be liable in damages for its actions and inactions that result in uncollectible or unbillable revenue, because GTEFL is responsible for the personnel provisioning the service and the equipment providing the service. (Shurter TR 212) AT&T further states that GTEFL should incur liability only for those actions or inactions not reasonably undertaken that result in lost revenues to AT&T. (Shurter TR 236, 238-39) AT&T proposes, furthermore, that instances of controversy concerning liability or damages should be resolved through ADR, rather than through invocation of the Commission's complaint process. (Shurter TR 241, 242-43) AT&T acknowledges that it must work with GTEFL as "partners in an industry [] on a customer-supplier model," and suggests that, through negotiations, the two companies could arrive at an agreement delimiting GTEFL's liability. (Shurter TR 239-40)

GTEFL asserts that the ALECs will have access to GTEFL's operation support systems in parity, and that, therefore, provisions for liquidated damages for performance failures resulting in a degradation of the ALEC's service are inappropriate. (Langley TR 2046) GTEFL suggests that were it to fail to adhere to the standards under the Act or to Commission quality of service standards, the ALECs may seek relief "under existing mechanisms of the Act or under the same procedures by which violations of Commission rules or standards are addressed." (Langley TR 2047)

GTEFL states that it has provided AT&T and MCI with access services for years under tariff provisions appropriately limiting GTEFL's liability to pro rata credit for service outages and interruptions. (BR p.19) Furthermore, GTEFL asserts that nothing in the Act requires any revision to GTEFL's limitations of liability. (Id.) GTEFL asserts that AT&T's proposed performance guaranty would hold GTEFL to an obviously unattainable standard of perfect service. (McLeod TR 1386) GTEFL argues that if AT&T and MCI wish to cut back GTEFL's liability limitations, the prices for services and elements will be forced upwards in recognition of risk-shifting. (McLeod TR 1307) GTEFL envisions that its liability under AT&T's proposal would be limitless, bringing an exposure to damages greatly disproportionate to its conduct. (BR p.20) GTEFL asserts that AT&T's proposal is fatally flawed, because GTEFL's potential costs under strict liability are incalculable and, hence, unrecoverable in violation of 252(d)(1)(A)(i). (BR p.21)

GTEFL is similarly critical of MCI's proposed language. It states that reciprocity of indemnification obligations is of minimal benefit to GTEFL. (BR p.22) GTEFL takes issue with the MCI language that would impose liability for "repeated breach of any one or more of its material obligations," because of uncertainty about the way in which the words "repeated" and "material" should be construed. (BR p.23) Moreover, under MCI's proposed indemnification provision, GTEFL asserts that MCI will have an "unbeatable" competitive advantage, because it will be unnecessary for MCI to include indemnification provisions in contracts with its customers. (BR p.24) Finally, GTEFL observes that the Commission, even in the competitive environment promoted by the Act, should continue to be concerned about the rates consumers pay for telecommunications services and should not, therefore, permit GTEFL's limitations of liability "to be negotiated away." (BR p.25)

Staff believes that GTEFL is correct that the Act does not require revisions to GTEFL's tariffed limitations of liability. Staff believes that the Commission should limit its consideration to the items enumerated in Sections 251 and 252 to be arbitrated, and matters necessary to implement those items. Neither liability, indemnification nor liquidated damages provisions fall within that limitation. While the Commission should not be insensitive to the concerns raised by AT&T and MCI relating to the consequences of GTEFL performance failures, staff believes the companies should not require the assistance of the Commission to establish contract provisions affording to each of them protections that will not cause unreasonable exposure to liability, direct or third-party, or hinder competitive entry. Staff would note that the Commission declined to arbitrate liquidated damages provisions in Docket No.

950757-TL.

Staff does not believe that the Commission may arbitrate liquidated damages under state law. A liquidated damages provision in a contract allows the parties to determine, in advance, the appropriate level of damages in the event of a breach of contract. Parties typically include such provisions in their contracts in order to lessen the cost of litigating disputes that may arise in the future. If the Commission were to impose a liquidated damages provision, it would be, in effect, awarding damages to one party for a breach of contract. The Commission lacks the authority to award money damages. Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, 291 So.2d 199, 202 (Fla. 1974). If the Commission cannot award money damages directly, it cannot do so indirectly by imposing a liquidated damages arrangement on the parties. Moreover, it is axiomatic that it be left to the parties to a contract to themselves stipulate in advance to an amount to be paid or retained as liquidated damages in the event of a breach, inasmuch as they know exactly their own situation and are in the best position to appreciate and make provision for the consequences of a performance failure. Poinsettia Dairy Products v. Wessel Co., 166 So. 306 (1936); Southern Menhaden Co. v. How, 70 So. 1000 (1916).

Therefore, staff recommends that the Commission decline to require or arbitrate liability and indemnification provisions and that it find that it is without authority to require or to arbitrate provisions for liquidated damages in the AT&T and MCI interconnection contracts with GTEFL. Staff believes that AT&T, MCI and GTEFL can and should establish remedies for performance failures by GTEFL through negotiation.

<u>ISSUE 6</u>: a) Should GTEFL be required to provide real-time and interactive access via electronic interfaces to perform the following:

Pre-Service Ordering
Maintenance/Repair
Service Order Processing and Provisioning
Customer Usage Data Transfer
Local Account Maintenance

b) If this process requires the development of additional capabilities, in what time frame should they be deployed?

c) What are the costs incurred, and how should those costs be recovered? **(GREER)**

<u>RECOMMENDATION</u>:

a) Yes. GTEFL should be required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

b) Processes that require the development of additional capabilities should be developed by GTEFL by January 1, 1997. If GTEFL cannot meet that deadline, it should file a report with the Commission by December 31, 1996, that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. GTEFL, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. These electronic interfaces should conform to industry standards where such standards exist or are developed.

c) The parties should be responsible for their share of costs to develop and implement additional capabilities. However, where a carrier negotiates for the development of a system or process which is exclusively for itself, that carrier should pay the full costs on the basis of TSLRIC. GTEFL should provide cost studies for each interface as it is developed. The cost study should be filed with this Commission, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

POSITION OF PARTIES

AT&T: a) The Act requires GTEFL to provide AT&T with non-discriminatory access to systems and functions that AT&T has requested by January 1, 1997. AT&T must have real time and interactive access to GTEFL's systems to perform preordering, ordering, provisioning, maintenance and billing at the same level of service GTEFL provides to its customers.

b) Any processes and procedures needed should be developed and put into place as soon as practicable.

c) The costs of providing such interfaces should be based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from these interfaces in a competitively neutral fashion.

GTEFL: a) No mandate is necessary, because GTEFL has already agreed in principle to provide real-time, interactive access to its existing operations support systems.

b) It is impossible to set a deployment date until industry standards have been determined, AT&T and MCI have given GTEFL their detailed access specifications, and GTEFL has, in turn, been able to assess the tasks associated with these specifications.

c) It is impossible to know what costs will be incurred until the standards and specifics associated with the requested electronic bonding have been determined. Whatever the costs GTEFL incurs, the Act requires full recovery from the parties requesting access.

MCI: a) Yes. Real-time, interactive access via electronic interfaces is required in order for MCI to be able to provide the same quality of service to its customers as is currently provided by GTEFL.

b) The FCC Rules require such interfaces to be deployed by January 1, 1997. If the

> Commission determines that it is impossible to deploy the required interfaces by January 1, 1997, interim arrangements should be implemented by that date and permanent arrangements should be implemented as soon thereafter as possible.
>
> c) Each party should bear its own costs of implementing the necessary interfaces.

STAFF ANALYSIS: This issue address the operational support systems that are necessary for AT&T, MCI and GTEFL to process orders, report service trouble, provision service, and to maintain accounts with one another. The issue is divided into three parts. Issue 6(a) addresses if GTEFL should provide access to OSS systems. Issue 6(b) addresses the development of additional capabilities and in what time frame they should be deployed. Issue 6(c) addresses the costs incurred to develop OSS systems, and how those costs should be recovered.

The Act

Section 3(29) of the Telecommunication Act of 1996 defines "network element" as, "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." Staff believes that this definition would include all of the operational support systems and interfaces. The FCC agrees with this interpretation in its Order and rules.

Section 251(c)(3) states that each incumbent local exchange carrier has "the duty to provide, to any requesting telecommunications carrier for the provision of telecommunications services, nondiscriminatory access to network elements on an unbundled basis . . . on rates terms and conditions that are . . . nondiscriminatory . . . ." Section 251(c)(4) states that each incumbent local exchange carrier has "[t]he duty . . . to offer for resale . . . any telecommunications service that the carrier provides at retail . . . and . . . not to impose . . . discriminatory conditions or limitations on, the resale of such telecommunication service . . . ."

FCC Order

The FCC Order addresses this issue in Paragraph 516. It states:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry."

Paragraph 523 also discusses the operational support systems:

> We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.

In Paragraph 517, the FCC states that "we conclude that . . . operations support systems are subject to the nondiscriminatory access duty imposed by Section 251(c)(3), and the duty imposed by Section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory terms and conditions." Further, in Paragraph 518, the FCC states that "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing."

Section 51.313(c) of the FCC's Rules states, "an incumbent LEC must provide a carrier purchasing access to unbundled network elements with pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems."

Section 51.319(f) of the FCC's Rules states:

> (1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.
>
> (2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997.

ALEC Requests

AT&T states that it has agreed with GTEFL in principle that GTEFL will provide AT&T with direct access to GTEFL's electronic interfaces with respect to both total service resale and unbundled network elements. (Shurter TR 309) AT&T states that the remaining issue is when and in what form GTEFL will provide real-time and interactive access via electronic interfaces. (Shurter TR 309) AT&T states that it has agreed with GTEFL on an interim solution for resold services, whereby interfaces will be both manual and electronic and then transition to full electronic bonding. (Shurter TR 308-309) However, AT&T states that it has not been able to reach an interim agreement with GTEFL with respect to interfaces for unbundled network elements. (Shurter TR 309)

AT&T states that it has requested real-time, interactive access through electronic interfaces to GTEFL's operational support systems for pre-ordering and ordering, provisioning, maintenance and repair, and billing. AT&T defines these systems as follows:

> Pre-ordering and ordering includes the exchange of information between telecommunications carriers about current and proposed customer products and services or unbundled network elements or some combination.
>
> Provisioning involves the exchange of information between carriers where one executes a request for a set of products and services or unbundled network elements or some combination from the other with attendant acknowledgements and status reports.

> Maintenance and Repair involves the exchange of information between carriers where one initiates a request for maintenance or repair of existing products and service or unbundled network elements or some combination from the other with attendant acknowledgements and status reports.
>
> Billing involves the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgements and status reports. It also involves the exchange of information between carriers to process claims and adjustments. (Shurter TR 213-214)

AT&T states that interactive electronic interface arrangements are essential to new entrants' successful entry into the local market. (Shurter TR 181) AT&T states that "[t]he law appears to recognize the business reality that you can not have competition without, at a minimum, a parity experience in the pre-ordering, ordering, provisioning, billing and maintenance functions." (Shurter TR 192) AT&T further asserts that the importance of electronic interfaces is evidenced by several states, including Georgia, California, Illinois, Ohio, and New York, who have recognized electronic interfaces as essential to competition in the local market. (Shurter TR 180, 206-208)

AT&T states that GTEFL has mischaracterized AT&T's position and asserts that AT&T wants real-time electronic interfaces immediately. AT&T asserts that it has only requested that GTEFL provide the electronic interfaces required by the Act "at the earliest practicable date in 1997." (Shurter TR 193) AT&T states that GTEFL continues to say that such interfaces will take "some time," and that AT&T is just looking for a more definite work plan from GTEFL. (Shurter TR 193)

AT&T states that the development of additional capabilities to make these interfaces real-time and interactive should be complete by January 1, 1997, as the Act requires. However, AT&T states that if the Commission determines that it is impossible to provide such access by January 1, 1997, an interim solution should be employed and the Commission should require GTEFL to move to implementation of a committed plan. (Shurter TR 181)

AT&T asserts that GTEFL refuses to proceed with the development of interfaces until it can agree with AT&T on the cost issues. (Shurter TR 197) Staff would note that this was initially true, but negotiations have continued and witness Shurter noted at the hearing that AT&T and GTEFL have begun to work together even without agreement on cost recovery. (Shurter TR 276-278) AT&T

states that it is time to get the AT&T and GTEFL implementation teams assigned and working on a definite schedule for the development of these interfaces. (TR 198) AT&T states that the Commission should require GTEFL to follow a three-phase plan in implementing electronic interfaces. (TR 198)

In Phase I, AT&T states that GTEFL should be required by the December 1996-January 1997 time frame to provide:

1) telephone number and due date assignment via "800" number;
2) street address guide via magnetic tape;
3) ordering firm order confirmation through network datamover (NDM) transport;
4) jeopardies and service activation by facsimile or E-mail;
5) maintenance via "800" number; and
6) billing and usage data via "800" number. (EXH 4)

In Phase II, AT&T states that GTEFL should be required by April 1997 to create up and running interfaces for the following:

1) telephone and due date assignment;
2) street address guide;
3) jeopardies and service activation; and
4) features and services recap. (EXH 4)

In Phase III, AT&T states that GTEFL should have operational by the earliest practicable date in 1997 real-time interactive interfaces that will provide the following:

1) access through a nationally standardized gateway to GTEFL systems for pre-ordering and provisioning and maintenance;
2) input through a nationally standardized gateway to GTEFL systems for ordering, provisioning and maintenance;
3) automated notification by GTEFL to AT&T for ordering, provisioning and maintenance;
4) billing usage data via electronic data interfaces; and
5) wholesale billing in Carrier Access Billing System (CABS) format. (EXH 4)

MCI's Request

MCI states that in Paragraph 516 the FCC concluded that operational support systems and the information they contain fall squarely within the definition of "network element" and must therefore be unbundled upon request. (deCamp TR 1021) MCI states that in order to provide service that is equal in quality to that provided by GTEFL, it is essential that MCI have real-time, interactive access to the various operational support systems. (deCamp TR 1021-1022, 1046-1047)

GTEFL refuses to provide real-time, interactive access to its provisioning or repair and maintenance systems. (Drew TR 2066-2067) GTEFL asserts that it will achieve parity so long as GTEFL personnel process an order received from MCI using the same systems used to process an order from an end user. (Drew TR 2015-2016) MCI asserts that it will not achieve parity with GTEFL until an MCI customer service representative can access the same operations support systems and make the same electronic entries into those systems as GTEFL. (deCamp TR 1036-1038)

MCI points out that GTEFL proposals for access to operational support systems all involve a manual element. For example, if MCI wants to obtain access to information about a customer's existing service, it must call GTEFL to obtain that information. MCI states that this is neither efficient nor inexpensive. MCI states that GTEFL witness Wellemeyer showed that such an inquiry will take a significant amount of time, and under GTEFL's proposal, MCI would incur a substantial per occurrence charge for making such inquiries. (MCI BR pp.22-23)

MCI states that manual processes introduce costs, delays, and potential inaccuracies which would be avoided if MCI had direct access to GTEFL's pre-ordering, provisioning, and maintenance and repair systems. MCI asserts that based on its experience in the access arena, the availability of real-time interactive interfaces is a key driver of the timeliness of repairs, and the absence of such interfaces puts MCI at a significant competitive disadvantage. (deCamp TR 1043)

MCI states that in addition to access to these support systems, MCI needs an administratively simple "transfer-as-is" mechanism to transfer customers from GTEFL to MCI in cases where the customer wants to keep the same services. (deCamp TR 1029) MCI states that GTEFL appears to be determined to frustrate this process by: (1) only allowing transfer if the written order for conversion includes the information relating to all existing, new and disconnected services, including the customer's name, type of service desired, location of service, and features and options the customer desires; and (2) denying MCI access to information about the customer's existing service unless it has previously provided a written letter of authorization (clear and unmistaken consent) from the customer. (MCI BR p.24; Drew TR 2019, 2052)

MCI states that electronic interfaces are MCI's choice for all operational support systems, but it recognizes that such interfaces for all systems may not be realistic in the near-term. MCI proposes that in order to comply with the Act and the Order, the Commission should direct GTEFL to file a schedule detailing its plans for developing real-time, interactive electronic interfaces by January 1, 1997. (BR p.26; deCamp TR 1040) MCI states that GTEFL has no incentive to develop these interfaces on its own, because GTEFL has already entered the interLATA market. (deCamp TR 1041)

GTEFL's Response

GTEFL states that AT&T and GTEFL have agreed to an interim solution for first-stage access to GTEFL's operational support systems to enable AT&T to get into the local market. (Drew TR 2074) GTEFL states that in the first stage of the interim process, GTEFL has staffed a National Open Market Center just to process ALEC's orders, and that access to systems will be automated to the extent feasible. (Drew TR 2061) GTEFL states that service orders will be transferred directly from and to ALECs via GTEFL's network data mover. The service order will then be entered into the ordering system and completed via current GTEFL processes. (Drew TR 2018) GTEFL states that under this stage, MCI's and AT&T's customers will typically receive their telephone numbers and installation dates in real time, while they are on the phone with the MCI or AT&T service representative. (Drew TR 2020)

GTEFL states that for the second interim stage, it has committed to removing some of the human intervention required in the first stages. (Drew TR 2074) GTEFL states that the negotiations on these measures are progressing quite well, as AT&T witness Shurter acknowledged, and agreement is expected. (Drew TR 2074; Shurter TR 277-278) GTEFL states that even without definitive agreement on cost recovery, it is working hard on the second stage process. (Drew TR 2074)

GTEFL states that the third stage of the process is the final stage of the development of the operational support systems and will permit ALECs real-time, interactive access. (GTEFL BR p.27) GTEFL states that this stage is what AT&T and MCI ultimately want, and what GTEFL has agreed to do, as AT&T has acknowledged. (GTEFL BR p.27; Shurter TR 280) GTEFL asserts that direct access to these interfaces cannot occur without significant development and also protection to the system. (Drew TR 2075-2076) GTEFL states that all parties agree that such interfaces should be based on standards developed by the entire industry. (Drew TR 2076; Shurter TR 279; deCamp TR 1026) GTEFL states that it cannot give AT&T and MCI a specific committed plan with a date certain, until they tell GTEFL exactly what type of access they require for each specific system. (GTEFL BR p.27; Shurter TR 281; McLeod TR 1380)

GTEFL states that while it is committed to providing the access to OSS that AT&T and MCI want, the Act does not require GTEFL to build new systems that might be helpful to the other carriers. (Drew TR 2028; GTEFL BR p.28) GTEFL asserts that the Order at ¶523 only requires access to the functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. (Drew TR 2030; GTEFL BR p.28)

GTEFL states that the issue of whether it should provide real-time, interactive access to its operational support systems has been resolved. GTEFL and AT&T have agreed on interim solutions and these solutions should satisfy MCI, who is requesting basically the same things as AT&T. (GTEFL BR p.28-29) GTEFL states that the only issues remaining are the timing and cost recovery in issue 6(b) and 6(c).

GTEFL states that the implementation of electronic interfaces will be very complex and should conform to industry standards. (Drew TR 2040) GTEFL further states that deployment of such interfaces cannot be done without knowing exactly when the industry standards will be determined, what these standards will entail, what specific types of access AT&T and MCI will want to which systems, and what GTEFL needs to provide that access. (Drew TR 2042)

GTEFL asserts that both AT&T and MCI recognize that it is difficult to achieve electronic bonding immediately, and that they have not proposed exact implementation dates. (Drew TR 2014; Shurter TR 193; deCamp TR 1040) In fact, GTEFL states that AT&T had proposed a two-year period for the development of real-time interactive interfaces. (Drew TR 2042-2043) GTEFL states that there is not enough evidence in this proceeding for the Commission to set a date for completion of electronic interfaces. GTEFL suggests that the parties be permitted to continue the productive efforts they have already started toward establishing this capability. (GTEFL BR p.30) GTEFL also states that MCI and AT&T should provide GTEFL with the specifications for the development of these systems.

Cost Recovery

AT&T states that the cost of providing real time electronic interfaces should be based on TELRIC studies in accordance with the rates set for network elements, capabilities or functions, and shared by all local service providers, including GTEFL, who benefit from such services in a competitively neutral fashion. (Shurter TR 255) AT&T states that it is willing to pay its fair share of the cost of creating electronic interfaces. (Shurter TR 254) AT&T points out that GTEFL has admitted that it is willing to contribute its fair share of the cost of any benefits it receives from enhancements to its operational support systems. (AT&T BR p.33; McLeod TR 1378-1379) AT&T asserts that because numerous upgrades and enhancements to GTEFL's systems are needed to achieve electronic bonding, the Commission should require GTEFL to pay its fair share. (Shurter TR 254) AT&T says if it wants a unique interface, they will pay for all of the costs. (Shurter TR 283)

MCI states that the costs of implementing electronic interfaces have not been identified. MCI states that GTEFL will be able to eliminate manual intervention with an electronic order entry interface and will experience a reduction in its costs. (Wellemeyer TR 1500-1501) MCI states that GTEFL should experience similar savings once electronic interfaces are available for the other support functions, and that each party should bear its own costs of implementing the necessary interfaces. (MCI BR p.28; deCamp TR 1055-1056; Shurter TR 198)

MCI states that Section 251(c)(3) of the Act requires access to operational support systems to be provided on terms and conditions that are just, reasonable, and nondiscriminatory, and that standard will not be met if MCI and the other new entrants are required to pay more than their own share of the costs. MCI asserts that all carriers have the obligation to develop a competitive local market, and requiring new entrants to pay all of the costs would not be competitively neutral. Establishing a system in which each party bears its share of the costs would provide an incentive to keep the development costs reasonable. (MCI BR p.28)

GTEFL states that the most important issue on operational support systems is how the development and operating costs will be recovered. (BR p.31) GTEFL states that it is entitled to recover all of its costs of electronic interface development. (Drew TR 2044) GTEFL states that while GTEFL would expect to share the cost of particular OSS enhancements that benefit GTEFL's retail operations, AT&T would have GTEFL share the costs for even AT&T's access to GTEFL's OSS. (McLeod TR 1378; Shurter TR 174) GTEFL states that it will derive no benefit from establishing gateways to allow third-party access to its systems. (Drew TR 2036, 2043)

GTEFL argues that AT&T has no right to determine GTEFL's wholesale strategy and no right to make GTEFL pay for something it would not develop or use for its own operations. GTEFL states that AT&T or MCI cannot point to anything in the Act that contemplates that cost recovery for third-parties access to ILECs' OSS will come from the ILECs themselves. GTEFL points out that in the intraLATA presubscription docket, AT&T argued that ILECs should pick up part of their costs of implementing intraLATA presubscription because they would somehow benefit from competitive entry into the toll market. GTEFL states that the Commission rejected this argument and ordered, "Those that stand to benefit, the IXCs, should pay for the opportunity; those that will lose, the LECs, should not." (Order No. PSC-95-0203-FOF-TP, issued February 13, 1995) GTEFL states that exactly the same logic should apply here. (GTEFL BR pp.32-33)

GTEFL states that this Commission should order AT&T and MCI to pay GTEFL all of its costs associated with the design, testing, deployment, implementation, and ongoing support for their requested access to GTEFL's OSS. (GTEFL BR p.33)

Staff Conclusion and Recommendation

Section 51.319(f)(2) of the FCC's rules and the Order, Paragraph 525, are clear that these functions must be provided by the incumbent LECs by January 1, 1997. Staff believes that the parties have agreed, in principle, that GTEFL will provide access to its operational support systems via real-time interactive access. Therefore, staff recommends that GTEFL should be required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance. However, GTEFL has testified that some of the interfaces cannot be modified or developed to be real-time and interactive until it obtains the specifics from MCI and AT&T and industry standards are developed. GTEFL appears to be attempting to comply with the FCC's Order and Rules. Therefore, staff recommends that to be sure that these operational interfaces are completed, GTEFL should be ordered by this Commission to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

In addition, staff recommends that processes that require the development of additional capabilities should be developed by GTEFL by January 1, 1997. If GTEFL cannot meet that deadline, it should file a report with the Commission by December 31, 1996, that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. GTEFL, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. Staff recommends that these electronic interfaces should conform to industry standards where such standards exist or are developed.

Staff also believes that a "transfer-as-is" mechanism should be developed since such a mechanism would be beneficial to MCI, AT&T, and GTEFL when establishing service to its customers. Staff does not believe it is necessary to go through the administrative burden of processing a disconnect and reconnect order and then having to request the features the customers wants, when all that needs to be changed is the provider of the service. This type of process will allow all local exchange companies to process service in a more efficient manner.

Staff recognizes that the costs of implementing these electronic interfaces have not been completely identified. Staff believes that these operational support systems are necessary for competition in the local market to be successful. Staff also believes that both the new entrants and the incumbent local exchange companies will benefit from having electronic interfaces with the operational support systems; and therefore, staff believes it is inappropriate for only the new entrant to recover the cost of implementing these interfaces.

Staff believes that all parties should be responsible for their share of costs to develop and implement such systems. However, where a carrier negotiates for the development of a system or process which is exclusively for itself, staff does not believe other carriers should be responsible for the recovery of such costs. The difficulty is determining what is the fair share. AT&T is willing to pay direct charges based on TELRIC. However, no costs for access to these systems are known. Therefore, staff recommends that GTEFL should provide TSLRIC cost studies for each interface as it is developed. The cost study should be filed, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

Issue 6(a)

Staff recommends that GTEFL should be required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

Issue 6(b)

Staff recommends that processes that require the development of additional capabilities should be developed by GTEFL by January 1, 1997. If GTEFL cannot meet that deadline, it should file a report with the Commission by December 31, 1996, that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. GTEFL, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. Staff recommends that these electronic interfaces should conform to industry standards where such standards exist or are developed.

Issue 6(c)

Staff recommends that all parties should be responsible for their share of costs to develop and implement electronic interfaces. However, where a carrier negotiates for the development of a system or process which is exclusively for itself, staff recommends that not all carriers should be responsible for the recovery of such costs. Staff recommends that GTEFL should provide TSLRIC cost studies for each interface as it is developed. The cost study should be filed, along with a proposed recovery mechanism, 60 days before the implementation of the interface.

ISSUE 7: a) When AT&T or MCI resells GTEFL's local exchange service, or purchases unbundled local switching, is it technically feasible: 1) to route 0+ and 0- calls to an operator other than GTEFL's; 2) to route 411 and 555-1212 directory assistance calls to an operator other than GTEFL's; or 3) to route 611 repair calls to a repair center other than GTEFL's?

b) If this process requires the development of additional capabilities, in what time frame should they be deployed?

c) What are the costs incurred, and how should those costs be recovered? **(REITH)**

RECOMMENDATION:

a) Yes. When AT&T or MCI resells GTEFL's local exchange service, or purchases unbundled local switching, it is technically feasible for GTEFL to: 1) route 0+ and 0- calls to an operator other than GTEFL's; 2) route 411 and 555-1212 directory assistance calls to an operator other than GTEFL's. The Commission should require GTEFL to provide customized routing using line class codes, on a first-come, first-served basis.

b) GTEFL should file with this Commission an implementation schedule by which customized routing, using line class codes, will be available to AT&T and MCI. The schedule should include deadlines for any network modifications that need to be made, along with a description and the purpose of each modification. This information should be filed within 60 days from the issuance date of the order in this proceeding.

c) GTEFL should file a TSLRIC cost study for implementing the switch's customized routing capabilities. The study should only include costs for providing customized routing that are beyond those capabilities that currently reside in the switch. Staff further recommends that the cost study be filed within 90 days from the issuance date of the order in this proceeding.

POSITION OF PARTIES

AT&T: a) Customized routing of Operator Services, Directory

Assistance, and Repair calls from AT&T local customers to AT&T's platforms is technically feasible. The FCC Order requires unbundling of operator and directory assistance services. GTEFL is required to unbundle these services from Local Switching.

b): Any processes and procedures needed should be developed and put into place as soon as practicable

c): TSLRIC or TELRIC provide the appropriate methods for establishing such statutorily required cost-based rates. In the absence of detailed TSLRIC or TELRIC cost studies, rates should be determined using the Hatfield Model where appropriate data are available. Interim prices should reflect any appropriate FCC default prices.

GTEFL: a) Customized routing to other carriers' operator platforms is not currently technically feasible. GTEFL will provide available routing capabilities on an interim basis if AT&T and MCI agree to pay all associated costs. GTEFL does not use 611 for repair calls.

b) As explained above, significant additional capabilities will be necessary to comply with AT&T's and MCI's customized routing requests. It is too soon to set a date for deployment since no industry standards have yet been developed.

c) Because there is too much uncertainty regarding a workable customized routing solution, there is no information to calculate the costs associated with such a solution. Whatever these costs are, they must be recovered from the carriers requesting such routing.

MCI: a) Yes. Such routing is technically feasible using either line class codes or AIN capabilities. Such routing is required so that customers of MCI will enjoy dialing parity with customers of GTEFL and to avoid creating a barrier to entry.

b) There is no evidence that line class codes cannot be used immediately to provide selective call routing.

c) GTEFL should recover only the forward-looking incremental cost of implementing such capability in the most efficient manner possible. GTEFL should bear the burden of proving such costs.

