

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by American) DOCKET NO. 961537-TP
Communications Services, Inc.) ORDER NO. PSC-97-0266-PHO-TP
and its local exchange operating) ISSUED: March 11, 1997
subsidiaries in Florida for)
arbitration of unresolved issues)
in interconnection negotiations)
with GTE Florida Incorporated,)
pursuant to Telecommunications)
Act of 1996.)
_____)

Pursuant to Notice, a Prehearing Conference was held on March 3, 1997, in Tallahassee, Florida, before Commissioner Joe Garcia, as Prehearing Officer.

APPEARANCES:

Floyd R. Self, Esquire, Norman H. Horton, Jr., Esquire, and Gwen G. Jacobs, Esquire, Messer, Caparello & Self, P.A., Post Office box 1876, Tallahassee, FL 32302-1876; Brad E. Mutschelknaus, Esquire, Edward A. Yorkgitis, Jr., Esquire, Kelly Drye & Warren, L.L.P., 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036; James Falvey, Esquire, American Communications Services, Inc., 131 National Business Parkway, #100, Annapolis Junction, MD 20701

On behalf of American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. and American Communications Services of Tampa, Inc.

Kimberly Caswell, Esquire, Post Office Box 110, FLTC0007, Tampa, Florida 33601-0110

On behalf of GTE Florida Incorporated.

William P. Cox, Esquire, and Beth Culpepper, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

DOCUMENT NUMBER-DATE

02577 MAR 11 5

FPSC-RECORDS/REPORTING

PREHEARING ORDER

I. CASE BACKGROUND

On July 30, 1996, American Communications Services, Inc. (ACSI), on behalf of its local exchange operating subsidiaries in Florida, requested interconnection, service, and unbundled network elements from GTE Florida, Inc. (GTEFL) under Section 251 of the Act. Negotiations were conducted between the companies regarding the request. As a result, the parties reached an agreement on a number of issues. On December 26, 1996, ACSI filed its petition for arbitration of the issues not resolved through its negotiations with GTEFL. To assure that this Commission is able to make its determination on the unresolved issues within the 9-month congressionally mandated time limitation, this docket shall be conducted as an expedited proceeding pursuant to Section 364.058, Florida Statutes. The hearing has been set for March 20 and 21, 1997.

II. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183(2), Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting confidential files.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. PREFILED TESTIMONY AND EXHIBITS

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

IV. ORDER OF WITNESSES

<u>WITNESS</u>	<u>APPEARING FOR</u>	<u>ISSUES #</u>
<u>DIRECT</u>		
Donald W. McLeod	GTEFL	1, 2, 7
Beverly Y. Menard	GTEFL	3
William E. Munsell	GTEFL	6
Kirby D. Cantrell	GTEFL	4, 5
Gregory M. Duncan	GTEFL	1, 2 - Rebuttal of Hatfield Model
Bert I. Steele*	GTEFL	1, 2, 3 (support for cost study calculations)
Dennis B. Trimble *	GTEFL	1, 2, 3 (pricing for elements offered to interconnectors)
Michael J. Doane	GTEFL	1, 2, (economic analysis of issues to be arbitrated)
<u>DIRECT & REBUTTAL</u>		
Richard Robertson	ACSI	1, 4, 5, 6, 7, 8
C. William Stipe, III.	ACSI	1, 5, 6
Dr. Marvin H. Kahn	ACSI	1, 2, 3

* GTEFL requests that Trimble and Steele be permitted to testify **as a panel**, as they did in GTEFL's recent arbitrations with AT&T, MCI and Sprint.

V. BASIC POSITIONS

ACSI: ACSI and GTE Florida have conducted good faith negotiations which have resulted in an agreement on substantially all issues with respect to an interconnection arrangement. There remain some areas on which the parties do not agree, which have been properly presented to this Commission for arbitration pursuant to the Telecommunications Act of 1996. The Act provides the framework for competition in the local exchange area but

competition will not evolve unless entrants are able to compete on equal terms with incumbent LECs such as GTE. It is essential to the development of competition that network elements be properly unbundled and available, that the elements be priced upon TELRIC and that prices, terms and conditions be available to all new entrants on a nondiscriminatory basis.

GTEFL:

It is critical that the Commission set proper prices for the unbundled elements American Communications Services, Inc. (ACSI) seeks in this arbitration. Correct prices will engender fair and effective competition, while improper pricing will prevent consumers from enjoying the benefits that efficient markets produce. To this end, only GTEFL's prices reflect the actual costs the Company will incur to provide service and maintain its network. The Commission cannot, consistent with constitutional law and sound economic theory, set prices below GTEFL's actual costs, as ACSI proposes. Further, rational pricing objectives and legislative history compel rejection of ACSI's request to unbundle and then recombine GTEFL's network elements in any manner ACSI chooses.

