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September 22, 1997

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

Re: Docket No. 970841-TP
Complaint of MCI Telecommunications Corporation Against GTE Florida Incorporated for Anti-Competitive Practices Related to Excessive Intrastate Switched Access Pricing

Dear Ms. Bayo:

Please find enclosed for filing in the above matter an original and fifteen copies of GTE Florida Incorporated's Request for Protective Order and Opposition to MCI Telecommunications' (1) Motion to Compel GTE Florida's Responses to First Set of Interrogatories and Request for Production and (2) Request for Expedited Ruling on Such Motion. Service has been made as indicated on the Certificate of Service. If there are any questions regarding this matter, please contact me at (813) 483-2617.

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Very truly yours,

Kimberly Caswell/dm

Kimberly Caswell

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of MCI Telecommunications Corporation Against GTE Florida, Incorporated) for Anti-Competitive Practices Related to Excessive Intrastate Switched Access Pricing)

Docket No. 970841-TP
Filed: Sept. 22, 1997

GTE FLORIDA INCORPORATED'S MOTION FOR PROTECTIVE ORDER AND OPPOSITION TO MCI TELECOMMUNICATIONS' (1) MOTION TO COMPEL GTE FLORIDA'S RESPONSES TO FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION AND (2) REQUEST FOR EXPEDITED RULING ON SUCH MOTION

GTE Florida Incorporated (GTEFL) asks the Commission to deny the (1) Motion to Compel GTE Florida's Responses to First Set of Interrogatories and Request for Production and (2) Request for Expedited Ruling on Such Motion (Motion), filed by MCI Telecommunications Corporation (MCI) on September 15, 1997. In conjunction with this opposition to MCI's Motion, GTEFL requests a protective order to the extent necessary to protect GTEFL from MCI's discovery. MCI has failed to prove that any of its discovery is relevant to any issue in this case, or that discovery should not be delayed until the Commission can rule on GTEFL's Motion to Dismiss MCI's Complaint that started this docket. In fact, MCI did not even attempt to respond to most of GTEFL's reasons for objecting to MCI's discovery requests.

In its August 25 Response to MCI's discovery (Response), GTEFL made both general objections to the discovery as a whole and specific objections to each interrogatory and request for production. Below, GTEFL renews its objections and shows that MCI has failed to effectively counter them. GTEFL refers the Commission to its Response for a more complete explanation of each of its objections.

GTEFL's General Objections

1. Commission Precedent and Florida Law Support GTEFL's Common-Sense Position that Discovery Should Be Deferred. In its Response, GTEFL argued that MCI's discovery as a whole is premature in light of GTEFL's pending Motion to Dismiss MCI's Complaint. That Motion to Dismiss, the Commission will recall, raises a fundamental jurisdictional question about the Commission's authority to grant the relief MCI has requested in this proceeding. The relief MCI seeks is a reduction of GTEFL's intrastate switched access charges to cost--that is, well beyond the 5% annual reductions the Florida Legislature has established in Florida Statutes section 364.163. GTEFL has pointed out that the plain language of this section, statutory construction, legislative history, and a Commission Staff memorandum all prove that the Commission cannot order greater access reductions than the Legislature has mandated. (See GTEFL's Motion to Dismiss, filed July 29, 1997.) If the Commission agrees with GTEFL, it will be obliged to dismiss MCI's Complaint. As such, any time and effort spent on discovery will have been wasted.

To prevent this inefficient use of Company and Commission resources, discovery is commonly delayed until after the Commission can rule on motions to dismiss and other dispositive motions. See, e.g., Petition of Lee County Elec. Cooperative, Inc. Against Florida Power and Light Co. to Resolve a Territorial Dispute, 85 FPSC 11:91 (1985) ("In the event the motions to dismiss are granted, any effort expended in discovery would be for naught."); Complaint of Builders Ass'n of South Florida v. Florida Power and Light Co., 2 FPSC 141, 143 (1978); Complaint of PSA, Inc. Against Southern Bell Tel. and Tel. Co., 86 FPSC 10:490 (1986).

More troubling even than the waste of resources associated with MCI's premature discovery is the potential for competitive harm that it presents, as most of MCI's requests seek highly sensitive and proprietary business information.

In its Response, GTEFL noted MCI's apparent accord with GTEFL's reasoning. At the FCC, MCI made the same arguments GTEFL is now making about the futility and potential competitive harm associated with allowing discovery before a decision on a dispositive motion. Specifically, MCI sought to delay discovery by Complainant Ameritech, contending that because MCI's summary judgment motion, "if granted, would result in dismissal of the complaint, the most efficient use of the Commission's resources would be to decide the motion before requiring any response to discovery requests." (GTEFL attached a copy of MCI's FCC Motion to its Response.) In addition, MCI called Ameritech's discovery a "fishing expedition" that posed MCI a serious competitive threat, and noted that no discovery would be necessary to resolve MCI's Motion. As GTEFL noted in its Response, exactly the same logic applies in this discovery dispute between GTEFL and MCI.