STAFF ANALYSIS: Section 251(b)(3) obligates all local exchange providers to provide the following:

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

The FCC interprets "nondiscriminatory access to operator services" to mean that a telephone service customer, regardless of the identity of his or her local service provider, must be able to connect to a local operator by dialing "0" or "0 plus" the desired telephone number. (FCC 96-333, ¶114)

The FCC interprets "nondiscriminatory access to directory assistance services" to mean that customers of all telecommunications service providers should be able to access each LEC's directory assistance services without regard to the requesting customer's local service provider. (FCC 96-333, ¶133) In addition, permitting nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible. (FCC 96-333, ¶151)

AT&T and MCI are requesting that their customers' operator service, directory assistance and repair calls be routed to AT&T and MCI, respectively, using the same dialing arrangements that GTEFL provides for its customers. (Shurter TR 223; MCI BR p.29) AT&T and MCI assert that this can be accomplished through customized routing. (Shurter TR 223; Price TR 841) The FCC addressed customized routing by determining that:

> 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. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which

> will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. (FCC 96-325, ¶418)

AT&T and MCI state that customized routing can be provided through the use of line class codes. (Caplan TR 358; Price TR 814) Witness Caplan maintains that it is technically feasible for GTEFL to provide customized routing functions. Witness Caplan points out that most switches in the LEC's network under utilize the number of line class codes available. (TR 358)

GTEFL asserts that in order to provide customized routing a unique line class code must be determined for every permutation of required options. Witness Hartshorn explains that the line class codes are then placed on each customer's switch entry. A manual search would have to be performed to find the required line class codes. (Hartshorn TR 1135-1136)

GTEFL states that substantial costs will be incurred to provide existing switches with the requested customized routing capabilities. Witness Hartshorn explains that it is difficult to estimate the costs of increasing capacity within the various switches, but GTEFL believes these costs could run in the tens of millions of dollars just to meet AT&T's demand for separate routing to operator services and directory assistance trunks. (TR 1136) Witness Hartshorn points out that a long term solution is needed which will involve the development of industry standards. GTEFL believes that AT&T's and MCI's request will require GTEFL to alter its existing switches and then "undo" the alteration when a permanent solution is found. (TR 1138)

GTEFL states that it does not use 611 for repair calls. Instead GTEFL uses a 1-800 number for repair calls. (BR p.34; TR 909) MCI states that 611 dialing is no longer an issue since competing carriers can use similar 1-800 numbers to reach their repair centers. (BR p.29)

The FCC recognized that customized routing may not be capable in all switches deployed by the incumbent LEC. The FCC pointed to evidence that the 1AESS may have problems accommodating customized routing requests from competitive carriers (FCC 96-325, ¶418) Therefore, the FCC concluded the following:

> We recognize that the ability of an incumbent LEC to provide customized routing to a requesting carrier will depend on the capability of the particular switch in question. Thus, our requirement that incumbent LECs

> provide customized routing as part of the "functionality" of the local switching element applies, by definition, only to those switches that are capable of performing customized routing. An incumbent LEC must prove to the state commission that customized routing in a particular switch is not technically feasible. (FCC 96-325, ¶418)

Staff believes that customized routing is technically feasible for GTEFL to provide to AT&T and MCI. Staff recognizes that the FCC has already determined that customized routing is technically feasible. Staff points out that the burden is on GTEFL to prove that customized routing in a particular switch is not technically feasible, as the FCC defines technical feasibility. Staff recommends that the Commission require GTEFL to provide customized routing using line class codes. Staff recognizes that line class codes are a finite resource and recommends that customized routing be provided on a first-come, first-served basis.

The second part of this issue deals with the implementation schedule for any new capabilities that need to be developed for customized routing. GTEFL states that substantial work will be necessary before customized routing can be implemented. In addition, witness Hartshorn points out that any long term solution would likely involve industry standards. GTEFL asserts that there is no evidence in the record to allow the Commission to set an implementation schedule. (BR p.35; Hartshorn TR 1138)

MCI takes the opposite approach by stating that there is no evidence that GTEFL cannot begin immediately to implement customized routing using line class codes. (BR p.31)

AT&T believes that GTEFL already has the capability to perform customized routing through the use of line class codes. (BR p.35) AT&T adds that to the extent GTEFL intends to provide customized routing through alternative methods, GTEFL should develop any additional processes and procedures as soon as possible. (BR p.35)

Staff believes that the record does not support the development of an implementation schedule. Therefore, staff recommends that GTEFL file with this Commission an implementation schedule by which customized routing, using line class codes, will be available to AT&T and MCI. The schedule should include deadlines for any network modifications that need to be made, along with the description and purpose of each modification. This information should be provided 60 days from the issuance date of the order in this proceeding.

The third part of this issue deals with cost recovery. GTEFL cannot calculate the costs for customized routing, at this time. GTEFL needs to know from what switches AT&T and MCI will request customized routing capability, the number of line class codes needed, and the capacity requirements. Witness Hartshorn explains that costs will vary depending on the switch. (BR p.35; TR 1136)

AT&T states that costs should be based on TSLRIC or TELRIC studies. In the absence of TSLRIC or TELRIC studies, rates should be determined using the Hatfield model where appropriate data is available. Any interim rates should reflect the FCC default prices. (BR p.36)

MCI asserts that where GTEFL must incur costs to provide a network capability, GTEFL should recover only the TELRIC of implementing such capability. Since GTEFL has not demonstrated that there will be any costs for employing line class codes for customized routing, no cost recovery should be permitted at this time. (BR p.31)

Staff notes that Section 51.319(c)(1)(i) of the FCC rules defines the local switching network element to encompass:

> (C) all features, functions, and capabilities of the switch which include, but are not limited to:
>
> > (2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signalling service features, and Centrex, <u>as well as any technically feasible customized routing functions provided by the switch.</u> (emphasis added)

Staff interprets the above passage to mean that the actual capability and function of the switch to provide customized routing is included in the local switching element. Therefore, staff recommends that GTEFL file a TSLRIC cost study for implementing the switch's customized routing capabilities. The study should only include costs for providing customized routing that are beyond those capabilities that currently reside in the switch. Staff further recommends that the cost study be filed within 90 days from the issuance date of the order in this proceeding.

ISSUE 8(a): Should GTEFL be required to provide AT&T and MCI with the billing and usage recording services that AT&T and MCI have requested? (**STAVANJA**)

RECOMMENDATION: Staff recommends that GTEFL should provide the carrier access billing system (CABS) or CABS-like billing services based on the local service billing standards adopted by the Open Billing Forum (OBF).

POSITION OF PARTIES

AT&T: GTEFL should use the carrier access billing system and assign a separate billing code to each local service and unbundled network element or combination purchased by AT&T. GTEFL should also provide AT&T monthly bills separately for local service and unbundled network elements including charges, credits and\or adjustments.

GTEFL: GTEFL will provide AT&T and MCI with the same billing and usage recording services GTEFL provides to itself.

MCI: Yes.

STAFF ANALYSIS Billing and usage recording services are elements of operations support systems (OSS). The provision of access to OSS elements is discussed in Issue 6. However, Issue 8(a) addresses what billing and usage recording system GTEFL should use to provide bills to AT&T and MCI. The Act and the FCC, in its Rules and Order, address OSS elements, including billing services, and requires ILECs to provide such elements.

The Act

Section 3(45) of the Telecommunication Act of 1996 defines "network element" as, "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." Staff believes that this definition would include all of the operational support systems and interfaces. The FCC agrees with this interpretation in its Order and rules.

Section 251(c)(3) states that each incumbent local exchange carrier has "the duty to provide, to any requesting telecommunications carrier for the provision of telecommunications services, nondiscriminatory access to network elements on an unbundled basis . . . on rates terms and conditions that are . . . nondiscriminatory . . . .." Section 251(c)(4) states that each incumbent local exchange carrier has "[t]he duty . . . to offer for resale . . . any telecommunications service that the carrier provides at retail . . . and . . . not to impose . . . discriminatory conditions or limitations on, the resale of such telecommunication service . . . ."

FCC Order

The FCC Order addresses this issue in paragraph 516. It states:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry."

In Paragraph 517, the FCC states that "we conclude that . . . operations support systems are subject to the nondiscriminatory access duty imposed by Section 251(c)(3), and the duty imposed by Section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory terms and conditions." Further, in Paragraph 518, the FCC states that "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing."

Paragraph 523 also discusses the operational support systems:

> We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.

Section 51.313(c) of the FCC's Rules states, "an incumbent LEC must provide a carrier purchasing access to unbundled network elements with pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems."

Section 51.319(f) of the FCC's Rules states:

> (1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.
>
> (2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997.

The Carrier Access Billing System (CABS) is an access billing system currently used by ILECs, including GTEFL, on a national basis. CABS is currently used by ILECs to provide intercompany billing with interexchange carriers. (deCamp TR 1032) The capability to provide CABS billing for trunk-side interconnection is available today. (Drew TR 2018) GTEFL claims that CABS billing for line-side interconnection or end-user billing is not available today; however, GTEFL states that it is working toward the development of this capability. (Drew TR 2023)

AT&T is requesting CABS for local carrier resale and access billing. AT&T specifically requests that GTEFL record and bill all charges that AT&T incurs for purchasing wholesale local services for resale and unbundled network elements and combinations of elements. AT&T states that it must have a separate and unique billing code for each local service and unbundled network element purchased. In AT&T's petition, it asserts that GTEFL must provide a monthly local service bill and monthly unbundled network element bill that includes all charges incurred and any adjustments or credits due to AT&T. (AT&T Petition, attachment 2)

MCI states that GTEFL must provide accurate billing information in a timely manner in order for MCI to accurately bill its end-user customers. (deCamp TR 1032) MCI witness deCamp states that there are two types of billing categories: billing between ILECs and ALECs, and billing of end user customers. Witness deCamp states that a CABS or CABS-like billing system should be used for charges related to interconnection, unbundled elements, and resale. MCI asserts that a CABS-like billing system would be cost-effective, because a standardized format would be used for all carriers. (deCamp TR 1032) MCI states that its concern is not over which billing system GTEFL uses to collect billing information, but that GTEFL produce a bill in CABS billing data format.(See Issue 28) (deCamp TR 1041)

GTEFL states that it has agreed to provide CABS billing for trunk-side interconnection, because this capability is available today. (Drew TR 2018) GTEFL also states that it is working to enhance CABS to handle both trunk-side and line-side billing. (Drew TR 2023) GTEFL states that in the interim, it will generate bills using its Customer Billing Services System (CBSS), which is the system it uses to bill its end users.

It appears that GTEFL is willing to provide CABS billing, and is currently performing a study on the use of line side CABS billing. (Drew TR 2090) As stated above, MCI's request is for bills provided in a CABS-like billing format, while AT&T specifically requests that GTEFL implement CABS for developing and providing bills. Staff believes that a standard billing format as is being developed by the OBF is appropriate. A standard billing format will allow an ALEC to obtain bills in the same format from all ILECs. Staff believes it would be inefficient for AT&T and MCI to adapt their own billing systems to accommodate unique billing systems of each ILEC in Florida. Therefore, staff recommends that GTEFL provide CABS or CABS-like billing based on the local service billing standards adopted by the Open Billing Forum.

ISSUE 8(b): If this process requires the development of additional capabilities, in what time frame should they be deployed? (**STAVANJA**)

RECOMMENDATION: Staff recommends that any additional capabilities should be developed when local service billing standards are adopted by the Open Billing Forum.

POSITION OF PARTIES

AT&T: AT&T believes the development of any additional capabilities should be required one year from the initiation of an agreement or when local service billing standards are adopted by the Open Billing Forum.

GTEFL: CABS billing for GTEFL/ALEC billing is available today. GTEFL is working toward developing CABS capability for end user billing, but no completion date can be set based on the record in this proceeding.

MCI: Billing and recording services should be available by January 1, 1997.

STAFF ANALYSIS Information in the record does not identify what additional capabilities are necessary to provide the billing and usage recording services requested by AT&T and MCI.

AT&T states that GTEFL should be required to develop the capabilities necessary to provide the billing services it has requested within one year of the initiation of an agreement, or when local service billing standards are adopted by the OBF, whichever is earlier. (BR p.37)

MCI states that there is no evidence in the record that additional capabilities are necessary for GTEFL to provide MCI with the billing information it requests. MCI has proposed a completion date of January 1, 1997. (BR p.32) This date is consistent with Section 51.319(f) of the FCC's Rules for access to OSS elements.

GTEFL states that CABS billing for line-side interconnection, or end-user billing is not available today; however, GTEFL states that it is working toward the development of this capability. (Drew TR 2023) GTEFL states that no completion date has been set and that it has not proposed one in this case. (BR p.37)

Staff recommends that any additional capabilities for billing and recording usage services should be developed when local service billing standards are adopted by the Open Billing Forum. Staff does not agree that GTEFL should be required to provide CABS billing within one year from the initiation of an agreement as stated by AT&T. Staff does not believe it would be appropriate to make a recommendation that could differ from the resulting standards set by the OBF. Also, staff does not interpret the January 1, 1997 date in Section 51.319(f) of the FCC Rules to include modifications to an ILEC's current billing system. This rule requires ILECs to provide access to current OSS elements by such date.

ISSUE 8(c): What are the costs incurred, and how should those costs be recovered? **(STAVANJA)**

RECOMMENDATION: Staff recommends that the costs to develop and provide CABS as determined by the Open Billing Forum should be borne by GTEFL, but recovered in rates charged to all carriers requesting the service. Additional costs for other billing and recording service requirements specific to AT&T or MCI should be borne by AT&T or MCI. Staff further recommends that GTEFL should provide cost studies for billing and usage recording services as requested by AT&T and MCI. The cost study should be filed, along with a proposed recovery mechanism, 60 days before the implementation of the billing and usage recording service.

POSITION OF PARTIES

AT&T: The costs of providing such service should be based on TELRIC studies approved by this Commission and shared by all local service providers who benefit from this access.

GTEFL: The specific costs of meeting MCI's and AT&T's billing and usage recording demands cannot yet be calculated. Whatever those costs, AT&T and MCI, the cost causers, must pay them.

MCI: GTEFL should recover only the forward-looking incremental cost of implementing such capability in the most efficient manner possible. GTEFL should bear the burden of proving such costs.

STAFF ANALYSIS GTEFL states that this Commission should order AT&T and MCI to pay GTEFL all of its costs associated with the development, ongoing support for, and use of any new features or systems they request. (BR p.37)

Staff recognizes that the costs of implementing the billing and usage recording services have not been completely identified. Staff believes that a standard billing system is necessary for competition in the local market to be successful. Staff also believes that both the new entrants and the incumbent local exchange companies will benefit from the efficiency of a single standard billing system.

Therefore, staff believes that all parties should be responsible for their share of costs to develop and implement a CABS billing system. This is the stance the FCC has recently taken with cost recovery for number portability. However, where a carrier negotiates for the development of a system or process which is exclusively for this carrier, staff does not believe all carriers should be responsible for the recovery of such costs. The difficulty is determining what is the fair share. AT&T is willing to pay direct charges based on TELRIC. However, costs for implementing a CABS billing system are not known. Therefore, staff recommends that GTEFL should provide cost studies for billing and usage recording services as requested by AT&T and MCI. The cost study should be filed, along with a proposed recovery mechanism, 60 days before the implementation of the billing and usage recording service.

ISSUE 9: What type of customer authorization is required for access to customer account information and transfer of existing services? **(SHELFER)**

RECOMMENDATION: Staff recommends that GTEFL should not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the operational support systems (OSSs). MCI and AT&T should issue a blanket letter of authorization to GTEFL which states that it will obtain the customer's permission before accessing the OSSs. Staff further recommends that GTEFL should develop a real-time operational interface to deliver OSSs to ALECs, and the interface should only provide the customer information necessary for MCI and AT&T to provision telecommunications services.

Each party should bear its own share of the cost of developing and implementing such systems and processes because these systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs should be recovered from the carrier who is requesting such customized system.

POSITION OF PARTIES

AT&T: GTEFL should transfer the customer's service features and functionality "as is" to AT&T upon customer request. The Act permits the use of a blanket letter of authorization procedure without further customer approval and permits access to customer proprietary data to initiate, render, bill and collect for telecommunications services.

GTEFL: Under the Act, GTEFL may disclose customer account information for any purpose, including transfer of existing services, to designated providers only upon "affirmative written request by the customer," so that is what this Commission should require.

MCI: GTEFL should provide access to customer account information and should transfer existing services pursuant to a blanket letter of authorization in which MCI commits that it will access such information and transfer such services only after obtaining the customer's consent.

STAFF ANALYSIS: AT&T and MCI request that GTEFL provide access to current operational support systems (OSSs) pursuant to a blanket letter of authorization. (Shurter TR 194 and deCamp TR 1038) GTEFL contends that under the Act, GTEFL may disclose customer account information to designated providers only upon "affirmative written request by the customer." (Drew TR 2052)

GTEFL initially took the position that it would provide operational support services to ALECs only upon written authorization from the customers and would transfer customers only with a written letter of authorization. On cross-examination, witness Drew clarified that a blanket letter of authorization would suffice for customer transfers, and that while GTEFL was currently insisting on letters of authorization to disclose customer information, it might be possible to work out an arrangement based on oral authorization. (Drew TR 2089-90)

Witness Drew contends that GTEFL's operational support systems were designed for a single ILEC environment, not multiple providers. GTEFL argues that it is not technically feasible to provide direct access to these systems and data bases to providers other than GTEFL at this time. Witness Drew states that if direct access were provided at this time, network security and customer privacy would be compromised. GTEFL asserts it is willing to provide nondiscriminatory access to its operations support systems functions as required by the Act; however, such access will require the creation of certain electronic interfaces. GTEFL states that these interfaces can be created but ALECs must pay for them. Witness Drew asserts that ample time must be allowed for this development depending on the amount of work which will be required. (Drew TR 2037, 2053, 2060)

GTEFL contends that the Act is unambiguous with respect to disclosure of customer proprietary network information (CPNI), which includes customer account information the ILEC acquired through provision of telecommunications services to a customer. GTEFL argues that AT&T and MCI have ignored the directive of Section 222(c)(2) which states:

> A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to a person designated by the customer.

GTEFL argues that AT&T and MCI would require GTEFL to disclose a customer's CPNI with no written customer authorization even before a customer commits to transfer to AT&T or MCI. GTEFL contends that specifically AT&T and MCI have proposed a "blanket letter of authorization process" which would allow them to authorize transfer of all of a customer's services from GTEFL to AT&T or MCI. (BR pp.37-38; Shurter TR 194; deCamp TR 1038-1039) GTEFL asserts this is misleading because no one would be required to get a letter from the customer authorizing the release of CPNI necessary to identify the services to be transferred. (BR p.38)

GTEFL states that customer consent should be clearly and unmistakenly obtained. (Drew TR 2051)

GTEFL states that this process would allow AT&T and MCI to access CPNI even for those customers that eventually decide not to transfer their services to the carrier to which the CPNI had been disclosed. GTEFL contends that AT&T and MCI seem to believe that their recommendation is permissible under Section 222(c)(1), the Act's initiation of service exception to the written authorization rule. GTEFL argues that the more plausible reading is that CPNI would be released only after the customer's verifiable commitment to transfer service to another carrier. (BR p.38)

GTEFL's witness Drew also contends that access to such "on-line" services allows AT&T to track GTEFL customers and, based on the level of service with GTEFL, target them for marketing of its own local or toll services. GTEFL argues since it will not have access to AT&T's similar customer account information, this would give AT&T a competitive marketing advantage. (TR 2052)

AT&T's witness Shurter states that GTEFL insists on a written authorization from the individual customer and thus introduces a very real, very substantial and very unnecessary barrier to local competition. AT&T contends that the blanket letter of authorization should be adequate to address any legitimate concerns for customer privacy and approval. Witness Shurter allows that GTEFL acknowledged in the course of negotiations that the blanket letter process proposed by AT&T was consistent with the practice employed in the interexchange PIC area. (Shurter TR 194-195)

AT&T contends that new entrants in the local exchange market cannot operate without access to operational support systems and services. Witness Shurter states that GTEFL has sought to limit and "define down" the nature of the interface requirements of AT&T and to "trickle down" those system support services. Witness Shurter argues that GTEFL has complained when AT&T has sought more definition of the interface, and more definite scheduling for the required movement to full interactive electronic interface. (TR 191-192)

AT&T and MCI argue that until ALECs have real-time interactive interfaces to the GTEFL operations support systems there will be no parity with GTEFL. AT&T and MCI contend this is not an issue of requiring GTEFL to "cede unrestricted control" of its network or operational systems to AT&T or anyone else; instead, it is a matter of enabling AT&T and MCI to provide a customer experience comparable to that which GTEFL provides to its own customers. (Shurter TR 194, deCamp TR 1038)

AT&T argues that it has never stated that it would not pay for operational systems provided by GTEFL as suggested by witness Langley. AT&T argues that it has not asked for any more than the law provides, and AT&T remains willing to pay the appropriate price for what it is requesting. (Shurter TR 194)

MCI states that it is not seeking blanket access to CPNI. Witness deCamp argues that MCI has offered to provide to GTEFL blanket letter of authorization which will represent that MCI has a customer's authorization whenever it accesses information or takes action on behalf of a customer. (TR 1038) MCI contends that the blanket letter of authorization is consistent with the requirements of both state and federal law. MCI offers that Section 222(c)(1) of the Act prohibits disclosure of CPNI "[e]xcept ... with the approval of the customer." MCI states that Section 364.24(2), Florida Statutes, similarly prohibits such disclosure "except as authorized by the customer." MCI argues it is important to note that neither the federal nor state law requires that such approval or authorization be in writing. (BR p.34)

MCI contends that there is no way that MCI will be able to serve customers as efficiently or effectively as GTEFL, let alone have an opportunity to become a provider of better quality service, if it is discriminated against in terms of how it obtains access to these system functions. (TR 1028, 1038) Witness deCamp asserts that residential and small business customers are often not aware of all the services to which they subscribe; therefore, MCI contends it will be impossible to establish a complete and correct customer record without access to CPNI. (TR 1039)

The FCC's Order discusses the issue of access to customer proprietary network information at Paragraph 492:

> We also conclude that access to call-related databases as discussed above, and access to the service management system discussed below, must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. Section 222, which was effective upon adoption, sets out requirements for privacy of customer information. Section 222(a) provides that all telecommunications carriers have a duty to protect the confidentiality of proprietary information of other carriers, including resellers, equipment manufacturers, and customers. Section 222(b) requires that telecommunications carriers that use proprietary information obtained from another telecommunications carrier in providing any telecommunications service "shall use that information only for such purpose, and

> shall not use such information for its own marketing purposes." Sections 222(c) and (d) provide protection for, and limitations on the use of, and access to, customer proprietary network information (CPNI).

The FCC has also initiated a proceeding to clarify the obligations of carriers with regard to section 222(c) and (d). (See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rule making, CC Docket No. 96-115, FCC 96-221, released May 17, 1996.) However, the FCC has not issued a final order regarding this docket and most likely will not until mid-1997.

Staff believes that Section 222 of the Act and Section 364.24(2), Florida Statutes protect customer proprietary network information. Staff believes that requiring the ALECs to obtain prior written authorization from customers before being permitted OSS access would be very unworkable. Section 222(b) imposes on all carriers the obligation to use customer account information responsibly -- only for provisioning telecommunications services from which the CPNI is derived. Staff believes that the ILECs need not be the guardians of the customer's privacy because the ALECs have that duty as well. Section 222(d)(1) provides for permitting access to CPNI for purposes of initiating telecommunication services without mention of customer approval. Staff agrees with AT&T and MCI's method of issuing a blanket letter of authorization to GTEFL which states that it will obtain the customer's permission before accessing the OSSs. In addition, staff believes that GTEFL, AT&T and MCI should develop an interface which discourages "roaming" through customer information. Access should only be for the information necessary to provision telecommunications service.

Therefore, staff recommends that GTEFL should not require AT&T and MCI to obtain prior written authorization from each customer before allowing access to OSSs. AT&T and MCI should issue a blanket letter of authorization to GTEFL which states that it will obtain the customer's permission before accessing the OSSs. Staff further recommends that GTEFL should develop a real-time operational interface to deliver OSSs to ALECs, and the interface should only provide the customer information necessary for AT&T and MCI to provision telecommunications services.

Each party should bear its own share of the cost of developing and implementing such systems and processes because these systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs should be recovered from the carrier who is requesting such customized system.

ISSUE 10: What are the appropriate rates, terms, and conditions, if any, for call guide pages, directory distribution, and inclusion of AT&T's and MCI's logos on the directory cover? **(REITH)**

RECOMMENDATION: AT&T and MCI should pay $2.49 for the secondary distribution of directories. In addition, GTEFL should include limited space for AT&T and MCI customer information in its directory, at no charge. Staff further recommends that GTEFL allow AT&T and MCI to purchase one additional page for listing their product information, at the same rate GTEFL pays to list its product information. GTEFL should not be required to include MCI's logo on its directory cover.

POSITION OF PARTIES

AT&T: GTEFL must include in each directory the same amount of space for information AT&T provides for the directory as GTEFL provides itself, at a rate based on cost. GTEFL should be required to distribute directories at the primary and secondary level for free as it does for its own customers.

GTEFL: GTEFL would accept AT&T's proposed contract terms requiring GTEFL to permit AT&T to purchase one page in the information section of the directory; and requiring AT&T to pay $2.49 per directory for secondary distribution. GTEFL will not include other companies' logos on its cover.

MCI: MCI should have the same ability as GTEFL to have information regarding its services published in the call guide pages and to have its logo on the directory cover. GTEFL should be required to distribute directories to all customers at no charge.

STAFF ANALYSIS:

Call Guide Pages, Directory Distribution

GTEFL proposes to provide AT&T and MCI with 1) initial directory distribution associated with its annual delivery at no charge, 2) secondary distribution of directories, outside the annual delivery, for $2.49, and 3) limited space in the call guide pages for customer contact information (i.e., business office, billing inquiries, repair), at no charge. (Peters TR 1187-1189) Witness Peters states that no product information will be allowed in the call guide pages. (TR 1189)

AT&T has agreed to pay GTEFL $2.49 for secondary directory distribution if GTEFL incurs that cost today and if the $2.49 is not covered as an wholesale cost. (Shurter TR 289) GTEFL states that it pays $2.49 for secondary distribution and that this amount is not included in GTEFL's calculation of costs in wholesaling local service, so there is no issue of double charging. (Peters TR 1188; BR p.41)

AT&T and GTEFL have also agreed to one page worth of space in the call guide pages but have not agreed to a price. (Shurter TR 290; GTEFL BR pp.40-41) AT&T proposes to pay the same rate that GTEFL pays for customer call guide information. (Shurter TR 290) GTEFL's offer consists of a discount off the full page rate to other purchasers of directory space. (GTEFL BR pp.40-41)

MCI and GTEFL have not reached an agreement with regards to directories. MCI is requesting that GTEFL be required to charge for secondary distribution of directories only to the extent it imposes such a charge on its own customers. (MCI BR p.35) GTEFL refutes this proposal by stating the fact that whether GTEFL directly imposes this charge on its own customers is immaterial as to whether GTEFL should be allowed to charge MCI. Witness Peters asserts that MCI can charge its own customers as it chooses. (TR 1188)

MCI is requesting that its pertinent business information be included in the call guide pages. Witness Price asserts that information such as rates, calling areas, sales, service, and repair information should be included at no charge. (TR 826) MCI takes issue with GTEFL's position that no product information will be allowed in the call guide pages. MCI believes that unless GTEFL agrees to remove its GTEFL product information, MCI and other new entrants will be at a competitive disadvantage. In addition, this restriction will deny customers easily accessible information about competitive alternatives that are available to them. (BR p.35)

Staff believes that AT&T and MCI should pay $2.49 for the secondary distribution of directories. This is the same rate GTEFL pays for secondary distribution of directories. In addition, staff recommends that GTEFL include limited space for AT&T and MCI customer information in its directory, at no charge. With respect to product information, staff believes that AT&T and MCI should be able to list their product information in GTEFL's directory. However, staff believes that AT&T and MCI should pay for this service at the same rate GTEFL pays for this service. Therefore, staff recommends that GTEFL allow AT&T and MCI to purchase one additional page for listing their product information, at the same rate GTEFL pays to list its product information.

Staff disagrees with GTE that it has a First Amendment right to exclude the ALECs' product information from the call guide pages of its directories. In this arbitration proceeding, the Commission is carrying out Congress' intention as expressed in the Act to require telephone companies to open their networks to competition. For the Commission to require GTE to include AT&T and MCI product advertising in the call guide pages of its directories would be to do nothing more than to encourage by reasonable means the development of competitive markets, a purpose unrelated to the content of expression. In Turner Broadcasting System, Inc. v. F.C.C., 819 F.Supp 32 (D.D.C. 1993), the court held that the "must-carry" provisions of the 1992 Cable Act did not violate cable television system operators' First Amendment rights. (47 U.S.C. §§534, 535) Those provisions required the operators to carry the video signals of certain commercial and noncommercial educational television broadcast stations. The court found that Congress' primary intention in enacting the must-carry provisions was to restore competitive balance and assure a functional market in the distribution of video signals.

Directory Cover Logos

MCI is requesting to have its logo appear of GTEFL's directory cover. (BR p.34; Petition ¶63) Staff notes that this request appears in MCI's brief and petition. However, there is no record support for MCI's request. AT&T is not requesting that its logo appear on GTEFL's cover. GTEFL states that it will not include ALEC logos on its directory covers. (Johnson TR 1189)

Staff would point out that the FCC did not expressly address allowing ALECs to have an appearance on the cover of white and yellow page directories. Section 222(f)(3) of the Act defines "subscriber list information" as any information:

> (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and
>
> (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Thus, staff believes that Section 251(b)(3), requiring nondiscriminatory access to directory listings, does not require that GTEFL include the logos of the ALECs on its directory covers.

Staff believes that under the obligations of an incumbent LEC to provide interconnection with its network, unbundled access to network elements, and to offer telecommunications services for resale to the ALECs, GTEFL is not required to provide the ALECs a logo appearance on its directory covers.

Interconnection

Section 251(c)(2) states that the incumbent LECs "have the duty to provide interconnection with the local exchange carrier's network ... for the transmission of telephone exchange service and exchange access." Telephone exchange service is defined at Section 3(47) and exchange access at Section 3(16). Neither definition contemplates directory publishing.