STAFF:

No position at this time.

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VI. ISSUES AND POSITIONS

ISSUE 1: Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for GTEFL to provide ACSI with these items? If technically feasible, what should the rates be for these items?

Multiplexing
Digital Cross-Connect
Channelization

POSITION

ACSI: These are network elements and should be offered at prices as discussed in Issue 2.

GTEFL: GTEFL will provide cross-connect functionality to alternative local exchange carriers (ALECs) under the same terms and conditions as it provides this functionality today to interexchange carriers (IXCs). GTEFL assumes that ACSI means "channelization" and "multiplexing" to be the same functionalities under the same terms and conditions as reflected in the AT&T/MCI arbitration order.

STAFF: No position at this time.

ISSUE 2: What should be the recurring and nonrecurring rates of each of the following items?

Network Interface Device
Unbundled Loops

POSITION

ACSI: The price of the unbundled elements should be equal to TELRIC plus a reasonable allocation of efficiently incurred forward-looking joint and common costs. GTE has not submitted adequate cost data to support their proposals consequently the Commission should utilize publicly available data and the Hatfield Model as described by Dr. Kahn to establish prices for these elements.

GTEFL: These items 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 this standard will effect an unconstitutional taking of GTEFL's property.

STAFF: No position at this time.

ISSUE 3: What should be the recurring and nonrecurring rate for interim local number portability (RCF, DID)?

POSITION

ACSI: The incremental cost of providing interim number portability should be borne by all carriers. The rates proposed by GTE-FL recover a disproportionate share of the cost of providing INP arrangements.

GTEFL: GTEFL's tariffed rates for RCF should remain in place. GTEFL's costs of providing DID should be recovered through appropriate tariffs, based on GTEFL's actual costs, or through a cost-pooling system.

STAFF: No position at this time.

ISSUE 4: Should GTEFL permit ACSI to cross-connect with other collocators on GTEFL's property, and if so, what should be charged for such cross-connection?

POSITION

ACSI: ACSI should be permitted to cross connect with other providers collocated on GTEFL's property and this should be permitted directly without having to use the GTE network. The prices proposed by GTE include costs which are recovered in the elements ordered by ACSI, thus GTE is charging for the same function twice.

GTEFL: GTEFL does not believe the Telecommunications Act of 1996 (Act) imposes a duty to facilitate interconnection between third parties on an ILEC's premises. Despite these concerns, GTEFL recognizes that this Commission has allowed such cross-connections. For the time being, GTEFL will permit third party cross-connections under certain conditions, including the requirement that GTEFL may choose whether GTEFL or the ALEC will provide the

cross-connection. ACSI must pay the full costs of such cross-connection, as calculated by GTEFL.

STAFF: No position at this time.

ISSUE 5: Should GTEFL be required to permit ACSI to collocate its remote switching modules in GTEFL's central offices?

POSITION

ACSI: Yes. The RSM concentrates individual subscriber loops to single trunk and can also perform limited switching. The RSM is an efficient interconnection arrangement and location of this equipment at the central office is the most efficient method of interconnection.

GTEFL: Under the Act, GTEFL must permit collocation of only equipment that is "necessary for interconnection or access to unbundled network elements." (47 U.S.C. sec. 251(c)(6).) Equipment which can provide switching functionality-such as remote switching modules- does not come within this requirement and thus will not be permitted. GTEFL's position on this matter accords with the FCC's.

STAFF: No position at this time.

ISSUE 6: What should be the compensation mechanism for the exchange of local traffic between ACSI and GTEFL?

POSITION

ACSI: The compensation method should be in the form of "bill and keep" or "mutual traffic exchange". This is a reasonable mechanism and imposes minimal administrative costs, unlike other proposals.

GTEFL: GTEFL's rates for termination of ACSI'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.

STAFF: No position at this time.

ISSUE 7: Should ACSI be allowed to combine GTEFL's unbundled network elements in any manner it chooses including recreating existing GTEFL services?

POSITION

ACSI: Yes. There should be no restriction on ACSI's ability to combine unbundled network offerings to provide services. To impose restrictions would be inconsistent with s.251(c)(3) and the Interconnection Order and a limitation on ACSI's ability to compete with GTE.

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. ACSI wishes to create arbitrage opportunities that would eviscerate the Act's unambiguous distinction-made explicit in the Act's legislative history-between unbundled elements and wholesale services made available for resale.

STAFF: No position at this time.

ISSUE 8: What restrictions, if any, apply to the availability to ACSI of individual provisions contained in those interconnection agreements GTEFL has with other carriers?

