

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition for	)	DOCKET NO. 911106-EU
approval of territorial agreement)	)	ORDER NO. 25707
between Clay Electric	)	ISSUED: 2/11/92
Cooperative, Inc. and the City	)	
of Green Cove Springs.	)	
	)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
 SUSAN F. CLARK  
 J. TERRY DEASON  
 BETTY EASLEY  
 LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTIONORDER APPROVING TERRITORIAL AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

A joint petition for approval of a territorial agreement (agreement) between the City of Green Cove Springs (GCS), a municipal electric utility and Clay Electric Cooperative, Inc. (Clay) a rural electric cooperative was filed with this Commission on October 31, 1991. After several inquiries by our staff to the parties about the intent of Section 2.4 and how it avoided unnecessary and uneconomic duplication of electric facilities, the parties revised Section 2.4. on December 30, 1991 (amendment). This amendment modifies Section 2.4 and adds Section 1.12 entitled "Change In Use".

The agreement as amended represents an attempt by the parties to prevent unreasonable and unnecessary duplication of electric facilities in the territory covered by the agreement. This agreement designates Clay's and GCS's service territories within Clay County. Except as provided for in the agreement, neither party shall serve or offer to serve a customer whose end use facilities are located in the territorial areas of the other party.

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The agreement does not contemplate the immediate transfer of any customers. According to Section 2.4 as amended, each utility will have the right and responsibility to provide retail electric service to each of its existing customers at any location now being served by that utility, until there is a Change in Use as defined in Section 1.12, at which time the customer will be served by the utility in whose territory the customer lies. However in order to be consistent with other territorial agreements we have approved we are providing in this Order that Section 1.12 will be construed to include in its definition of Change of Use Subsection 4 "that a change in use of rural property by reason of a change in ownership or occupancy thereof to any person other than a widow, widower, or divorced spouse of an existing customer who receives electric service at the same location."

We also find that Section 2.3 should be amended to ensure our continued control over interim service to a new customer seeking service in the other utility's territory. Therefore, we are requiring that the utilities file a revised provision stating that in instances where a new customer seeks to be provided interim service that that service will not be provided for more than one year unless prior approval is received from this Commission.

If approved, the agreement will remain in effect for a period of twenty (20) years from the date of this Commission's initial order approving this agreement. The agreement may be extended or terminated as provided for by the agreement.

The agreement does not, and is not intended to prevent either party from providing bulk power supply to wholesale customers for resale wherever they may be located.

Having reviewed the joint petition and the agreement and amendment, the Commission finds that it satisfies the provisions of Subsection 366.04(2)(d), Florida Statutes and Rule 25-6.0440, Florida Administrative Code. We also find that the agreement satisfies the intent of Subsection 366.04(5), Florida Statutes to avoid further uneconomic duplication of generation, transmission, and distribution facilities in the State. We, therefore, find that the agreement is in the public interest and should be approved.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Petition for Approval of the Territorial Agreement as amended between Clay Electric Cooperative, Inc. and the City of Green Cove Springs is granted as amended and with the conditions set out in the body of this Order. It is further

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ORDERED that the territorial agreement is incorporated in this order as Appendix A. It is further

ORDERED that the parties shall file an amendment to Section 2.3 of the agreement consistent with the condition set out in the body of this Order. It is further

ORDERED that this Order shall become final and the docket closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission, this 11th day of FEBRUARY, 1992.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

MRC:bmi  
911106.bmi

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may

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file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on

3/3/92

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

APPENDIX A  
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AGREEMENT

Section 0.1 THIS AGREEMENT, made and entered into this  
19<sup>th</sup> day of September, 1991, by and between  
CLAY ELECTRIC COOPERATIVE, INC., an electric cooperative  
organized and existing under the laws of the State of Florida  
(herein called "COOPERATIVE") and the City of Green Cove Springs,  
a Municipal Government organized and existing under the laws of  
the State of Florida (herein called the "CITY");

Section 0.2 WHEREAS, the Cooperative by virtue of Florida  
Statutes, Chapter 425, and the Charter issued to it thereunder,  
is authorized and empowered to furnish electricity and power to  
its members, private individuals, corporations and others, as  
defined by the laws of Florida, and pursuant to such authority,  
presently furnishes electricity and power to members and  
customers in areas of Clay County, Florida and elsewhere; and

Section 0.3 WHEREAS, the City, by virtue of the laws of Florida,  
is authorized and empowered to furnish electricity and power to  
persons, firms and corporations in the County of Clay, State of  
Florida, and pursuant to such authority presently furnishes  
electricity and power to customers in areas of Clay County,  
Florida; and

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Section 0.4 WHEREAS, the respective areas of service of the parties hereto are contiguous in many places in Clay County, with the result that in the future duplication of service facilities may occur unless such duplication is precluded by a Territorial Agreement; and

Section 0.5 WHEREAS, the Florida Public Service Commission (herein called the "COMMISSION"), has previously recognized that any such duplication of service facilities may result in needless and wasteful expenditures, may create hazardous situations; both being detrimental to the public interest; and

Section 0.6 WHEREAS, the Commission is empowered by Section 366.04 (2) (d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, and has recognized the wisdom of such agreements to avoid unnecessary and uneconomic duplication of electric facilities, and costly disputes over service areas; and that such agreements are in the public interest; and

Section 0.7 WHEREAS, the parties hereto desire to avoid and eliminate the circumstances that may give rise to the aforesaid duplications, hazards, and costly expenditures, and to that end desire to establish territorial boundaries; and

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Section 0.8 WHEREAS, in order to accomplish said area allocation the parties have delineated boundary lines in portions of Clay County, hereinafter referred to as "Boundary Lines", and said boundary lines define and delineate the retail service areas of the parties in portions of Clay County;

Section 0.9 NOW, THEREFORE, in fulfillment of the purposes and desires aforesaid, and in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the parties hereto, subject to and upon the terms and conditions herein set forth, do hereby agree as follows:

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ARTICLE I

DEFINITIONS

Section 1.1 Territorial Boundary Lines - As used herein, the term "Territorial Boundary Lines" shall mean boundary lines which delineate the geographic areas on the county map attached hereto as Exhibit "A" and which differentiate and divide the Cooperative Territorial Area from the City Territorial Area as more particularly described in the legal description attached hereto and marked Exhibit "B". In the event of any discrepancy between Exhibit "A" and Exhibit "B", Exhibit "B" shall prevail.

Section 1.2 Cooperative Territorial Areas - As used herein, the "Cooperative" Territorial Areas shall mean the geographic areas shown as Exhibit "A" as lying outside the shaded areas and labeled "Cooperative".

Section 1.3 City Territorial Areas - As used herein, the term "City" Territorial Areas shall mean the geographic areas shown on Exhibit "A" as lying inside the shaded areas and labeled "City".