Unbundled Network Elements

Section 251(c)(3) states that the incumbent LECs "have the duty to provide nondiscriminatory access to network elements on an unbundled basis." In Section 3(29), network element is defined to mean "a facility or equipment used in the provision of telecommunications services, and includes "features, functions, and capabilities" provided by such facilities or equipment, such as "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of telecommunications service." See also, §51.319, C.F.R. Thus, the Act and the rules do not contemplate directory services as a network element.

Resale

Section 251(c)(4) states that the incumbent LECs "have the duty to offer for resale ... any telecommunications service" provided at retail. Section 3(46) defines telecommunications services to mean "the offering of telecommunications for a fee directly to the public." Section 3(43) defines telecommunications to mean "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." Section 51.603(b), C.F.R., provides that "[]a LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users." Thus, the Act and the rules do not contemplate directory service as a telecommunications service to be offered for resale.

Staff believes that the Act and the rules contain no provision, express or implied, that the incumbent LECs provide logo appearances on their directory covers. Furthermore, staff believes there is insufficient evidence in this record to justify a recommendation that, in the silence of the Act, GTEFL provide the ALECs with such appearances. Therefore, staff recommends that GTEFL should not be required to include MCI's logo on its directory cover.

Finally, GTEFL raises a First Amendment argument in support of its position that it has a constitutional right to control the content of its directories, including their covers. Staff believes the Commission can reach a proper disposition of this issue without the necessity to consider the constitutional argument. Therefore, staff recommends that GTEFL should not be required to include MCI's logo on its directory cover.

ISSUE 11: a) Should GTEFL be required to provide AT&T and MCI access to GTEFL's directory assistance database?

b) If this process requires the development of additional capabilities, in what time frame should they be deployed?

c) What are the costs incurred, and how should those costs be recovered? **(REITH)**

RECOMMENDATION:

a) Yes. GTEFL should provide AT&T and MCI access to its directory assistance database.

b) GTEFL should be required to provide directory assistance database information via magnetic tape by January 1, 1997. GTEFL should file with this Commission a date by which access to its DA database will be provided via a real-time electronic interface. This information should be provided 60 days from the date of this order.

c) GTEFL should file a TSLRIC cost study dealing with access to its DA database, 120 days before access is provided.

POSITION OF PARTIES

AT&T: a) Yes, GTEFL is required under the Act to provide AT&T access to its Directory Assistance Database. Under the Act and the FCC Order, Directory Assistance databases are considered to be network elements, and it is technically feasible to unbundle this element.

b) Any processes and procedures needed should be developed and put into place as soon as practicable.

c) The costs of providing such access should be based on TELRIC studies approved by this Commission and shared by all local providers who benefit from this access.

GTEFL: a) Because third-party access to GTEFL's directory assistance database is not technically feasible today, GTEFL should not be ordered to provide such access in this proceeding.

b) This process will require additional capabilities to ensure the security and integrity of GTEFL's databases. Vendors will dictate the timing of the development of these capabilities. There is no evidence in the record that would allow the Commission to establish a time frame for deployment.

c) The costs of the necessary additional capabilities cannot be calculated at this time. Whatever the costs will be, they should be recovered from the parties requesting access to the DA database.

MCI: a) Yes. MCI should have the option of accessing GTEFL's directory assistance database either through a real-time interactive interface or through the purchase of information resident in the database. In addition, MCI should have the option to route DA calls to GTEFL's operators.

b) The option to purchase database information does not require the development of additional capability and should be available immediately. Other options should be available by January 1, 1997.

c) GTEFL should recover only the forward-looking incremental cost of implementing such capability in the most efficient manner possible. GTEFL should bear the burden of proving such costs. The cost associated with the database information purchase option should be very small.

STAFF ANALYSIS: AT&T and MCI are requesting access to GTEFL's directory assistance database for the purpose of providing their own directory assistance (DA) service. (Shurter TR 218; Price TR 820) AT&T witness Shurter believes that consumers will view carriers that are unable to provide DA services as inferior to those carriers that can. (TR 219)

AT&T and MCI state that the FCC's order requires GTEFL to provide access to its DA database as an unbundled element. (Shurter TR 219; Price TR 820) Specifically, the FCC states that:

> In particular, the directory assistance database must be unbundled for access by requesting carriers. Such access

> must include both entry of the requesting carrier's customer information into the database, and the ability to read such a database, so as to enable requesting carriers to provide operator services and directory assistance concerning incumbent LEC customer information. We clarify, however, that the entry of a competitor's customer information into an incumbent LEC's directory assistance database can be mediated by the incumbent LEC to prevent unauthorized use of the database. We find that the arrangement ordered by the California Commission concerning the shared use of such a database by Pacific Bell and GTEFL is one possible method of providing such access. (FCC 96-325, ¶538)

GTEFL states that it is technically feasible to provide DA listings electronically, but that the Act does not require DA listings to be unbundled from DA service. Witness Johnson cites to section 222(e) of the Act which states that:

> a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and, conditions, to any person upon request for the purpose of publishing directories in any format.

Witness Johnson believes that while GTEFL is required to provide subscriber list information for directory publishing, there is no such requirement for DA purposes. (TR 1533) In addition, witness Johnson maintains that it is not currently technically feasible for GTEFL to provide multiple-user access to its DA database and that vendor endorsed solutions will have to be available before any system modifications are made. (TR 1534)

The FCC concluded that directory listing is synonymous with subscriber list information. (FCC 96-333, ¶137) The FCC requires LECs to share subscriber listing information with their competitors, in readily accessible tape or electronic formats, and such data must be provided in a timely fashion upon request. (FCC 96-333, ¶141) The FCC found that an effective way to accomplish nondiscriminatory access to DA is to allow competitors to obtain read-only access to the LECs' DA databases. (FCC 96-333, ¶143)

In addition, the FCC determined that:

> It is not possible to achieve seamless and nondiscriminatory access to directory assistance without

> requiring access to the underlying databases. Consistent with our definition of nondiscriminatory access, the providing LEC must offer its competitors access of at least equal quality to that it receives itself. Competitors who access such LEC databases will be held to the same standards as the database owner, in terms of the types of information that they can legally release to directory assistance callers. The LEC that owns the database can take the necessary safeguards to protect the integrity of its database and any proprietary information, or carriers can agree that such databases will be administered by a third party. (FCC 96-333, ¶144)

Staff believes that GTEFL should provide AT&T and MCI with access to its DA database. Access should initially be provided to AT&T and MCI via magnetic tape. Such access should be provided by January 1, 1997. GTEFL has indicated that it cannot currently provide multiple user access to its DA database. Therefore, staff recommends that GTEFL file with this Commission, a date by which access to its DA database will be provided via a real-time electronic interface. This information should be provided 60 days from the date of this order.

AT&T and MCI believe that cost recovery of DA access should be based on TELRIC studies. (AT&T BR p.41; MCI BR p.36) MCI asserts that any cost for providing DA information via magnetic tape is very small or nonexistent. (BR p.37)

GTEFL states that it is impossible to know the specific costs for DA database access because part of the solution will be driven by vendors. GTEFL believes these costs will be significant because of mechanisms needed to protect the security and integrity of the customer data. (BR p.43)

Staff does not believe there is a sufficient information in the record to deal with cost identification and recovery at this time. Therefore, staff recommends that GTEFL file a TSLRIC cost study dealing with access to its DA database, 120 days before access is provided.

ISSUE 12: How should PIC changes be made for AT&T's and MCI's local customers? **(GREER)**

RECOMMENDATION: GTEFL should be prohibited from making any PIC change for a customer that receives its local exchange service from a local exchange carrier other than GTEFL. GTEFL should forward the request of the customer to their local exchange carrier and provide the customer a contact number for their local carrier.

POSITION OF PARTIES

AT&T: AT&T is entitled to be the contact point for PIC change requests by AT&T local customers. GTEFL should reject any PIC change request from another local carrier and notify the carrier to submit the request to AT&T. This practice complies with industry standards on billing and ordering.

GTEFL: The PIC change process should remain as it is today. End users and interexchange carriers should continue to be permitted to submit changes directly to GTEFL. AT&T's and MCI's request to break the automated process in place today will result in a cumbersome and uneconomical process.

MCI: GTEFL should not accept a PIC change directly from an IXC for an MCI local customer; such requests should be made by the IXC through MCI.

STAFF ANALYSIS: The Act, as well as the FCC's orders, do not specifically address this issue. However, staff believes the intent of the Act, the FCC's First Report and Order (96-325), and the FCC's Second Report and Order (96-333) stresses the need for parity between the incumbent LECs and new entrants.

AT&T and MCI believe GTEFL should not directly accept a PIC change for AT&T or MCI local customers. (MCI BR p.37; AT&T BR p.42) AT&T's witness Shurter believes only AT&T will have the most current customer account information for its Florida customers that have selected AT&T as their local service provider, which could include restrictions on PIC changes. (TR 220) Further, AT&T believes this is not a change in the current process, but a change in the electronic interfaces by which PIC changes are made. (Shurter TR 287-288) Witness Shurter believes the more control GTEFL can assert between AT&T and other new entrants and their customers, the better for GTEFL. AT&T believes it is their right and responsibility to care for its local customers and it is not necessary nor appropriate for GTEFL to come between AT&T and its customers. (TR 195)

GTEFL has refused to refer requests for PIC changes to AT&T and MCI. Instead, GTEFL plans to require changes for AT&T and MCI local exchange customers to be made directly through GTEFL. (Drew TR 2034) GTEFL's witness Drew indicates that GTEFL intends to handle PIC change requests for the customers of all resellers. (TR 2014) GTEFL believes it should not be prohibited from making PIC changes upon request of other IXCs or their customers. (Drew TR 2045-2046) GTEFL's witness Drew believes approval of AT&T's and MCI's request would change a simple and efficient process into a cumbersome and inefficient one. (TR 2045)

GTEFL argues in its brief that it would be affected if the existing automated PIC process is dismantled. It claims that costly modifications will be necessary to allow the system to detect and reject changes that come from another local carrier. Although staff would agree that there would be some modifications necessary to handle the PIC changes in a different manner, we do not believe GTEFL's claim cost modifications or adverse impact due to the change in the PIC process is supported by any evidence in this proceeding.

Staff believes GTEFL's proposal to continue to handle the PIC changes as it does today, without regard to the provider of local exchange service to the end user, is inappropriate. Staff does not believe the manner in which GTEFL proposes to handle PIC changes takes into consideration the move toward a competitive local exchange market, but instead continues the processes that were developed when GTEFL was the only local exchange carrier. Staff believes the process being proposed by AT&T and MCI will provide parity in the handling of PIC change requests. In addition, staff believes this type of process represents a more appropriate procedure than to have a local exchange company that has no relationship with an end user affecting the overall service provided by another local exchange company. If AT&T and MCI's proposal is accepted, all PIC changes (including AT&T and MCI long distance companies) will be required to be sent to the provider of local exchange service, just as it is today.

Based on the discussion above, staff believes the Commission should prohibit GTEFL from processing any PIC change request for a customer that receives its local exchange service from a local exchange carrier other than GTEFL. GTEFL should direct the request of the customer to their local exchange carrier and provide the customer a contact number for their local carrier.

ISSUE 13(a): Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for GTEFL to provide AT&T and MCI with these elements? **(STAVANJA)**

Network Interface Device
Loop Distribution
Local Switching
Operator Systems
Dedicated Transport
Common Transport
Tandem Switching
Signaling Link Transport
Signal Transfer Points
Service Control Points/Databases
Loop Concentrator/Multiplexer (AT&T only)
Loop Feeder (AT&T only)
Multiplexing/Digital Cross-connect (MCI only)
DA Service
911 Service
AIN Capabilities
Operations Support Systems

RECOMMENDATION: Yes. All elements listed are considered to be network elements as defined by §3(29) of the Act. The following items are technically feasible for GTEFL to provide on an unbundled basis:

Network Interface Device
Loop Distribution
Local Switching
Operator Systems
Dedicated Transport
Common Transport
Tandem Switching
Signaling Link Transport
Signal Transfer Points
Loop Concentrator/Multiplexer (AT&T only)
Loop Feeder (AT&T only)
Multiplexing/Digital Cross-connect (MCI only)
DA Service
911 Service
AIN Capabilities
Operations Support Systems

With regards to the SS7 network, GTEFL should be allowed to use mediation mechanisms as necessary.

POSITIONS OF PARTIES

AT&T: a) GTEFL has a statutory obligation under the Act to offer network elements to new market entrants on an unbundled basis and at rates, terms and conditions that are just, reasonable, and non-discriminatory. All items listed above are network elements, and all items are technically feasible to provide.

GTEFL: a) GTEFL will unbundle the NID, loop, port, transport, and its signaling systems, and will provide access to OSS functions. It will consider other unbundling requests, such as subloop unbundling, on a case-by-case-basis.

MCI: a) Each of these items requested by MCI is a network element, capability or function, and it is technically feasible to unbundle each of the requested elements. The Commission should strictly scrutinize any claim by GTEFL that unbundling is not technically feasible to preclude GTEFL from creating barriers to competitive entry by MCI and others.

STAFF ANALYSIS: Section 251(c)(3) of the Telecommunications Act of 1996 (the Act) obligates incumbent LECs to provide the following:

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

In order to apply this section of the Act, two questions need to be answered for each of the items listed above. Are these items considered to be network elements, and if so, is it technically feasible for GTEFL to provide them? The Act and the FCC's Rules provide some guidance for making these determinations by defining network element and technical feasibility.

The Act states that:

> The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (§3(29))

The FCC Rules define technical feasibility as:

> Interconnection, access to unbundled elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such a request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts. (§51.5)

The FCC determined that certain elements are network elements and are technically feasible to unbundle. The FCC's rules state that the incumbent LEC must provide nondiscriminatory access to the following network elements on an unbundled basis: local loop, network interface device, switching capability, interoffice transmission facilities, signalling networks and call related databases, operations support systems functions, operator services, and directory assistance. (§51.319) Staff will include each of these items in the discussion below.

A. Network Interface Device

The FCC Rules define the network interface device (NID) as a cross-connect device used to connect loop facilities to inside wiring. (§51.319(b)(1)) Incumbent LECs are required to permit requesting telecommunications carriers to connect their own loops to the inside wiring of premises through the incumbent LEC's NID. The FCC states that the requesting telecommunications carrier shall establish this connection through an adjoining NID deployed by such telecommunications carrier. (§51.319(b)(2)) However, the FCC *recognizes* that competitors may benefit by directly connecting to the incumbent LEC's NID by avoiding the cost of deploying their own NIDs. The FCC left it to the states to determine whether direct connection to the incumbent LEC's NID can be achieved in a technically feasible manner. (FCC 96-325, ¶396)

MCI originally requested the ability to directly connect to GTEFL's NID but has since agreed to a *NID-to-NID arrangement*, as set forth by the FCC. (TR 959) However, AT&T is requesting the ability to directly connect to GTEFL's NID. (TR 324) GTEFL states they will allow AT&T and MCI to connect their loops directly to GTEFL's NID, provided that such interconnection does not adversely affect the reliability and security of GTEFL's network, that GTEFL recovers all costs associated with unbundling its NID, and GTEFL receives "just and reasonable" compensation from AT&T for the unbundled NID. (Hartshorn TR 1128)

Staff believes that GTEFL *should* allow AT&T and MCI to directly connect to its NID, where spare capacity is available. GTEFL's loop will still be connected to the NID and thus, will be properly grounded and secure. However, staff has concerns over the lack of safety code guidelines concerning NIDs which have no spare capacity. Therefore, in instances where spare capacity does not exist, AT&T and MCI should adhere to the FCC rules concerning a NID-to-NID arrangement until such time as the appropriate guidelines are developed and incorporated within the National Electric code.

B, C, D,. Loop Distribution, Loop Concentrator/Multiplexer, Loop Feeder

The local loop facility provides a transmission path from the local end user's premises to the local switch. (TR 323) In addition to requesting access to the local loop facility as a whole, AT&T also requested the subloop elements on a unbundled basis. The subloop elements consist of the loop distribution, the loop concentrator/multiplexer, and loop feeder. MCI is requesting that GTEFL unbundle the loop distribution where there is an existing cross-connect in GTEFL's network. (TR 956)

Loop distribution is the portion of the loop that provides customer connection to the local network by connecting the customer's NID to either the feeder distribution interface (FDI) or the loop concentrator/multiplexer. (Crafton TR 324) The FDI is the connection point between the loop distribution and the loop feeder plant. The loop concentrator/multiplexer is the portion of the network that provides the functions required to assist in transmitting calls across the network. (TR 325) In addition to the conversion of signals from analog to digital, the loop concentrator/multiplexer provides concentration of lines and signals. (TR 326) The loop feeder connects the customer lines at the FDI or the loop concentrator/multiplexer, if one exists, with the local central office. (TR 326)

AT&T and MCI assert that the unbundling of loop distribution is required in instances where their companies deploy local fiber rings and their own switches, but do not own the facilities to span the traditional "last mile" to the customer premises. (Powers TR 975; Crafton TR 325) AT&T states that in such a case, it could use fiber rings to transport traffic between its central office and GTEFL's loop distribution, along with a loop concentrator/multiplexer, to transfer traffic from its central office to the customer's premises. In addition, witness Crafton states that if the loop concentrator/multiplexer is located in the building in which the traffic is being transmitted (e.g., office buildings) the use of GTEFL's loop concentrator/multiplexer and loop distribution plant is generally the most efficient way for AT&T to reach individual customers. (TR 325) MCI witness Powers contends that the unbundling of loop distribution facilities would encourage more rapid development of facilities based competition. (TR 975)

Witness Crafton asserts that the unbundling of the loop concentrator/multiplexer will effectively allow AT&T to purchase only the specific functions required to provide local services to consumers. (TR 326) AT&T also contends that GTEFL should unbundle the loop feeder to allow AT&T to gain access to its customers in situations where it has deployed its own distribution plant or has purchased that functionality from another vendor, but will continue to use GTEFL's feeder capabilities to transport traffic to and from GTEFL's central office. (TR 327)

Witness Hartshorn states that GTEFL agrees to provide loop distribution, loop feeder, and loop concentrator/multiplexer as unbundled elements on an individual case-by-case basis, provided AT&T:

1. notifies GTEFL when it intends to deploy any service-enhancing copper cable technology, and if so, certify that such technology will not interfere with GTEFL's existing or future technology within a given cable sheath or other GTEFL facility; and

2. pays all the costs associated with unbundling the loop from the switch, including the costs of testing AT&T's technology and the costs of any loop conditioning. (TR 1126)

GTEFL states that an individual case-by-case basis approach is needed because there is no standard network configuration; therefore, the technical feasibility of such unbundling depends on the manner in which each particular loop is configured. (TR 1130) For instance, GTEFL witness Hartshorn testified that in order to unbundle loops at central offices that use integrated digital loop concentrators (IDLCs), channel boxes would need to be installed which would amount to millions of dollars. (TR 1131-1132) Although AT&T witness Crafton acknowledged this problem and noted various ways to unbundle IDLCs, AT&T asserts that the costs of unbundling IDLC loops are driven by the frequency with which these systems have been deployed and by how often new entrants find it cost effective to use unbundled loops. (TR 356, 390) GTEFL states that while there may be more cost-effective methods of provisioning the unbundled loops, AT&T must notify GTEFL of the specific central offices or specific loops it wishes to unbundle, and the parties must discuss the feasibility of the request. (TR 1132)

GTEFL also contends that the integrity of the network would be at risk if AT&T and other carriers were given unrestricted access to GTEFL's cross-connect locations in order to connect and disconnect their facilities. (TR 1133) However, AT&T believes that reasonable reporting procedures could be developed that would not unfairly restrict the use of unbundled elements, while protecting the network from harm. (TR 355) In addition, MCI contends that since MCI is willing to have all work at the cross-connect point performed for MCI by GTEFL personnel, GTEFL's security or reliability concerns should be alleviated. (TR 987)

While MCI and AT&T agreed that a case-by-case approach was appropriate in some circumstances, AT&T states that the parties have not come to an agreeable Bona Fide Request Process procedure that would require GTEFL to respond within a set time frame to good faith requests. (Powers TR 995-996; Crafton TR 393,398) In addition, MCI asserts in its brief that there is no reason to require individual case basis analysis of unbundled loop distribution where MCI is only requesting interconnection at existing cross-connect points. (BR p.42)

The FCC defines the local loop network element as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office, and the network interface device at the customer premises. (§51.319(a); FCC 96-325, ¶380) This definition includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals. (FCC 96-325, ¶380)

While GTEFL argues above that it is not technically feasible to unbundle loops at central offices that use IDLCs, the FCC Order, specifically found it technically feasible to unbundle IDLC-delivered loops. (FCC 96-325, ¶384)

The FCC concluded that:

> ... incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. IDLC technology allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. (FCC 96-325, ¶383)
>
> We find that it is technically feasible to unbundle IDLC-delivered loops. One way to unbundle an individual loop from an IDLC is to use a demultiplexer to separate the unbundled loop(s) prior to connecting the remaining loops to the switch. ... Again, the costs associated with these mechanisms will be recovered from requesting carriers. (FCC 96-325, ¶384)

As noted above in the FCC's definition of technical feasibility, a determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such a request does not affect whether satisfying such a request is technically feasible. (§51.5)

In addition, the FCC addressed subloop unbundling by stating that:

> As a general matter, we believe that subloop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient. For example, a competitor may seek to minimize its reliance on the LEC's facilities by combining its own feeder plant with the incumbent LEC's distribution plant. ... The record presents evidence primarily of logistical, rather than technical, impediments to subloop unbundling. Several LECs and USTA, for example, assert that incumbent LECs would need to create databases for identifying, provisioning, and billing for subloop elements. Further, incumbent LECs argue that there is insufficient space at certain possible subloop interconnection points. We note that these concerns do not represent "technical" considerations under our interpretation of the term "technically feasible. (FCC 96-325, ¶390)

Staff notes that the FCC declined to make a determination on subloop unbundling because proponents did not address certain LEC concerns such as access by competitors' personnel to ILEC equipment, which raised network reliability concerns. (FCC 96-325, ¶391)

Staff believes MCI's proposal for unbundling loop distribution and AT&T's proposal for unbundling loop distribution, loop concentrator/multiplexer, and loop feeder are technically feasible. While GTEFL may incur additional costs in providing certain network configurations, such as unbundling with IDLCs, staff would note costs are irrelevant to the issue of technical feasibility. Therefore, staff recommends that GTEFL unbundle loop distribution (including at the IDLC as requested by AT&T), loop concentrator/multiplexer (AT&T only), and loop feeder (AT&T only) as requested by AT&T and MCI.

<u>E. Local Switching</u>

The FCC determined that incumbent LECs must provide local switching as an unbundled network element. Section 51.319(c)(1)(i) of the FCC rules defines the local switching network element to encompass:

> (A) *line-side facilities, which include, but are not limited to,* the connection between a loop termination

at a main distribution frame and a switch line card;

(B) trunk-side facilities which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a trunk card; and

(C) all features, functions, and capabilities of the switch which include, but are not limited to:

(1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as, the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and

(2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signalling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

AT&T believes that GTEFL's definition of unbundled local switching is incorrect. (BR p.53) GTEFL states that it will unbundle the port, which does not include all the vertical features in the switch. (TR 1845) GTEFL asserts that through the port, the ALECs can obtain access to both the local switching capability of GTEFL's switch and the capability to route calls from the trunk side of the switch (e.g., switched access, toll, E-911, directory service) which GTEFL believes is sufficient to allow them to effectively compete in the local market. In addition, GTEFL asserts that the local switching element includes all vertical features that the switch is capable of providing, including custom calling, CLASS features, and Centrex, as well as any technically feasible customized functions. (TR 1845) However, AT&T contends in its brief that local switching is an independent network element that is separate from these other elements that GTEFL insists must be attached to local switching. (BR p.54) In addition, the inclusion of other features and capabilities would require AT&T to purchase more services than it actually requires. (TR 342)

AT&T believes that another reason for GTEFL to require the port offering, and not just local switching, is that it is not technically feasible for its local switch to route calls to AT&T operator systems, transport facilities, and other AT&T facilities. (BR p.54) GTEFL states that its switches cannot perform customized routing, which is the switch's ability to distinguish between customers for various purposes. (TR 1136) However, it appears that what witness Hartshorn testified to is that GTEFL's switches lack the capacity to perform customized routing, not that its switches lack the capability. (TR 1136) This issue is addressed further by staff in Issue 7.

While GTEFL states that it will unbundle the port, which does not include all the vertical features in the switch, AT&T asserts that GTEFL has an incorrect understanding of local switching as an unbundled network element. However, as stated above in Section 51.319(c)(1)(i), the FCC specifically required the unbundling of local switching. Therefore, staff recommends that GTEFL be required to provide local switching as an unbundled network element, as contemplated by the FCC.

F, G, H. Operator Systems, DA Service, 911 Service

The FCC determined that incumbent LECs must provide access to operator services and directory assistance facilities where technically feasible. (§51.319(g))

In Section 51.5 of the FCC's rules, operator services and directory assistance are defined as follows:

> "Operator services" are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Such services include, but are not limited to, busy line verification, emergency interrupt, and operator-assisted directory assistance services.
>
> "Directory assistance service" includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

The FCC addressed operator service and directory assistance in its order by stating:

> We conclude that incumbent LECs are under the same duty to permit competing carriers nondiscriminatory access to operator services and directory assistance facilities as all LECs are under section 251(b)(3). We further conclude that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with

> nondiscriminatory access to such facilities and functionalities at any technically feasible point. We believe that these facilities and functionalities are important to facilitate competition in the local exchange market. Further, the 1996 Act imposes upon BOCs, as a condition of entry into in-region interLATA services the duty to provide nondiscriminatory access to directory assistance services and operator call completion services. We therefore conclude that unbundling facilities and functionalities providing operator services and directory assistance is consistent with the intent of Congress. (FCC 96-325, ¶534)

MCI and AT&T have requested that GTEFL provide operator services, directory assistance service, and 911 service as unbundled network elements. (Wood TR 817-818, 827; Crafton TR 328) Operator systems provides operator and automated call handling and billing, special service, customer telephone listings, and optional call completion services. (TR 328) MCI contends that access to operator systems and directory assistance are essential components of basic telephone service. (TR 818) AT&T asserts the unbundling of these elements will benefit consumers by allowing AT&T to create new services. (TR 329) GTEFL contends that AT&T's request includes operator services and directory services. GTEFL claims that because operator systems includes many different components to which ALECs might request access, it is difficult to determine whether unbundling operator systems is feasible; therefore, GTEFL believes that requests should be handled on a case-by-case basis. (TR 1534)

While GTEFL does not believe that directory assistance service is a network element, GTEFL contends it will offer its tariffed operator and directory assistance services at the same rates as its corresponding retail offerings. GTEFL asserts no wholesale discount is warranted because these activities require GTEFL to perform the same activities at both the wholesale and retail levels. (TR 1436) While GTEFL also contends that 911 service is not a network element, GTEFL states there are no outstanding issues regarding 911 service and supports the provision of the service. In addition, GTEFL states that MCI and GTEFL have agreed on language for 911 service in an interim contract. (BR p.50)

In addition to a general obligation to provide unbundled access to directory assistance and operator facilities and functionalities stated above, the FCC went further to include additional obligations:

> 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 provider to differentiate their service from the incumbent LECs. We also note that the Illinois Commission has recently ordered such access. We therefore find that incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and to other unbundled network elements to the extent technically feasible. (FCC 96-325, ¶536)

Therefore, staff recommends that GTEFL provide operator services, directory assistance service, and 911 service as unbundled network elements, consistent with the FCC's rules and order.

I. Multiplexing/Digital Cross-Connect/Channelization

The FCC stated that incumbent LECs must provide requesting carriers with access to digital cross-connect system functionality. The FCC explains that:

> A DCS aggregates and disaggregates high-speed traffic carried between IXCs' POPs and incumbent LECs' switching offices, thereby facilitating the use of cost-efficient, high-speed interoffice facilities. ... We find that the use of DCS functionality could facilitate competitors' deployment of high-speed interoffice facilities between their own networks and LECs' switching offices. Therefore, we require incumbent LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services. (FCC 96-325, ¶444)

MCI is requesting that GTEFL provide digital cross-connect and multiplexing in conjunction with transport facilities or separately so MCI can provide their own transport facilities or use the facilities supplied by other parties. (TR 966-967) GTEFL contends that it will provide ALECs digital cross-connect functionality as it does today for IXCs. (BR p.50)

Therefore, staff recommends that GTEFL provide access to digital cross-connect system functionality consistent with the FCC's rules and order.

J & K. Dedicated Transport and Common Transport

The FCC labels dedicated and common transport as interoffice transmission facilities. The FCC determined that interoffice transmission facilities are to be offered as unbundled network elements. Section 51.319 of the FCC's rules deals with unbundled elements and states that:

> (1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

AT&T and MCI have requested that GTEFL provide dedicated and common transport as unbundled network elements. (Powers TR 963-964;

Crafton TR 322-323) GTEFL states that it will provide dedicated and common transport to AT&T and MCI. (BR p.49)

Therefore, staff recommends that GTEFL provide dedicated and common transport as unbundled network elements, consistent with the FCC's rules and order.

L. Tandem Switching

The FCC determined that incumbent LECs must provide tandem switching as an unbundled element. The FCC's rules define the tandem switching network element as:

> (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;
>
> (ii) the basic switching function of connecting trunks to trunks; and
>
> (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signalling conversion features. (§51.319(c)(2))

GTEFL only has one tandem switch in Florida, and GTEFL and AT&T agree that tandem switching should not be an issue in this proceeding. (Munsell TR 1557; Crafton TR 410) However GTEFL states that if tandem to tandem switching was required, GTEFL would have to resolve issues related to billing data prior to providing tandem switching. (Munsell TR 1557-1559) Nevertheless, if and when a tandem switching issue presents itself, staff recommends that GTEFL be required to provide tandem switching as an unbundled network element consistent with the FCC's rules and order.