MCI could offer no legitimate reason for its directly opposing positions in the contemporaneous proceedings before the FCC and this Commission, nor could it explain away the above-cited Commission precedent supporting GTEFL's position. So MCI did the only thing it could do--it simply ignored GTEFL's arguments. MCI's Motion offers no rebuttal at all to these points. Even worse, MCI has the audacity to accuse GTEFL of "abusing the Commission's process" in seeking to defer MCI's discovery, even though MCI took exactly the same approach in the Ameritech Complaint case before the FCC.

These tactics underscore the lack of merit in MCI's position before this Commission. The only response MCI made at all to GTEFL's objection about the timing of discovery was that GTEFL "never cites to any provision in the Florida Rules of Civil Procedure" (FRCP). (MCI Motion at 2.) GTEFL, of course, does not have to cite a specific Rule of Civil Procedure for the Commission to sustain its objection. The above-noted Commission decisions on this issue, as well as GTEFL's practical and equitable arguments (advanced by MCI itself at the FCC), are ample reason for deferring discovery pending a ruling on a motion to dismiss.

Nevertheless, if MCI wishes GTEFL to cite an FRCP reference as additional support for GTEFL's position that the Commission has the discretion to defer discovery, it is Rule 1.280(c). That rule affirms that tribunals may issue orders protecting a party from discovery "for good cause shown." Case law confirms that GTEFL has demonstrated good cause for a discovery delay in this case. Where jurisdictional questions are raised, Florida courts follow federal procedure, permitting limited discovery only into the jurisdictional issues themselves. Discovery pending resolution of jurisdictional issues "should not be broad, onerous or expansive, not should it address the merits of the case." Gleneagle Ship Management Co. v. Leondakos, 602 So. 2d 1282, 1284 (1992). See also, e.g., Suroor Bin Mohammed Al Nahyan v. First Investment Corp., 1997 Fla. App. Lexis 3764 (Fla. 5th DCA, Apr. 11, 1997); Banco de la Construccion, S.A. v. Inversiones y Comercio, 677 So. 2d 35 (Fla. 3d DCA 1996); Magic Pan Intl., Inc. v. Colonial Promenade, 605 So. 2d 563 (Fla. 5th DCA 1992). "It is common to limit discovery in these cases to facts dealing with jurisdiction, leaving other discovery to await determination of that issue, as

'the burdens incident to the status of a defendant ought not to be augmented until it is certain that the party involved is properly a defendant.'" Carlini v. State of Florida, Dep't of Legal Affairs, 521 So. 2d 254, 258 (Fla. 4th DCA 1988), Glickstein, J., concurring specially, quoting Moore's Federal Practice, para. 26.56[6] (2d ed. 1985).

MCI has violated the Florida standard for permissible discovery pending determination of jurisdictional questions. None of its discovery concerns GTEFL's allegations that the Commission lacks the jurisdiction to grant the relief MCI has requested. MCI's attempt to conduct discovery into the merits of the case before the Motion to Dismiss is settled is especially troubling because almost all of the detailed information sought is highly confidential and competitively sensitive information. There is no legal or logical basis to allow discovery at this stage; in no event should the Commission take the extraordinary measure of expediting discovery, as MCI has requested.

2. MCI Still Has Not Raised Any Factual Issues that Would Require Discovery. Discovery is a means for a party to gather facts and evidence that may help prove its case. But, as GTEFL's Response explained, MCI's Complaint raises no factual issues that would require discovery. The Complaint lists only one issue in the requisite "Disputed Issues of Fact" section: "MCI assumes that GTEFL may dispute whether its current practice of charging excessive switched access prices constitutes anti-competitive behavior." This is not a fact issue at all. The question of whether GTEFL's access rates are too high and thus "anticompetitive" is strictly a legal issue, as GTEFL pointed out in its Motion to Dismiss (at 12-13) and its Response (at 7). GTEFL admits that its access rates are well above costs;

the only dispute is whether the rates are lawful under Chapter 364 and whether the Commission has the authority to adjust them in this proceeding. No amount of discovery--and certainly not the questions MCI has asked--will resolve this issue, which is just a matter of reading the statute and considering the historical ratesetting policies of this Commission.

Again, MCI does not respond to GTEFL's argument about the lack of any factual issues justifying discovery. In fact, the filings MCI has made since its Complaint retreat further and further from the central and, in fact, only issue MCI has raised--that GTEFL's access rates are unlawful. GTEFL has not, contrary to MCI's claims, ignored paragraphs 17 through 28 of MCI's Complaint, in which MCI purports to "describe[] in detail GTEFL's anti-competitive behavior," nor has GTEFL "pretend[ed] that these paragraphs are not part of MCI's Complaint." (MCI Motion at 2-3.) Rather, GTEFL has repeatedly placed MCI's assertions in the proper context of MCI's own Complaint. Once again, based on that Complaint, the only behavior MCI has asked the Commission to investigate is "GTEFL's practice of charging excessive intrastate access charges"; the only hearing MCI seeks is on "disputed issues of fact" (that is, MCI's "fact" issue of whether GTEFL's access rates are anticompetitive); the only determination MCI asks the Commission to make is "that GTEFL's practice of charging excessive access rates violates Sections 364.3381(3) and 364.01(4)(g), F.S."; and the only specific relief MCI seeks is for the Commission to order GTEFL to reduce its intrastate access rates. (MCI Complaint at 9-10.)