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Section 1.4 Distribution Lines - As used herein, the term "Distribution Lines" shall mean all lines for the flow of electric energy of either party having a rating up to but ~~not~~ including 69 kv.

Section 1.5 Express Distribution Feeders - As used herein, the "Express Distribution Feeder" shall mean a three phase line, at distribution voltage, that transports power through the other party's territory but serves no load within such territory.

Section 1.6 Transmission Lines - As used herein the term "Transmission Lines" shall mean all lines for the flow of electric energy of either party having a rating of 69 kv or over.

Section 1.7 Customers - As used herein, the term "Customer" shall mean a customer or consumer of either party.

Section 1.8 New Customers - As used herein, the term "New Customers" shall mean all retail electric customers applying for service to either the City or Cooperative after the effective date of this Agreement.

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Section 1.9 Existing Customers - As used herein, the term "Existing Customers" shall mean all retail electric customers receiving service on or before the effective date of this agreement from either party.

Section 1.10 Annexed Area - As used herein, the term "Annexed Area" shall mean any area presently located in Clay's territorial area and subsequently annexed by and into the City of Green Cove Springs.

Section 1.11 End Use Facilities - As used herein, the term "End Use Facilities" shall mean a geographic location where the electric energy used by a customer is ultimately consumed.

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ARTICLE II

AREA DESIGNATIONS AND NEW CUSTOMERS

Section 2.1 Service Areas - The Cooperative Territorial Areas, as herein defined, are hereby set aside to the Cooperative as its retail service areas for the term hereof; and the City Territorial Areas, as herein defined, are hereby set aside to the City as its retail service areas for such period. Except as otherwise specifically provided for in Section 2.3, neither party shall serve or offer to serve a customer whose end use facilities are located in the territorial areas of the other party.

Section 2.2 New Customers - The parties shall each have the right and the responsibility to provide retail electric service to all New Customers within their respective territorial areas except as modified by Section 2.4 below. Neither party shall hereafter serve or offer to serve a New Customer whose end-use facilities are located in the territorial area of the other party except on an interim basis as provided in Section 2.3 below.

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Section 2.3 Interim Service - The parties recognize that exceptional circumstances, economic constraints, good engineering practices, and system planning may indicate that a customer should not be immediately served by the party in whose territorial area the customer's end use facilities are located, until some time in the future. In such an event, a party may, in its discretion, request the other party to provide service to the new customer on an interim basis. Such request shall be made in writing and the other party shall promptly notify the requesting party if it should elect, in its discretion, to decline the request. If such request is accepted, the party providing interim service shall be deemed to do so only on behalf of the requesting party, who shall remain entitled to serve the New Customer to the same extent as if it had provided service in the first instance. At such time as the requesting party elects to begin providing service directly to the New Customer, after reasonable written notice to the other party, such other party shall cease providing interim service and, thereafter, service shall be furnished to the New Customer in accordance with Section 2.1 and 2.2 above.

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Section 2.4 Existing Customers - Each party shall have the right and responsibility of providing retail electric service to each of its existing customers or any new customers at any location now being served by it whether or not the location where such existing service is provided is located within or without the territorial area of such party. It is intended by this provision that each party shall have the right to continue serving any existing location served by it, irrespective of the location of such service, and, irrespective of whether the customer served is an existing customer or a new customer. Notwithstanding the foregoing to the contrary, a customer located in the others territory that discontinues electric service for one and one-half (1 1/2) years or longer shall thereafter be the customer of the party in whose territory same is located.

Section 2.5 Bulk Power Supply for Resale - Nothing herein shall be construed to prevent either party from providing bulk power supply to wholesale customers for resale purposed wheresoever they may be located. Further, no other provision of this Agreement shall be construed as applying to bulk power for resale.

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ARTICLE III

OPERATION AND MAINTENANCE

Section 3.1 Facilities to Remain - All generating plants, transmission lines, substations, distribution lines and related facilities now used by either party in conjunction with their respective electric utility systems, and which are used directly or indirectly and are useful in serving customers in their respective service areas, shall be allowed to remain where situated and shall not be subject to removal hereunder, except by the party owning or using such facilities; PROVIDED, HOWEVER, that each party shall operate and maintain said lines and facilities in such a manner as to minimize any interference with the operations of the other party.

Section 3.2 Express Distribution Feeders - Either party may erect and/or operate Express Distribution Feeders in the territorial are of the other party; PROVIDED, HOWEVER, that the party shall construct, operate and maintain said Express Distribution Feeders in a safe manner so as to minimize any interference with the operation of the other party's facilities.

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Section 3.3 Transmission Lines - Either party may erect and/or operate Transmission Lines in the territorial area of the other party; PROVIDED, HOWEVER, that the party shall construct, operate and maintain said Transmission Lines in a safe manner so as to minimize any interference with the operation of the other party's facilities.

ARTICLE IV

ANNEXATIONS

Section 4.1 Annexed Areas - In the event any portion of the area outside the City territorial area and within the Cooperative's territorial area is subsequently annexed by and into the city limits of the City, the City may impose a franchise agreement with respect to such annexed portions upon reasonable terms and conditions, but the City shall have no right to acquire by eminent domain, condemnation, or otherwise any customers or facilities of the Cooperative in any portion designated as Clay territorial area. The Cooperative shall have the right to continue service to its existing and new customers in any area annexed by the City. Such franchise fee may not exceed 12% of the cooperative's revenues from its members within the city's corporate limits area covered by the franchise agreement.

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ARTICLE V

PREREQUISITE APPROVAL

Section 5.1 Florida Public Service Commission - The provisions of this Agreement, are subject to the regulatory authority of the Florida Public Service Commission, and appropriate approval by that body of the provisions of this Agreement shall be a prerequisite to the validity and applicability hereof and neither party shall be bound hereunder until that approval has been obtained. Each party irrevocably and unconditionally consents to and requests the Commission to approve this agreement.

Section 5.2 Liability in the Absence of Approval - In the event approval pursuant to Section 5.1 is not obtained, neither party will have any cause of action against the other arising under this Agreement.

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ARTICLE VI

DURATION

Section 6.1 This Agreement shall continue and remain in effect for a period of twenty (20) years from the date the Agreement is approved by the Commission. The parties, however, recognize that the Commission has the jurisdiction to review this agreement periodically during the term of this Agreement.

ARTICLE VII

CONSTRUCTION OF AGREEMENT

Section 7.1 Intent and Interpretation - The purpose and intent of this Agreement shall be, and this Agreement shall be interpreted and construed, to eliminate and avoid the needless and wasteful expenditures, duplication of facilities and potentially hazardous situations, which might otherwise result from unrestrained competition between the parties operating in overlapping service areas.

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ARTICLE VIII

MISCELLANEOUS

Section 8.1 Negotiations - Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Agreement, the only ones agreed upon are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the parties hereto unless the same shall be in writing and hereto attached and signed by both parties.