M,N, O & P. AIN Capabilities, Signaling Link Transport, Signal Transfer Points and Service Control Points/Database

Signaling systems assist in routing telephone calls between switches. Most LECs employ signaling networks that are physically separate from their voice networks, and these "out-of-band" signaling networks simultaneously carry signaling messages for multiple calls. In general, most LECs' signaling networks adhere to a Bellcore standard Signaling System 7 (SS7) protocol. (FCC 96-325, ¶455)

SS7 networks use signaling links to transmit routing messages between switches, and between switches and call-related databases. A typical SS7 network includes a signaling link, which transmits signaling information in packets, from a local switch to a high capacity packet switch called the signaling transfer point (STP). The STP switches packets onto other links according to the address information contained in the packet. These additional links extend to other switches, databases, and STPs in the LEC's network. A switch routing a call to another switch will initiate a series of signaling messages via signaling links through an STP to establish a call path on the voice network between the switches. (FCC 96-325, ¶456)

As stated above, the SS7 network also employs signaling links (via STPs) between switches and call-related databases, such as the Line Information Database (LIDB), Toll-Free Calling (i.e., 800, 888 number) database, and Advanced Intelligent Network databases. These links enable a switch to send queries via the SS7 network to call-related databases, which return customer information or instructions for call routing to the switch. (FCC 96-325, ¶457)

The Advanced Intelligent Network (AIN) is a network architecture that uses distributed intelligence in centralized databases to control call processing and manage network information, rather than performing those functions at every switch. An AIN-capable switch halts call progress when a resident software "trigger" is activated, and uses the SS7 network to access intelligent databases, known as Service Control Points (SCPs), that contain service software and subscriber information, for instruction on how to route, monitor, or terminate the call. AIN is being used in the deployment of number portability, wireless roaming, and such advanced services as same number service (i.e., 500 number service) and voice recognition dialing. (FCC 96-325, ¶459)

AT&T is requesting GTEFL to unbundle its signaling network elements and provide unmediated access to AIN triggers. (BR p.59) While MCI is also requesting access to GTEFL's SS7 network elements, MCI is not seeking unmediated access. (Powers TR 967, 989) AT&T contends that GTEFL refuses to unbundle its access to its AIN triggers in such a way that AT&T can achieve parity in the creation and offering of AIN-based services. (Crafton TR 351) GTEFL contends that providing unmediated access to AIN is not technically feasible until standards are developed permitting proper mediation. (Dellangelo TR 1979) AT&T does not believe mediation is necessary because safeguards are already built into the SS7 network. (TR 421) However, GTEFL states as an alternative that it will work with AT&T to develop and test AIN services that will execute on GTEFL's platforms, thus permitting AT&T "virtual" access to AIN capabilities. (Dellangelo TR 1973-1975)

GTEFL notes in its brief that the FCC expressly precluded direct access to AIN triggers in the switch. The FCC decision that GTEFL is referring to is as follows:

> Although we conclude that access to incumbent AIN SCPs is technically feasible, we agree with BellSouth that such access may present the need for mediation mechanisms to, among other things, protect data in incumbent AIN SCPs and ensure against excessive traffic volumes. In addition, there may be mediation issues a competing carrier will need to address before requesting such access. Accordingly, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the Commission acting pursuant to section 252(e)(5)) must consider whether such mediation mechanisms will be available and will adequately protect against intentional or unintentional misuse of the incumbent's AIN facilities. We encourage incumbent LECs and competitive carriers to participate in industry fora and industry testing to resolve outstanding mediation concerns. Incumbent LECs may establish reasonable certification and testing programs for carriers proposing to access AIN call related databases in a manner similar to those used for SS7 certification. (FCC 96-325, ¶488)

The fact that MCI is not seeking unmediated access to AIN functionalities indicates that MCI may be willing to accept GTEFL's mediation proposal. (TR 989-990)

In today's environment, interconnection with an SS7 network occurs at the STP, which was designed to be the entry point to an SS7 network and to provide access to all SS7 functions. GTEFL contends that the STP is the only physical point that interconnection is technically feasible, and will offer such interconnection. GTEFL asserts that AT&T and MCI can gain access to the SCPs and associated databases by interconnecting at the STP. (Morris TR 1167-1173) Additionally, AT&T's witness Crafton testified that AT&T realizes that access to either a switch or to a SCP database in the SS7 network can only occur through a STP. (TR 415)

Staff believes that GTEFL should provide access to its SS7 network and AIN as envisioned by the FCC's rules and order. Staff believes that there is sufficient record to warrant GTEFL's request for a mediation device. Therefore, staff recommends that GTEFL should provide access to its SS7 network and AIN as envisioned by the FCC's rules and order. With regards to the SS7 network, staff further recommends that GTEFL should be allowed to use mediation mechanisms as necessary.

Q. Operations Support Systems

MCI and AT&T are requesting access to GTEFL's operations support systems. (Crafton TR 335; deCamp TR 1020) MCI states that access to key databases and operations support systems is essential for MCI to be able to offer local exchange telecommunications service competitively. (TR 1020) While this issue is discussed in detail in Issue 6, GTEFL contends it will develop the electronic bonding MCI and AT&T have requested to access GTEFL's operator support systems. (BR p.55)

The FCC has ordered that operations support systems be treated as separate unbundled network elements. The FCC explains that:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are

> essential to promote viable competitive entry."

Although GTEFL's operations support systems and its various components are discussed in detail in Issue 6, staff recommends that GTEFL be required to provide its operational support systems as unbundled network elements, as contemplated by the FCC.

ISSUE 13(b): What should the price of each of the items considered to be network elements, capabilities, or functions? **(STAVANJA)**

RECOMMENDATION: Staff recommends that the Commission should set rates as outlined in the staff analysis. GTEFL should file TSLRIC cost studies, for all rates that are designated interim, 60 days from the date of the order.

POSITIONS OF PARTIES

AT&T: TELRIC provides the appropriate methodology for establishing the cost-based rates required by the Act. Those rates should equal TELRIC plus a reasonable share of joint and common costs. Rates should be determined using the Hatfield Model where appropriate data are available because GTEFL has not provided appropriate TELRIC studies. Absent appropriate data, interim prices may be based on any appropriate default prices including those established by the FCC Order.

GTEFL: Except for the already tariffed services, the items offered should be priced at total long-run incremental cost, as calculated by GTEFL, plus a reasonable share of joint and common costs. A departure from the standard set forth by GTEFL will effect an unconstitutional taking of its property.

MCI: The price of unbundled elements should be based on the forward-looking, long-run economic costs, calculated in accordance with TELRIC principles, that a wholesale only LEC would incur to produce the entire range of unbundled network elements. These costs are calculated by the Hatfield Model, and the appropriate prices are set forth in the direct testimony of Mr. Wood.

STAFF ANALYSIS:

Table 1 illustrates staff's recommended recurring rates which cover GTEFL's TSLRIC costs and provide some contribution toward joint and common costs. All of the proposed rates were set based on GTEFL's cost studies, except for the Loop Feeder and Loop Distribution elements. Staff set rates for these elements by increasing the Hatfield Study results. Staff recommends that the

Commission approve the rates for these two elements in the interim, until GTEFL provides the appropriate TSLRIC cost studies.

Table 1: Staff's Recommended Recurring Rates

Network Element	Staff Recommended Recurring Rates
Network Interface Device	
basic	$1.45
12x	$2.10
Loops	
2-wire analog	$20.00
4-wire analog	$25.00
Loop Distribution	*$7.50
Loop Feeder	*$3.00
Digital Cross Connect	
DS0	$1.60
DS1	$4.00
DS3	$31.00
Local Switching:	
Ports	
2-wire analog	$4.75
DS1	$72.25
Usage	
originating/min.	$0.004
terminating/min.	$0.0375
Signaling	
56 kbps link	$80.00
DS1 link	$125.00
Signal Transfer Point	
port termination	$350.00
Channelization System	
DS3 to DS1 multiplexing	$305.00
DS1 to DS0 multiplexing	$205.00
Common Transport	
transport termination	$0.0001
transport facility/mile	$.0000017

Network Element	**Staff Recommended Recurring Rates**
Dedicated Transport	
Entrance Facility:	
2-wire voice	$29.00
4 wire voice	$35.00
DS1 system first	$135.00
DS1 system add'l	$125.00
DS3 protected	$960.00
voice facility	$2.60
DS1 facility per mile	$10.00
DS1 per termination	$30.00
DS3 facility per mile	$13.00
DS3 per term.	$285.00
Tandem Switching	$0.0009512
Databases	
LIDB (ABS)	$.04
Toll-Free calling (800)	$.011

* Staff recommended interim rate

Table 2 presents staff's recommended permanent nonrecurring charges which cover GTEFL's costs. Where GTEFL did not provide nonrecurring cost studies, staff recommends that GTEFL provide

TSLRIC cost studies within 60 days from the issuance of the order from this recommendation.

Table 2: Staff's Recommended Nonrecurring Charges

Network Element	**Staff Recommended Rates**
Unbundled Loop or Port	
Service Ordering:	
Initial Service Order	$47.25
Transfer of Service Charge	$16.00
Subsequent Service Order	$24.00
Customer Service Record	$5.25
Research	
Installation:	$10.50
Unbundled loop, per loop	$10.50
Unbundled port, per port	$62.50
Loop Facility Charge	

The pricing requirements contained in the FCC's Interconnection Order, FCC 96-325, released August 8, 1996 (the Order), and the FCC's rules are currently under a stay. Because of the stay, staff will discuss this issue based both on our interpretation of the Act and the FCC Order.

Pricing Requirements Pursuant To The Act

The Act, in Section 252(d), contains the pricing standards for unbundled network elements. Section 252(d)(1), Interconnection and Network Element Charges, states:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be-
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> (ii) nondiscriminatory, and

(B) may include a reasonable profit.

Staff interprets this Section of the Act to require the prices for unbundled elements to be based on cost and may include a reasonable profit. Based on the Act, staff believes that the appropriate cost methodology is an approximation of TSLRIC. This policy was adopted by the Commission in Order No. PSC-96-0811-FOF-TP, issued June 24, 1996, in Docket No. 950984-TP. (Motion for stay and an appeal have been filed.)

Staff believes that the Act can be read to allow geographic deaveraging of unbundled elements; however, staff does not interpret the Act to require geographic deaveraging. Staff does not believe that the rates for unbundled elements could be geographically deaveraged in this proceeding because of the lack of sufficient cost evidence. Therefore, if the stay of the FCC Order continues, staff would not recommend that the rates for unbundled elements be geographically deaveraged at this time.

Pricing Pursuant To The FCC's Order

TELRIC, TSLRIC, and LRIC

The FCC, in its Order 96-325, released August 8, 1996, defines TELRIC as:

> the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.
>
> (1) *Efficient network configuration*. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.
>
> (2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.
>
> (3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates. (FCC Rules, 51.505(b))

AT&T witness Kaserman states that the relevant cost to which prices should be equated is TSLRIC. Witness Kaserman explains that TSLRIC:

> ...measures the total incremental cost incurred in the long run that is caused by the addition (or deletion) of a service or element from an existing set of services or elements. Technically, the prices are set equal to the TSLRIC (which is a total dollar amount) divided by the number of units to be sold, so that prices are stated as dollars per unit. (TR 693)

Witness Kaserman further explains why TSLRIC is the theoretically correct basis for pricing unbundled network elements:

> First, TSLRIC is an incremental cost. As a result, socially optimal purchase and entry decisions will be fostered with prices set at this level. Second, TSLRIC is long-run in nature. Because the decision to enter a market is, by definition, a long-run decision, TSLRIC prices will send economically correct signals to potential entrants. Third, TSLRIC is an economic cost. As such, it includes a normal (competitive) profit on the capital that is invested to provide the relevant service or element. And fourth, the concept applies to total service costs, which means that all costs that can be causally attributed to production of the product in question are incorporated in these prices. Thus, TSLRIC prices for interconnection services and unbundled network elements are subsidy-free and economically efficient. Such prices will promote efficient and sustainable competition in local exchange markets. (TR 658)

For the purpose of this recommendation, TSLRIC will be defined as the costs to the firm, both volume sensitive and volume insensitive, that will be avoided by discontinuing, or incurred by offering, an entire product or service, holding all other products or services offered by the firm constant. This definition should not be construed as requiring or assuming that the firm would reoptimize its input mix and facilities when a service is added to (or removed from) the existing product mix. That is, TSLRIC, in this recommendation, should not be calculated based upon a "scorched earth" analysis.

Staff believes that theoretically there should not be a substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element. In fact, the FCC states that, "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term "total element long run incremental cost" (TELRIC) to describe our version of this methodology." (FCC 96-325, ¶678) However, it should be noted that the methodology the FCC uses to implement TELRIC would not necessarily be used by this Commission in determining TSLRIC costs. For example, the FCC's TELRIC definition uses a scorched node approach, whereas the Commission has used in the state proceedings a TSLRIC approach using efficient technology. The difference between these methodologies is that the scorched node only considers the current location of central offices and not the existing technology or physical architecture deployed by the carrier in either the central office or outside plant. The TSLRIC based forward-looking approach considers the current architecture and the future replacement technology.

Staff believes that the FCC did make a distinction between TSLRIC and TELRIC for the purposes of setting prices. Neither TSLRIC nor TELRIC costs include forward-looking joint and common costs. Staff does not disagree with the FCC's pricing methodology; in fact, staff recommends TSLRIC prices that include some contribution to joint and common costs.

The FCC states that prices should be based on the TSLRIC of the network element, which will be called the Total Element Long Run Incremental Cost (TELRIC), and will include a reasonable allocation of forward-looking joint and common costs. (FCC 96-325, ¶672) In addition, the FCC adopted in its rules, Section 51.505(a), the following language:

> <u>In general.</u> The forward-looking economic cost of an element equals the sum of: (1) the total element long run incremental cost of the element, as described in paragraph (b); and (2) a reasonable allocation of forward-looking common costs, as described in paragraph (c).

<u>Analysis of Cost Studies</u>

The cost information presented by the parties consists of two types of cost studies. AT&T and MCI recommend the Commission use the results of the Hatfield Study. AT&T and MCI claim that the Hatfield Model provides results that are consistent with the FCC's TELRIC pricing standard. (TR 1596). GTEFL provided TELRIC and TSLRIC cost studies for unbundled network elements. This Commission established a policy in Docket Nos. 950984-TP and 950985-TP of using TSLRIC as a cost basis for setting rates.

Hatfield Model Study

The Hatfield Model was developed by Hatfield and Associates, Inc. at the request of AT&T and MCI. The model has been updated several times since its inception. The version used in this proceeding is version 2.2 release 2. The model was designed to estimate the TELRIC costs of the unbundled network elements and to estimate the cost of basic local exchange telephone service. The Hatfield Model is a "scorched node" model, in that it assumes all network facilities would be designed and built from scratch, constrained only by the current location of central offices. The developers purport that the model develops forward-looking network investments and costs for unbundled network elements and basic local exchange service. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area. (EXH 41)

The Hatfield Model contains six functional modules which contain the information and methodology used to calculate estimated plant investment and expenses. A primary data source used by the Model is the BCM-PLUS input data file. The BCM-PLUS input data file is used within the Hatfield Model as the first step in developing the investment level associated with the feeder and distribution elements of the local loop. This file contains 1995 estimates of households per Census Block Group (CBG), data regarding the size of each CBG, and other CBG-specific data. The Hatfield Model adjusts the household data, converting it to access lines and accounting for multi-line residences, business, payphone and special access lines. BCM-PLUS was derived from part of the Benchmark Cost Model (the BCM1 version) which was developed by US WEST, NYNEX, MCI and Sprint. (Wood TR 1596) A brief explanation of each module is provided below.

1. Line Converter Module

    This module transforms the census data from the BCM-PLUS data input files into a total line count per customer type. This line count is used in the calculation of costs per line.

2. Data Module

    The Data Module computes the quantity and length of distribution and feeder cables per CBG.

3. Loop Module

    This module estimates cable investments by determining the size and type of cable required to serve each CBG. The module then takes the distribution and feeder lengths calculated in the Data Module and using cable price information, calculates the total loop investment necessary for each CBG.

4. Wire Center Module

The Wire Center Module calculates investments in wire centers, switching, signaling and interoffice transmission facilities. The model also determines switching and interoffice capacity to meet the service demand in the area being studied.

5. Convergence Module

The Convergence Module combines the loop investment calculated in the Loop Module with the results of the Wire Center Module. This module also calculates the cost to install poles and conduits considering terrain and population density conditions. The module produces output containing total investment for all plant categories by density range.

6. Expense Module

The Expense Module uses the output from the Convergence Module to generate monthly costs for unbundled network elements and basic local exchange service. These costs include annual capital carrying costs, operations and maintenance expenses and other per-line expenses incurred to provide local service. (EXH 41)

GTEFL raised several criticisms concerning the results generated by the model. GTEFL witness Duncan co-authored a paper entitled the "Economic Evaluation of Version 2.2 of the Hatfield Model." This paper was attached to his direct testimony as exhibit GMD-1. Witness Duncan filed a revised version of his evaluation at the hearing (EXH 47). Staff has provided witness Duncan's summary evaluation of the Hatfield Model, as excerpted in his paper.

Witness Duncan claims that the Hatfield Model is fundamentally flawed, and its shortcomings fall into two areas. Witness Duncan states that the model has never been directly empirically validated and that the model fails direct internal consistency checks of its validity. In addition, witness Duncan states that:

... the Hatfield Model does not provide reasonable

> estimates of the costs of local exchange company (LEC) network elements, either for LECs in general or any particular LEC, because the model (1) departs from fundamental economics in a number of significant ways, (2) contains a number of inaccuracies in execution that depart from reality, (3) produces results that are inconsistent with what can actually be observed, and (4) implies a fantasy version of both regulation and functioning markets. (EXH 47)

Witness Duncan's criticisms from his paper include:

> 1. The model is based on static notions of cost rather than the dynamic notions that are relevant to regulations that seek to emulate the workings of dynamic competitive markets.
>
> 2. There is no attempt at empirical validation of the model or its predictions.
>
> 3. Its predictions fail explicit internal consistency requirements that are a necessary feature of structures capable of representing the minimum cost of producing telecommunications services using the most efficient forward-looking technology.
>
> 4. Its predictions do not agree with other industry models that are based on firm specific data.
>
> 5. The assumption that all volumes currently served by local exchange carriers will be served by a brand new entrant that instantly materializes is inconsistent with both reality and sound economics. Accordingly, costs based on such a model will not be representative of the costs incumbent LECs incur providing services and unbundled networks components.
>
> 6. The inputs (e.g., central office equipment prices) are consistently lower than what local exchange companies actually pay. (EXH 47)

GTEFL asserts, in its post-hearing brief, that it would be a legal error for the Commission to rely on the Hatfield model to establish network element prices. GTEFL argues that the Hatfield model is based on unreliable and unverifiable assumptions, formulas, and calculations; that it has not been validated by its proponents; and that the model's inputs are not based on GTEFL's Florida market. GTEFL urges that the Commission decline to consider the Hatfield model, all testimony related to it and all prices based upon it.

Staff believes GTEFL's argument is untimely. At the hearing, GTEFL did not object to the admission of any testimony and exhibits regarding the Hatfield model on reliability or any other grounds. GTEFL cannot argue now that the evidence should not be considered. Staff recommends that it is plainly within the Commission's discretion to consider the evidence on the Hatfield model, just as it may consider the evidence GTEFL submitted criticizing the model, and give it the weight that it deserves.

AT&T and MCI witness Wood states that the model is not intended to cost a LEC's embedded network. (TR 1602) He further testified that the Hatfield model uses least cost forward-looking technology currently available in the market place, which is also known as the scorched node model. The scorched node model builds a theoretically efficient network based solely on a LEC's existing switch locations. (Wood TR 1680) Witness Duncan criticizes the model's method of assigning CBGs to the closest wire centers. Witness Duncan explains that the BCM component assigns large percentages of households to the wrong wire center. Witness Duncan states that Hatfield proponents argue that the BCM component assigns households more efficiently than the LEC has. However, witness Duncan refutes this claim by stating that the BCM component ignores real world physical barriers such as hills, lakes, and rivers between a CBG and its closest central office. The result is that the Hatfield Model calculates shorter cable routes per CBG, and therefore underestimates the cost. (EXH 47).

The Hatfield model does not use GTEFL or Florida-specific input data only. The model incorporates publicly available data from areas throughout the country. (TR 1707-1709). Under cross-examination, witness Wood explained that economic depreciation lives used were determined in a Bell Atlantic Maryland proceeding (TR 1716), and an average drop wire investment amount was taken from a 1993 New Hampshire study (TR 1727).

Prior to hearing staff performed sensitivity analyses on the Hatfield model, modifying certain assumptions. Two questionable assumptions built into the model had fairly significant impacts on the total cost of a loop. First, the Hatfield Model incorporates a default value of .700 for a "Forward-Looking Network Operations Factor." This factor reduces network operations expense amounts initially computed in the model by 30%, assuming that over time an efficient firm would be able to achieve such a reduction relative to historic expense levels. (TR 1748-1749). During cross-examination by staff, MCI witness Wood acknowledged that Network

Operations Expenses actually consists of five subaccounts. One of these subaccounts is Power, which relates to expenses associated with electricity required to power the telecommunications network; another subaccount pertains to testing expense. (TR 1750) In response to questioning by staff, witness Wood did not fully agree that the application of the forward-looking network operations factor effectively assumes that an efficient LEC will be able to reduce expenses for power and testing by 30%. (TR 1751) However, when staff analyzed the factors used for each of the five subaccounts, the calculations did indicate that the network operations factor did in fact reduce expenses by 30%. By nullifying the impact of this factor, the Hatfield model computes total loop costs $0.62 higher than those sponsored by MCI and AT&T. (TR 1751)

Second, staff discovered that the Hatfield Model has built into it a "structure sharing factor." Structures include the costs of trenching, conduit, and telephone poles, which are associated with the installation of buried, underground, and aerial cable, respectively. The model assumes that supporting structures will be "shared" with other firms -- typically, a cable company and an electric utility. In order for the costs of trenching to be shared, a LEC would need to coordinate its efforts with such other utilities. Witness Wood admitted during cross-examination that he did not know what percentage of GTEFL's conduits and telephone poles are shared by other kinds of providers. (TR 1756-1757) The default values for the structure sharing factors in the Hatfield model are set at .33; the effect of applying these .33 values is to exclude 2/3 of the investment in supporting structures initially computed from the final cost outputs. By setting these values to 1.0 (which attributes 100% to the LEC), total loop costs derived by the model increased by $3.90. (TR 1757).

The cumulative impact of the above two adjustments results in an increase to the Hatfield estimated total loop costs of $4.52 per line per month. These adjustments result in a total increase in costs of 40%. The Hatfield loop cost for all GTEFL loops as submitted by MCI and AT&T is $11.44.

Staff does not believe that the Hatfield Model produces estimated costs which are representative of the costs of GTEFL's network in Florida. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area. The Hatfield model is extremely complex and staff's efforts in thoroughly evaluating the model were impeded by the presence of numerous locked cells in the spreadsheets. Moreover, as demonstrated above, our review leads us to conclude that the Hatfield Model appears to understate costs. Accordingly, staff recommends that the Commission not set permanent rates based on Hatfield results.

GTEFL's TELRIC and TSLRIC Cost Studies

GTEFL submitted TELRIC and TSLRIC cost studies for unbundled network elements in this proceeding. GTEFL defines TSLRIC as a measure of the total incremental cost incurred in the long run that is caused by the addition (or deletion) of a service from an existing set of services. (Sibley TR 769) Witness Sibley notes in his direct testimony ten problems he claims exist when unbundled network elements are priced **at** TSLRIC. They are:

1. TSLRIC pricing does not reflect the firm's total direct costs.

2. TSLRIC pricing does not reflect the firm's economic costs.

3. TSLRIC pricing is not competitive pricing.

4. TSLRIC pricing promotes free riding by competitors.

5. TSLRIC pricing subsidizes entrants.

6. TSLRIC pricing does not take into account the shifts in costs from attributable costs to joint and common costs due to unbundling, thus creating incentives for excessive and economically inefficient unbundling.

7. TSLRIC pricing fails to include joint and common cost increases that are due to unbundling.

8. TSLRIC pricing creates incentives for the incumbent to reduce its joint and common or shared costs.

9. TSLRIC pricing lacks dynamic pricing flexibility and creates incumbent burdens.

10. TSLRIC pricing is discriminatory (TR 771)

GTEFL argues that unbundled element rates should be based on its proposed pricing methodology, the Market-Determined Efficient Component Pricing Rule (M-ECPR). (Sibley TR 772) GTEFL states that a M-ECPR price is equal to the TELRIC of the network element plus the opportunity cost to the owner of that element of leasing it to someone else. (Sibley TR 773-774) Witness Sibley states that the M-ECPR is a method for determining the common costs to be allocated when pricing unbundled network elements. Witness Sibley further defines an M-ECPR price for an unbundled network element as being:

> equal to the sum of its TELRIC plus its opportunity cost, as constrained by market forces. Opportunity costs refers to the net return that an unbundled network element will bring GTEFL if it is not sold at wholesale to a competitor. [SIC] (TR 773-774)

AT&T witness Kaserman states that the M-ECPR is a modified version of the Efficient Component Pricing Rule (ECPR) that was rejected by the FCC, yet still contains many of the same flaws. (TR 701) Witness Kaserman states:

> ...Dr. Sibley's proposal modifies the previous version by capping the opportunity costs component by a "market constraint" representing alternative competitive supply prices or stand alone costs. This modification eliminates only the most egregious outcomes in the practical application of this rule. The basic flaws still remain. (TR 701-102)

Witness Kaserman states further:

> Although Dr. Sibley proposes a modified form of this rule, his suggestion does not represent any improvement over the previously rejected version when one takes account of the very large "common costs" he suggests apply in this case. Dr. Sibley argues for over three quarters of a billion dollars in common costs and further suggests that, due to competitive supply in switches, these costs will be assigned primarily to loops. This renders competitive entry nearly impossible. Using Dr. Sibley's methodology, the stand alone costs of loops and some UNEs will be prohibitive. Consequently, Dr. Sibley's application of the ECPR will amount to monopoly pricing. [SIC] (TR 705)

Staff would note that UNEs, as stated by witness Kaserman above, refer to Unbundled Network Elements (UNEs).

Staff believes there is further evidence that the M-ECPR results in excessive contribution over costs. During cross examination witness Trimble acknowledged proposed markups of 42%, 1129%, and 3107% on 2-wire local loop costs, transport and facility per mile costs, and DS1 facility per airline mile costs, respectively. (TR 1929-1930) Witness Trimble also admitted that up to the price ceiling constrained by stand-alone costs, the M-ECPR would produce a rate where GTEFL would be indifferent to providing the service at retail itself, or selling the network elements to a competitor. (TR 1919) Relative to this indifference produced by the ECPR, this Commission has already stated:

> A competitive market does not thrive on indifference. If a LEC is rendered indifferent by virtue of the pricing of its services as to whether it serves the customer or not, the reason for establishing competition is eliminated. There is no longer any incentive for the LEC to seek to attract customers, and the market is no longer driven by competition...Therefore, we do not agree with GTEFL that ECP is an appropriate approach to determining prices. (Order No. PSC-96-0811-FOF-TP, p.17)

GTEFL argues that the M-ECPR bases prices on forward-looking costs, promotes competition and, when combined with a competitively neutral end-user charge, satisfies the Act's requirement that the ILEC be allowed to earn a "reasonable profit."

Staff points out that the Act permits but does not require an ILEC to earn a reasonable profit. Section 252(d)(1) provides that determinations by state commissions

(A) shall be -
    (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable) and
    (ii) nondiscriminatory, and
(B) <u>may</u> include a reasonable profit. (emphasis added)

Staff views GTEFL's pricing methodology as a means of protecting its current revenue stream. Staff's proposed rates for this proceeding are set to recover GTEFL's costs, and are intended to foster competition as opposed to guaranteeing monopoly revenues. Therefore, based on the excessively large markups on GTEFL's proposed rates and the Commission's prior rejection of the ECPR, staff recommends that the Commission reject GTEFL's proposed M-ECPR to generate rates for unbundled network elements.

<u>Staff's analysis of GTEFL's Cost Studies</u>

GTEFL provided cost studies which contain both TSLRIC and TELRIC costs for unbundled network elements. GTEFL proposes its TELRIC costs as the price floor and an "upper bound" loop price as the price ceiling for unbundled loops. (Trimble TR 1824) GTEFL states that its cost model calculates both volume-sensitive and volume-insensitive costs as necessary to develop TSLRIC costs.

GTEFL used two types of cost models to develop costs. One is the COSTMOD model which is GTEFL's own model and the other is the Switching Cost Information System (SCIS), which GTEFL received under license agreement with BellCore. (Steele TR 1898-1899) Witness Steele claims that the COSTMOD model has been validated and is accurate within several points. Witness Steele states that BellCore validated the SCIS model to be accurate within 2%. (TR 1901) During cross examination, witness Steele stated that GTEFL used a return on equity of 12.2%, with a composite rate of return of 10.4% in its cost calculations. (TR 1905)

Staff is concerned with the level of costs provided in GTEFL's cost studies for 2-wire and 4-wire loops. Although staff is concerned, the parties in this proceeding did not produce sufficient evidence to refute GTEFL's cost studies. However, we believe that the 2-wire and 4-wire loop cost figures are inappropriate because they include costs associated with land and buildings. Therefore, staff has proposed a rate for the 2-wire and 4-wire loops which are lower than GTEFL's stated TSLRIC cost. For all other unbundled elements, staff set recurring and nonrecurring rates which cover GTEFL's costs and provide some contribution towards joint and common costs.