POSITION

ACSI: There should be no restrictions on the availability of individual provisions to ACSI. The most favored nations would allow ACSI to have access to rates, terms and conditions offered to other providers in a nondiscriminatory manner, which is consistent with the requirements of the Telecommunications Act of 1996.

GTEFL: *** This issue is contested by GTEFL ***

ACSI's proposed issue 8 asks, in effect, whether the commission should permit ACSI to assemble an interconnection and unbundling contract with GTEFL by picking and choosing provisions from among GTEFL's contracts with other ALECs. This issue has not been accepted for consideration in this case. (Order Determining Issues, number PSC-97-0155-PCO-TP, Feb. 13, 1997, at 2.) GTEFL reserves the right to take a substantive position on this issue if, at the prehearing

conference, the prehearing officer adds it to the official issues list. GTEFL refers the Commission to its Comments filed January 31, 1997 for its discussion as to why this issue should not be include for resolution in this case. Among other things, GTEFL pointed out that the Commission already declined to decide this exact same issue in GTEFL's recent arbitration with Sprint (Docket number 961173-TP). Because this was a legal decision pursuant to the Act, the Commission's decision on the same issue here should not be any different. Making the same finding at the prehearing conference that the Commission made after the Sprint hearing would save GTEFL from submitting--and the Commission from hearing--needless testimony.

STAFF: No position at this time.

VII. EXHIBIT LIST

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Richard Robertson	ACSI	_____	Unbundled basic network elements
		RR-1	
		_____	ACSI Proposed Most Favored Nations Language
		RR-2	
		_____	ACSI Collection at GTE Central Office
		RR-3	
Dr. Marvin H. Kahn	ACSI	_____	Qualifications
		MHK-1	
		_____	Hatfield model unbundled loop cost results for GTE
		MHK-2	
		_____	Hatfield model
		MHK-3	
		_____	Hatfield default proxies for GTE-Florida
		MHK-4	
		_____	Effect of using GTE proposed depreciation schedules
		MHK-5	

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Dr. Marvin H. Kahn	ACSI	<u> </u> MHK-6	Fill Factor Analysis
		<u> </u> MHK-7	Comparison of GTE-FL and BellSouth FL Loop costs by Density Zone - Hatfield Model
		<u> </u> MHK-8	Comparison of GTE-FL and BellSouth FL Loop costs by Density Zone - BCM2 Model
		<u> </u> MHK-9	Comparison of GTE-FL and BellSouth FL BCM2 Model using GTE's cost study density zones
		<u> </u> MHK-10	GTE-FL Proxy Loop rates applying \$17.00 statewide rate
		<u> </u> MHK-11	Calculation of Rates and charges for Interim Number Portability
Gregory M. Duncan	GTEFL	<u> </u> GMD-1	Economic Evaluation of Version 2.2 of the Hatfield Model
Bert I. Steele	GTEFL	<u> </u> BIS-1	Composite exhibit - attached to Mr. Steele's Direct Testimony
		<u> </u> BIS-2	Composite exhibit - attached to Mr. Steele's Direct Testimony

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Bert I. Steele	GTEFL	<u>BIS-3</u>	Composite exhibit - GTEFL's multi- binder cost study submission
Dennis B. Trimble	GTEFL	<u>DBT-1</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-2</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-3</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-4</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-5</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-6</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-7</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony
		<u>DBT-8</u>	Composite exhibit - attached to Mr. Trimble's Direct Testimony

<u>WITNESS</u>	<u>PROFFERED BY</u>	<u>I.D. NO.</u>	<u>DESCRIPTION</u>
Michael J. Doane	GTEFL	<u> </u> MJD-1	Curriculum Vitae of Mr. Doane - attached to Mr. Doane's Direct Testimony
		<u> </u> MJD-2	An Economic Framework for Implementing the Pricing Provisions of the Telecommunications Act of 1996 - attached to Mr. Doane's Direct Testimony

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

IX. PENDING MOTIONS

X. RULINGS

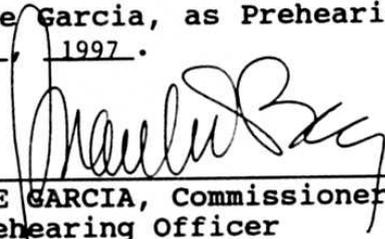
The contested Issue 8 shall remain an issue in this proceeding.

It is therefore,

ORDERED by Commissioner Joe Garcia, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

ORDER NO. PSC-97-0266-PHO-TP
DOCKET NO. 961537-TP
PAGE 15

By ORDER of Commissioner Joe Garcia, as Prehearing Officer,
this 11th day of March, 1997.


ASST. TO.
JOE GARCIA, Commissioner and
Prehearing Officer

(S E A L)
WPC/BC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.