Section 8.2 Successors and Assigns - Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon or give to any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the parties hereto and their respective representatives, successors and assigns.

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Section 8.3 Notices - Notices given hereunder shall be deemed to have been given to Clay if mailed by Certified Mail, postage prepaid, to: General Manager, Clay Electric Cooperative, Inc., Post Office Box 308, Keystone Heights, Florida 32656; and to the City if mailed by Certified Mail, postage prepaid, to: Mayor, City of Green Cove Springs, Green Cove Springs, Florida 32043. Such address to which such notice shall be mailed may be, at any time, changed by designating such new address and giving notice thereof in writing in the manner as herein provided.

Section 8.4 Severability - The invalidity or un-enforceability of a particular provision of this agreement shall not affect the other provisions hereof, and the agreement shall be construed in all respects as if such invalid or un-enforceability provision were omitted.

Section 8.5 Cost and Attorney Fees - In the event legal action is taken to enforce the terms of this agreement, hereof, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney fees.

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#### F. Directories

GTEFL's initial position regarding provision of directories to all subscribers in the ECS exchanges was that the estimated costs of \$7 million were not considered in pricing ECS service. Should we determine that directories were required for each customer, GTEFL proposed a monthly flat rate of \$.60 for all customers in the ECS exchanges. Witness Menard amended this position in her summary stating "GTEFL has determined that it is feasible to make directories for the ECS exchanges available to customers at specified GTEFL locations at no charge to the customer."

FIXCA, the only intervenor taking a position on this issue, questioned GTEFL's unwillingness to provide directories for the ECS exchanges at no charge. Witness Gillan believes that if we conclude that the ECS exchanges form a community of interest, then it follows that directories should be provided to all subscribers. Witness Russo also expressed concern, stating that GTEFL should be required to make directories containing the new calling scope available to all affected subscribers at no charge.

Rule 25-4.040(2), Florida Administrative Code, reads in part "When expanded calling scopes are involved, as with Extended Area Service, each subscriber shall be provided with directory listings, for all published telephone numbers within the local service area." Approximately 50% of the subscribers in the ECS exchanges make calls in a given month. People in this area in some cases already receive several large directories, and if their calling to the ECS exchanges is limited, they may not be interested in receiving additional directories. Menard testified that on EAS routes approved "before the rule change, only about 30% of the customers wanted the EAS directories." GTE South's experience under the TriWide<sup>sm</sup> plan shows that only about 5% of the subscribers wanted directories for the TriWide<sup>sm</sup> exchanges. We find that providing directories at no cost, upon request of the subscriber at GTEFL locations, is a good compromise. Currently, we have not set a policy on the provision of directories under the \$.25 plan.

GTEFL has indicated it will make telephone numbers to the ECS exchanges available through local directory assistance, like other local telephone numbers, subject to existing rules and charges. We find this to be appropriate.

In summary, directories shall be made available upon request, at customer convenient locations to be specified later, for all ECS exchanges at no cost to the ECS customer. Directory assistance for

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ECS exchanges shall be handled like any other local directory assistance (three call allowance and \$.25 per additional call).

V. REVENUE IMPACT AND STIMULATION

As submitted in the original tariff filing, GTEFL estimates the revenue impact of ECS to be a \$28,483,904 loss for the test year. This figure does not include any stimulation in usage due to the decrease in rates for calls between the ECS exchanges, nor does it include normal toll growth. GTEFL does not believe that this figure represents the long run revenue impact to the Company because some stimulation is likely. That is, if the rates for calling between the ECS exchanges are reduced by approximately 70%, then, over time, there will be an increase in call volumes, and resulting longer term revenues will be greater than the first year figure represented in the tariff filing.

FIXCA disputed two points of GTEFL's testimony regarding the revenue impact of this filing. First, contrary to GTEFL's projections, FIXCA's witness Gillan believes that the revenue impact of the ECS plan will be much greater than what GTEFL alleges. Gillan disputed GTEFL's revenue estimates in his direct and rebuttal testimonies. Gillan's initial estimates of the claimed loss associated with ECS were approximately \$60 million per year through 1995. By the time the case arrived at hearing, FIXCA's position was that the impact of the plan would be somewhere between \$17 and \$20 million.

In his direct testimony, Gillan presented financial projections based upon internal GTEFL planning documents. The comparison of planning documents contained in the prepared testimonies of Gillan does not correspond to the tariff support provided by GTEFL. Gillan stated that GTEFL's internal planning documents did not accurately depict the effect of ECS as described in the tariff filing. However, GTEFL did not rely upon these documents in supporting its ECS plan. GTEFL's revenue reductions were based solely on a straight mathematical calculation of the revenue loss associated with repricing the service down to ECS rates.

The second dispute between FIXCA and GTEFL concerns the level of stimulation which will occur from the ECS plan. Both estimates accept an initial stimulation in usage due to the implementation of the ECS plan. It is FIXCA's position that stimulation will not occur as estimated by GTEFL, and that pre-ECS growth levels will return after the first year the plan is implemented. Gillan

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justifies this position by analyzing the TriWide<sup>sm</sup> experience. FIXCA states that GTEFL assumed the rate of growth would jump to 25% in the second and third years after implementation of ECS, even though that rate of growth did not occur in North Carolina after implementation of a similar plan. FIXCA believes that fundamental growth rates remain unaffected by the introduction of ECS-type calling plans, but GTEFL believes calling volumes will grow at higher rates for the first three years of the plan. In fact, the TriWide<sup>sm</sup> data does show additional stimulation after the first year. The data shows that there was approximately 100% stimulation in the first year (including normal growth) and approximately 20% stimulation in the second year (including normal growth). At the time of the hearing in this docket, the TriWide<sup>sm</sup> plan had been in effect just over two years. While the data seemed to show a lower rate of stimulation in the later months of the plan, it also appears that some level of stimulation continues throughout the life of the plan. Gillan is correct, however, that GTEFL overestimated the likely amount of stimulation for the ECS plan, albeit for a different reason. As explained below, it appears that GTEFL made a mathematical error in translating the TriWide<sup>sm</sup> stimulation to the ECS plan.

An additional concern is that GTEFL compared its estimates of revenue in future years against 1990, not against revenue estimates of future years without the ECS plan. Therefore, GTEFL compared volumes in future years against a no-growth scenario. GTEFL would experience growth in toll without the ECS plan; therefore, we find that to compare ECS revenues against a scenario assuming no growth is not reasonable.

GTEFL based its stimulation on the experience with TriWide<sup>sm</sup> Service. TriWide<sup>sm</sup> Service is a service similar to ECS which was introduced by GTE South in Durham, N.C. Calls from GTE South's Durham customers to Raleigh, Chapel Hill, Cary, and Hillsborough had been 1+ intraLATA toll calls. With the introduction of GTE South's TriWide<sup>sm</sup> Service in April of 1989, Durham customers' calls to these exchanges were dialed on a seven-digit basis at rates approximately 65% less than the existing toll rates.