Staff has reviewed GTEFL's cost studies and, based on the evidence in this record, believes that the studies are appropriate because they approximate TSLRIC cost studies and reflect GTEFL's efficient forward-looking costs. Staff believes the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the assumptions appear reasonable. Staff recommends that the Commission require GTEFL to provide TSLRIC cost studies 60 days after the issuance of the Order for the following elements:

Operator systems

Directory Assistance Service

911 Service

AIN Capabilities

Operations Support Systems

Loop Feeder

Loop Distribution

4-wire analog port

GTEFL's Takings Argument

GTEFL contends that adopting prices below GTEFL's actual costs would be an unlawful taking. GTEFL argues that this was exemplified by Mr. Trimble when he discussed the potential impact of the FCC's proxy rates on GTEFL's revenues. (TR 1878-79)

GTEFL argues that the Supreme Court long ago established the rule that the Takings Clause of the U.S. Constitution forbids a regulator from forcing a utility to operate a segment of its business at a loss because the firm happens to be profitable in another segment of its business. Brooks-Scanlon Co. v. Railroad Comm'n of Louisiana, 251 U.S. 396, 399 (1920). GTEFL maintains Brooks-Scanlon and the dozens of subsequent cases that have construed the Takings Clause stand for the proposition that this Commission may not force a regulated entity such as GTEFL to provide a regulated service below cost without due compensation. GTEFL contends that this rule applies even to temporary or interim rates.

GTEFL argues that application of these well-established constitutional principles requires that it recover all of its forward-looking costs and earn a fair rate of return on its historic costs. GTEFL also argues that it must recover the following types of costs to prevent an unlawful taking: 1) incremental costs; 2) all forward-looking joint and common costs; 3) GTEFL's costs of subsidizing other services; and 4) and GTEFL's costs of unbundling and resale. GTEFL asserts that the Takings Clause also prohibits the use of overstated avoided costs, such as those that AT&T and MCI propose. GTEFL argues that neither the FCC's proxy rates nor the prices proposed by AT&T and MCI would allow GTEFL to recover fully any of these costs.

In addition, GTEFL contends that any rates set by this Commission must allow GTEFL a reasonable return on its historic costs. Under the AT&T and MCI proposals, GTEFL recovers none of its historic or embedded costs in building the very network with which AT&T and MCI now seek interconnection. Yet, the Takings Clause requires a fair rate of return for regulated utilities on their investments. See, e.g., Duquesne Light Co. v. Barasch, 488 U.S. 299. Thus, GTEFL argues that it is entitled to recover that portion of its historic costs not yet recovered and to earn a fair rate of return on those investments.

GTEFL contends that to the extent that AT&T and MCI now seek access to GTEFL's network, they should have to either pay for an appropriate share of (and return on) those historic costs or GTEFL should be allowed a rate rebalancing, an end user charge, or a one-time payment which would account for the monies prudently spent by GTEFL, but which are now stranded by the transition from regulation to competition.

GTEFL also argues that if the Commission were to implement rates even temporarily below GTEFL's actual costs, the harm to GTEFL would be irreparable. GTEFL contends that if this were to happen, there could be no real truing up of rates to require the ALECs to reimburse GTEFL for its lost revenue and GTEFL would lose irretrievable market share by virtue of AT&T's and MCI's entry into the market at such low rates.

GTEFL states that if the Commission chooses to impose some form of interim rates pending further review, GTEFL's proposed rates would help to ameliorate the problems inherent in applying interim rates. GTEFL contends that the Commission will find that GTEFL's proposed rates are the most accurate for services and elements that are being provided so that little or no use of a true-up mechanism will be required. GTEFL also contends that even if the Commission completes its review of cost and price studies to find future rates slightly below those proposed by GTEFL, GTEFL proposes to refund any excess portion of the final rate.

MCI did not address GTEFL's claim. AT&T, however, contends that the Commission has already considered and rejected this argument, which was raised by GTEFL in Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996. (GTEFL has filed an appeal and motion for stay of this Order).

> Implicit in GTEFL's arguments is the notion that this Commission owes GTEFL an increase in local rates to replace the company's potential losses of expected contribution and profit. GTEFL is asking that we look at potential revenue losses, albeit under the disguise of alleged constitutional violations. Even if it could be predicted with certainty that there would be major losses, GTEFL does not have a per se statutory right that it must recover profit and contribution as a result of unbundling and reselling services. Even under the rate-base regulation regime in Chapter 364, GTEFL was merely afforded the opportunity to earn a fair return on its investment, not a guarantee of a return. Further, under the new, price-regulated regime in Chapter 364 that GTEFL has elected, GTEFL is not guaranteed a specific return in

> this competitive environment. Moreover, even if the losses come to fruition, such losses, if necessary, can be addressed through appropriate Commission proceedings. (Order PSC-96-0811-FOF-TP, pp.21-22)

AT&T states that the Commission correctly concluded that the arguments raised by GTEFL in that proceeding were invalid, and should rule that such arguments raised by GTEFL in this proceeding are equally invalid.

AT&T asserts that no taking claim can arise from the mere use of the TELRIC approach. It is the result of the methodology, and not the methodology itself, which could be the possible basis for a takings claim. AT&T points out that the Supreme Court explained in FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944), "it is not the theory but the impact of the rate order which counts." Id. at 602. Rather, it is only necessary that the "end result" be just and reasonable. Id. at 603.

AT&T contends that no constitutional claim can be made unless the agency's chosen rate-making methodology produces rates as a whole which are so low that they "jeopardize the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital." Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989). AT&T adds that the Supreme Court also has stated that the end result is to be measured against the company's performance as a whole. The fact that a particular element of the company's business has become unprofitable does not establish a takings claim. See Baltimore & Ohio Railroad Co. v. United States, 345 U.S. 146 (1953); Fort Smith Light & Traction Co. v. Bourland, 267 U.S. 330, 332 (1925).

In trying to prove serious financial impact, AT&T asserts that GTEFL must establish that it is the Commission's order imposing a TELRIC methodology, and not other events, which causes the serious loss that could be remedied by a takings claim. In this context, it is established that economic losses resulting from the introduction of competition do not give rise to a takings claim. The takings clause "has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces." Market St. Ry. Co. v. Railroad Comm'n of State of California, 324 U.S. 548, 567 (1945).

AT&T claims that GTEFL must show a serious economic loss based on the current value of its facilities, and not some historical value of its facilities. "[T]he due process clause has never been held . . . to require a commission to fix rates . . . on the historical valuation of property whose history and current financial statements showed the value no longer to exist. Market St, 324 U.S. at 567. AT&T asserts that this is true even if the new methodology results in substantial revenue losses and unprofitability, because a "regulated utility has no constitutional right to a profit . . . and a company that is unable to survive without charging exploitive rates has no entitlement to such rates." Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission, 810 F. 2d 1168, 1180-1181 (D.C. Cir. 1987).

Moreover, AT&T asserts that the Act compensates GTEFL to offset any reduction of revenues and allows GTEFL to compete in other markets. AT&T claims that this type of regulatory scheme can not effect a taking because it provides GTEFL the opportunity to earn a fair return on its business overall. See Hope, 320 U.S. at 602. See also, Ruckelshaus v. Monsanto, 467 U.S. 986 (1984) and Colorado Springs Production Credit Association v. Farm Credit Administration, 967 F. 2d 648 (D.C. Cir. 1992).

AT&T argues that the only constitutional question is whether a TELRIC approach jeopardizes GTEFL's financial integrity and ability to continue to attract capital. By definition, AT&T asserts that the TELRIC approach provides GTEFL the opportunity to recover all of its forward-looking costs, including the costs of attracting capital.

AT&T also argues that even if revenues generated by a different methodology could be used to assess a possible takings claim, the revenue "shortfalls" of the types at issue here are wholly unobjectionable. AT&T points out that, in contrast to TELRIC, the FCC's Part 69 revenue requirement rules for rate-base regulation reflect a backward-looking, fully distributed cost, rate-of-return methodology. AT&T states that the FCC has recognized that rates based on such historical costs have "no claim to economic rationality," because "current or anticipated costs and revenues are generally the relevant factors influencing business decisions to enter markets and price products." Further Notice of Proposed Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers, 3 FCC Rcd. 3195, 3226-27 (1988).

AT&T further asserts that TELRIC based prices properly exclude certain categories of "costs" that may appear in a rate-of-return revenue requirements, because rates based on historical costs lack economic rationality. AT&T states that the FCC and the courts consistently have rejected takings claims premised on supposed rights to recover such costs, which the incumbent LECs were able to recover in past rates only by virtue of their monopoly power. See Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254 (D.C. Cir. 1993).

Finally, AT&T argues that even if a TELRIC-based pricing requirement would cause GTEFL to suffer the deep financial hardship envisioned in Hope, the end result would not necessarily amount to a taking, because determining whether rates are just and reasonable, involves a balancing of the investor and consumer interests. Hope, 320 U.S. at 603. AT&T contends that the adoption of TELRIC-based pricing would still not constitute a taking even if it causes GTEFL to fail, if the interests of consumers in breaking up the local exchange monopolies is deemed to outweigh GTEFL's interests in preserving its viability.

Although we cannot rule on whether our decision will be unconstitutional, we can address the concerns which GTEFL asserts implicate the takings clause.

As mentioned by AT&T, this Commission has already considered and rejected this argument, which was raised by GTEFL in Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996. (GTEFL has filed an appeal and motion for stay of this Order). Staff believes that the rationale regarding the takings issue in that Order is applicable to this instance.

Property interests are not created by the Constitution, but rather are delineated by existing rules or understandings that stem from an independent source such as state law. Ruckelshaus v. Mansanto Co., 467 U. S. 986, 1000 (1984) citing Webb's Fabulous Pharmacies, Inc v. Beckwith, 449 U.S. 155, 161 (1980).

Sections 251 and 252 of the Act impose certain obligations on the incumbent LECs including the duty to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. If the parties can not negotiate an agreement, either party may petition this Commission to arbitrate any open issues. The Commission's determinations for just and reasonable rates for network elements shall be based on cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network elements, be nondiscriminatory, and may include a reasonable profit. Most significantly, staff believes the unbundled rates we have recommended for GTEFL meet the Commission's obligation to ensure that the rates are not below GTEFL's costs.

Staff is not persuaded by GTEFL's arguments. First, Section 252(c)(1)(A) of the Act provides that just and reasonable rates shall be based on the cost of providing the network element. As discussed, basing rates on TSLRIC meets Section 252(c)(1)(A) of the Act, because TSLRIC is the cost of providing the service. Second, Section 252(c)(1)(B) provides that just and reasonable rates may, not must, include a reasonable profit. As discussed previously, TSLRIC includes recovery of the cost of capital or a reasonable profit; therefore, staff is not persuaded by GTEFL's argument.

In anticipation or speculation that GTEFL will experience lost revenues as a result of unbundling, GTEFL believes that this Commission must order an immediate rate rebalancing or explicit subsidy payments when unbundled rates go into effect. Even if we agreed that there was a possibility of major revenue losses, that mere possibility would not give rise to an immediate rate increase. To the extent GTEFL experiences revenue losses, there are specific procedures for relief set forth in Chapter 364. First, under Section 364.051(5), Florida Statutes, if GTEFL believes that circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services, it may petition the Commission for a rate increase. This Commission shall grant such a petition only after an opportunity for a hearing and a compelling showing of changed circumstances. Second, under Section 364.025, Florida Statutes, GTEFL may seek a subsidy towards its universal service obligations. Specifically, GTEFL must file a petition showing that competition has eroded its ability to support universal service and identify the amount of subsidy needed. See Order No. PSC-95-1592-FOF-TP.

ISSUE 14: Should GTEFL be prohibited from placing any limitations on AT&T's and MCI's ability to combine unbundled network elements with one another, or with resold services, or with AT&T's, MCI's or a third parties facilities, to provide telecommunications services to consumers in any manner AT&T or MCI chooses? **(GREER)**

RECOMMENDATION: Yes. Staff recommends that the Commission require GTEFL to allow AT&T and MCI the ability to combine unbundled network elements in any manner they choose, including recreating existing GTEFL services as provided in Section 251(c)(3) of the Act and the FCC's Order.

POSITION OF PARTIES

AT&T: Yes. AT&T has a statutory right under the Act to combine unbundled network elements in any manner, and at any location which is technically feasible, in order to provide its customers with telecommunications services. GTEFL may not limit or restrict AT&T's ability to combine, use, or resell unbundled network elements.

GTEFL: No. ALECs cannot reassemble network elements to avoid taking wholesale offerings. The Act's pricing standards for unbundled elements and services offered for resale are deliberately different. AT&T and MCI wish to create arbitrage opportunities that would eviscerate the Act's unambiguous distinction between unbundled elements and wholesale services.

MCI: Yes. Section 251(c)(3) of the Act requires that GTEFL offer unbundled elements in a manner that allows MCI to recombine such elements in order to provide telecommunications services. The Act does not allow limitations on the manner in which the elements are combined, or the telecommunications services which can be provided through the use of unbundled elements.

STAFF ANALYSIS: Section 251 (c)(3) of the Telecommunications Act of 1996 states that the incumbent local exchange carrier has the duty to:

> ...provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just reasonable, and nondiscriminatory...

This same section in the Act also states:

> An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Staff interprets this section of the Act to permit the rebundling of network elements in any manner AT&T or MCI chooses, including the recreation of an existing GTEFL service.

Staff believes purchasing an existing retail service at wholesale rates is not the same as recreating the same type of service by combining unbundled elements. The FCC's rules are clear that a requesting telecommunications carrier can provide any telecommunications service that can be offered by means of network elements. Specifically, Section 51.307(c) provides that

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that <u>allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element</u>. (emphasis added)

Also, Section 51.309(a) provides that

> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner that the requesting telecommunications carrier intends.

In addition, Section 51.315(a) states that "an incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carrier to combine such network elements in order to provide a telecommunications service." Finally, Section 51.315(c) specifically provides that upon request,

> an incumbent LEC shall perform the functions necessary to combine unbundled elements <u>in any manner</u>, 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.

In ¶333 of the Order, the FCC states:

> Additionally, carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under section 251 (c)(4) of the 1996 Act.

While the service may appear the same to an end-user, the service is clearly different to the carrier, based on how it is provisioned.

The FCC's Order, ¶334, states:

> If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks... It thus faces the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. (Many network elements can be used to provide a number of different services.) A carrier that resells an incumbent LEC's services does not face the same risk. This distinction in the risk borne by carriers entering local markets through resale as opposed to unbundled elements is likely to influence the entry strategies of various potential competitors.

AT&T states that the Commission should not allow GTEFL to restrict AT&T's ability to combine unbundled network elements. AT&T asserts that in order for consumers to benefit from competition, carriers must be able to easily obtain and configure the unbundled elements that they will use to provide services. (Gillan TR 87) AT&T states that this can be done through what is typically called the "platform configuration." AT&T states that the platform configuration is the combined purchase of unbundled switching and an unbundled loop. (TR 88)

AT&T states that the platform configuration promotes competition and benefits the consumers in a number of ways. First, the platform configuration efficiently uses the existing network to obtain switching and call termination. Second, customers can easily shift between local providers using the platform configuration because the existing exchange line does not need to be reconfigured to provide service. Third, the platform configuration solves, at least temporarily, the entry barrier presented by the absence of number portability because the new entrant's customers continue to be served by the incumbents's switch. Finally, the platform configuration allows the new entrant to offer new and different services or combinations of services. (Gillan TR 88-90)

MCI does not address this issue directly in its testimony filed in this proceeding. It does argue the legal implications of this issue in its post-hearing brief. MCI states that Section 251(c)(3) of the Act obligates GTEFL to provide network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services. MCI points out that GTEFL only opposes the combination of an unbundled loop and unbundled local switching. (BR p.54)

GTEFL argues that AT&T and MCI should not be permitted to avoid the mandated resale pricing standards by recombining unbundled elements into a service equivalent to a wholesale offering. (McLeod TR 1268) GTEFL states that allow the combination of unbundled elements into an equivalent service would render the Act's distinction between unbundled elements and wholesale services meaningless. (TR 1279) GTEFL states that neither Congress nor the FCC intended to encourage this sort of tariff arbitrage. (Wellemeyer TR 1447)

Staff believes that purchasing an existing retail service at wholesale rates is not the same as recreating the same type of service by combining unbundled elements and is supported by paragraph 334 of the FCC's order.

Staff concurs with the FCC's Order that purchasing a retail service at wholesale does not contain the same element of risk that recombining unbundled elements to recreate a service does. AT&T witness Gillan agrees when he says, "I'm going to distinguish resale from buying network elements. Because I think buying network elements, even when you buy all of them, is fundamentally a different environment." (TR 120) AT&T states that there is a difference in becoming a reseller and a network-based competitor. AT&T states that if you simply resell the LEC's service you do not have to develop detailed product management skills or other skills that it takes to create and offer services. AT&T states that if a new entrant becomes a network element-based company, it has to design local exchange services, price the service, and carry the risk associated with those services. (Gillan TR 155-157)

Based on the clear direction of section 251(c)(3) of the Act and the FCC's Order and Rules, staff recommends that the Commission allow AT&T and MCI the ability to combine unbundled network elements in any manner they choose, including recreating existing GTEFL services.

ISSUE 15: a) Should GTEFL be required to provide AT&T and MCI with access to GTEFL's unused transmission media?

b) What are the costs incurred, and how should those costs be recovered? **(REITH)**

RECOMMENDATION:

a) No, except that GTEFL should be required to lease dark fiber to AT&T and MCI solely for interconnection purposes under the same terms and conditions as those contained in GTEFL's agreement with MFS and memorialized in Commission Order No. PSC-96-1401-FOF-TP. The Commission should take official recognition of Order No. PSC-96-1401-FOF-TP, issued November 20, 1996.

b) The cost for dark fiber should be recovered through a non-discriminatory tariff or contract terms from GTEFL.

POSITION OF PARTIES

AT&T: a) Yes. Unused transmission media is a network element per the FCC definition. Unbundling unused transmission media is technically feasible, it is not proprietary, and denial of access would add to AT&T's costs.

b) The prices for such Unused Transmission Media should be priced as a separate element based on the TSLRIC or TELRIC of providing the facility.

GTEFL: a) No. Dark or dim fiber is not "used in the provision of a telecommunications service." As such, it is not a network element subject to unbundling under the Act.

b) Because dark fiber is not an unbundled element, GTEFL has provided no information on costs.

MCI: a) Yes. From an engineering perspective, unused transmission media such as dark fiber is simply another level in the transmission hierarchy and is a network element which must be unbundled upon request.

b) Like any other unbundled element, the price for dark fiber should be based on its forward looking economic cost in accordance with TELRIC principles.

STAFF ANALYSIS: This issue deals with AT&T and MCI's request to purchase dark fiber as an unbundled network element. Staff defines dark fiber as fiber optic cabling facilities that have not been outfitted with the electronic equipment necessary to transmit signals through the fiber.

The Act provides for requesting telecommunications carriers to have nondiscriminatory access to network elements on an unbundled basis. (§251(c)(3)) The Act states that a network element shall be defined as the following:

> The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (§3(29))

GTEFL states that dark fiber is not a network element; therefore, it is not subject to unbundling. Witness Hartshorn points out that the Act defines a network element to include facilities that are <u>used</u> in the provision of a telecommunications service. (TR 1145) Witness Hartshorn maintains that GTEFL does not use dark fiber in its network. Dark fiber must be lit to be used; therefore, it does not meet the statutory definition of a network element. (TR 1145-1146)

AT&T asserts that dark fiber is a network element because it is "a facility or equipment used in the provision of telecommunications service." AT&T maintains that because it is not currently in use does not change its character, which is to provide telecommunications service. (BR p.81) Witness Crafton asserts that without the ability to lease dark fiber, AT&T will face "yet another capital investment barrier to developing its own network." (TR 352)

MCI acknowledges that dark fiber is not used to provide telecommunications service. (Powers 1005) Witness Powers echoes AT&T's concerns and adds that without the ability to purchase dark fiber, MCI's only choices will be to place its own facilities in the ground or purchase transport services from GTEFL. (TR 965) Witness Powers adds that having to purchase GTEFL's existing services forces MCI to be held captive to GTEFL's technology rather than being allowed to deploy new, more efficient technologies that are consistent across geographic locations. (TR 964)

The FCC declined to make a recommendation on whether dark fiber qualifies as a network element under the Act. The FCC stated that there was not sufficient information in its record on which to decide this issue. (FCC 96-325, ¶ 450)

Staff does not believe that dark fiber should be classified as a network element, as defined by the Act. Staff agrees that dark fiber is not used in the provision of a telecommunications service. Staff does not believe that the unbundled access provisions in Section 251 of the Act apply.

In addition to the network element argument above, AT&T points out that GTEFL has already agreed to provide dark fiber to Metropolitan Fiber Systems of Florida, Inc. (MFS). (BR p.81) AT&T is referring to the agreement between GTEFL and MFS that was filed August 27, 1996 and approved, under Section 252(e) of the Act, at the November 12, 1996 Agenda Conference. The Commission should take official recognition of this decision memorialized in Commission Order No. PSC-96-1401-FOF-TP, issued November 20, 1996. Specifically, AT&T is citing to paragraph III.C. which reads:

> In extending network interconnection facilities to the D-NIP, MFS shall have the right to extend its own facilities or lease dark fiber facilities (if available) or digital transport facilities from GTEFL or from any 3rd-party, subject to the following terms:
>
> 1. Such leased facilities shall extend from any point designated by MFS on its own network (including a co-location facility maintained by MFS at a GTEFL wire center) to the D-NIP or associated manhole or other appropriate junction point.
>
> 2. Where MFS leases such facilities from GTEFL, MFS shall have the right to lease under non-discriminatory tariff or contract terms from GTEFL.

MFS uses the acronym "D-NIP" to mean a Designated Network Interconnection Point. Staff believes that the GTEFL-MFS agreement is very specific in that dark fiber facilities may be leased for interconnection at the D-NIP. Staff does not believe that this provision allows MFS to lease dark fiber for the purpose of creating its own network as proposed by AT&T and MCI: staff believes this is a narrower and specific use of dark fiber for the provision of interconnection. The FCC defines "interconnection" as "the linking of two networks for the mutual exchange of traffic.

This term does not include the transport and termination of traffic." (§51.5)

Since GTEFL has negotiated an agreement with MFS, which the Commission has approved, for the use of dark fiber for this limited purpose, staff believes that 252(i) requires GTEFL to offer the same terms and conditions to AT&T and MCI. Section 252(i) states:

> AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS. - A local exchange carrier shall make available <u>any interconnection, service, or network element provided under an agreement approved under this section</u> to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreements. (emphasis added)

Section 252(i) is clear: if a local exchange carrier provides any interconnection, service, or network element available under an approved agreement, the LEC must make it available to other requesting carriers under the same terms and conditions as those provided in the agreement. Thus, since GTEFL has agreed to allow MFS to lease dark fiber for the specific purpose in their agreement, staff believes that the plain reading of 252(i) requires GTEFL to also make it available to AT&T and MCI under the same terms and conditions. Therefore, staff recommends that GTEFL be required to lease dark fiber to AT&T and MCI only for interconnection purposes, under the same terms and conditions as those in GTEFL's agreement with MFS, which is memorialized in Commission Order No. PSC-96-1401-FOF-TP.

Staff notes that the Eighth Circuit stayed Section 51.809 of the FCC's rules regarding Section 252(i). The Court said:

> Here again, price becomes a key issue. When the FCC promulgated its rule, it expanded the statutory language of §252(i) to include <u>rates</u>, terms, and conditions." <u>Id.</u> §51.809 (emphasis added). The petitioner's objection is that the rule would permit the carriers seeking entry into a local market to "pick and choose" the lowest-priced individual elements and services they need from among all of the prior approved agreements between that LEC and other carrier, taking one element and its price from one agreement and another element and its price from a different approved agreement.

Although staff interprets Section 252(i) to include prices, the Commission does not need to address whether 252(i) includes prices in this instance. The agreement specifically provides that where

MFS leases such facilities, MFS "shall have the right to lease under non-discriminatory tariff or contract terms from GTEFL."

The second part of this issue deals with what costs are incurred in leasing dark fiber, and how they should be recovered. AT&T and MCI's positions on cost recovery are based on dark fiber being offered as an unbundled network element. (AT&T BR p.82; MCI BR p.58) GTEFL states that since dark fiber is not considered an unbundled element, GTEFL has not performed a cost study for it. GTEFL believes that if it chooses to offer dark fiber, the price should be negotiated. (BR p.74)

The MFS and GTEFL agreement states that MFS can lease dark fiber under nondiscriminatory tariff or contract terms from GTEFL. Staff believes that it is appropriate for the price of dark fiber to be negotiated or offered under tariff. Therefore, Staff recommends that the cost for dark fiber should be recovered through a non-discriminatory tariff or contract terms from GTEFL.

ISSUE 16: At what points should AT&T and MCI be permitted to interconnect with GTEFL? **(REITH)**

RECOMMENDATION: GTEFL should be required to provide interconnection at any technically feasible point requested by AT&T and MCI.

POSITION OF PARTIES

AT&T: The Act requires that GTEFL must provide interconnection at any requested, technically feasible point.

GTEFL: AT&T and MCI may interconnect with GTEFL at any of the minimum technically feasible points required by the FCC. Interconnection at additional points will be at GTEFL's discretion.

MCI: MCI should be permitted to interconnect at any technically feasible point on GTEFL's network that it designates, and MCI should not be required to interconnect at more than one point per LATA. MCI and GTEFL must use the same MCI-designated interconnection point (IP) for traffic in each direction since traffic on 2-way trunks (which may be requested by MCI) cannot be segregated to separate IPs.

STAFF ANALYSIS: AT&T and MCI are requesting that GTEFL be required to interconnect with their respective networks at any technically feasible point on GTEFL's network. (AT&T BR p.82; Powers TR 940) Section 251(c)(2)(B) of the Act states that interconnection must be provided at any technically feasible point within the incumbent LEC's network. (MCI BR p.58) MCI points out that the FCC's rules identify a minimum set of places where interconnection is technically feasible. (Powers TR 940-942) Section 51.305(a)(2) of the FCC's rules states that an incumbent LEC shall provide interconnection with its network:

> (2) at any technically feasible point within the incumbent LEC's network including, at a minimum:
>
> > (i) the line-side of a local switch;
> >
> > (ii) the trunk-side of a local switch;
> >
> > (iii) the trunk interconnection points for a tandem switch;
> >
> > (iv) central office cross-connect points;
> >
> > (v) out-of-band signaling transfer points

> necessary to exchange traffic at these points and access call-related databases; and
>
> (vi) the points of access to unbundled network elements as described in §51.319 of this part;

AT&T asserts that if the points at which it requests interconnection are the same points at which GTEFL is already providing access, then interconnection at those points is technically feasible. AT&T cites to the following determination by the FCC as support. (BR pp.82-83)

> We also conclude that preexisting interconnection or access at a particular point evidences the technical feasibility of interconnection or access at substantially similar points. Finally, we conclude that incumbent LECs must prove to the appropriate state commission that a particular interconnection or access point is not technically feasible. (FCC 96-325, ¶ 198)

GTEFL agrees that interconnection can only take place where it is technically feasible to occur. (Munsell TR 1542) However, witness Munsell states that the following factors may frustrate or even prevent interconnection, including incompatibility between ALEC and GTEFL's equipment; too many ALECs requiring interconnection at a given point; the inability of GTEFL switching and transport facilities to handle additional traffic; and the unavailability of collocation space. (TR 1542) Witness Munsell asserts that it should not be presumed that interconnection is technically feasible because GTEFL has previously provided such interconnection. Witness Munsell adds that the FCC's order states that:

> We conclude that successful interconnection or access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point, or at substantially similar points in networks employing substantially similar facilities. In comparing networks for this purpose, the substantial similarity of network facilities may be evidenced, for example, by their adherence to the same interface or protocol standards. We also conclude that previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality. Although most parties agree with this

> conclusion, some LECs contend that such comparisons are all but impossible because of alleged variability in network technologies, even where the ultimate services offered by separate networks are the same. We believe that, if the facilities are substantially similar, the LECs' contention is adequately addressed. (FCC 96-325, ¶ 204)

Witness Munsell interprets the order to say that interconnection at a "requested point must be <u>substantially</u> similar and employ <u>substantially</u> similar facilities, and even interconnection is only "substantial evidence" of technical feasibility -- technical feasibility is not presumed." (TR 1556) Witness Munsell acknowledges that interconnection at end offices, tandem switches, and mutually acceptable meet points are most often used because they pose the fewest technical problems. (TR 1543)

Staff believes that GTEFL should provide interconnection at any technically feasible point within its network. Staff agrees with the FCC that this includes preexisting interconnection or access at a particular point or access at substantially similar points. Staff realizes that the term "substantially similar" is subjective but we also recognize that it is the LEC's burden to prove that an interconnection or access point is not technically feasible. Therefore, staff recommends that GTEFL should provide interconnection to AT&T and MCI, at any technically feasible point within its network.

ISSUE 17: a) What access should be provided by GTEFL for its poles, ducts, conduits, and rights-of-way?

b) What are the costs incurred, and how should those costs be recovered? **(REITH)**

RECOMMENDATION:

a) GTEFL should be required to provide nondiscriminatory access to its poles, ducts, conduits, and rights-of-way. GTEFL should allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself.

(b) GTEFL should charge AT&T and MCI a pro rata share of the TSLRIC costs for supplying the facilities requested.

POSITION OF PARTIES

AT&T: a) GTEFL must provide AT&T non-discriminatory access to pole space, ducts, conduit, and rights-of-way on terms and conditions at a parity to that it provides to itself or other LECs. GTEFL should neither preclude or delay allocation because of potential needs nor satisfy its existing needs prior to providing access to others.

b) When GTEFL incurs costs to add additional space to accommodate an AT&T request, AT&T will pay its proportionate share of the costs incurred, based on the TELRIC of providing the items. AT&T will pay an Attachment Fee for each GTEFL facility upon which AT&T obtains authorization to place an Attachment.

