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MEMORANDUM

JANUARY 26, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BROWN, COX) *mcB/jk*
DIVISION OF COMMUNICATIONS (NORTON, GREEN) *576*
DIVISION OF AUDITING AND FINANCIAL ANALYSIS (D. VANDIVER, *192*
DEVLIN) *EDD OV*

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
AND MCI METRO ACCESS TRANSMISSION SERVICES, 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.

AGENDA: FEBRUARY 3, 1998 - REGULAR AGENDA - DECISION PRIOR TO
HEARING - INTERESTED PARTIES MAY PARTICIPATE

CRITICAL DATES: HEARING DATES - MARCH 11-12, 1998

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960847ER.RCM

CASE BACKGROUND

47 U.S.C. § 252(d)(1), Interconnection and Network Element Charges, requires that prices set for unbundled elements be based on cost, be nondiscriminatory and may include a reasonable profit. By Order No. PSC-96-1152-PCO-TP, issued September 13, 1996, the Prehearing Officer consolidated arbitration proceedings between GTE

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Florida Incorporated (GTEFL) and AT&T Communications of the Southern States, Inc. (AT&T) and GTEFL and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCI) in Docket Nos. 960847-TO and 960980-TP. On January 17, 1997, the Commission issued a final arbitration order, Order No. PSC-97-0064-FOF-TP, in those dockets. In that Order, the Commission set interim and permanent rates for specific unbundled network elements and ordered GTEFL to file cost studies so that permanent rates could be established for those elements assigned interim rates. On May 21, 1997, the Commission issued Amendatory Order No. PSC-97-0064A-FOF-TP, requiring GTEFL to provide cost studies for all of its nonrecurring charges. On May 9, 1997, and July 21, 1997, GTEFL filed the cost studies that the Commission had ordered, and thereafter this proceeding was established to review those studies.

On January 14, 1998, the Commission's Auditing Bureau Chief, Division of Auditing and Financial Analysis, submitted to GTE Florida Incorporated (GTEFL) a notice of intent to audit certain company records. The notice stated that the Commission will audit components of the cost study data filed by GTEFL in response to Order No. PSC-97-0064-FOF-TP. On January 19, 1998, GTEFL replied that it would not respond to the audit request, at least until the Commission's authority to do the audit is clarified. In light of these circumstances, staff believes that the following recommendations are appropriate.

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DISCUSSION

ISSUE 1: Should the Commission require GTE Florida Incorporated to respond to the audit requests issued by the Division of Auditing and Financial Analysis on January 16, 1998, pursuant to Section 364.183, Florida Statutes?

RECOMMENDATION: Yes. The Commission should require GTE Florida Incorporated to comply with the audit request regarding components of the cost study data filed in response to Order No. PSC-97-0064-FOF-TP, issued January 17, 1997. The records that are the subject of this audit request are reasonably necessary for the disposition of matters properly before the Commission in this proceeding. Staff recommends that the Commission issue an order permitting the requested audit to go forward immediately so that the audit can be completed with sufficient time prior to the March 11-12, 1998, hearing dates.

STAFF ANALYSIS: As discussed previously, on January 14, 1998, the Commission's Division of Auditing and Financial Analysis submitted an audit request to GTEFL regarding cost study information submitted by GTEFL in Docket Nos. 960847-TP and 960980-TP, pursuant to the Commission's authority to conduct audits under Section 364.183, Florida Statutes, Access to Company Records, and Commission Rule 25-4.0201, Florida Administrative Code, Audit Access to Records. On January 19, 1998, GTEFL responded that it would not comply with the request, pending clarification of the Commission's jurisdiction to conduct the audit.

STATUTORY AND REGULATORY AUTHORITY

Section 364.183(1), Florida Statutes, Access to Company Records, states in pertinent part:

- (1) The commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. . . . The commission may require a telecommunications company to file records, reports, or other data directly related to matters within the commission's jurisdiction in the form specified by the commission and may

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require such company to retain such information for
a designated period of time. . . .

Rule 25-4.019(3), Florida Administrative Code, Records and
Reports in General, states as follows:

- (3) Upon notification to the utility, members may, at reasonable times, make personal visits to the company offices or other places of business within or without the State and may inspect any accounts, books, records, and papers of the company which may be necessary in the discharge of the Commission's duties. Commission staff members will present Commission identification cards as the written authority to inspect records. During such visits the company shall provide the staff member(s) with adequate and comfortable working and filing space, consistent with the prevailing conditions and climate, and comparable with the accommodations provided the company's outside auditors.

Rule 25-4.0201, Florida Administrative Code, Audit Access to
Records, states in pertinent part:

- 1) This rule addresses the reasonable access to utility and affiliate records provided by §364.183(1) for the purposes of management and financial audits.
 - a) The audit scope, audit program and objectives, and audit requests are not constrained by relevancy standards narrower than those provided by §364.183(1).
 - b) Reasonable access means that company responses to audit requests for access to records shall be fully provided within the time frame established by the auditor. In establishing a due date, the auditor shall consider the location of the records, the volume of information requested, the number of pending requests, the amount of independent analysis required, and reasonable time for the utility

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to review its response for possible claims of confidentiality or privilege.