The primary difference between TriWide<sup>sm</sup> and ECS is that ECS is a two-way service. Between the ECS exchanges, all calls in both directions would be seven-digit dialed, measured calls. In addition, a similar rate reduction (70%) is proposed with ECS. The other differences between the two plans are the set up and usage rates, the off-peak discount and the off-peak calling periods. TriWide<sup>sm</sup> rates are \$.06 per set-up and \$.045 per minute of use

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during peak calling periods. There is a 50% discount for calls placed during off-peak hours. With TriWide<sup>sm</sup>, GTE South's Durham customers had reduced rates and 7-digit dialing to the Centel and Southern Bell exchanges. However, calls from Southern Bell's and Centel's customers were still dialed on a 1+ 10-digit basis.

Using the stimulation experienced with TriWide<sup>sm</sup>, GTEFL believes the revenue impact of the ECS plan for the first year will be approximately a \$16,716,433 revenue loss (versus \$28,483,904 without stimulation). GTEFL believes that the calling volumes will continue to grow 25% faster than toll usage is growing. Based upon this assumption, GTEFL anticipates a net revenue loss of \$11,356,243 during the second year of ECS. A net revenue loss of \$4,656,006 is anticipated during the third year. GTEFL estimates that in 1995, the fourth year, ECS will have a positive annual revenue impact. However, GTEFL notes that all numbers are not known and measurable and that the actual stimulation could be more or less. Also, when determining the revenue impact, we have observed that GTEFL used the pre-ECS (1990) revenue levels as a benchmark for all revenue effect calculations. We do not agree with this approach.

For 1992, GTEFL believes a reasonable assumption is that messages of the ECS plan will grow by 120% and minutes by 95%. For 1993 and 1994, GTEFL stimulated both messages and minutes by an additional 25% for each year. Witness Kissell stated that GTEFL filed a slightly higher stimulation in the Florida plan than GTE South actually experienced in TriWide<sup>sm</sup>. GTEFL's rationale was that it believes that stimulation may be higher with the two-way ECS plan than the one-way TriWide<sup>sm</sup> plan. In addition, promotional efforts can be more effectively targeted in the Tampa area due to concentrated mass media opportunities.

Although there is no way to test what level of stimulation is appropriate for the ECS plan, we believe that applying a level of stimulation similar to the TriWide<sup>sm</sup> experience could be reasonable. However, GTEFL apparently erred in its calculation of the expected ECS stimulation. Kissell stated that the stimulation experienced in the TriWide<sup>sm</sup> plan was 165%. The stimulation applied to the ECS data was approximately 265% (95% the first year, 25% per year for the next two years, and 20% in the next year for a total of 265% stimulation in minutes - the stimulation applied to messages totaled 312%). Thus, while we agree that the stimulation experienced in the TriWide<sup>sm</sup> plan should be used as a guide to the stimulation which may occur in the ECS plan, it appears that an

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error was made in the translation. It is unclear how this error occurred.

In the past, we have not used stimulation in determining revenues in rate proceedings. See, e.g., Docket No. 880069-TL, Order No. 20162 and Docket No. 881344-TL, Order No. 21520. This is because we have found that we have not had adequate information to evaluate prior stimulation assumptions. While we agree that some stimulation will occur here, we find that stimulation shall not be recognized in this docket, since the response cannot be estimated with precision. Some of the factors which contribute to uncertainty when making an estimate of stimulation include, but are not limited to: (1) the extent of the price change; (2) whether the service is optional or not; (3) the monthly subscription price (if any); and (4) the demographics of the population under consideration.

For example, GTEFL applied a higher stimulation to the ECS plan than the TriWide<sup>sm</sup> experience would suggest because GTEFL believed a two-way calling plan would generate greater usage than a one-way calling plan. This assumption may be reasonable. However, the Clearwater, St. Petersburg, and Tampa areas are heavily populated with retired people on fixed incomes and the demographics of the population may have a significant impact on stimulation, despite two-way calling. Therefore, when attempting to determine the true revenue effect on GTEFL, we find that the level of stimulation cannot be determined with any certainty. However, we also find that various stimulation assumptions are useful for illustrative purposes to gain a better understanding of possible outcomes.

When analyzing the revenue impact, or the "price tag" associated with the ECS plan, we believe it is important that the revenue be compared with and without the ECS plan. FIXCA agrees. GTEFL's analysis of the ECS plan shows that the plan ultimately yields increased revenue flows. However, this is because GTEFL compares revenue levels in different time-periods, not just revenues that occur under different conditions. Therefore, because GTEFL's comparisons always relate revenues after ECS is implemented (1992 beyond) to the revenues that GTEFL recovered from the same routes in 1990 (which is two years prior to ECS's implementation), GTEFL characterizes ECS as providing "positive" net revenues in 1995. This differs markedly from revenues exceeding the level they would have been absent the introduction of the ECS plan. FIXCA believes that under this approach, any price reduction, with or without stimulation, will ultimately show "positive net revenues,"

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since normal growth in the Florida market will eventually cause future revenues to exceed historic levels. OPC agrees with FIXCA on this point and so do we.

We have recalculated GTEFL's revenue impact by applying relevant growth to the test period units and using various stimulation percentages. Without any stimulation, we have calculated a negative revenue impact of \$31,562,594 for 1992 and \$33,692,515 and \$35,977,741 for 1993 and 1994, respectively (these figures include an annual facilities cost of \$1,092,296). The revenue impact of the ECS plan given different stimulation assumptions is as follows:

REVENUE IMPACT WITH VARIOUS ECS STIMULATION SCENARIOS					
YEAR	TOLL REVENUE WITHOUT ECS	Stimulations			
		ZERO	100%	150%	200%
1990	\$37,073,880				
1991	\$39,669,052				
1992	\$42,445,885	(31,562,594)	(19,587,007)	(13,599,219)	(7,611,426)
1993	\$45,417,097	(33,695,515)	(20,881,637)	(14,474,706)	(8,067,768)
1994	\$48,596,294	(35,977,741)	(22,266,891)	(15,411,475)	(8,556,052)

The ECS plan will negatively impact the earnings of GTEFL; however, it is impossible for us to find, unequivocally, that this filing would cause GTEFL to seek rate relief. If GTEFL decides to seek rate relief at a later date, any future revenue impact from the ECS plan shall be considered in the revenue requirement calculation.