GTEFL: a) Despite GTEFL's concerns about the constitutionality of the Act's provisions on this matter, GTEFL will provide access to these facilities in accordance with its property rights and reasonable concerns for network safety, reliability, capacity, and engineering standards.

b) The costs will vary with the site of the requested access. The party requesting access should pay all of the costs, including those associated with make-ready, replacement, rearrangement, and any other, related activities.

MCI: a) GTEFL should be required to make any unused capacity in its poles, ducts, conduits, and rights-of-way available on a nondiscriminatory basis to all carriers, including itself, and should not be allowed to reserve capacity in such facilities.

b) Costs of existing capacity should be recovered through a nondiscriminatory rental fee designed to recover a pro rata share of the facility costs. Costs of capacity expansions should be borne by the cost-causer, and shared by any party who subsequently makes use of the expanded facility.

STAFF ANALYSIS: Section 251(b)(4) of the Act deals with access to rights-of-way by requiring that all local exchange carriers have the following duty:

> (4) ACCESS TO RIGHTS-OF-WAY. - The duty to afford access to poles, ducts, conduits, and rights-of way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

Staff notes that Section 224 is titled REGULATION OF POLE ATTACHMENTS and deals with the regulation of poles, ducts, conduit and rights-of-way.

AT&T and MCI state that Section 224(f)(1) of the Act imposes a specific duty on GTEFL to provide nondiscriminatory access to its poles, ducts, conduit and rights-of-way. (Crafton TR 347; Price TR 843) Section 224(f)(1) of the Act states that:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.

Witness Crafton asserts that "nondiscriminatory access" means that GTEFL must take reasonable steps to ensure that AT&T has access to and the ability to use poles, ducts, conduit and rights-of-way on the same terms and conditions as GTEFL affords itself. (TR 347) Witness Crafton further asserts that GTEFL should not be permitted to first satisfy all of its existing and projected five year spare capacity needs before allowing others to share the pathways. (TR 347, 363)

GTEFL maintains that the Act did not divest GTEFL of its property rights and that AT&T's and MCI's rights to GTEFL's poles and conduit must be subject to certain limitations. (Jernigan TR 1192) Witness Jernigan states that GTEFL must be able to satisfy both its current needs and future space requirements. (TR 1204-1205) GTEFL forecasts its future requirements based on a five year horizon. Witness Jernigan points out that the capital investment associated with the placement of poles and conduits is paid by GTEFL. Once these facilities have been placed, GTEFL is responsible for using and maintaining them in a safe manner. (TR 1192-1193)

In addition to capacity requirements, GTEFL believes they should be able to deny access to poles and conduits based on safety, reliability and generally applicable engineering purposes. Witness Jernigan asserts that it defies logic that the FCC determined to allow only electric utilities to deny access on these grounds. (TR 1198, 1200) Such "denial should not turn on the type of service provided by the owner of the facility." (Jernigan TR 1198) Staff believes witness Jernigan is relying on paragraph 1172 of the Order, which states:

> While the express language of sections 224(f)(1) and (f)(2) suggests that only utilities providing electric service can take into consideration concerns relating to safety and reliability, we are reluctant to ignore these concerns simply because the power pole owner is not an electric utility ... [I]n some circumstances, a LEC will have legitimate safety or engineering concerns that may need to be accommodated ... [W]e conclude that any utility may take into account issues of capacity, safety, reliability and engineering when considering attachment requests, provided the assessment of such factors is done in a nondiscriminatory manner.

GTEFL disagrees with the FCC's interpretation that the Act does not permit non-electric utilities to reserve space on their own facilities. GTEFL believes that the States, not the FCC, are in the best position to determine how best to accommodate carrier of last resort obligations as they may exist in State statutes. Further, GTEFL contends that a prohibition on GTEFL's reservation of space, coupled with the access rate requirements of section 224 and the FCC's implementing regulations, effects a taking of GTEFL's property in violation of the U.S. and Florida Constitutions. GTEFL maintains that the Court made it clear that the property rights include the rights to "possess, use, and dispose" of the property." Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419. GTEFL argues that by its interpretation of section 224, the FCC would strip GTEFL, as a property owner, of its right not only to exclude others, but to make use of its own property in the future.

GTEFL points out that this Commission has considered the takings issue before in the collocation context. This Commission determined that it had no authority to take the LECs' property: "we observe that the Commission lacks the power of eminent domain which is required to take property. We agree that the authority to determine the appropriate compensation for a taking rests with the judiciary." GTEFL argues that the same conclusion applies here. (Order Nos. PSC-94-0285-FOF-TP, issued March 10, 1994.) [The Commission stayed that order when the FCC ordered mandatory virtual, rather than physical, collocation. Order No. PSC-94-1102, FOF-TP, issued September 7, 1994.

Staff points out that when the Commission decided that order, the Commission was persuaded by the argument that property dedicated for the public purpose is subject to a different standard when, pursuant to statutory authorization, a regulatory body mandates certain uses of that property in the furtherance of its dedicated use. The Commission was not persuaded by the LECs' argument that a mandatory physical occupation is a per se taking.

In the instant case, the statutory authorization is provided by the Telecommunications Act of 1996 and the FCC's Order. Staff believes that such access for poles, ducts, and rights-of-way provided by GTEFL consistent with the Act and Order does not turn statutorily authorized regulation into a compensable taking.

Staff believes Section 224(f)(1) of the Act requires without qualification that competitive telecommunications carriers must have nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by incumbent LECS. Nondiscriminatory access means access for all on the same terms and conditions as the incumbent LEC holds for itself. In addition, Section 251(c)(2) charges the incumbent LEC with the duty to provide for interconnection of any requesting telecommunications carrier with the LEC's network that is at least equal in quality to that provided the LEC itself and on nondiscriminatory terms and conditions. See also, Sections 51.305, 51.311, and 51.313, C.F.R. Moreover, Section 251(c)(6) charges the incumbent LEC with the further duty to provide physical collocation of equipment necessary for interconnection on terms and conditions that are nondiscriminatory.

Paragraph 1170 of the Order states that:

> Section 224(f)(1) requires nondiscriminatory treatment of all providers of [telecommunications or video] services and does not contain an exception for the benefit of such provider on account of its ownership or control of the facility or right-of-way ... Allowing the pole or conduit owner to favor itself or its affiliate with respect to the provision of telecommunications or video services would nullify, to a great extent, the nondiscrimination that Congress required. Permitting an incumbent LEC, for example, to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.

In Paragraph 1191, the FCC states that Section 224(f)(1) is not reasonably susceptible of a reading that gives the pole owner the choice of whether to grant telecommunications carriers and cable television systems access. See also, §1.1403, C.F.R.

Staff believes that GTEFL may reserve capacity in order to meet future needs, but to the extent that it does, it must permit AT&T and MCI to do the same. Furthermore, GTEFL may not reserve space for local exchange service to an extent that would favor GTEFL's future needs over the present needs of AT&T or MCI. Thus, given the FCC's order, and its interpretation of the Act, staff recommends that the Commission require GTEFL to allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself. Access must be competitively neutral. Staff must be clear that this recommendation is a direct result of the FCC's order. Staff has concerns with the incumbent LEC's ability to provide wholesale and retail services without being able to reserve capacity in excess of that provided to the ALEC.

AT&T states that it will reimburse GTEFL for its proportional share of the costs incurred to expand space to accommodate AT&T's attachment requests based on TELRIC. AT&T further states it will pay an attachment fee determined by the FCC's methodology. (BR pp.84-85) MCI states that compensation for shared use of ILEC-owned or ILEC-controlled poles, ducts, and conduits should be based on TELRIC. (Price TR 833) MCI further states if a facility expansion is required to accommodate its attachment requests, it will bear the cost of that expansion subject to reimbursement by others who subsequently share the expanded facility. (BR p.61)

GTEFL states the ALECs accessing GTEFL's facilities should pay, as they are the cost causers and they receive the benefits. Rates should be based on direct costs with appropriate contribution to common costs. Provisioning charges should be based on actual cost pass-throughs. Charges for rights-of way should be shared by all that use them. (Bailey TR 1216) Furthermore, GTEFL argues that, Section 224 of the Act notwithstanding, it must recover the fair market value of the property taken. (BR p.78)

Staff believes attachment compensation is to be determined in accordance with the provisions of Section 224(d) and (e). Staff notes that the FCC will undertake rulemaking with respect to the methodology for pole attachment rates. In paragraph 1211, the FCC states that

> With respect to the allocation of modification costs, we conclude that, to the extent the cost of modification is incurred for the specific benefit of any particular party, the benefiting party will be obligated to assume the cost of modification, or to bear its proportionate share of the cost with all other attaching entities participating in the modification. If a user's modification affects the attachments of others who do not initiate or request the modification, ... the modification cost will be covered by the initiating or requesting party. Where multiple parties join in the modification, each party's proportionate share of the total cost shall be based on the ratio of new space occupied by that party to the total amount of new space occupied by all the parties joining in the modification.

See also, §1.1416, C.F.R.

Thus, staff recommends that GTEFL may charge AT&T and MCI a pro rata share of the TSLRIC for supplying the attachments requested in conformance with the FCC's allocation requirements.

ISSUE 18: Does the term "rights-of-way" in Section 224 of the Act include all possible pathways for communicating with the end user? **(REITH)**

RECOMMENDATION: No. The term "rights-of-way" in Section 224 of the Act does not include all possible pathways for communicating with the end user.

POSITION OF PARTIES

AT&T: Neither the Act nor the FCC rules define "poles, ducts, conduits, and rights-of-way." However, AT&T believes these terms are of general applicability and include all possible pathways to the customer which the incumbent LEC controls, in whatever physical form, otherwise, the incumbent LEC could effectively shut off access to particular customers.

GTEFL: No. The Act does not use the term "pathway" anywhere, and Congress did not intend such a broad expansion of the traditional right-of-way concept.

MCI: No.

STAFF ANALYSIS: AT&T states that "[a] right of way is the right to place poles, conduits, cables, or other equipment on the property of another, as well as to obtain physical access to that equipment." Witness Crafton adds that a right of way may run to, on or above public or private property, including air space, and may include discrete spaces in buildings. (TR 345) Crafton asserts that GTEFL has accumulated access to public and private pathways for decades in order to construct network facilities and that these pathways are a finite resource. (TR 345-346)

MCI believes that poles, ducts, conduits, and rights-of-way consist of "all the physical facilities and legal rights needed for access to pathways across public and private property to reach customers." (Price TR 831) Witness Price includes poles, pole attachments, ducts, conduits, entrance facilities, equipment rooms, remote terminals, cable vaults, telephone closets, rights-of-way, or any other inputs needed to create pathways to complete telephone local exchange and toll traffic. (TR 831) Witness Price admits that MCI's use of the term "pathway" is more expansive than poles, ducts, conduit and rights-of-way. (TR 905)

GTEFL asserts that there is no evidence that Congress intended to expand the term "rights-of-way," as it is used in Section 224, to include all possible pathways to the customer such as entrance facilities, cable vaults, equipment rooms and telephone closets.

(Jernigan TR 1200) Although "rights-of-way," as used in Section 224 of the Act, has never been formally defined, witness Jernigan states that it "has always referred to the legal right of a utility to place poles or conduits across public or private property." (TR 1200-1201) As support, GTEFL cites to the FCC's order which states that:

> We note that some commenters favor a broad interpretation of "pole, duct, conduit, or right-of-way" because that approach would minimize the risk that a "pathway" vital to competition could be shut off to new competitors. Others argue for a narrow construction of this statutory phrase, contending that Congress addressed access to other LEC facilities elsewhere in the 1996 Act. We recognize that an overly broad interpretation of this phrase could impact the owners and managers of small buildings, as well as small incumbent LECs, by requiring additional resources to effectively control and monitor such rights-of-way located on their properties. We do not believe that section 224(f)(1) mandates that a utility make space available on the roof of its corporate offices for the installation of a telecommunications carrier's transmission tower, although access of this nature might be mandated pursuant to a request for interconnection or for access to unbundled elements under section 251(c)(6). The intent of Congress in section 224(f) was to permit cable operators and telecommunications carriers to "piggyback" along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility. (FCC 96-325, ¶ 1185)

Staff believes that the term "rights-of-way" in Section 224 of the Act should not include all possible pathways for communicating with the end user. Staff agrees with the FCC that such a broad interpretation could impact many more individuals than just incumbent LECs. Staff believes that access to entrance facilities, cable vaults, equipment rooms and the like, should be handled on a case-by-case basis. Therefore, staff is recommending that the term "rights-of-way" in Section 224 of the Act does not include all possible pathways for communicating with the end user.

ISSUE 19: Should GTEFL be required to provide interim number portability solutions including remote call forwarding, flex-direct inward calling, route index portability hub, and local exchange route guide reassignment? **(GREER)**

RECOMMENDATION: GTEFL should provide the following interim number portability solutions:

a. Remote Call Forwarding
b. Direct Inward Dialing
c. Directory Number Route Index
d. Route Index Portability Hub
e. Local Exchange Routing Guide to the NXX Level

POSITION OF PARTIES

AT&T: Yes. Until the Local Number Portability database is implemented, local number portability must be done in the local switch. GTEFL should be required to support the following types of interim number portability:

- Remote Call Forwarding
- Directory Number-Route Index
- Route Indexing Portability Hub
- Local Exchange Routing Guide Reassignment

GTEFL: No. It would be a needless waste of resources for GTEFL to provide all four of these options on just an interim basis, particularly when LERG reassignment isn't even a portability method. GTEFL will continue to offer tariffed remote call forwarding and is also willing to provide direct inward dialing.

MCI: GTEFL should be required to provide interim number portability through remote call forwarding and flex-direct inward calling. MCI is not seeking any other method of interim number portability at this time.

STAFF ANALYSIS: Section 251(b)(2) of the Act requires all local exchange companies to provide to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. The Act defines the term "number portability" to mean the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. (§3 (30) of the Act)

On July 2, 1996 in the FCC's First Report and Order on

Telephone Number Portability, FCC 96-286, the FCC interpreted the requirements of the Act to require all local exchange companies to offer currently available methods of number portability, such as RCF and DID. The Commission has labeled these methods of providing number portability as "temporary" number portability methods. In addition, the FCC required the LECs to offer number portability through RCF, DID, and other comparable methods because they are the only methods that currently are technically feasible. (FCC 96-833, ¶ 110)

The FCC did not provide a definition of technically feasible in its number portability order. However, it did define this term in its interconnection order as:

> Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

Although this definition does not appear to consider number portability, Paragraphs 199 and 200 of the FCC's interconnection order state that in the 1996 Act, Congress distinguished "technical" considerations from economic concerns. GTEFL does not believe this definition applies to number portability. (Menard TR 2129) AT&T's witness Crafton believes GTEFL confuses technical feasibility with commercial availability. (EXH 9, p.6) Staff is concerned with the potential economic impact of requiring any carrier to provide costly interim solutions for any purpose. However, staff believes the FCC definition of technical feasibility does apply to the entire Act, regardless of the economic impact to a carrier. Therefore, staff believes it should use this definition in determining whether a specific interim number portability mechanism is technically feasible.

AT&T requests the Commission to require GTEFL to provide the following interim number portability solutions listed below.

a. remote call forwarding (RCF)
b. directory number route index (DNRI)
c. route index portability hub (RIPH)
d. local exchange routing guide reassignment (LERG) (EXH 9, pp.89-95)

MCI requests the Commission to require GTEFL to provide RCF and flexible direct inward dialing (Flex DID). (BR p.62)

GTEFL doesn't specifically identify any of the interim number portability solutions requested as not technically feasible, except for LERG reassignment at the NPA-NXX-X level. Witness Menard did state that GTEFL is still evaluating the technical feasibility of DNRI and RIPH. The main concern raised by GTEFL is the fact that it is going to cost a considerable amount of money to upgrade their network and billing network to handle these interim number portability solutions. (TR 2120) Since there is some question as to the technical feasibility of providing some of these solutions, staff will individually explain what the solution is and whether it is technically feasible pursuant to the FCC's definition.

Remote Call Forwarding

RCF provides interim number portability by assigning a second 10-digit number to a customer and forwarding calls to that customer's new serving end office. When a customer has changed service providers, but retains the current telephone number, calls placed to that number are first routed to the old providers's end office. At the old provider's end office, the telephone number is forwarded to the second number, which is located at the new provider's end office. The call is then routed to the customer's location. (Menard TR 2097, 2098)

This method is intended primarily for single-line applications, and is best applied for residential use. (EXH 9, p.89) RCF has several drawbacks which make it more appropriate for use on an interim basis only. First, RCF requires one additional telephone number for each number that has been "ported" to a new service provider. Second, RCF will not allow many services features, such as some custom local area signaling services (CLASS) features, to be operated over ported telephone numbers. Third, RCF results in an inefficient use of the network as all calls to the ported number are first routed to the old service provider's end office, then to the new service provider's end office. (Menard TR 2097)

There does not appear to be a dispute as to the technical feasibility of this interim number portability solution. RCF is currently tariffed and available today. (Menard TR 2097, 2098) GTEFL is willing to provide RCF as an interim number portability solution. (Menard TR 2099) Therefore, staff believes GTEFL should provide RCF as an interim number portability solution in Florida.

Flexible Direct Inward Dialing

Flex DID provides interim number portability by sending calls to a ported number through a specific, dedicated trunk group between the old service provider's end office and the new service provider's end office. Calls to a ported number are routed to the old service provider's end office where they are routed directly to the appropriate Flex-DID trunk group. (Menard TR 2099)

Flex-DID is easily provisioned by service providers today without costly network modifications. Unlike RCF, Flex-DID does not require a second telephone number. Although calls are still routed to the old service provider's end office, calls are not routed a second time over the switched network to reach the new service provider's end office. However, again like RCF, Flex DID has drawbacks which confine it to an interim number portability basis. First, Flex-DID does not allow all service features, such as some CLASS features, to operate on ported telephone numbers. Second, Flex-DID continues to route all calls to the old service provider's end office before routing the call to the new service provider. Third, Flex-DID requires the use of additional trunk groups, thereby imposing an additional cost. (Menard TR 2099)

There does not appear to be a dispute as to the technical feasibility of this interim number portability solution. GTEFL considers Flex-DID as an acceptable interim number portability solution. (Menard TR 2099) Therefore, staff believes GTEFL should provide RCF as an interim number portability solution in Florida.

Direct Number Route Indexing

DNRI providers interim number portability by sending calls to a ported number via the new service provider's end office through an interconnection trunk. This trunk is established directly between end offices. (Menard TR 2100)

DNRI is favored by some carriers because it allows the telephone number to be ported over interconnection trunks, rather than the dedicated facility required by Flex-DID. The interconnection trunk can support other signaling messages and related voice/data transmissions and can be bi-directional. DNRI does not require a second number, and thus uses numbering resources efficiently. As do the other methods, there are drawbacks with DNRI. First, DNRI does not allow all service features, such as certain CLASS features, to operate on ported telephone numbers. Second, under DNRI the end office continues to route all calls to the old service provider's end office before routing the call to the new service provider. Third, it is not an existing service for many of these service providers and is, therefore, not supported by existing ordering, provisioning and billing processes. (Menard TR 2101)

There does not appear to be a dispute as to the technical feasibility of this interim number portability solution. (EXH 9, p.36; Menard TR 2101) However, GTEFL does indicate that service providers would have to modify their network systems supporting these processes, in addition to any network changes they might have to make. (Menard TR 2101) Staff realizes that there will be costs associated with this option, but based on the definition of technical feasibility discussed above, staff believes it is technically feasible to provide DNRI as an interim number portability solution. Therefore, staff believes GTEFL should provide DNRI as an interim number portability solution in Florida. Staff does believe the upgrade costs identified by GTEFL should be allowed to be recovered as identified in Issue 20.

Route Index-Portability Hub

RIPH, referred to as DNRI Tandem Hubbing by GTEFL, operates much like DNRI, but routes ported calls differently. The old service provider's end office routes the call to the end office's tandem switch, which then routes the call to the new service provider's end office over direct interconnection trunks. This is accomplished by adding a pseudo NPA code to the NXX which identifies the new service provider at the old service provider's end office. The tandem switch recognizes the pseudo NPA-NXX combination, routing the call to the direct interconnection trunk group of the new service provider. Each service provider using RIPH thus requires a unique NPA pseudo code to identify its interconnection trunk group. (Menard TR 2101, 2102)

RIPH has all of the advantages and drawbacks of DNRI. An additional advantage is that RIPH only requires one interconnection trunk group from the tandem switch to each of the end offices subtending the tandem switch. However, there are several additional drawbacks. First, the pseudo NPA codes are part of the 1XX series of codes, which are currently used by local service providers for internal or local purposes and are not part of the administration of the NANP. Accordingly, there is no mechanism among companies for assigning or managing these codes and no way to assure standardization. Thus, different service providers would use the same codes to accomplish different functions in their networks. Second, the number of available 1XX codes may be insufficient to meet the demand for such codes. Third, due to the use of the tandem switch, RIPH would require further modifications to ordering systems and impose additional costs to provide the services. Fourth, RIPH reintroduces network inefficiency where the calls are routed to the old provider's end office, and are then routed out again, as with RCF. (Menard TR 2102)

There does not appear to be a dispute as to the technical feasibility of this interim number portability solution. (EXH 9, p.36; Menard TR 2101, 2102) GTEFL did identify a limitation of available pseudo 1XX codes that could affect the technical feasibility depending on the number of carriers requesting this solution. However, staff does not believe there has been any evidence that would suggest that there would be enough carriers requesting this interim solution to exhaust these codes. Therefore, staff believes DNRI is technically feasible and GTEFL should provide it as an interim number portability solution in Florida. Staff does believe the upgrade costs identified by GTEFL should be allowed to be recovered as identified in Issue 20.

LERG Reassignment

LERG Reassignment uses the network table entitled Local Exchange Routing Guide (LERG) to determine routing of geographic numbers. The LERG is managed by Bellcore, and is used by all carriers for routing instructions. LERG reassignment enables an NXX or a portion of an NXX to be routed to a specific switch other than that of the carrier to which the NXX is originally assigned. (EXH 9, p.93)

The originating switch would, through a change in its routing translations, effectively recognize the new entrant CO as the owner of the 512-458-4000 through -4999 number range. This same type of reassignment could, for instance, transfer the whole 512-458 NPA-NXX from the old service provider to the new entrant's CO. (EXH 9, p.93)

This method of interim number portability would be directed at customers with either 1000 or 10,000 block of numbers. However, as with all options there are some drawbacks. GTEFL indicates several drawbacks associated with LERG reassignment at the NXX-X number level. First, all end office, tandem and other switches would have to be modified and reprogrammed to screen on the NPA-NXX-X instead of NPA-NXX. Second, each end office and tandem switch that connects to one end office via trunk lines under the current system would have to connect via ten trunks to cover the same series of numbers, entailing additional routing and capital costs. Third, because billing and other operational support systems depend on vertical and horizontal coordinates for end offices that are based on NPA-NXX codes, these systems would have to be changed to an NPA-NXX-X format. (TR 2015-2017) AT&T witness Crafton's late filed deposition exhibit recognizes many of the same concerns raised by GTEFL as to the use of LERG reassignment to the NPA-NXX-X number level as an interim number portability solution. In addition to identifying similar concerns, it was noted that the current numbering guidelines did not support LERG reassignment at the NPA-NXX-X level, and such a change would require considerable time to develop. (EXH 9, pp.108, 109) AT&T did state that it would be satisfied with LERG reassignment at the NPA-NXX level. (TR 432)

Based on the discussion above, staff does not believe LERG reassignment at the NPA-NXX-X level is technically feasible since there is no industry standard to specify the reassignment requirements at this level. Staff believes approval of this reassignment method would create some operational problems associated with the routing of the calls to the reassigned numbers. Therefore, staff does not believe GTEFL should be required to provide LERG reassignment at the NPA-NXX-X level.

GTEFL did not provide any arguments, other than the fact that they didn't have a single customer with an entire NXX, that LERG reassignment at the NPA-NXX was not technically feasible. In fact GTEFL's witness Menard states that they can provide LERG reassignment at the NPA-NXX level. She indicates that type of reassignment is available in the BellCore guidelines for number assignment. (TR 2127) Therefore, staff believes GTEFL should provide LERG reassignment at the NPA-NXX level.

Summary

Although staff is concerned with the fact that the FCC's interpretation of technically feasible doesn't consider the economic impact of providing an interim number portability solution, staff believes all of the interim number portability options requested, except for LERG reassignment at the NPA-NXX-X level, are technically feasible, as defined by the FCC, and should be provided by GTEFL.

ISSUE 20: What should be the cost recovery mechanism to provide interim local number portability in light of the FCC's recent order? **(GREER)**

RECOMMENDATION: Staff believes the Commission should address the cost recovery for interim number portability in Docket No. 950737-TP. Until completion of that proceeding, the Commission, on an interim basis, should require each carrier to pay for its own costs in the provision of the interim number portability solutions listed in Issue 20. Further, the Commission should require each telecommunications carrier to this proceeding to track its cost of providing the interim number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

POSITION OF PARTIES

AT&T: The Commission should adopt a mechanism which requires each carrier to pay its own costs of providing interim local number portability. In other words, the service should be provided as requested (of either the incumbent or the new entrant) at no charge

GTEFL: GTEFL's tariffed rates for RCF should remain in place. GTEFL's costs of implementing DID and any other methods the Commission might order should be recovered through appropriate tariffs or a cost pooling system.

MCI: There should be no explicit monthly recurring charge for remote call forwarding used to provide interim local number portability. GTEFL and MCI should each bear their own cost of implementing the interim number portability mechanism.

STAFF ANALYSIS: The Act requires that all carriers bear the costs of establishing number portability. (§251 (e)(2) of the Act) Although the FCC Order agrees for the most part with this blanket approach to cost recovery, the order does allow the states to exempt some carriers from the recovery of these costs. (FCC 96-286, ¶ 130)

The FCC established the following criteria to determine an appropriate cost recovery mechanism. First, the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. The FCC interprets this to mean that the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer. The second criteria for an acceptable cost recovery mechanism is that it should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments. (FCC 96-286, ¶¶132 and 135)

The FCC Order identifies various methods of cost recovery that meet the two criteria listed above. The first option is to allocate number portability costs based on a carrier's number of active telephone numbers relative to the total number of active telephone numbers in a service area. A second option would be to allocate the costs of currently available measures between all telecommunications carriers and incumbent LECs based on each carrier's gross telecommunications revenues net of charges to other carriers. A third competitively neutral cost recovery mechanism would be to assess a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers. Staff believes all three of these options would produce essentially the same result as it relates to the distribution of costs between carriers. The final option that the FCC believes would meet its criteria is to require each carrier to pay for its own costs of currently available number portability measures. (FCC 96-286, ¶136)

The Commission's existing policy on cost recovery of temporary number portability requires only the new entrants to pay for temporary number portability solutions. The FCC's order clearly prohibits this type of cost recovery mechanism. Since the costs are required to be recovered from all carriers, the Commission's current policy is inconsistent with the FCC requirements. The Commission will be utilizing Docket No. 950737-TP to address this cost recovery issue as it relates to the provision of temporary number portability. The parties recognize that all carriers are not represented in this proceeding, and the handling of the cost recovery issue may best be resolved in the Commission's generic investigation. (Menard TR 2122; EXH 9, p.40) However, we believe the Commission should establish an interim cost recovery mechanism until the proceeding in Docket No. 950737-TP is complete. Since the parties have not provided any cost information associated with most of the temporary number portability methods discussed in Issue 19, and the Commission must implement a cost recovery mechanism that is consistent with the FCC Order, staff believes the Commission should require each carrier to pay for its own costs in the provision of the temporary number portability solutions listed above for the interim. Further, the Commission should require all telecommunications carriers to this proceeding to track its cost of providing the temporary number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

ISSUE 21(a): Should GTEFL be prohibited from placing any limitations on interconnection between two carriers collocated on GTEFL's premises, or on the types of equipment that can be collocated, or on the types of uses and availability of the collocated space? **(STAVANJA)**

RECOMMENDATION: Staff recommends that GTEFL should be able to impose those limitations as provided in §51.305 and §51.323 of the FCC's rules on interconnection and collocation. Staff further recommends that the Commission require GTEFL to comply with §51.323 of the FCC's Rules on standards for physical collocation and virtual collocation. However, as stated in §251 (c)(6) of the Act, §51.323 of the FCC's Rules, and ¶¶580 and 594 of the FCC's Order, staff recommends that AT&T and MCI be granted the ability to:

1. Interconnect with other collocators that are interconnected with GTEFL in the same central office. (FCC 96-325, ¶594)

2. Purchase unbundled dedicated transport from GTEFL between the collocation facility and AT&T's or MCI's network. (§51.323(g))

3. Collocate transmission equipment such as optical terminating equipment and multiplexers in a GTEFL central office. (FCC 96-325, ¶580)

4. Select physical over virtual collocation, where space and/or other considerations permit. (§251 (c)(6) of the Act)

POSITION OF PARTIES

AT&T: GTEFL should not be permitted to restrict the availability of collocated space, the type of equipment that is allowed in collocated space or the use of collocated space. Further, GTEFL should not be permitted to limit the efficient interconnection between AT&T and other new entrants within the Central Office.

GTEFL: No. GTEFL should be permitted to place reasonable conditions on cross-connections between ALECs and ALECs should not be permitted to collocate switching, enhanced services or customer premises equipment.

MCI: Yes, GTEFL should be prohibited from placing such limitations. MCI should have the ability to collocate subscriber loop electronics, such as digital loop carrier; should be permitted to interconnect with other collocators; should be permitted to interconnect to unbundled dedicated transport obtained from GTEFL; and should be able to collocate via either physical or virtual facilities.