GTEFL's POSITION

GTEFL cites several reasons for its refusal to comply with the Commission's audit request. Foremost, GTEFL does not believe that the Commission has statutory authority to conduct the audit as proposed in this proceeding. GTEFL states that since GTEFL is no longer a rate-of-return regulated local exchange carrier, the Commission has limited access to company records under Section 364.183, Florida Statutes. GTEFL states that the Commission is authorized to access company records limited only to those records "that are reasonably necessary for the disposition of matters within the Commission's jurisdiction." GTEFL argues that the Commission must accordingly provide a clear representation of what matter within the Commission's jurisdiction necessitates an examination of the records at issue and why such access to records is reasonably necessary for the disposition of the matter.

Next, GTEFL contends that the audit request is a procedurally inappropriate attempt to alter the Commission's decision in the earlier arbitration order in this docket, Order No. PSC-97-0064-FOF-TP. GTEFL believes that the audit's purpose is unclear and further that the audit appears to improperly put the cost study methodology approved in the earlier arbitration order at question, contrary to the Commission's earlier findings and the issues list in this docket.

Furthermore, GTEFL argues that the audit is an irregular, inappropriate procedure that imposes undue burden upon GTEFL. GTEFL believes that complying with the audit request in the midst of complying with discovery requests and preparing for hearing would put GTEFL at a disadvantage in this proceeding. GTEFL contends that if staff's purpose is information gathering, it should not forego discovery in favor of audit procedures not contemplated by the Commission's rules.

Finally, GTEFL believes that the interjection of the audit report into the record would be constitutionally infirm. GTEFL believes that the introduction of the audit report into the record in this proceeding would result in testimony that cannot be cross-

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examined or rebutted by GTEFL, contrary to its rights under Section 120.57(1)(b)(4), Florida Statutes. GTEFL notes that staff has neither proffered a witness nor filed testimony in this proceeding to date.

ANALYSIS

Based on the statutory provision and the Commission rules provided above, staff strongly disagrees with GTEFL's decision to deny the Commission's audit request. First, the Commission's January 14, 1998, notice of intent to audit GTEFL did clearly specify the matter for disposition within the Commission's jurisdiction. This notice specified that the Commission would take this audit in accordance with Commission audit procedures as a part of the ongoing proceeding in Docket Numbers 960847-TP and 960980-TP regarding components of the cost study data filed by GTEFL in response to Order No. PSC-97-0064-FOF-TP. The notice specified that the Tampa district office supervisor would coordinate the audit.

The notice cited as a regulatory authority for the audit Rule 25-4.019(3), Florida Administrative Code (See above), but did not clearly specify the statutory authority for the audit. There is no requirement that the Commission state its statutory authority in a notice of intent to audit a company under its jurisdiction. The Commission does have statutory authority under Section 364.183(1), Florida Statutes, to audit all telecommunications company records that are reasonably necessary for matters within the Commission's jurisdiction. In this case, staff seeks to verify components of cost study data filed in response to the Commission's earlier arbitration order in this proceeding. Staff believes that this data will assist the Commission in verifying the accuracy of cost data supplied by GTEFL. Staff is seeking the most reliable and fully developed evidentiary record. Staff is acting in a neutral role and should not be considered an adversary seeking to subvert the discovery process.

This type of audit is properly classified as a financial audit under the Commission's Rule 25-4.0201, Florida Administrative Code. This audit is not, as GTEFL contends, an inappropriate procedure seeking to subvert the normal Commission discovery process. It is a valid and prudent use of the Commission's resources to verify cost study data components. Staff does not seek to use the data

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for any improper purpose, such as questioning the cost methodology approved by the Commission in its earlier arbitration order. This type of audit is routinely done when the Commission is concerned about cost allocations and costing of a particular service.

Furthermore, staff does not believe that this audit would impose an undue burden on or disadvantage GTEFL in any way. Staff will work with the company to accommodate any timing requirements that may be burdensome. If a problem does result, staff intends to follow the dispute resolution procedure provided in Commission Rule 25-4.0201(1)(c). We, however, have not reached that juncture at this time, as GTEFL has flatly refused the audit request without seeking any accommodation regarding the timing of its responses to the audit.

Finally, in the event that staff proffers the audit report in this proceeding, staff will remedy GTEFL's constitutional concerns by providing a witness to sponsor the audit report at the hearing, which is the normal Commission practice. Following the completion of the audit, the staff witness will supply direct testimony, and the parties then will be permitted an opportunity to file rebuttal testimony on the staff witness testimony, as well as conduct discovery. The witness will be tendered for cross-examination at the hearing in this proceeding.

CONCLUSION

Accordingly, the Commission should require GTE Florida Incorporated to comply with the audit request regarding components of the cost study data filed in response to Order No. PSC-97-0064-FOF-TP, issued January 17, 1997. The records that are the subject of this audit request are reasonably necessary for the disposition of matters properly before the Commission in this proceeding.

In this case, the Commission is charged under federal law to establish rates for unbundled network elements that are based on forward-looking, long-run incremental costs. The Commission's ability to discharge this responsibility is greatly dependent on the quality of the evidentiary record. In turn, the quality of the evidentiary record in this case is greatly dependent upon the findings of the requested audit. Staff therefore recommends that the Commission issue an order permitting the requested audit to go forward immediately so that the audit can be completed with sufficient time prior to the March 11-12, 1998, hearing dates.

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ISSUE 2: Should these Dockets be closed?

RECOMMENDATION: No. These Dockets should remain open pending the outcome of the hearing.

STAFF ANALYSIS: These Dockets should remain open pending the outcome of the hearing.