An additional concern expressed by FIXCA regarding GTEFL's revenue impact deals with the elimination of the Toll Monopoly Areas (TMAs). Gillan states that there is no reason to assume that anything dramatic is going to happen on January 1, 1992, when TMAs are eliminated, because the only thing that is different is that the IXCs may use their own networks for completion of interEAEA calls. FIXCA asserts that the current access charge system bills carriers the same amount whether they substitute part of their network for GTEFL's or not. Therefore, FIXCA continues, no carrier has an incentive to take traffic off GTEFL's network because the IXC is going to pay GTEFL the same switched access charges either way. FIXCA asserts that GTEFL errs when assuming that competitors will make inroads on the routes in question if ECS is not

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introduced. We agree that the impact of eliminating TMAs will probably be minimal for switched traffic. However, there is likely to be an impact in the private line arena and for large customers who use special access lines. Yet, as we previously stated in our TMA order, the impact of eliminating TMAs remains unknown. In any event, this does not affect GTEFL's revenue impact calculations, nor does it affect ours. GTEFL's only discussion of the possible impact of TMAs is found in their internal planning documents which discuss factors GTEFL considered when deciding whether to propose this plan.

Another area of concern with GTEFL's projected revenue is how customers who currently subscribe to foreign exchange lines (FX) will react to ECS. FX is a service which provides the appearance of a local presence by allowing a customer located in a distant exchange to have a local telephone number. Currently, FX is provided over usage sensitive lines at an estimated monthly rate of approximately \$192.00, depending on mileage, based on GTEFL's newly approved FX rates. There may be an additional revenue reduction associated with FX customers switching to ECS, although we believe this revenue impact will likely be small. The displaced FX revenue would be due to a certain percentage of FX customers no longer subscribing to FX because the ECS plan is more attractive. This is especially applicable to customers who have FX primarily for outgoing calling needs. However, many local businesses want to encourage incoming calling from patrons and subscribe to FX for much the same reasons that regional and national businesses subscribe to 800 service (so that patrons can call them without a charge). In addition, many business customers that are heavily dependent upon incoming calls may hesitate to change their telephone numbers for fear of losing patrons.

The revenue impact from FX customers dropping the service because of ECS is difficult to quantify because we cannot predict which customers will actually switch. A customer may have FX because of outgoing calling needs, incoming calling needs, or some combination of both. Usage data is only available for outgoing calls and is insufficient to predict customer choice between ECS and FX. If all of GTEFL's 3950 business FX customers located in the ECS exchanges were to no longer subscribe to the service, the additional revenue impact to GTEFL would be approximately \$9,100,800. However, if we assume that the average business FX customer places 250 calls totalling 1000 minutes per month at peak rates, the FX revenue impact of these customers using the ECS plan will be offset by \$2,844,000. Although it is difficult to exactly quantify the revenue impact associated with customers giving up FX due to implementation of the ECS plan, we can assume that the

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"worst case scenario" revenue effect of all customers giving up the service would be \$6,256,800. Although this is a substantial revenue impact, we believe that very few business FX customers will switch to ECS because of the specific reasons cited above. However, we recognize it is inevitable that some FX customers will switch.

In conclusion, the record supports that the expected revenue impact of the ECS plan will be a \$30,470,298 loss in 1992 if stimulation is not considered. This does not include an additional \$1,092,296 for associated annual carrying charges for incremental facilities costs and billing system expansion for a total 1992 annual net operating revenue of \$31,562,594. Stimulation shall not be recognized for the purpose of determining the impact on GTEFL in this docket, since the response cannot be estimated with precision; however, it is reasonable to expect that some level of stimulation will occur. If the ECS plan has a material effect on earnings and a rate case is filed, then stimulation shall be considered as a mitigating factor.

#### VI. EFFECT ON GENERAL BODY OF RATEPAYERS

GTEFL's authorized range of return on equity (ROE) is 11.3% to 13.3% with a midpoint of 12.3%. This was established in Docket No. 890216-TL, Order No. 22352, issued December 29, 1989. During the hearing in early September, GTEFL indicated that there had been no decision to file a general rate case. However, witnesses Menard and Farmer stated throughout the hearing that it has been determined that if the Company's earnings continue to trend downward, a rate case may be required in the April/May 1992 time frame. GTEFL also asserted, "The important point is that ECS is not creating the need for a general rate application. The fact is that ECS is viewed in the same light as any other source of revenue in planning a general rate case." With GTEFL's projected stimulation, the negative revenue impacts are \$16.7 million and \$11.3 million for 1992 and 1993, respectively. GTEFL stated that these revenue reductions equate to approximately a 143 and 47 basis point reduction in ROE for 1992 and 1993, respectively, which would not singularly cause a general rate case.

As stated in Section V above, we have recalculated the revenue impact of the ECS plan to correct for several errors in GTEFL's calculations. Without any stimulation, we have calculated a negative revenue impact of \$31,562,594 for the first year and \$33,695,515 and \$35,977,741 for the second and third years, respectively, including an annual facilities cost of \$1,092,296.

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We have also calculated the revenue impact of the ECS plan given different stimulation scenarios (chart in Section V).

We find that the benefits of implementing ECS (or some modification thereof) make the potential revenue impact a worthwhile risk. Whether it is appropriate that the entire risk should be borne by the general body of ratepayers is not yet known. We believe that monitoring the impact and stimulation which actually occur is critical to making such a determination.

Based upon our own experience with the \$.25 plan and GTE South's experience with the TriWide<sup>sm</sup> Plan in North Carolina, we believe that stimulation will likely fall between 100% and 150% in the first year and a half of the plan. If the revenue reduction associated with this scenario were apportioned to subscriber lines and trunks in accordance with existing rate relationships, the 1992 impact would be approximately \$.60 per R-1 line, \$1.60 per B-1 line, and \$3.16 per PBX trunk (assuming a stimulated revenue impact of \$18 million), or approximately \$1.00 per R-1 line, \$2.60 per B-1 line, and \$5.30 per PBX trunk (assuming an unstimulated revenue impact of \$30 million).

Accordingly, we find that the ECS Plan will create a downward shift in GTEFL's revenues and, that after a transition period, revenues are likely to resume growing at the historical rate. The revenue effect may be permanent, in that GTEFL is unlikely to ever attain the revenue level that would have resulted if ECS had not been introduced. Traditionally, overall earnings dictate when a rate case is filed. GTEFL is hereby put on notice that the effect of our approved plan in this docket shall be considered in any future rate proceedings.

VII. DENIAL OF PLAN AS FILED AND REQUIREMENT  
FOR MODIFIED VERSION OF PLAN

GTEFL obviously supports the plan it filed and believes that an alternative would not be appropriate. GTEFL states that it analyzed, considered, and rejected several alternatives. GTEFL believes its proposal is appropriate because, in contrast to traditional flat-rate EAS, only those customers who actually make ECS calls would incur additional charges. GTEFL argues that under a traditional flat-rate EAS scenario, all customers in an exchange are required to pay for EAS whether or not they use the service. Witness Kissell stated that the costs associated with EAS vary in direct proportion to usage volumes. He further stated that "historically, the price increase associated with the EAS surcharge

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has not always covered the additional cost of the EAS nor has the surcharge covered the lost toll revenues associated with EAS calling. This problem is exacerbated as call volumes between the EAS exchanges increase at a rate higher than access line growth." Finally, the Company did not propose traditional flat-rate EAS because the calling volumes did not meet the requirements of Rule 25-4.060.