Thus, despite MCI's diversionary tactics, the fact remains that MCI's Complaint is about access charges, and the purportedly anticompetitive behavior MCI wants the

Commission to address is the access charge levels themselves. As GTEFL has explained before, paragraphs 17 through 28 of MCI's Complaint do not, in fact, describe any anticompetitive behavior. Instead, they talk about discounts on toll and vertical services, waivers of non-recurring charges and other price breaks. MCI itself admits that this behavior "is not, in and of itself, an anti-competitive practice." (MCI Complaint at 7.)

Nevertheless, this behavior is the focus of MCI's discovery, which seeks detailed information about GTEFL's extended local calling services, its various toll discount plans, promotions and other rate reductions, non-recurring charge waivers, and the like. The discovery is thus not about "anticompetitive practices," as MCI claims, but rather pro-consumer practices. The data requested would certainly help MCI tailor its marketing strategies to ensure its success in competing against GTEFL, but none of this information could possibly help MCI prove its claim that GTEFL's access rates are unlawfully high.

In an attempt to fabricate some relevancy justification for its discovery, MCI offers the novel theory that GTEFL is using its alleged "monopoly rents" from access charges to fund discounts for local customers and to "subsidize" GTEFL's long-distance affiliate. Aside from the fact that MCI has offered no support whatsoever for its "subsidization" allegations, MCI's discovery could not possibly help prove its "subsidization" theory. Information about the nature and amount of GTEFL's discounts and other price breaks cannot possibly be used to show that those discounts and price breaks are being funded by access charges. Further, such alleged "subsidization" has never been found unlawful in Florida or anywhere else. The only practice regulators have concerned themselves with, and the only thing the Florida Statutes prohibit, is cross-subsidization, which is using

revenues from one service to price another below cost. In fact, although MCI has alleged no cross-subsidization, its Complaint is purportedly grounded in section 364.3381, which is entitled "Cross-subsidization."

In short, MCI's Complaint presents no factual issues that would justify discovery, let alone discovery that is not even relevant to any of MCI's own unprecedented legal theories.

3. MCI's Definitions of "You" and "Your" Is Overly Broad. GTEFL objected to MCI's discovery definitions of "you" and "your" to the extent that they would require production of materials not within the custody or control of GTEFL. In particular, MCI asks for documents and information about GTE Long Distance (GTELD). GTELD is a separate company from GTEFL, with its own books, accounts, and facilities. Any joint marketing efforts the Companies may undertake do not undermine the separation between them and present no basis for GTEFL to produce material that only GTELD possesses and controls.

In its response to GTEFL's objection, MCI again attempts to characterize benign and entirely lawful behavior as anticompetitive. Joint marketing and packaging of local and long-distance services are not in any way unlawful and do not show less than arms' length relations between the companies. Discounts and packaging are pro-consumer measures. Again, because GTEFL is not engaging in any cross-subsidization in association with any of its discounts or joint marketing (and MCI has made no such allegation), there is no legitimate allegation of competitive harm.

Nevertheless, MCI states that it "has reason to believe that GTEFL is . . . not

operating at arm's length with GTE Long Distance and that GTEFL's supracompetitive profits are being used to subsidize GTE Long Distance entry into the long distance market." (MCI Motion at 3.) MCI never states why it has reason to believe that this is true; it merely alludes once again to a Texas Public Utilities Commission decision that found GTE Southwest (GTESW) was not acting at arm's length with its long-distance affiliate. This decision, as GTEFL pointed out in its Motion to Dismiss, has nothing to do with the subject of MCI's Complaint here and MCI's reference to it is just part of its strategy to draw attention away from the specific Florida law governing MCI's Complaint. The Texas case did not in any way address access charges, "supracompetitive profits" from access or any other services, or subsidies flowing from the operating company to GTELD. In fact, the Texas PUC conducted no investigation into the relationship between GTESW and GTELD, and the Administrative Law Judge overseeing the case specifically found that GTESW did not engage in any preferential, discriminatory, or anticompetitive behavior. The Texas PUC's reversal of the Judge was so plainly wrong from a legal standpoint that the Commission's own General Counsel took the extraordinary step of seeking rehearing of the Commission decision. (General Counsel's Motion for Rehearing, Tex. PUC Dkt. no. 15711, July 15, 1997.) The Commission did not act on the Motions for Rehearing, and GTESW has appealed the decision in both state and federal court. In short, the Texas Commission case which appears to be the only basis for MCI's suspicion of wrongdoing by GTEFL, is plainly irrelevant to MCI's access charge Complaint, in addition to being legally infirm. Certainly, it provides no justification for MCI's demanding information from GTEFL that GTEFL does not even possess.