STAFF ANALYSIS: The Act mandates LECs to provide collocation to ALECs. Specifically, Section 251(c)(6) of the Act states:

> The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

This section of the Act clearly requires LECs to provide physical collocation over virtual collocation, unless it is technically infeasible to do so or because of limited space.

AT&T states that, through physical collocation, an interconnecting carrier obtains dedicated space in GTEFL's premises, and places equipment in that space to interconnect with GTEFL's and other LEC's networks." (Crafton TR 349) AT&T is requesting the ability to interconnect with non-GTEFL collocated carriers on GTEFL's premises. (Crafton TR 350) Staff does not interpret the Act to require a LEC to provide collocation to a carrier that will not interconnect with the LEC. Section 51.323(h) of the FCC's Rules states:

> An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises **provided that the collocated equipment is also used for interconnection with the incumbent LEC** or for access to the incumbent LEC's unbundled network elements.
>
> (1) An incumbent LEC shall provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers, unless the incumbent LEC permits one or more of the collocating parties to provide this connection for themselves; ...
> (emphasis added)

In addition, the FCC Order states that permitting two or more collocators to interconnect their networks is consistent with the policy goals of Section 251 of the Act. (FCC 96-325, ¶594)

AT&T claims that it is seeking to collocate only the equipment necessary to interconnect with GTEFL and other carriers, and to provide high quality service to its customers. (Crafton TR 362) However, GTEFL witness Hartshorn disagrees, stating that AT&T is seeking to collocate more than equipment necessary for interconnection and access to unbundled elements. (TR 1229) Witness Hartshorn states that AT&T believes that Section 251(c)(6) of the Act permits it to collocate any type of equipment on GTEFL's premises, including switches, enhanced services equipment and customer premises equipment. (TR 1230)

However, Section 51.323(b) states that:

> An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements... Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:
> (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and
> (2) equipment being collocated to terminate basic transmission facilities...

In fact, Section 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.

MCI has requested approval to place a Digital Line Concentrator (DLC) in collocated space. (Powers TR 981) The purpose of a DLC is to concentrate large numbers of unbundled loops into large capacity lines for transport to a switch. Staff believes that the DLC falls under transmission type equipment and is, therefore appropriate equipment to collocate on GTEFL's premises.

Based on the Act and the FCC's Rules, staff recommends that only equipment necessary for interconnection and access to unbundled network elements should be permitted for collocation on GTEFL's premises. Therefore, staff recommends that no switching equipment or equipment used to provide enhanced services should be permitted in a collocated space.

AT&T and MCI are concerned that GTEFL will not provide sufficient space to house the necessary collocation equipment for interconnection and access to unbundled network elements. (Powers TR 982) MCI proposes that GTEFL adopt the policies of NYNEX and Pacific Bell, which have established a general policy of leasing up to 400 square feet in a central office. (Powers TR 982) GTEFL Witness Cantrell states that a misconception may have occurred with respect to limitation of space for collocation. GTEFL believes it should be permitted to reserve space for future use based on a five-year planning horizon. (BR p.84) Witness Cantrell states that "GTEFL's physical collocation tariff does not, in fact, limit the amount of space an individual ALEC can request." (TR 1248)

AT&T and MCI assert that GTEFL should allow them to collocate at all GTEFL structures that house GTEFL's network facilities. (Crafton TR 362; Powers TR 983) AT&T witness Crafton states that GTEFL should be required to make a showing to this Commission where GTEFL claims that it is not technically feasible for AT&T to collocate. (TR 362-363)

GTEFL states that AT&T believes it should be permitted to collocate equipment at any GTEFL location that AT&T chooses. GTEFL claims that there is little benefit for AT&T to collocate at GTEFL facilities which do not perform routing or rating functions. (Cantrell TR 1235) GTEFL witness Cantrell states that it would be more appropriate for AT&T to collocate at certain locations, such as:

> ...central offices (where calls are routed to and from customers), a serving wire center (the office closest to an interexchange carrier's point of presence which serves as a rating point, but provides no switching), or a tandem switch (which routes calls from one central office to another). (TR 1235)

The FCC's Order requires collocation to be provided at all structures that house LEC network facilities including "any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures." (FCC 96-325, ¶¶ 573-575)

MCI is requesting the ability to purchase unbundled dedicated transport from MCI's network to GTEFL's Central Office. The FCC Order states that a competitive entrant should not be required to bring its own transmission facilities to a LEC's premises. (FCC 96-325, ¶590) Therefore, staff recommends that GTEFL should allow AT&T or MCI the ability to purchase dedicated transport from their facilities to GTEFL's premises.

Staff believes the Act and the FCC's Rules and Order are clear as to the requirements and standards for physical collocation and virtual collocation. Staff recommends that the Commission require AT&T, MCI and GTEFL to abide by these standards and requirements.

ISSUE 21(b): What are the costs incurred, and how should those costs be recovered? **(STAVANJA)**

RECOMMENDATION: Staff recommends that the party requesting collocation should bear the costs associated with the collocation request. Staff recommends that the Commission should set permanent collocation rates based on GTEFL's TSLRIC cost studies. The following rates cover GTEFL's TSLRIC costs and provide some contribution toward joint and common costs:

Collocation Element	Staff's Proposed Recurring Rates
Collocation	
DS0 cross connect	$1.60
DS1 cross connect	$4.00
DS3 cross connect	$31.00
Partitioned space/sq. ft.	$1.85
DC power	$405.00
Cable Space	$14.00

Collocation Element	Staff's Proposed Nonrecurring Rates
Physical Engineering Fee	$6,946.00
Building Modification costs:	
Simple	$13,484.00
Moderate	$18,448.00
Complex	$23,514.00
DC Power	$2,900.00
Cable Pull	$1,213.00
Cage Enclosure	$4,559.00

POSITION OF PARTIES

AT&T: Costs associated with providing space and maintenance should be priced distinctly from other elements at TSLRIC or TELRIC.

GTEFL: GTEFL's costs associated with collocation are shown in its cost study submitted in this docket. The parties requesting collocation should pay all of the costs associated with their individual requests.

MCI: Rates for collocation should be based on forward looking economic cost in accordance with TELRIC principles.

STAFF ANALYSIS:

AT&T states that collocation elements should be priced at TSLRIC. AT&T witness Guedel states that the cost data provided by GTEFL was done so in a summary format. Witness Guedel claims that the cost studies are not verifiable and generally do not appear to represent forward-looking costs. AT&T recommends that the Commission order GTEFL to provide cost studies that are consistent with forward-looking cost parameters and provide sufficient backup to validate the cost studies. (TR 475-476) AT&T states that, in the interim, the Commission should adopt the FCC proxy rates for collocation, which are GTEFL's current tariff rates for collocation. (Guedel TR 480) Although AT&T does not generally approve of GTEFL's cost studies, staff believes that AT&T's critisms were not sufficiently precise to refute the validity of the cost studies.

GTEFL believes that collocation is a taking of its property and it should receive just compensation for its property. However, GTEFL states that it will permit collocation if the costs to do so are fully recovered from AT&T or MCI. (BR p.85)

Staff agrees that the entity requesting collocation should bear the costs for the establishment of collocated facilities. Staff recommends that rates for collocation be based on GTEFL's TSLRIC cost studies. Table 1 illustrates staff's proposed recurring rates which cover GTEFL's TSLRIC costs and include contribution toward joint and common costs.

Table 1: Staff's Proposed Recurring Rates for Collocation

Collocation Element	Staff's Proposed Recurring Rates
Collocation	
DS0	$1.60
DS1	$4.00
DS3	$31.00
Partitioned space/sq. ft.	$1.85
DC power	$405.00
Cable Space	$14.00

Table 2 illustrates staff's proposed recurring rates which cover GTEFL's TSLRIC costs. Staff would note that GTEFL did not propose any additional contribution towards joint and common costs in their proposed nonrecurring charges. Therefore, staff recommends GTEFL's proposed rates for nonrecurring charges.

Table 1: Staff's Proposed Recurring Rates for Collocation

Collocation Element	Staff's Proposed Nonrecurring Rates
Physical Engineering Fee	$6,946.00
Building Modification costs:	
Simple	$13,484.00
Moderate	$18,448.00
Complex	$23,514.00
DC Power	$2,900.00
Cable Pull	$1,213.00
Cage Enclosure	$4,559.00

ISSUE 22: What should be the compensation mechanism for the exchange of local traffic between AT&T and GTEFL? (**SHELFER**)

RECOMMENDATION: Staff recommends a reciprocal rate of $.00125 per minute for tandem switching and $.0025 per minute for end office termination.

POSITION OF PARTIES

AT&T: The Commission should order that interconnection be priced at TELRIC and that GTEFL be ordered to develop TELRIC studies as promptly as possible. Until such studies are completed, the Commission should require a bill and keep arrangement for interconnection.

GTEFL: GTEFL's rates for termination of an ALEC's traffic should be cost-based, as the Act provides. Rates should be determined in accord with the Market Determined-Efficient Component Pricing Rule. Establishment of any bill-and-keep arrangements should be strictly at GTEFL's discretion.

MCI: The compensation mechanism for transport and termination of local traffic between MCI and GTEFL should use symmetrical rates for transport and termination set in accordance with total element long run incremental cost principles. The Hatfield Model produces costs calculated in accordance with these principles for tandem switching, local switching and transport.

STAFF ANALYSIS: Section 251(b)(5) of the Act requires the ILECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The portions of the FCC Order addressing transport and termination were stayed.

AT&T states that the Act specifies that each local exchange carrier has an obligation to establish reciprocal compensation arrangements for the transport and termination of such traffic. Witness Guedel contends that more specifically, the Act requires that such arrangements provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carriers' network of calls that originate on the network of the other carrier. (TR 450-451)

AT&T proposes that the Commission order that interconnection be priced at TELRIC. Witness Guedel acknowledged in cross examination that his prefiled testimony did recommend the use of TSLRIC; however, he states that this was before the FCC Order, which talked extensively about TELRIC. Witness Guedel clarified that the methodology behind TSLRIC is essentially identical to the methodology behind TELRIC. (TR 477-478) AT&T contends that the Commission should order GTEFL to produce valid TELRIC cost studies prior to establishing a specific price for this call termination and transport service. (TR 453)

AT&T acknowledges that initially, the best solution may be the "bill-and-keep" arrangement. Witness Guedel asserts that arrangement is simple and can be implemented without the development of cost studies that would be required to establish and justify specific prices. AT&T states that under this arrangement, no dollars change hands. (TR 452-453, 474, 480) AT&T argues that the Act permits arrangements that provide "mutual recovery of costs through offsetting of reciprocal obligations," to the extent that such arrangements permit the recovery of the related costs. Further, AT&T contends that the Act specifically identifies "bill-and-keep" arrangements as acceptable to the extent that each carrier covers the cost of transport and termination. (§252(d)(2)(B))

AT&T argues that absent adequate TELRIC data, the Commission should establish, in the interim, a mutual traffic exchange or "bill-and-keep" arrangement. AT&T contends that this mechanism has met with acceptance from all parties and would permit the Commission to establish rates until further definition of the TELRIC pricing can be determined. (Munsell TR 1564-1565) AT&T contends that this Commission has recognized "bill-and-keep" arrangements in previous dockets. (see Order No. PSC-96-0668-FOF-TP, issued May 20, 1996; Order No. PSC-96-1148-FOF-TP, issued September 12, 1996)

AT&T's witness Guedel contends that GTEFL's assertion that it may have older, less efficient plant and equipment which would tend to increase its cost is without merit. AT&T argues that embedded technologies have no place in a TSLRIC or TELRIC analysis. Witness Guedel states that the fact that GTEFL may or may not have some obsolete technologies in place is irrelevant because on a going forward basis the estimated cost incurred by GTEFL should be based upon the most efficient technology. (Guedel TR 466)

AT&T disagrees with GTEFL that because the total capacity of an ALEC's network tends to be more fully utilized than the capacity of the ILEC's network, the ALEC's per unit cost will be lower than the ILEC's. Witness Guedel contends that since GTEFL begins the competitive phase with a market share of nearly 100% and the ALEC begins with nothing, it is not likely that an ALEC could deploy a network and immediately utilize it as efficiently as GTEFL can utilize its network. AT&T argues that economies of scale would tend to favor the ILEC, and the larger networks would still tend to be more efficient at full utilization than smaller networks. (TR 467)

GTEFL disagrees with AT&T's proposed studies. GTEFL's witness Sibley argues that AT&T's pricing formulas would deny GTEFL recovery of its total costs, require GTEFL's shareholders to subsidize AT&T's entry into local exchange telephony, and confiscate the private property of GTEFL's shareholders. (TR 779) Therefore, GTEFL contends AT&T's pricing methodology should be rejected.

MCI states that it interprets the FCC Order to permit mutual traffic exchange only for the physical interconnection between two networks, and to require reciprocal, symmetrical compensation for transport and termination of traffic delivered over that interconnection facility. (Goodfriend TR 740-741) MCI proposes that the Hatfield Model produces prices calculated in accordance with such principles for tandem switching, local switching and transport. (TR 744)

MCI states that GTEFL appears to disagree with MCI's interpretation of the FCC Order, and believes that "mutual traffic exchange" is a permitted method of compensation for interconnection, transport and termination under the FCC Rules. (Munsell TR 1551) MCI contends that while GTEFL maintains that the Commission cannot "order" bill-and-keep, GTEFL is willing, in the spirit of compromise, to accept bill-and-keep under certain terms and conditions. (TR 1565-1566)

MCI states that if the Commission determines that the FCC Rules permit bill-and-keep or if the Commission chooses to apply a bill-and-keep methodology in light of the stay of the pricing provisions of the FCC Rules, MCI states it would not object to a reaffirmation of the Commission's prior order which requires mutual traffic exchange unless and until a carrier proves that traffic is sufficiently out of balance to justify the cost of measurement and billing. (BR p.67)

GTEFL contends that it should be allowed to charge rates for interconnection, transport, and termination that are just, reasonable, and nondiscriminatory, and that allow GTEFL full recovery of its costs and a reasonable profit. (Munsell TR 1574) GTEFL proposes that rates for termination should be cost-based as the Act provides. Under the Act, GTEFL contends that any compensation mechanism for transport and termination of traffic must "provide for the mutual and reciprocal recovery by each carrier of cost associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." GTEFL states that the cost determination must be made "on the basis of a reasonable approximation of the additional costs of terminating such calls." (Section 252(d)(2)(A)(i&ii))

Witness Munsell asserts that rates for interconnection and for transport and termination should be determined according to the Market-Efficient Component Pricing Rule (M-ECPR). (Munsell TR 1553) GTEFL's witness Sibley states that M-ECPR is a market-based method for determining, as the FCC directed, the reasonable share of forward-looking common costs that would be allocated to the prices for the ILEC's various unbundled network elements. Witness Sibley states that M-ECPR takes full account of the competitive entry when setting prices for unbundled network elements. He contends that the M-ECPR price for an unbundled network element is equal to the sum of its TELRIC plus its opportunity cost, as constrained by market forces. (TR 774) The witness contends that if GTEFL is to be required to sell its services and products to AT&T and others, GTEFL should be reimbursed for all its costs and be allowed the opportunity to earn a reasonable rate of return. (TR 768) GTEFL also offers that it should be allowed a true-up of its costs should it be eventually allowed to recover its cost under ECPR. (Munsell TR 1553)

GTEFL contends that the costs associated with transport and termination may differ depending on the extent to which completion of calls from the point of interconnection involves tandem switching and transport. Witness Munsell states that since an ALEC's point of interconnection with an ILEC will vary, the functions of tandem switching, transport and termination generally are priced separately. (TR 1544)

Witness Munsell also argues that the cost of transport and termination will generally be higher for an ILEC than an ALEC because ILEC equipment is older and will tend to have a lower throughput than ALEC equipment. GTEFL offers that ALECs are just now entering the local exchange business and are installing currently available switches and transmission plant. GTEFL states that this new equipment is often less expensive per unit of traffic than older equipment already deployed by the ILECS. Witness Munsell contends that GTEFL's traffic is usually dispersed throughout a large network of end offices and tandem switches, which serves a relatively large number of low volume residential or rural customers. GTEFL argues that by contrast, an ALEC will have relatively few end office switches which can be expected to serve a relatively large number of high volume business customers. According to witness Munsell, this results in a lower per unit cost for ALECs. (TR 1545)

GTEFL offers that if a transport and termination agreement accurately reflects the true relative costs incurred by an ALEC and an ILEC for terminating each other's traffic, the agreement will, most likely, provide that the ILEC recovers its costs at a higher rate than the ALEC. Witness Munsell argues that if a transport and termination agreement provides for symmetrical rates the agreement does not necessarily reflect the actual costs of interconnection for each party. (TR 1545)

GTEFL contends that Section 252(d)(1)(A)-(B) requires that rates set by state commissions shall be "based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable, and ... nondiscriminatory, and ... may include a reasonable profit." (TR 1546)

Witness Munsell argues that the Act provides that a state commission may not consider the terms and conditions of reciprocal compensation to be just and reasonable unless such terms and conditions "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier" and determine costs "on the basis of a reasonable approximation of the additional costs of terminating such calls." (§252(d)(2(A)(i)-(ii)) GTEFL also contends that Section 252(d) states that such pricing standards shall not be construed to prevent parties from arranging for "the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)." (§252(d)(2)(B)(i); TR 1548)

GTEFL states that symmetrical pricing between AT&T and GTEFL will not afford GTEFL recovery of its costs. Witness Munsell contends that AT&T's costs for terminating calls will, most likely, be less than GTEFL's cost for terminating calls. GTEFL argues that using symmetrical pricing, AT&T will receive a subsidy from GTEFL, because it will be receiving far more than the cost it incurs to complete a call. Therefore, GTEFL asserts that its costs are not a suitable proxy for determining the actual costs of interconnection. Witness Munsell contends that the Commission should adhere to the intent of the Act and allow the parties to recover their respective true costs of transport and termination. (TR 1563) However, GTEFL states that if the Commission decides symmetrical pricing is justified, pending judicial review of the FCC Order, GTEFL argues it should be allowed a true-up of its costs in the event the FCC's requirement of symmetrical pricing is eventually overturned. (TR 1563, 1567)

While GTEFL contends that its preferred position is asymmetrical rates, GTEFL is willing to enter into bill-and-keep arrangements only where traffic is approximately equal, and transport and termination would be of local traffic only. GTEFL also states that interLATA access must be carried over separate trunk groups and not intermingled with local and toll traffic. (TR 1554, 1564-1565) GTEFL asserts that in the spirit of promoting the competitive process, it proposes a broad definition of roughly balanced as equating to plus or minus ten percent. Witness Munsell states that either party may request studies not more frequently than quarterly if traffic is suspected to fall outside this parameter. Further, GTEFL contends that either party could terminate the bill-and-keep arrangement with twelve months' notice. (TR 1565)

AT&T contends that GTEFL has not provided TELRIC data for exchange of local traffic. AT&T states that instead, GTEFL has requested a compensation methodology based on the ECPR. (Munsell TR 1553) AT&T argues that this Commission has already rejected the ECPR as a pricing methodology for unbundled network element rates on the grounds that it eliminates the incentive for competition. (Docket No. 950985-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996) AT&T states that the FCC has also rejected the use of ECPR. AT&T asserts that the FCC stated that "ECPR does not provide any mechanism for moving prices toward competitive levels." (FCC 96-325, ¶¶707-710)

Section 252(d)(2)(A) provides the general rule that governs state commission approval of reciprocal compensation arrangements. Specifically, this section states:

> (A) IN GENERAL. - For purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of additional costs of terminating such calls.

Section 252(d)(2)(A) applies regardless of whether the arrangements have been established by the parties through a voluntary agreement under Section 252(a) or through action by a state commission under Section 252(b).

Section 252(d)(2)(B) provides:

(B) RULES OF CONSTRUCTION. - This paragraph shall not be construed -

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements).

Staff believes that while Section 252(d)(2)(B)(i) does not require a state commission to adopt mutual traffic exchange, it clearly authorizes it to do so. The Act expressly recognizes that the offsetting of reciprocal obligations, whether through bill-and-keep or mutual traffic exchange, is a permissible method of cost recovery. Nothing in the Act states that the rules of construction apply only to voluntarily negotiated compensation mechanisms, and that this Commission would have less latitude than the parties would have to establish an appropriate compensation policy. The Commission is within its authority to order mutual traffic exchange on either a temporary or a permanent basis.

As AT&T stated, staff acknowledges that the Commission has ordered bill-and-keep in a previous docket. Although requiring bill-and-keep may be an interim option, staff believes reciprocal rates should be set, since there is sufficient evidence in the record upon which to establish rates for tandem and end office switching.

As discussed at length in Issue 13(b), staff does not believe MCI's Hatfield Model is suitable to use in this proceeding to establish permanent rates.

As argued by AT&T, this Commission has already rejected GTEFL's ECPR as a pricing methodology for unbundled network element rates on the grounds that it eliminates the incentive for competition. (Order No. PSC-96-0811-FOF-TP, June 24, 1996, p.17) In addition, staff believes that the FCC's argument regarding ECPR has merit. The FCC Order states that ..."the ECPR does not provide any mechanism for moving prices toward competitive levels; it simply takes prices as given." (FCC 96-325, ¶709) Even though GTEFL contends it has modified the ECPR model to promote competition by capping prices for each unbundled network element at the price of its market alternative, staff believes that the M-ECPR may still discourage the incentive for competition.

Staff also believes that the pricing for termination should be symmetrical between AT&T, MCI and GTEFL. Even though GTEFL argues that each party should recover their respective true costs of transport and termination, the only cost data provided was GTEFL's. Staff believes GTEFL's costs are appropriate for determining symmetrical rates.

To determine the validity of the TSLRIC cost study provided in this docket, staff compared these costs to the costs provided in the interconnection proceeding (Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP). The Order, on page 6, states:

> Based on GTEFL's cost study, GTEFL's witness Menard agreed that GTEFL's cost for terminating a local call was less than two-tenths of a cent per minute of use. This cost includes the LRIC for tandem switching and transport and an estimate of the TSLRIC for the end office switching. Although witness Menard testified that no contribution to shared or joint and common costs is included in GTEFL's cost study, she agreed that a return on capital for the investment is included in performing GTEFL's cost study. (Order No. PSC-96-0668-FOF-TP)

Although the end office cost was estimated TSLRIC in Docket No. 950985-TP, the TSLRIC cost for end office switching in this docket was significantly greater than the $.002 for the combination of tandem switching, transport, and end office switching in Docket No. 950985-TP.

Staff's review of the supporting cost papers in this docket, indicates that the company employed two factors which may not have been used in the prior study. One factor is to estimate associated land and buildings costs, and the other is to attribute "volume insensitive" costs. Although GTEFL provided support for its land and buildings factor, staff was unable to find any supporting rationale in the record for the volume insensitive factor used by the company. Staff acknowledges that it is appropriate to include volume insensitive costs in a TSLRIC study. However, staff has misgivings about accepting the company's factor: 1) it is without support and 2) application of the factor is a key driver of the GTEFL's reported cost. To endorse the company's cost result would require staff to similarly endorse its volume insensitive factor. Given the lack of support in the record, staff is hesitant to do so without qualification.

Staff has developed separate rates for tandem and end office switching, because the ALECs may use one or both ILEC switches to terminate a call. Staff believes this is appropriate since a call terminated at an access tandem may require additional switching and transport than a call terminated at an end office. The tandem switching rate only includes the costs to terminate at the tandem; therefore, if an ALEC terminates a call through both a tandem and end office switch, GTEFL will charge both a tandem and end office rate.

Staff would note that the costs considered in this issue are for termination only. The costs that are considered in Issue 13(b) for unbundled switched elements include all the features, functions and capabilities pursuant to the definition of local switching in the FCC's Rules and Order.

Staff recommends a rate of $.00125 for tandem switching per minute and $.0025 for end office switching per minute. While they are under GTEFL's reported costs, staff believes the rate levels are sufficient to cover TSLRIC costs and provide some contribution to common costs.

ISSUE 23: What intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase GTEFL's unbundled local switching element? How long should any transitional period last? **(NORTON)**

RECOMMENDATION: Staff recommends that existing Florida law and policy should apply. No additional charges should be assessed for unbundled Local Switching over and above those approved in Issue 13(b) of this recommendation for that element. Under the Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in DN 950985-TP, the company terminating a toll call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

POSITION OF PARTIES

AT&T: No intrastate access charges should apply to a carrier routing local traffic through unbundled network elements it has purchased. TELRIC purchase prices replace access charges and are the proper measure of economic and competitive prices.

GTEFL: Until local rates are rebalanced and intrastate universal service issues resolved, full intrastate access charges should be collected from ALECs purchasing GTEFL's unbundled local switching element.

MCI: The price for unbundled local switching should be based on its forward looking economic cost in accordance with TELRIC principles. The price should not include any additional charge for intrastate switched access minutes that traverse GTEFL's switch, and in particular should not replace the CCL and RIC revenues that GTEFL would have received if it had retained the end-user customer.

STAFF ANALYSIS: This issue applies to MCI only. This issue arose from the requirements in the FCC Order to the effect that carriers who utilize unbundled local switching will, for a finite period, also be required to pay the Carrier Common Line charge plus 75% of the RIC. The FCC instituted this charge in the belief that LECs would experience a substantial revenue impact when carriers are able to purchase and use the unbundled local switching element to switch all their traffic, both local and toll. This is allowed under the Order, and would presumably occur because the switched access local switching rate would be so much higher than the unbundled local switching rate. By adding on the "support" for a period of time, the FCC sought to mitigate the potential revenue impact on the LECs.

The Eighth Circuit, however, stayed that provision (§51.515, C.F.R.) of the FCC rules. Therefore, assessment of the CCL and 75% of the RIC is not mandated by the Order at this time. Florida law, unlike the FCC Order, does not allow carriers to transport or terminate toll traffic over local interconnection facilities. (See Section 364.16(3)(a), Florida Statutes) Thus, GTEFL and MCI will have to be sure that local and toll traffic are separately identified, and that the appropriate charges be assessed on each.

Staff recommends that no additional charges should be assessed for unbundled Local Switching over and above those approved in Issue 13(b) of this recommendation for that element. However, with respect to toll traffic, existing Florida law does not allow carriers to bypass switched access charges. Therefore, under this Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in DN 950985-TP, the company terminating a toll call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

ISSUE 24: Should GTEFL be required to provide notice to its wholesale customers of changes to GTEFL's services? If so, in what manner and in what timeframe? **(STAVANJA)**

RECOMMENDATION: Yes. If GTEFL provides internal notice 45 or more days in advance of a change, then GTEFL should provide 45 days notice to its wholesale customers. If GTEFL provides internal notice less than 45 days in advance of a change, wholesale customers should be noticed concurrently with GTEFL's internal notification process. GTEFL should not be held responsible if it modifies or withdraws the resold service after the notice is provided; however, GTEFL should notify the resellers of these changes as soon as possible.

POSITION OF PARTIES

AT&T: GTEFL should be required to provide notice in advance of its general public notice of changes to services.

GTEFL: GTEFL's tariff filing will be sufficient notice of changes in its services. GTEFL cannot provide longer notice windows than those that apply to its own internal operations.

MCI: GTEFL should be required to provide notice to its wholesale customers of changes to GTEFL's services at least 45 days prior to the effective date of the change, or concurrent with GTEFL's internal notification process for such changes, whichever is earlier. (Price)

STAFF ANALYSIS: This issue addresses whether GTEFL should provide a notice to its wholesale customers for changes to its services and how long that notice period should be.

Neither the Act nor the FCC rules and order explicitly require ILECs to provide notice to wholesale customers of changes to ILEC services. Therefore, since the parties could not agree, the Commission will determine the appropriate requirements.

AT&T states that GTEFL should notify resellers 45 days prior to the effective date of a change, or concurrent with GTEFL's internal notification process, whichever is earlier, for price changes to existing services or for the introduction of new services. (Shurter TR 305) AT&T asserts that changes in technology would require a longer notification period. (Shurter TR 306-307)

AT&T states that the advance notice period will provide AT&T the time to prepare its systems for the changes. AT&T asserts that it cannot make the necessary changes to its systems without sufficient advance notice, which would give GTEFL an unfair competitive advantage since GTEFL would be the first local telecommunications provider to make the offerings available. (Shurter TR 305)

MCI has requested GTEFL to provide notice of changes to its retail services at least 45 days prior to the effective date of the change, or concurrent with GTEFL's internal notification process for service changes, whichever is earlier. (BR p.69)

GTEFL states that when it files a tariff with the Commission, the filing is itself a public notice. Initially, GTEFL asserted that the period between a tariff filing and the effective date would be adequate notice. However, GTEFL now states that it may consider notifying new entrants with its internal notification procedures. (McLeod TR 1309, 1333) Staff would note that for ALECs, the tariff notice period is 15 days.

GTEFL states that it has a liability concern with providing an advance notice, in the event that GTEFL notified AT&T and MCI of an upcoming change and subsequently made a business decision to abandon that change. (McLeod TR 1332-1333)

In its brief MCI states that "[s]o long as MCI is protected against the possibility of GTEFL providing intentional misinformation, it would appear appropriate for the Commission to protect GTEFL from liability for normal changes in business plans which occur after it has provided a reseller with notice of an upcoming retail service change." (BR p.70)

Staff believes that the Commission should require the parties to enter into agreements whereby GTEFL will not be held liable if, after announcement of a new or modified service, GTEFL modifies or withdraws that service before it goes into effect as announced. GTEFL, however, should notify the resellers of such changes at the earliest possible time.

Staff believes notice to AT&T and MCI would be inadequate under GTEFL's plan to provide notice to resellers at the same time it files public notice. Staff recommends that GTEFL should provide 45 days notice to its wholesale customers. If GTEFL provides such notice less than 45 days in advance of the change, wholesale customers should be noticed concurrently with GTEFL's internal notification process.