GTEFL also considered and rejected a message rate structure such as the \$.25 plan. Witness Kissell stated:

one intent behind ECS was to insure that the cost for an ECS call was always less than a customer would pay for an equivalent call under the current intraLATA toll rates. With a \$.25 per message rate, customers would pay more for short calls made during off-peak hours than they currently pay for these calls made at toll rates. Additionally, a per call charge of \$.25 discourages the use of the telephone as a tool to make numerous short calls such as calling several stores to check the availability of a product. GTEFL believes a per message charge of \$.25 unduly punishes callers who make calls of short duration.

Conversely, this \$.25 charge benefits those users which use the telephone for long periods, such as for dedicated computer applications. A per call charge would encourage the business customer (such as banks) to connect all of their branches for the entire business day for \$.25 per day. The costs for these calls would not be fully recovered from the cost causers.

The Company also considered and rejected a toll discount plan similar to its recently introduced Suncoast Preferred plan. According to Kissell, "the public did not believe Suncoast Preferred offered a low enough rate for calls across the Bay. With the current PSC toll pricing requirements, GTEFL is currently unable to offer a toll discount plan for calls across the Bay at rates less than those already offered with its Suncoast Preferred Service." In other words, GTEFL could not offer a toll discount plan with a significantly greater discount than offered by the Suncoast Preferred plan, and still comply with our access charge imputation requirement.

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FIXCA originally proposed a route-specific reduction in access costs in conjunction with a blanket authorization allowing IXCs to implement route-specific pricing. The idea was that a route-specific reduction in access charges on the proposed ECS routes, coupled with authorization to implement route-specific pricing, would allow IXCs to lower their prices on those routes. Lower prices would, presumably, provide EAS relief on those routes. FIXCA's position now is that we should consider a LATA-wide reduction in GTEFL's access rates. FIXCA argues that such a reduction would spread the benefits of lower toll prices to a broader array of consumers and would not discriminate among providers of interexchange services.

OPC favors a \$.25 message plan on the ECS routes if we decide it is appropriate to implement a type of local service on these routes. OPC asserts that the \$.25 plan is "much less like local measured service and much more like the optional message rate service which has been popular in GTEFL exchanges for years." OPC also points out that the revenue impact of the \$.25 plan would not be as great as the revenue impact of GTEFL's proposed plan. OPC's estimates show the negative revenue impact of the \$.25 plan to be about \$3.5 million less than the revenue impact of the ECS plan, using GTEFL's unstimulated revenue projections. Finally, OPC argues that under the \$.25 plan, "customers would not have to fear having the 'meter running' while they are on the phone, as they would under the ECS plan."

In reaching our decision in this docket, we considered all of the following EAS options: (1) flat-rate EAS; (2) a toll discount plan; (3) FIXCA's proposal for route-specific access reductions; (4) a message rate; and (5) a measured rate. We agree with GTEFL that traditional flat-rate EAS would not be appropriate on these routes. Notwithstanding the cost causation arguments presented by Kissell, the calling volumes do not meet the requirements of our EAS rules. Further, even if we chose to waive those requirements and conduct a customer survey for flat-rate EAS, we believe the survey would surely fail because of calling patterns on the ECS routes. The call distributions show that fewer than 50% of the customers in each exchange make two or more calls per month on the ECS routes. Since the rules require that more than 50% of those eligible to vote vote in favor of EAS for a survey to pass, it is clear that a survey would fail.

Similarly, we agree with GTEFL that a reduced toll plan, such as Suncoast Preferred, would not offer a significant enough reduction to customers on the ECS routes. Alternatively, if the rates were substantially lower, the plan could not meet the

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imputation test we require for toll plans. The discount associated with Suncoast Preferred is 20% off standard direct distance dialed (DDD) toll rates. The proposed ECS rates, however, offer approximately a 65% reduction in standard DDD toll rates. Even at that rate, some witnesses at the service hearings stated that they were still interested in flat rate EAS and that a 65% discount was not enough. In addition, there was strong support at the service hearings for seven-digit dialing. A toll discount plan would generally retain 1+ dialing. Thus, we have concluded that customers would not be satisfied with an extension of the Suncoast Preferred plan, or any other toll discount plan.

FIXCA's proposal would not offer a significant enough discount to relieve EAS pressure on the ECS routes and would have a revenue impact too great for GTEFL to absorb. In order to institute a LATA-wide reduction in access charges, GTEFL would first need two separate access charge schedules -- an intraLATA schedule and an interLATA schedule. If intraLATA access rates were reduced such that GTEFL and the IXCs could charge ECS rates, the potential revenue impact would be between \$50 and \$100 million, depending upon the assumptions used in making the calculations.

We have also considered the \$.25 plan as an option on the ECS routes. GTEFL offered several arguments as to why a per minute rate structure was preferable to a per message rate structure. Among these arguments are that a \$.25 per message charge unduly punishes callers who make calls of short duration and that some customers would pay more for short calls made during off-peak hours than they currently pay at existing toll rates. On the whole, we agree with these arguments. However, there are also several arguments in favor of a message rate plan, at least for residential customers. Clearly, a message rate structure is easy for customers to understand and accept. A message rate structure also allows customers to easily keep track and control their telephone charges. A customer knows, before a call is placed, exactly how much that call will cost. With a message rate structure, there is no time pressure to cut calls short. Thus, while there are economic considerations in favor of a per minute rate structure, they must be weighed against the social considerations in favor of a message rate structure.

We believe that business customers, in particular, would prefer a per minute rate, as opposed to a \$.25 message rate. Of course, if the message rate were \$.10, then we believe the rate structure would not be a significant issue to business customers. If the choice, however, is between a per minute structure with a rate of \$.10 for the first minute, and a message rate structure at

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\$.25 per message, the fact that the average duration of a business call is shorter than the average duration of a residential call, and the proportion of very short calls is greater, as well, leads us to conclude that the per minute rate structure would be preferable for business customers.

Having considered and rejected the alternatives of flat-rate EAS, a toll discount plan, and FIXCA's proposal, we were left to weigh the advantages of a measured rate versus a message rate. As outlined above, we believe that a message rate is preferable for residential customers, while a measured rate is preferable for business customers. Thus, the plan we are authorizing shall be a hybrid plan under which residential customers pay a message rate and business customers pay the measured rates described below.