4. GTEFL also objected to MCI's interrogatories because they contained many more items than the 30 permitted under Florida Rule of Civil Procedure 1.340. Since the time GTEFL made its objection, the Commission issued a procedural order allowing 100 interrogatories, including subparts. MCI's interrogatories fit within the Commission's 100-item restriction. Thus, although GTEFL's objection was valid at the time it was made, the Commission's Order has now rendered that objection moot and GTEFL withdraws it.

GTEFL's Specific Objections to MCI's Interrogatories

Interrogatories 1-6. MCI has failed to provide any basis to compel GTEFL's responses. GTEFL objected to these Interrogatories about GTEFL's affiliate relationships because the information they seek is not relevant to any issue in this proceeding and it could not reasonably lead to the discovery of any relevant or admissible evidence. GTE's corporate structure and the nature of GTEFL's affiliate relationships can have nothing to do with MCI's Complaint about the level of GTEFL's access rates. Nothing MCI could learn about GTEFL's affiliates could possibly help MCI prove its theory that GTEFL's access rates are too high and thus anticompetitive.

MCI responded to GTEFL's objection by stating that it "is not merely complaining about the access rates in isolation. It is the use by GTE of its supracompetitive profits, earned by overcharging for monopoly access service provided to its competitors, to subsidize competitive services that forms the core of MCI's complaint." (MCI Motion at 5.) Thus, MCI is again trying to divert attention from its real complaint--that access charges are unlawfully high. It focusses on "subsidies" to other services only as an attempt (albeit

an unsuccessful one) to avoid the statutory constraints on mandatory access reductions. But the fact remains that MCI has asked the Commission to investigate only "GTEFL's practice of charging excessive intrastate access charges," not any other behavior. (MCI complaint at 9-10.) So the only way discovery into any matter could be relevant is if it relates to the establishment of the access charges. GTEFL's affiliates, of course, had nothing to do with setting access rates. The Commission set those rates, explicitly affirming that "its overriding goal was to implement access charges that maintain the financial viability of the LECs while maintaining universal service." Intrastate Tel. Access Charges for Toll Use of Local Exchange Services, Order no. 12765 at 7 (1983). The Legislature knew full well what the incumbent local exchange companies' access rates were--and how much above cost they were--when it capped them and mandated annual 5% reductions in the 1995 revisions to Chapter 364. So MCI's accusation that GTEFL is "overcharging" for access is necessarily directed not just at GTEFL, but at the Commission and the Legislature, as well.

Further, no information MCI could obtain about GTEFL's affiliate relationships could possibly help to prove that the alleged "supracompetitive" access profits exist, or that these so-called "monopoly rents" are being funneled to GTE's long-distance operation. GTEFL has already admitted that access is well above cost--the only dispute is the characterization of the rates. While MCI terms these rates excessive and anticompetitive, GTEFL has more accurately explained that access charges are at their current levels because of the legacy of deliberate subsidization of local service for social reasons. MCI's questions about GTE's corporate structure cannot resolve this dispute. Thus, MCI

Interrogatories 1-6 are irrelevant to even MCI's own novel legal theories.

MCI's suspicion that GTEFL is "not operating at arm's length with GTE Long Distance" is just incendiary matter which is untrue, wholly unsupported in MCI's Complaint, and, in any event, irrelevant to that Complaint or the discovery requests at issue. Florida Statutes set forth clear prohibitions on cross-subsidization. Commission and Supreme Court decisions on affiliate relationships establish parameters for assessing the lawfulness of affiliate transactions. If MCI believed GTEFL were engaging in unlawful affiliate conduct, it would presumably file a complaint with some colorable allegation to that effect--not a complaint about access charges. Most importantly, even if MCI were correct that GTEFL did not have an arm's length relationship with GTEFL, the proper remedy would not be reduction of GTEFL's access charges--indeed, that remedy would itself violate Chapter 164.163.

Interrogatories 7-14. MCI has provided no basis to compel GTEFL's response. GTEFL objected to these Interrogatories because the information requested, concerning the size of discounts GTEFL has provided under its tariffed Easy Savings, Total Solutions and One Easy Price Plans, is not relevant to any issue in this proceeding and could not lead to the discovery of any relevant or admissible evidence. MCI's only stated reason for wanting this detailed information is to prove that GTEFL is funding its Easy Savings, Total Solutions, and One Easy Price discounts with "supracompetitive" access profits. No amount of information about the nature or level of these discounts could possibly establish that GTEFL is using access revenues to fund the discounts at issue. Likewise, nothing

MCI could learn about the Easy Savings, Total Solutions, or One Easy Price discounts could help prove that access rates are too high and thus anticompetitive.