ISSUE 25: What should be the term of the agreement? **(GREER)**

RECOMMENDATION: Staff recommends the Commission establish the term of this agreement to be 3 years, with successive one-year renewal options.

POSITION OF PARTIES

AT&T: The term of an interconnection agreement must be at least five years to allow a firm foundation of competition prior to allowing GTEFL the ability to reassert its market dominance and renegotiate an agreement, to allow AT&T to make realistic market plans and to provide continuous support to its customers.

GTEFL: The agreement should last for two years. Anything longer would be at odds with the rapidly changing telecommunications marketplace.

MCI: The term of the initial arbitrated agreement should be 5 years, with successive one-year renewal options.

STAFF ANALYSIS: There is not any specific guidance in the Act or the FCC's order in determining an appropriate term of an agreement. Section 252(b)(4)(c) does provide however, that a state commission shall resolve outstanding issues by imposing conditions required to implement the arbitration standards of Section 252(c); and Section 252(c)(3) requires the state commission to provide a schedule for implementation of the terms and conditions of the arbitration agreement. Although staff believes this issue would be resolved better via negotiations between the parties, the parties are unable to negotiate this issue.

MCI and AT&T have indicated that the Commission should set the term of this arbitrated agreement to be 5 years. (Price TR 839; Shurter TR 189) GTEFL believes the term of the arbitrated agreement should be no more than two years. (McLeod TR 1282)

AT&T witness Shurter believes its proposed 5 year term is hardly an excessive period for the interconnection, services and network elements sought by AT&T. He believes a term of 5 years will be the minimum time required by AT&T to acquire, configure, service and market services and elements obtained from GTEFL. Witness Shurter uses the development of interexchange competition to illustrate that competition will not happen overnight, but will require some time to transition from resale to facilities based competition. (TR 189) MCI's witness Price does not believe GTEFL should be permitted to dictate the term of this arbitration agreement. (TR 839)

GTEFL believes it would not be prudent for its company to enter into a long-term contract considering the unprecedented scope of the Act and all the uncertainty associated with the issues raised by the parties. GTEFL's witness McLeod believes a term of 5 years is likely to be far longer than the period of transition from monopoly regulation to competition and would greatly prejudice GTEFL. Witness McLeod believes the parties should not need such time to enter the market and to begin to effectively compete with GTEFL. (TR 1282, 1316)

Staff believes that it is virtually impossible to determine at this point how long it will take to develop local competition in the market place. However, staff does believe that there will be some transition period that could last several years. During this transition period, new entrants should have some stability in the prices GTEFL is charging for wholesale services and elements. With that understanding, staff is still concerned with establishing a term for this arbitrated agreement which is so long that a change, either regulatory or technical, in the industry should create a situation where some aspect of the agreement might impede competition. Therefore, staff recommends the Commission establish the term of this agreement to be 3 years, with successive one-year renewal options. Staff believes this is an appropriate compromise between the parties' positions. This approach will also allow the parties either to renew the agreement, or renegotiate the agreement if circumstances have changed significantly.

ISSUE 26: Can the agreement be modified by subsequent tariff filings? **(GREER)**

RECOMMENDATION: No. Staff recommends the Commission not allow GTEFL to modify the agreement via subsequent tariff filings, unless the agreement specifically references the tariff.

POSITION OF PARTIES

AT&T: GTEFL should not be permitted to modify the Agreement or to override the Agreement with subsequent tariff filings. AT&T's proposed interconnection agreement includes language that would permit the parties to further negotiate resolution of new or open issues as necessary.

GTEFL: While negotiation is the best way to establish terms governing competitive markets, entry of an agreement will not affect the Commission's jurisdiction to require tariff filings.

MCI: No, the agreement cannot be unilaterally modified by subsequent tariff filings.

STAFF ANALYSIS: AT&T and MCI believe GTEFL should not be allowed to modify the agreement by subsequent tariff filings. (Shurter TR 177; MCI BR p.70) AT&T states that otherwise GTEFL, pursuant to Section 364.051(6), Florida Statutes, would file a tariff modifying or eliminating essential services or elements on which competitive carriers have relied, and competitive carriers would have no recourse other than to challenge the tariff through the complaint process. (BR p.97) MCI believes that as a matter of policy and of contract law, GTEFL cannot be allowed to unilaterally modify the agreement in this proceeding. (MCI BR p.71)

GTEFL believes it should be allowed to modify the agreement with subsequent tariff filings. GTEFL's witness McLeod recognizes that the agreement, once achieved, will address matters over which the parties have negotiated and he believes the negotiation process is the most appropriate way to attain terms and conditions that will best produce a competitive marketplace. (TR 1308) However, GTEFL points out that tariffs will continue to be filed from time to time pursuant to the Commission's rules and requirements. It believes the Commission should not be hamstrung from having full authority to review and approve those tariffs at the time they are filed based upon all the considerations pertinent at that time. (TR 1308) Witness McLeod believes it makes neither good business sense nor good public policy for the ALECs to suggest that the Commission should restrain the authority it has for the future. (TR 1308)

Staff believes that GTEFL should not be permitted to modify an agreement reached pursuant to the Act by subsequent tariff filings. It is a maxim in the law that one party to a contract cannot alter its terms without the assent of the other parties. United Contractors, Inc. v. United Construction Corp., 187 So.2d 695 (Fla. 2d DCA 1966); 17A C.J.S §375. Mutual assent is as much a requisite element in effecting a contractual modification as it is in the initial creation of a contract. 17A Am Jur 2d §520. However, staff believes that interconnection contracts between GTEFL and the ALECs may be modified by subsequent tariff filings if the contracts contain express language permitting modification by subsequent tariff filing, i.e., a clause establishing a contractual requirement with specific reference to a tariff provision.

Thus, staff recommends that GTEFL not be permitted to modify interconnection agreements with the ALECs reached under the Act by subsequent tariff filings, except in an instance where the agreement sets forth a requirement with specific reference to the tariff.

ISSUE 27(a): When MCI resells GTEFL's services, is it technically feasible or otherwise appropriate for GTEFL to brand operator services and directory services calls that are initiated from those resold services? **(REITH)**

RECOMMENDATION: Yes. GTEFL should provide branding or unbranding for operator and directory service calls for MCI.

POSITION OF PARTIES

AT&T: No Position.

GTEFL: No. Such branding would require customized routing, which is not technically feasible. Branding itself raises its own set of technical problems, which cannot be resolved without significant time and expense.

MCI: Yes. Such branding is technically feasible, and is necessary to enable a reseller to establish its own identity in the market.

STAFF ANALYSIS: This issue is only specific to MCI and GTEFL and addresses whether or not GTEFL should rebrand or unbrand operator services and directory assistance calls initiated from a GTEFL resold service. Section 51.613(c) of the FCC's rules deals with branding of resold services and states that:

> Branding. Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.
>
> > (1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.
> >
> > (2) For the purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such

> services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

GTEFL states that they cannot provide branding for operator and directory assistance services because customized routing is not possible. Witness Johnson explains that even if the issue of customized routing were resolved, branding raises its own set of technical issues. (TR 1531) GTEFL identifies two types of potential branding called prebranding and post branding. Prebranding begins at the beginning of a directory assistance call. Postbranding occurs anytime during a recorded directory assistance announcement. (Johnson TR 1531)

Witness Johnson explains that prebranding requires identification and branding capabilities at the operator switch, a dedicated trunk group to identify calls and storage capacity for unique recorded branding phrases. (TR 1531-1532) Witness Johnson asserts that GTEFL database management personnel will have to spend an extensive amount of time within each GTEFL operator service switch setting up the branding process. (TR 1532)

GTEFL states that, in practical terms, operator services branding is not technically feasible because MCI would have to designate all of its customers to unique NPA/NXX groups. Witness Johnson points out that for resold services ALECs will share many numbers within a single NPA/NXX. (TR 1532)

With respect to customized routing, the FCC determined the following:

> 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. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. (FCC 96-325, ¶ 418)

In Issue 7 staff recommended that GTEFL be required to provide customized routing.

MCI states that it's important that operator and directory assistance services be properly branded. Witness Price believes customers that obtain MCI's operator and directory assistance services via GTEFL's platform, should be provided services in conjunction with MCI's brand name. The FCC states that:

> Brand identification is likely to play a major role in markets where resellers compete with incumbent LECs for the provision of local and toll service. This brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize consumer confusion. Incumbent LECs are advantaged when reseller end users are advised that the service is being provided by the reseller's primary competitor. We therefore conclude that where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted by an incumbent LEC proving to the state commission that it lacks the capability to comply with unbranding or rebranding requests. (FCC 96-325, ¶ 971)

MCI echoes this sentiment and adds that customers may conclude that they where "slammed" if they're greeted with the name of their old telephone company when making an operator service or directory assistance call. (Price TR 800)

Staff believes that GTEFL should provide branding or unbranding for MCI customers of GTEFL's resold service. Staff does not believe that GTEFL has proved that it "lacks the capability" to brand or unbrand its operator service or directory assistance service. Therefore, staff is recommending that GTEFL be required to provide branding or unbranding for operator service and directory service calls for MCI.

ISSUE 27(b): When GTEFL's employees or agents interact with MCI's customers with respect to a service provided by GTEFL on behalf of MCI, what type of branding requirements are technically feasible or otherwise appropriate? **(REITH)**

RECOMMENDATION: When providing repair services on behalf of MCI, GTEFL should use unbranded leave-behind materials.

POSITION OF PARTIES

AT&T: No Position

GTEFL: It is reasonable and appropriate for GTEFL to continue to identify its employees and its business offices as its own. GTEFL is willing to provide only a no-access door-hanger when providing services to MCI or other ALEC customers.

MCI: When interacting with customers with respect to a service provided by GTEFL on behalf of MCI, it is both feasible and appropriate for GTEFL employees to identify themselves as providing service on behalf of MCI and for such employees to use "leave-behind" cards or other written materials provided by MCI which identify MCI as the provider of service.

STAFF ANALYSIS: MCI states that resellers require carrier-specific branding for all customer contacts. Witness Price explains that customers expect services to be provisioned, serviced and maintained by their carrier of choice. Witness Price asserts that "customer confusion will be significantly diminished if the customer does not perceive that resold services are actually provided by another carrier." (TR 801)

MCI is requesting that GTEFL employees who interact with an MCI customer with respect to a resold service should, 1) be required to identify themselves as providing service on behalf of MCI, and 2) be required to use branded "leave-behind cards" and other written materials. (BR p.73) Staff notes that this proposal appears in MCI's brief. However, there is no record support for this approach.

GTEFL asserts that its employees should continue to work under GTEFL's brand. GTEFL service personnel providing repair service for MCI customers are GTEFL employees. However, witness Drew states that GTEFL is willing to use an unbranded no access door hanger when providing repair service to MCI and other ALECs. (TR 2049)

This issue deals with MCI's request for branding requirements as it pertains to GTEFL employees or agents. Staff believes that given the record in this proceeding, GTEFL's proposal of leaving unbranded materials when providing repair service to MCI's customers is appropriate. Therefore, staff recommends that when providing repair services on behalf of MCI, GTEFL should use unbranded leave-behind materials.

ISSUE 28: In what time frame should GTEFL provide CABS-like billing for services and elements purchased by MCI? **(STAVANJA)**

RECOMMENDATION: Staff recommends that the Commission should require GTEFL to provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of the order in this proceeding. GTEFL can continue to use its CBSS billing system, but the output from the CBSS system should be translated into the CABS-like format. In the interim, GTEFL should provide bills for resale and unbundled elements to MCI using its CBSS and CABS billing systems.

POSITION OF PARTIES

AT&T: No Position

GTEFL: GTEFL can provide CABS billing today for the interconnection services MCI purchases.

MCI: GTEFL should provide CABS formatted billing for resold services in accordance with the specifications adopted by the industry Ordering and Billing Forum in August, 1996 no later than January 1, 1997. NYNEX will be producing bills in the OBF CABS format effective October 1, 1996, by reformatting the output from its CRIS system.

STAFF ANALYSIS: This issue addresses what time frame GTEFL should provide CABS-like billing for services and elements purchased by MCI.

MCI states that a CABS or CABS-like billing system should be used for ILEC and ALEC billing for charges related to interconnection, resale, and unbundled elements. MCI acknowledges that CABS may require some modifications to be able to bill these services and elements; however, it is a system that is familiar to both ILECs and ALECs and has been the foundation for intercompany billing since access charges began. MCI claims that a CABS-like system would be cost-effective if adopted as an industry standard, instead of making each ALEC adapt to each ILEC's unique billing format. (deCamp TR 1032)

MCI states that it recognizes that GTEFL may use its Customer Billing Services System (CBSS) to collect billing information relevant to MCI. MCI only requests that GTEFL provide the bills in a CABS billing data format. (deCamp TR 1041) MCI asserts that receiving its bills in a CABS billing data format will enable MCI to build one system to receive and audit ILEC billing data, rather than having to build multiple interfaces and audit systems. (deCamp

TR 1042)

MCI states that in August 1996, the Ordering and Billing Forum (OBF) established specifications for CABS formatted billing data for resold local service. In addition, MCI states that NYNEX and Pacific Bell are already moving towards implementation of a CABS billing data format for the billing of resold services. (deCamp TR 1042)

GTEFL states that it is working to enhance CABS to handle both trunk and line side billing. However, GTEFL asserts that for now it will create a bill for resold services and unbundled elements along with a summary bill master using GTEFL's CBSS. (Drew TR 2023)

MCI states that GTEFL should provide CABS formatted billing no later than January 1, 1997. GTEFL states that an investigation into the use of CABS for both access and line side billing has not been completed. (Drew TR 2090) Therefore, GTEFL does not offer an implementation date for a CABS formatted billing.

Staff believes that the billing between GTEFL and MCI should transition to a CABS formatted billing for resold services and unbundled elements. It appears that MCI is only requesting that GTEFL provide bills in a CABS data format, regardless of what system is used to do it. Staff believes that requiring GTEFL to provide CABS formatted bills is appropriate because a standardized billing format for unbundled elements and resold services will be consistent and familiar to MCI. Staff is convinced that the CBSS translation to a CABS billing data format is technically feasible as evidenced by NYNEX and Pacific Bell.

Therefore, staff recommends that the Commission should require GTEFL to provide CABS-like formatted billing for both resale and unbundled elements within 120 days of the issuance of the order in this proceeding. Staff believes that 120 days is sufficient time for GTEFL to transition to CABS-like formatted billing, especially since GTEFL has already begun an investigation into CABS billing. Staff recommends that the billing format should be consistent with industry guidelines to the extent they exist or are developed.

ISSUE 29: What are the appropriate rates, terms, and conditions for access to code assignments and other numbering resources? **(WIDELL)**

RECOMMENDATION: GTEFL Should be required to furnish competing LECs access to code assignments on a non-discrimnatory basis. There should be no charge for this service.

POSITION OF PARTIES

AT&T: No Position

GTEFL: To the extent that GTEFL serves as central office code administrator for a given region, it will support all ALEC requests related to central office (NXX) code administration and assignments in a timely and effective manner.

MCI: Access to code assignments and other numbering resources should be provided on a nondiscriminatory basis. There should be no significant additional costs associated with management of these resources.

STAFF ANALYSIS: Staff believes the parties essentially agree on this issue. MCI believes that NXX code assignments should be made on a nondiscriminatory basis. (BR p.75) GTEFL indicated that for the regions where it is the Central Office Code Administrator, GTEFL will process MCI's requests for numbering code assignments and related matters in a timely and effective manner. In addition, MCI says that there should be no significant cost associated with the management of these resources. GTEFL say there will be no charge for this service. (TR 2119)

Based on this, staff recommends that GTEFL be required to furnish NXX codes in a nondiscriminatory manner at no charge as required the industry guidelines.

ISSUE 30: Should the agreement be approved pursuant to the Telecommunications Act of 1996? **(BARONE, BROWN)**

PRIMARY RECOMMENDATION: Yes, the arbitrated agreements should be submitted by the parties for approval under the standards in Section 252(e)(2)(B). The Commission's determination of the unresolved issues should comply with the standards in Section 252(c) which include the requirements in Section 252(e)(2)(B). **(BARONE)**

ALTERNATIVE RECOMMENDATION: Yes. The Commission's arbitration of the unresolved issues in this proceeding has been conducted pursuant to the directives and criteria of Sections 251 and 252 of the Telecommunications Act of 1996. Pursuant to Section 252(e), the parties should submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. The agreement shall include the issues on which the parties were able to negotiate agreement, as well as the unresolved issues arbitrated by the Commission. In their submission the parties should identify those portions of the agreement that they negotiated and those portions that the Commission arbitrated. In the post-hearing procedure described in Issue 31, the Commission should review the negotiated portions of the agreement under the standards of Section 252(e)(2)(A) and the arbitrated portions of the agreement under the standards of Section 252(e)(2)(B) and Section 252(c). **(BROWN)**

POSITION OF PARTIES

AT&T: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e)

GTEFL: Yes. The Commission must approve the agreement, but it should recognize that contract provisions that were not arbitrated should be considered under the nondiscrimination and public interest standard of section 252(e)(2)(A), rather than (B), which governs the arbitrated provisions.

MCI: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e).

PRIMARY STAFF ANALYSIS: Section 252 sets forth the procedures for negotiation, arbitration and approval of agreements. Specifically, Sections 252(a)(1)and 252(a)(2) regard the procedures for agreements arrived at through negotiation and Section 252(b) regards the procedure for agreements arrived at through compulsory arbitration.

or arbitration shall be submitted for approval by this Commission. This Commission may only reject the agreements for specific reasons. Specifically, Section 252(e)(2) states that this Commission may only reject

> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -
>
> > (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> >
> > (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
>
> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Thus, the Act establishes different standards for approval depending on whether the agreement is arrived at through negotiation or arbitration.

GTEFL contends that this language contemplates that portions of an agreement may be reviewed under subsection 252(e)(2)(A), governing negotiations, while other portions may be assessed under subsection 252(e)(2)(B). GTEFL states that it has agreed with AT&T and MCI to provisions that have not been arbitrated. GTEFL asserts that although these provisions must still be approved by this Commission, they must be considered under the nondiscrimination and public interest standards of 252(e)(2)(A), rather than the 252(e)(2)(B) standard. Specifically, GTEFL applies the different standards to the issues rather than to the agreement itself.

MCI, however, expects that this proceeding will result in the submission of an arbitrated agreement, which should then be approved or rejected applying the standards contained in Section 252(e)(2)(B).

AT&T states that the agreement should be filed under Section 252(e) of the Act. However, AT&T does not specify whether the agreement should be approved pursuant to Section 252(e)(2)(A) or Section 252(e)(2)(B).

The Act contemplates different mechanisms under which the parties can submit agreements. Under Section 252(a)(1), the parties may negotiate and enter into a binding agreement which shall be submitted to the State for approval. Under Section 252(b), the parties may petition the State commission to arbitrate any open issues. Section 252(b) contemplates that there will be resolved issues as well as unresolved issues. In fact, this section requires the petitioner to provide all relevant documentation concerning "any other issue discussed and resolved by the parties."

Although GTEFL asserts that the standards in subsections 252(e)(2)(A) and (B) apply not only to complete agreements but also to "any portion thereof" adopted through negotiation or arbitration, staff contends that phrase allows the Commission to reject a portion of a submitted agreement rather than rejecting the entire agreement itself. In addition, GTEFL's interpretation is inconsistent with the schedule for state action in Section 252(e)(4). That section states that if the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. Under GTEFL's interpretation, the negotiated provisions would have to be approved within 90 days and the arbitrated provisions within 30 days.

Because these will be agreements resulting from arbitration pursuant to Section 252(b), the agreements should be approved under the standards in Section 252(e)(2)(B). The arbitrated agreements should consist of the Commission's decision regarding the unresolved issues in this recommendation as well as issues resolved by the parties. The Commission's determination of the unresolved issues should comply with the standards in Section 252(c) which include the requirements in Section 252(e)(2)(B).

ALTERNATIVE STAFF ANALYSIS: This issue has been included in every arbitration proceeding the Commission has conducted under Section 252 of the Act. Staff initially developed the issue to accommodate the Act's bifurcated arbitration and approval process, recognizing that the Commission would act both as arbitrator and final decision maker in the proceedings. The Act's process appears to contemplate that arbitrations would first be conducted by an administrative law judge or other arbitrator, and then the state commission would conduct the final approval process. Because the Commission plays both roles here, it seemed incongruous that the Commission would conduct extensive proceedings to arbitrate the disputed issues between the parties and then have to turn around and conduct another proceeding to approve what it had just decided. This issue was designed to be the catch-all issue, where the Commission would act as final decision maker and approve its arbitration decision according to the standards for approval set out in Section 252(e).

In the course of the proceedings, several parties suggested that another step was needed. They urged that the Commission's arbitration decision by itself would not provide sufficient detail and finality to actually implement the decision. They needed a written agreement to ensure that the decision would be implemented effectively and efficiently. Thus, in the first arbitration cases, as in this case, staff recommended that the Commission direct the parties to memorialize the Commission's arbitration decision in a written agreement. If the parties could not agree on language of the agreement they would submit their own proposed agreements and the Commission would choose language that best reflected its arbitration decision.

The parties continued to negotiate as the cases progressed, and in every case they reached agreement on several issues before hearing. The question then became; how should the Commission approve the parties' agreement on the issues they had settled, as well as the agreement on the issues the Commission had arbitrated? In the first arbitrations, the parties withdrew the issues they had settled, and submitted a separate negotiated agreement in a separate docket for Commission approval. The Commission was able to approve the separate negotiated agreement under the more flexible standard for approval of negotiated agreements found in Section 252(e)(A). Since the only agreement left to approve was the agreement that memorialized the Commission's arbitration decision, and since the Commission had already made that decision according to the stricter standard for approval under Section 252(e)(B), there was no need for further formal Commission approval.

In this case, however, the parties have negotiated an agreement on some of the issues in the case, but they have not submitted a separate written agreement for separate Commission approval. The Commission must therefore approve the negotiated agreement on some issues of the case, as well as the agreement on the issues the Commission has arbitrated. The standards for approval are different under the Act. The Act provides that parties may negotiate agreements without regard to the standards set forth in subsections (b) and (c) of section 251, and the state commission can only reject those agreements if they discriminate against a telecommunications carrier not a party to the agreement or they are not consistent with the public interest. The Act requires that agreements adopted by arbitration must comport with the requirements of section 251, the FCC regulations implementing section 251, and the pricing standards set forth in section 252(d). Negotiated agreements do not have to comply with any of these requirements.

The Commission needs to decide how it will apply the different standards of the act to an agreement that combines negotiated parts and arbitrated parts. The primary recommendation proposes that the Commission should apply the stricter standard for arbitrated agreements to the entire agreement the parties will submit, including the negotiated portions. This alternative recommendation proposes that the Commission should apply the negotiated agreement standard to those issues and parts of the agreement that the parties negotiated, and the arbitrated agreement standard to the arbitrated parts, which the Commission has actually already done in its arbitration decision.

Staff submits that both proposals are supportable under the Act. Staff suggests, however, that the alternative recommendation better implements the intent of the Act to encourage negotiation and private agreements to implement its purposes rather than state-imposed solutions. The primary recommendation proposal has the advantage of applying one standard to the whole agreement, and it thus avoids the difficulty of figuring out which part of the agreement is which. The alternative proposal requires that the parties identify the different parts of their agreement so that the Commission may apply the different standards; but what the proposal may lose in efficiency, it gains in flexibility. It allows the parties to continue to negotiate resolution of their disagreements without regard to the limitations imposed by Section 251, the pricing standards of the Act, and the FCC's regulations. It does not limit the scope of negotiations by artificially imposing stricter standards simply because the negotiations were not concluded by the time a petition for arbitration was filed. The alternative proposal is consistent with the intent of the Act and the Commission's own policy to encourage negotiation and settlement. Staff recommends that the Commission should review the negotiated portions of the agreement that the parties identify under the standards of Section 252(e)(2)(A) and the arbitrated portions of the agreement under the standards of Section 252(e)(2)(B) and Section 252(c).

ISSUE 31: What are the appropriate post-hearing procedures for submission and approval of the final arbitrated agreement? **(BARONE, BROWN)**

PRIMARY RECOMMENDATION: Staff recommends that the parties submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after the agreements are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision. **(BARONE)**

ALTERNATIVE RECOMMENDATION: The parties should submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the negotiated portions of the submitted agreements pursuant to the standards in Section 252(e)(2)(A) and the arbitrated portions of the submitted agreements pursuant to the standards in Sections 252(e)(2)(B) and 252(c) within 30 days after they are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision. **(BROWN)**

POSITION OF PARTIES

AT&T: The parties should file a comprehensive agreement 14 days after the Commission issues its decision. Each party should file proposed contractual language for unresolved issues 20 days after the issuance of the Order. The Commission should adopt, on an issue-by-issue basis, the language that best reflects its decisions.

GTEFL: The parties should be directed to negotiate an agreement that accords with the terms of the Commission's order in this arbitration. To avoid future disputes, the parties must have sufficient time to incorporate the Commission's directives into a full and final agreement.

MCI: The parties should be directed to negotiate a comprehensive agreement that incorporates the Commission's decisions on the issues decided in this proceeding within 14 days of the Commission's vote. In the event the parties are unable to conclude an agreement within that time frame, each party should submit its proposed agreement within 20 days of the vote. The Commission should then adopt the proposal, or the portions of the competing proposals, which best incorporates its decisions into a comprehensive agreement.

PRIMARY STAFF ANALYSIS: Staff submitted this issue in order to recommend a post-arbitration procedure by which the parties shall submit a written agreement for approval that memorializes and implements the Commission's arbitration decision.

In Order No. PSC-96-1107-PCO-TP, the Prehearing Officer in the AT&T/MCI/BellSouth arbitration docket (Docket No. 960833-TP) ruled that the Commission will act on the major issues identified by the parties to this proceeding, but will not resolve all of the subsidiary issues to produce a final arbitrated agreement. The Prehearing Officer proposed a post-decision procedure under which the parties would be given 30 days to submit a comprehensive arbitrated agreement that incorporates the Commission's decisions on the major issues. If the parties are unable to reach an agreement, the Prehearing Officer proposed that each party would submit its own version of a proposed agreement and that the Commission would choose and approve the agreement the best comports with its decision.

Section 252(c) provides that the State commission shall provide a schedule for implementation of the terms and conditions by the parties to the agreement.

GTEFL states that the Commission has been asked to resolve numerous complex issues in this case. To avoid future disputes, the Commission must allow sufficient time to incorporate its findings into a comprehensive and integrated agreement. GTEFL states that the two weeks proposed by AT&T and MCI is not enough. GTEFL points out that the parties were given twelve days to write their Posthearing Statements. GTEFL contends that, in comparison, two weeks to produce a contract governing the telecommunications market structure is plainly unreasonable. GTEFL also contends that this proposal would unfairly burden GTEFL, which would have to negotiate and finalize two of the most complex commercial contracts it will ever write within an unduly compressed time frame, while MCI and AT&T, respectively, need only concern themselves with one agreement each.

GTEFL proposes that 30 days is a reasonable period for contract finalization, which is slightly more than twice AT&T's and MCI's proposed 14 day period. GTEFL states that this properly accounts for the fact that GTEFL will be negotiating separate contracts with each party.

AT&T proposes that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order reflecting the Commission's decisions on the issues in this proceeding. If no agreement is reached, AT&T proposes that the parties should file their respective proposed contractual language for each issue that remains unresolved within 20 days after the issuance of the Order. The Commission should then adopt on an issue-by-issue basis the proposed contractual language that best reflects the Commission's determinations in its Order.

MCI's proposal is very similar to AT&T's except that if the parties are unable to reach an agreement in 14 days, each party would submit its own version of a proposed agreement in 20 days. MCI adds that the Commission should retain the flexibility to accept the entire proposed agreement submitted by either party or to accept, on an issue-by-issue basis, parts of the proposed agreements offered by either party. MCI points out that this is consistent with the discretion that the FCC would vest in its arbitrators to use either "entire package" final offer arbitration or "issue-by-issue" final offer arbitration in cases where the FCC has assumed jurisdiction over an arbitration. 47 C.F.R. 51.807(d)

Staff recommends that the appropriate reading of the Act gives the Commission the role under the provisions of Sections 252(b),(c),(d) and (e) both to arbitrate the unresolved issues <u>and</u> approve the "agreement" that results. Section 252(e)(1) states that any agreement adopted by negotiation or arbitration must be approved by the state commission. Section 252(e)(2)(B) sets out the grounds for rejection of an agreement adopted by arbitration. Finally, Section 252(e)(4)provides that the state commission must act to approve or reject the agreement adopted by arbitration within 30 days of its submission by the parties or it shall be deemed approved. The Act gives state commissions considerable flexibility to fashion arbitration procedures that will be compatible with the commissions' processes and accomplish the policy purposes of the Act.

Accordingly, staff recommends that the parties submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after the agreements are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision.

ALTERNATIVE STAFF ANALYSIS: As the alternative recommendation statement for this issue indicates, staff agrees with the primary recommendation that the parties should submit a written agreement to the Commission within 30 days of issuance of the Commission's order. The agreement should memorialize the Commission's arbitration decision, as well as the negotiated settlement the parties achieved on certain issues in the proceeding. Staff also agrees with the primary recommendation that if the parties cannot agree to the language of the agreement, each party should submit its version of the agreement and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision. This procedure is similar to the procedure the FCC will adopt in arbitrations it will conduct if necessary. Staff only disagrees with the primary recommendation on the standard the Commission should use to approve the negotiated and arbitrated portions of the agreement. See Issue 30.

ISSUE 32: Should these dockets be closed?

RECOMMENDATION: These dockets should remain open until permanent rates are established for all interim rates.