In determining the appropriate rates, we had two main considerations: first, the revenue impact of our plan; and second, the level by which existing rates would be reduced. We find that the rates shall be slightly higher than those proposed by GTEFL in order to reduce the revenue impact of the plan. Specifically, residential customers shall pay a message rate of \$.25 per call, while business customers shall be charged a measured rate of \$.10 and \$.06, rather than GTEFL's proposed \$.09 and \$.05. Our rates represent a reduction of 63% for business customers, rather than the 69% reduction under GTEFL's proposal. For a three minute call, the \$.25 message rate would offer a reduction of 58% as compared to existing rates. Stimulation should not differ markedly our version of the plan. In the Tri-Wide<sup>sm</sup> plan, the rates were reduced by 65% and 142% stimulation was the result. Our rates represent a reduction almost as great as that put in place under the Tri-Wide<sup>sm</sup> plan.

Similarly, we find that an off-peak discount is unnecessary under our plan. First, our rates already offer such a great discount from the existing rates. Second, elimination of the discount would further lessen the revenue impact of our plan. Third, the \$.25 message rate, as previously implemented on other routes, does not offer an off-peak discount. Finally, approximately 75% of all business calls on these routes are made in the daytime period. The revenue impact of our plan is estimated as follows:

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REVENUE IMPACT WITH AND WITHOUT STIMULATION		
	GTEFL PLAN	MODIFIED PLAN
NO STIMULATION		
1992	(\$30,470,298)	(\$28,095,660)
1993	(\$32,603,219)	(\$30,062,356)
1994	(\$34,885,444)	(\$32,166,720)
1995	(\$37,327,425)	(\$34,418,390)
TRI-WIDE STIMULATION		
1992	(\$19,657,316)	(\$16,584,674)
1993	(\$18,029,229)	(\$14,317,104)
1994	(\$19,219,275)	(\$15,319,301)
1995	(\$20,641,664)	(\$16,391,652)

The revenue impact calculations submitted by GTEFL showed a 265% increase in minutes of use from 1992 through 1995. This was based on an assumed increase of 95% in 1992, 25% in 1993, 25% in 1994, and 20% in 1995. GTEFL claims that this is the equivalent of the stimulation associated with the Tri-Wide plan. However, the usage data from the Tri-Wide plan actually shows stimulation of approximately 142%. As we discussed in Section V, it is unclear how this error was made. We believe the appropriate figure to use to compare the stimulated and unstimulated revenues of GTEFL's proposed plan and our plan is 142%. The figures shown above do not include any possible facilities costs.

We have also considered whether any other routes should be added to the ECS plan. There are several routes with calling rates which equal or exceed the one-way calling rates on the proposed ECS routes. Of these routes, we find it appropriate that the Plant City/Tampa route be included in our modified plan. The Plant City/Tampa toll route was first examined in Docket No. 850152-TL. At that time, the Plant City to Tampa route exhibited one-way calling volumes of 5.4 M/M/Ms with 48.7% of the customers making two or more calls per month. Although the number of customers

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making two or more calls per month fell slightly below the threshold required by the EAS rules, we ultimately ordered a survey be conducted for nonoptional flat-rate EAS. The survey failed and an optional EAS plan was later implemented. Since one of the options is a premium flat rate option (available to residential customers only), the number of calls on this route, as shown by data submitted by GTEFL, is substantially higher. Because of the high calling volumes on this route, the fact that the Plant City/Tampa route has previously been considered for EAS, and since Plant City is located in the same county as Tampa, we shall require this route to be included. The premium flat rate option shall continue to be offered, but other EAS options on this route shall be discontinued.

We identified at least twelve other one-way routes which also have substantial calling rates. However, we are not requiring these routes to be included in our modified plan, at this time, for the following reasons: the ECS routes have higher two-way calling rates; several of these other routes are between thirty and forty-five miles; the revenue impact of our plan is already rather substantial; and finally, we believe these routes may be addressed after some experience has been gained with our modified version of the plan.

Overall, our modified version of the plan is very similar to GTEFL's proposal differing primarily in four areas. First, our rates for business customers shall be \$.10 for the initial minute, and \$.06 for each additional minute, rather than the \$.09 and \$.05 proposed by the Company. Second, residential customers shall pay \$.25 per message, regardless of call duration. Third, no off-peak discount shall be offered. Finally, the Plant City/Tampa route shall be included in our version of the plan.

Accordingly, GTEFL's tariff filing shall be denied. GTEFL shall refile its tariff to include the following:

- (a) the end user rate shall remain capped at \$.25 for nonLEC payphone providers, remain at \$.25 for LEC payphone providers, and the interconnection rate for NPATS shall remain at the level of the local interconnection rates determined in Docket No. 860723-TP;
- (b) resale of ECS shall only be permitted for those services which we have previously authorized for resale;

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- (c) directories for ECS exchanges shall be made available to customers at convenient locations upon request with no additional charge; directory assistance calls shall be considered local;
- (d) rates for business customers shall be \$.10 for the first minute and \$.06 for each additional minute, rather than \$.09 and \$.05, respectively, to mitigate the revenue impact to GTEFL; there shall be no off-peak discount;
- (e) residential customers shall pay \$.25 per call regardless of duration or time of day; and
- (f) Plant City shall be added to the ECS routes with calling to the whole Tampa exchange only.

Revised tariffs shall be filed five days after any reconsideration vote in this matter, or five days after the reconsideration period expires, if no reconsideration is requested. After correct tariff pages are filed, the effective date shall be February 8, 1992, unless reconsideration is requested, in which case the tariff shall not become effective until we dispose of the reconsideration request(s). This action will allow GTEFL to notify customers via bill stuffers, media releases, and directory pages of the approved plan. In addition, GTEFL shall file quarterly reports to track any stimulation resulting from implementation of this plan. Finally, all historical usage and access line data for the ECS exchanges, from 1990 forward, shall be retained by GTEFL until we have identified specific data which is required.

Under GTEFL's proposal, bill detail for ECS calls would not be provided as a standard feature; however, it would be offered as an optional service. Bill detail, if requested, would provide the customer with a list of each ECS call made during the billing period. GTEFL's proposed rate for this service is \$1.75 per month per customer bill, plus \$.12 for each page of ECS billing detail. We shall approve the Company's bill detail proposal. However, the Company shall also explore the feasibility of a record retention policy of 30 to 60 days where bill detail has not been ordered by the customer.

GTEFL shall provide complete instructions to each NPATS provider in the ECS areas regarding the implementation of the plan so the pay telephones can be reprogrammed (e.g., affected NXX codes, end user dialing requirements, and end user rates). For

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already deployed equipment, NPATS providers shall be permitted to implement our plan within 60 days of the effective date of any tariffs, since each affected phone will require reprogramming. GTEFL has testified that it is willing and able to provide NPATS providers with proper notice.

GTEFL plans to notify its customers of the ECS plan in several ways. The first way is via a bill insert which will be developed to describe ECS, including a map of local calling areas and ECS areas, listing the prefixes in each. The insert will be sent to customers in the ECS-affected areas immediately following our approval of ECS.