Finally, GTEFL is aware that there are Commission-sanctioned procedures available to protect GTEFL's confidential information from public disclosure in conjunction with the discovery process. But since MCI's discovery requests are, in any event, irrelevant, there is no reason to resort to such procedures.

Interrogatory 15. MCI has provided no basis to compel GTEFL's response. GTEFL objected to this Interrogatory because the information sought--about discounts and the nature of any joint toll offerings under the Easy Savings Plan tariff--is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible evidence. Details about how GTEFL calculates Easy Savings Plan discounts or the nature of any joint toll offerings cannot help prove MCI's theory that GTEFL's access profits are "supracompetitive" or that access revenues are funding toll discounts. Likewise, none of the information MCI seeks could demonstrate that GTEFL's access rates are "excessive" and thus anticompetitive. MCI's allegations, even if true, do not make out any case of anticompetitive conduct. Even if they did, the remedy would not be reduction of access charges, which is the only remedy MCI specifically seeks.

Interrogatory 16. MCI has failed to provide any basis to compel GTEFL's response. GTEFL objected to this Interrogatory because it seeks information about GTELD's offerings that is not in its possession or under its control. GTELD is a legally distinct entity

from GTEFL, regardless of whether the companies engage in any joint marketing. GTEFL thus cannot be required to answer this interrogatory on GTELD's behalf.

GTEFL further objected to this item because information about GTELD's offerings is not relevant to any issue in this proceeding and it cannot lead to discovery of any relevant or admissible evidence. MCI states the purpose of this Interrogatory is "to determine what discounts GTE Long Distance is offering so that MCI can determine to what extent it is subsidizing these discounts through access charges." (MCI Motion at 12.) If that is true, then the Interrogatory fails to satisfy its purpose. There is no way that the requested information about GTELD's discounts can be used to help prove that GTEFL's access revenues are funding those discounts. Nothing MCI could learn about GTELD's discounts could help prove MCI's complaint that GTEFL's access charges are too high and thus anticompetitive.

Interrogatories 17-20. MCI has failed to provide any basis to compel GTEFL's responses. GTEFL objected to these Interrogatories because the information requested--about GTEFL's waivers of non-recurring charges (NRCs)--is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible evidence. With regard to justification for these questions, MCI states: "Interrogatories 17 through 20 seek to determine the extent of the waivers GTEFL is providing and are therefore reasonably calculated to lead to the discovery of admissible evidence and are directly relevant to the allegations contained in the Complaint." (MCI Motion at 14.) But MCI fails to explain what kind of admissible evidence these questions could lead to or what allegations they are

relevant to. Whatever the level of GTEFL's NRC waivers, the amount of those waivers cannot help prove the waivers were funded through access revenues. Further, nothing MCI could learn about GTEFL's NRC waivers could help prove the existence of the "windfall" access profits MCI claims.

GTEFL also objected to these Interrogatories because they seek confidential, competitively sensitive information. GTEFL understands that there are Commission-sanctioned procedures to protect such information from public disclosure through the discovery process, but there is no need to resort to these measures in this case because the information sought is irrelevant.

Interrogatories 21-24. MCI has failed to provide any basis to compel GTEFL's responses. GTEFL objected to these Interrogatories because the information they request--about GTE Phone Marts--is not relevant to any issue in this proceeding and it cannot lead to the discovery of any relevant or admissible evidence. MCI tries to justify its request with the explanation that the Phone Marts market joint GTEFL/GTELD offerings. Assuming this is true, this information is still not relevant to MCI's Complaint that GTEFL's access charges are too high. GTEFL's admitting that the Phone Marts sell local and long-distance packages cannot help prove MCI's theory that GTEFL's access charges are funding toll discounts or that GTEFL is earning "supracompetitive" profits from access charges.

Interrogatory 25. MCI has provided no basis to compel GTEFL's response. GTEFL objected to this question because the information sought--about other state Commission

affiliate decisions--is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible information. Again, there is nothing unlawful about joint marketing of toll services or packaging of local and toll services. These benign and pro-consumer measures are not anticompetitive under any provision of any law, either in Florida or elsewhere. In any case, no state utility commission has ever found that a GTE operating company's access rates are "subsidizing" GTELD's operations.

MCI states that a response to this question could "shed light on the relationships of the various GTE affiliates." Whether or not that is true, the information sought is still irrelevant to MCI's Complaint. As GTEFL explained in its response to MCI's Interrogatories 1 through 6, nothing MCI could learn about GTEFL's affiliates could help prove MCI's theory that access rates are too high and thus anticompetitive or that access revenues are funding long-distance or other discounts.

Interrogatories 26 & 27. MCI has provided no basis to compel GTEFL's responses. GTEFL objected to these questions because they seek information--about GTEFL's promotional discounts and other rate reductions--that is irrelevant to any issue in this proceeding and which cannot lead to the discovery of any relevant or admissible evidence. MCI states that "Interrogatories 26 and 27 seek to determine the extent of the promotions and discounts GTEFL is providing and therefore are reasonably calculated to lead to the discovery of admissible evidence and are directly relevant to the allegations contained in the Complaint." (MCI Motion at 17.) MCI does not explain, however, what admissible evidence its questions could possibly lead to, or how, exactly, they relate to any of the

Complaint's allegations. Nothing MCI could learn about the nature or level of GTEFL's promotional or other discounts could help prove that access charges are funding those discounts, or that the access charges themselves are unlawfully "excessive."

GTEFL also renews its objection to these questions to the extent they seek publicly filed information. The fact that GTEFL "is in a better position to identify the details regarding its promotional practices" does not justify burdening GTEFL with the responsibility to respond to requests for public information that MCI could itself obtain.

Interrogatory 28. MCI has provided no basis to compel GTEFL to respond. GTEFL objected to this Interrogatory because the information sought--about GTEFL's cost of switched access--is not relevant to any issue in this proceeding and it could not lead to the discovery of any relevant or admissible evidence. The markup on access is not an issue in this case. As GTEFL has repeatedly pointed out, it does not dispute that access prices are significantly above their costs. The only dispute is about the characterization of the markup. GTEFL has explained that access prices are well above cost as a result of social pricing policies designed to preserve universal service. MCI, on the other hand, has made thoroughly unsupported claims that GTEFL is earning "windfall" access profits, which it is allegedly using to "subsidize" other services. MCI claims that information about GTEFL's access costs will help prove its theory that GTEFL is earning supracompetitive profits on this service. MCI is incorrect because, as GTEFL explained in its Response, GTEFL's rates are not required to be cost-based. In fact, they were deliberately set--and maintained by the Legislature--to ensure adequate contribution to local rates. MCI itself is compelled

to acknowledge the historical connection between access charge revenues and maintenance of universal service. (MCI Motion at 20.) However, it states that "it appears clear that access charges produce revenues far above the amount needed to cover access costs and any required universal service support." (Id.) This statement is pure assumption. MCI has no basis upon which to allege that access charges are higher than necessary to support universal service, and MCI's questions about the cost of access will not provide any such basis.

As GTEFL pointed out in its previous filings in this case, GTEFL does not oppose access reductions per se. In fact, maintaining access charges at their existing levels will harm GTEFL in a competitive marketplace. However, GTEFL also understands that access reductions cannot be made in isolation. Rather, they must be undertaken only as part of a comprehensive effort to rationalize prices and to quantify the subsidy required to support below-cost local rates. GTEFL fully supports this appropriately broad approach, which is the only one consistent with sound public policy and the existing law.

With regard to that law, MCI is incorrect that GTEFL has suggested that the Commission "must ignore the explicit mandate that it prevent anti-competitive conduct." (MCI Motion at 20.) GTEFL has never disputed the Commission's authority to investigate anticompetitive behavior. However, there must be some colorable claim of such behavior. Here, MCI has made no allegation of the "cross-subsidization, predatory pricing, or other similar anticompetitive behavior" that would be necessary to even invoke the Commission's oversight jurisdiction under section 364.3381(3), upon which MCI purports to rely. MCI's Complaint is patently wild and unfounded allegations which, even if proven, do not

constitute unlawful activity. MCI has worked backward from what it wants--access charge reductions--and leveled groundless accusations at GTEFL in a desperate attempt to try to attain that objective. This is nothing short of harassment. Allowing any and all competitive complaints to go forward with no scrutiny of their legal basis at the outset is at odds with the Commission's role of assuring fair and open competition.

Even more importantly, regardless of the outcome of any investigation of GTEFL's conduct, the Commission cannot order the access charge reductions MCI seeks. As GTEFL explained at length in its Motion to Dismiss, section 364.163 plainly states that Commission discretion over access reductions is limited to assuring that annual statutory reductions are correctly effected. The Commission has no authority to negate the Legislature's carefully considered scheme of gradual, incremental access reductions.

In short, GTEFL's access costs are irrelevant to resolving MCI's Complaint. These rates were set by the Commission and are adjusted pursuant to explicit statutory parameters. Nothing that MCI could learn about GTEFL's access costs could help MCI prove that access rates and too high and thus anticompetitive. Likewise, no information MCI could obtain about GTEFL's access costs could change the fact that the Commission has no jurisdiction to order the access reductions MCI seeks.

GTEFL also objected to this question because it seeks confidential and competitively sensitive cost information. GTEFL understands that there are Commission-sanctioned procedures for protecting such information from public disclosure in the discovery process, but it is unnecessary to resort to these procedures because the information MCI seeks is, in any event, irrelevant.