GTEFL also plans to notify its customers by print ads, which will also include a map designating local calling areas and ECS areas, listing the associated prefixes. These print ads will appear in both the St. Petersburg Times and The Tampa Tribune as soon as ECS becomes effective. In addition, television ads are being developed which would communicate optional area code (10 digit) dialing in February, 1992. These ads are being modified to include a tagline that area code dialing is not necessary on ECS calls between Tampa, St. Petersburg, Clearwater, and Tarpon Springs.

Finally, directory pages are being developed for inclusion in the directories of ECS communities. The new directories will be distributed in 1992. The directory page will detail the service and include a map highlighting the local calling areas, ECS areas, and list the associated prefixes. We find all of these methods to be appropriate for proper notification regarding the plan.

#### VIII. SECTION 364.335, FLORIDA STATUTES

An additional issue in this proceeding was whether Section 364.335, Florida Statutes, precludes IXCs from providing service over their own facilities on routes which are determined to be local. The positions of the parties fell along predictable partisan lines when responding to this question.

GTEFL argues that Section 364.335 does not allow IXCs to provide a local service over their own facilities on the ECS routes. The only exception, according to GTEFL, is the provision of a dedicated facility between two points owned by affiliated entities. The Company cites Order No. 24877 in Docket No. 890183-TL as support for this position.

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According to GTEFL, FIXCA suggests that IXCs have some lawful role in providing transport or switching functionality in the local exchange network, but the amendment of Chapter 364 by the 1990 legislature does not support such a position. GTEFL believes that which was local before the Chapter 364 rewrite is local today, with the limited affiliated AAV exception. GTEFL cautions us regarding the potential ramifications of this issue. According to GTEFL, FIXCA takes the position that after January 1, 1992, an IXC can carry traffic on any route; that they are only prohibited from providing local exchange service. FIXCA then defines local exchange service as the basic switched product providing ubiquitous connection within a defined geographic area where connections can be established with simple dialing and signalling activity between the subscriber's instrument and the local exchange carrier's network. Thus, according to GTEFL, it is FIXCA's position that, if an interexchange carrier utilizes any technology or functionality that does not include traditional signalling as is utilized today, that function does not constitute local exchange service. GTEFL states that FIXCA believes that an IXC can deploy facilities which are new and innovative within the established local service area and that this would not violate Section 364.335. GTEFL believes it is this aspect of FIXCA's position which should cause us concern.

FIXCA responds that GTEFL's proposal does not present the Commission with any issue involving Section 364.335. FIXCA asserts that Section 364.335 provides direction only when evaluating the proposed entry of a new carrier and that entry is not at issue here. Competition has been allowed along these routes, FIXCA continues, since we issued the first certificate to a competitive IXC.

FIXCA notes that while it has been the Commission's policy to prohibit IXCs from using their own transmission facilities when providing interexchange services within the Tampa EAEA, that policy was not based on Section 364.335. With the expiration of the TMA restriction on January 1, 1992, IXCs will no longer be limited to the use of LEC facilities to provide authorized services. FIXCA adds that Section 364.335's threshold requirement to first determine inadequate service before issuing a certificate to another carrier does not protect just any service that may be offered by a local telephone company. Rather, FIXCA states, its focus is much narrower and limits competition only as to "local exchange services." GTEFL's decision to include ECS in its General Services tariff does not cause such service to become "local" as the term is used in Section 364.335 . . . any more than moving GTEFL's basic exchange service to the MTS section of its tariff would cause the service to become "toll" and exempt it from this

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protection. While GTEFL's pricing proposal may render competition for message toll service economically impossible, the argument continues, it does not, however, expand a preexisting statutory limitation beyond its original scope.

FIXCA concludes that Section 364.335 does not contemplate or empower -- much less require -- the Commission to "de-authorize" competitive facilities in reaction to a local telephone company pricing proposal. Effective January 1, 1992, the expiration of the Commission's policy limiting toll transmission competition will permit IXCs to use their own transmission facilities along the interexchange routes where GTEFL is offering its ECS service, should they choose to do so. GTEFL's request to label and tariff ECS as a "local" service in its General Services Tariff should not be allowed to supersede Commission policy or to extend GTEFL's statutory monopoly, according to FIXCA.

OPC did not assert a position on this issue in its posthearing brief. Southern Bell states that if we determine that the ECS plan should be characterized as local, as it believes we should, then the statute cited precludes an interexchange company from competing with or duplicating the services provided by GTEFL, absent a finding by the Commission that GTEFL's existing services are inadequate. FPTA does not actually take a position on the issue, but does ask that we remain guided by the important legislative goal of promoting competition.

Section 364.335(3) (1990) provides in pertinent part:

The commission may not grant a certificate for a proposed telecommunications company, or for the extension of an existing telecommunications company, which will be in competition with or duplicate the local exchange services provided by any other telecommunications company unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telecommunications company to remove the basis for competition or duplication of services. The commission may, however, grant such a certificate for a proposed telecommunications company, or for the extension of an existing telecommunications company, which will be providing either competitive or duplicative pay telephone service pursuant to the provisions of s. 364.3375, or private line service by a certified alternative access vendor, without determining that existing facilities are inadequate to meet the reasonable needs of the public and

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without amending the certificate of another telecommunications company to remove the basis for competition or duplication of services.

We have consistently interpreted this provision (renumbered from Section 364.335(4)(1989)) as a prohibition against duplication of or competition with the local exchange company, absent a specific exception provided by statute or authorized by this Commission.

In their positions, the parties do not genuinely dispute that this statute reserves the provision of "local exchange service" to local exchange companies. The heart of the disagreement, rather, revolves around the meaning of the term "local exchange service."

We find that the routes for which ECS has been approved shall be classified as local and held to fall within the ambit of "local exchange service," as that term is employed in Section 364.335. This is consistent with our treatment of EAS as local service. The necessary result of our action shall be to preclude competition on these routes. We do not find it necessary to fully define "local exchange service" at this time in order to take this action. Rather, we find only that these routes constitute "local exchange service" as contemplated in Section 364.335. We categorically reject FIXCA's argument that this section of the statute is not at issue here.

#### IX. RULINGS

At the beginning of the hearing, we entered rulings on two pending motions. Staff's August 13, 1991, Motion for Extension of Time to Conduct Discovery and FIXCA's August 22, 1991, Motion to File Amended Direct Testimony of Joseph Gillan were both granted.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and every one of the specific findings set forth herein be and the same are hereby approved in every respect. It is further

ORDERED that GTE Florida, Incorporated's tariff filing T-91-037 filed January 29, 1991, is hereby denied for the reasons set forth herein. It is further

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ORDERED that GTE Florida, Incorporated shall refile its tariff following the guidelines and timeframes established in the body of this Order. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 11th day of FEBRUARY, 1992.

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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

ABG

by: Kay Flynn  
Chief, Bureau of Records

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 the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order,

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pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.