Interrogatory 29. MCI has provided no basis to compel GTEFL's answer. GTEFL objected to this Interrogatory because the information requested--about GTEFL's costs of local interconnection, switched access, and intraLATA toll--is not relevant to any issue in this proceeding and it cannot lead to the discovery of any relevant or admissible evidence. GTEFL's Response to Interrogatory 28 explains that the costs of access are not relevant to any issue raised by MCI. With regard to its inquiry into local interconnection costs, MCI's claimed justification is that GTEFL uses the same network to transmit local and toll calls. Whether or not that is the case, the fact remains that local interconnection rates are required to be cost-based under the Telecommunications Act of 1996, while there is no such requirement for access rates. In fact, these rates, as GTEFL has repeatedly pointed out, have been deliberately set and maintained at above-cost levels to support universal service. Thus, there is no relationship between local interconnection rates and access rates, nor can MCI draw one with the information it seeks in this Interrogatory.

Finally, intraLATA toll costs have nothing to do with GTEFL's access rates; intraLATA toll cost data cannot help prove MCI's theory that access rates are too high and thus anticompetitive, or that access is "subsidizing" toll. Furthermore, MCI has made no allegation that GTEFL's toll or any other prices are below-cost, so MCI's request for intraLATA toll costs is doubly unjustified.

Again, GTEFL understands that there are procedures in place to protect GTEFL's confidential and competitively sensitive cost information, but there is no need to resort to those procedures because the information MCI seeks is, in any event, irrelevant.

Interrogatory 30. MCI has provided no basis to compel GTEFL's response. GTEFL objected to this Interrogatory because it seeks information that is not relevant to any issue in this proceeding and that could not lead to the discovery of any relevant and admissible information. MCI's knowing the date on which GTE Long Distance, a separate company from GTEFL, first offered presubscribed service has nothing to do with the establishment or level of GTEFL's access charges. Further, contrary to MCI's suggestions, this information cannot help MCI prove its theory that access revenues are funding GTELD's operations.

Interrogatory 31. MCI has provided no basis to compel GTEFL's response. GTEFL objected to this Interrogatory because it seeks information that is not relevant to any issue in this proceeding and that could not lead to the discovery of any relevant and admissible information. As justification for this question, MCI states: "The number of access lines GTE Long Distance has gained since it began providing...service is relevant to the question of whether GTE Long Distance has an unfair advantage over its competitors." (MCI Motion at 22.) But MCI never explains why it's relevant. MCI's Complaint raises no question about GTELD's conduct or whether that company has an unfair competitive advantage over MCI. In any event, no matter how many of GTEFL's access lines are presubscribed to GTELD, there is no way that number can indicate whether GTELD has an unfair advantage over MCI. Nothing MCI could learn about GTEFL's access lines could help MCI prove its theory that GTEFL's access revenues are "subsidizing" GTELD or that GTEFL's access rates are too high and thus anticompetitive.

Interrogatory 32. MCI has provided no basis to compel GTEFL's response. GTEFL objected to this Interrogatory because it seeks information that is not relevant to any issue in this proceeding and it could not lead to the discovery of any relevant and admissible information. MCI tries to justify this Interrogatory by stating that "revenues from switched access are relevant to determining the amount of the supracompetitive profits GTEFL receives." In other words, the Interrogatory is relevant just because MCI says it is. MCI gives no explanation of how access revenue and traffic information could possibly be used to prove that GTEFL's access rates are "excessive" or that those revenues are funding other services.

Interrogatories 33 & 34. MCI has provided no basis to compel GTEFL's responses. GTEFL objected to these questions because the information sought--about GTEFL's ECS routes and traffic--is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible information. To try to justify this question, MCI states that "MCI must pay GTEFL's exorbitant access rates" when it competes with GTEFL on ECS routes for intraLATA toll. (MCI Motion at 24.) The fact that MCI must pay access charges to GTEFL on MCI's routes in competition with ECS routes is no reason for GTEFL to have to provide MCI with detailed usage and revenue information for those routes. Nothing MCI could learn about GTEFL's ECS routes, traffic, or revenues could possibly help MCI prove that GTEFL's access rates are too high and thus anticompetitive.

GTEFL also objected to these questions because they seek confidential and competitively sensitive information. GTEFL understands that there are Commission-

sanctioned procedures to prevent disclosure of such information in conjunction with the discovery process, but there is no reason to resort to those procedures because the information sought is, in any case, irrelevant.

Interrogatory 35. MCI has provided no basis to compel GTEFL's response. GTEFL objected because the information requested--about GTEFL's intraLATA toll traffic and revenues--is not relevant to any issue in this proceeding and it cannot lead to the discovery of any relevant or admissible evidence. As justification for this Interrogatory, MCI states that intraLATA toll is a competitive service, and MCI needs information about it because it believes access profits are funding competitive services (MCI Motion at 25.) That fact that intraLATA toll is a competitive service is no reason for GTEFL to have to provide MCI with detailed statistics about revenues and usage associated with that service. Such statistics cannot be used to help prove MCI's theory that access is funding intraLATA toll or other services or that GTEFL's access charges are too high and thus anticompetitive.

GTEFL's Specific Objections to MCI's Production Requests

Production Requests 1-3. MCI has provided no basis to compel GTEFL's production of the requested documents. GTEFL objected because the information sought is not relevant to any issue in this proceeding and it cannot lead to the discovery of any relevant or admissible evidence. In short, nothing MCI could learn about GTE's corporate structure or affiliate relationships could possibly help MCI prove its claim that GTEFL's access rates

are too high and thus anticompetitive. Please see GTEFL's response to MCI's Interrogatories 1-6, above, for a more complete explanation of this objection.

Production Request 4. MCI has provided no basis to compel GTEFL to produce the requested documents. GTEFL objected because the information sought is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible evidence. MCI asks for GTEFL's workpapers supporting the responses to Interrogatories 7-14. GTEFL objected to those Interrogatories, and therefore there are no such workpapers. In short, the size of discounts GTEFL has proved under its tariffed Easy Savings, Total Solutions and One Easy Price Plans can in no way help MCI prove that GTEFL is using access revenues to fund these discounts. Please see GTEFL's response to Interrogatories 7-14, above, for a more complete explanation of this objection.

Production Request 5. MCI has provided no basis to compel GTEFL's production of the requested documents. GTEFL objected to this Request because the information sought is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible evidence. MCI has asked for "every agreement between GTEFL and each entity identified in response to Interrogatory No. 15.d." Interrogatory 15.d asks for a list of entities with which GTEFL provides joint toll offerings. GTEFL objected to and did not answer Interrogatory 15 because, in short, the nature of any joint toll offerings under the Easy Savings Plan tariff is in no way related to the level of GTEFL's access charges. The documents sought cannot help prove MCI's theory that access charge

revenues are funding toll discounts. For a more complete explanation of this objection, please see GTEFL's response to Interrogatory 15, above.

Production Request 6. MCI has provided no basis to compel GTEFL's production of the requested documents. GTEFL objected because the information sought is not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible information. In addition, the tariffs MCI requests have all been publicly filed, so it would be unduly burdensome and oppressive to expect GTEFL to produce them. In short, GTEFL's tariffs concerning NRC waivers can in no way help MCI prove GTEFL is using access revenues to fund these waivers. For a more complete explanation of this objection, please see GTEFL's response to Interrogatories 17 through 20, above.

Production Requests 7 & 8. MCI has provided no basis to compel production of the requested documents. GTEFL objected to these Requests because the information sought is not relevant to any issue in this proceeding and it cannot lead to the discovery of any relevant or admissible information. GTEFL objected, in addition, because the tariffs sought are publicly filed documents which MCI itself can obtain. Whether or not GTEFL is in a better position to know the details of its promotions is no reason to expect GTEFL to do MCI's research.

MCI has asked for tariffs relating to all promotional offering and rate reductions identified in response to Interrogatories 26 and 27. GTEFL objected to and did not answer Interrogatories 26 and 27, so nothing was identified there. In short, GTEFL's tariffs

concerning promotions and rate reductions can in no way help MCI prove its theory that GTEFL is funding such promotions and rate reductions with access charge revenues. Please see GTEFL's response to Interrogatories 26 and 27, above, for a more complete explanation of GTEFL's objection to these production requests.

Production Request 9. MCI has provided no basis to compel GTEFL's response to this Request. GTEFL objected because the documents sought are not relevant to any issue in this proceeding and cannot lead to the discovery of any relevant or admissible evidence. MCI has asked GTEFL to produce all studies identified in response to Interrogatory 29, which seeks information about GTEFL's costs of local interconnection, switched access, and intraLATA toll. GTEFL did not answer Interrogatory 29, so there are no associated studies to produce. In short, GTEFL's costs of local interconnection, switched access, and intraLATA toll can in no way help MCI prove its claim that switched access rates are too high and thus anticompetitive, or that access revenues are funding other services. For a more complete explanation of this objection, please see GTEFL's response to Interrogatory 29, above.

Production Request 10. MCI has provided no basis to compel GTEFL's production of the requested documents. GTEFL objected because the documents sought are not relevant to any issue in this proceeding and because they cannot lead to the discovery of any relevant and admissible evidence. GTEFL also objected to the extent this Request seeks information that is not in GTEFL's control or under its possession.

MCI has asked for copies of all marketing materials used by GTEFL and GTELD in the marketing of any joint services. In short, GTEFL's marketing materials have nothing to do with the establishment of the access charges MCI is complaining about, nor can such documents help MCI prove its theory that access revenues are "subsidizing" GTELD. Further, joint marketing is not unlawful or anticompetitive, as MCI seems to imply.

Respectfully submitted on September 22, 1997.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of GTE Florida Incorporated's Request for Protective Order and Opposition to MCI Telecommunications' (1) Motion to Compel GTE Florida's Responses to First Set of Interrogatories and Request for Production and (2) Request for Expedited Ruling on Such Motion in Docket No. 970841-TP were hand-delivered(*) or sent via U.S. mail(**) on September 22, 1997 to:

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