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STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

AT&T; Communications of Illinois, Inc. :
Petition for Arbitration of Interconnection Terms, Conditions and Prices from GTE North Incorporated [and GTE South Incorporated, in their respective services areas]. : 96-AB-005

ARBITRATION DECISION

I. INTRODUCTION

On August 16, 1996, AT&T; Communications of Illinois, Inc. ("AT&T;") filed a petition ("AT&T; Arbitration Petition") with the Illinois Commerce Commission ("Commission") requesting that the Commission arbitrate certain terms, conditions and prices for interconnection and related arrangements from GTE North Incorporated and GTE South Incorporated (collectively "GTE"), in their respective service areas, pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Telecommunications Act" or "Act"). The AT&T; Arbitration Petition pointed out that at the time of filing, AT&T; and GTE had not agreed in writing upon any issues during their negotiations. Thus, because all issues were unresolved and would need to be decided by the Commission, AT&T; submitted as Exhibit A to the AT&T; Arbitration Petition a complete proposed Interconnection Agreement (the "AT&T; Interconnection Agreement") and requested that the Commission adopt it as the interconnection agreement between the parties. On October 29, 1996, AT&T; filed revisions to its proposed Interconnection Agreement. References in this decision are to the revised Interconnection Agreement.

GTE subsequently filed a Motion to Dismiss, or, in the Alternative, to Suspend the Petition, contending that GTE is a "rural telephone company" as defined in Section 153(37) of the Act, and thus is automatically covered by the "rural exemption" of Section 251(f)(1). The Hearing Examiners issued a ruling denying GTE's Motion in its entirety.

On September 10, 1996 GTE filed its Response to the AT&T; Arbitration Petition, pursuant to Section 252(b)(3) of the Act ("GTE Response"). In its Response, GTE included matrices identifying various issues and summary statements of the parties' positions regarding those issues. GTE also represented that no written agreement on any of the issues had been reached by the parties, and attached to its Response a proposed interconnection agreement (the "GTE Interconnection Agreement").

On October 1, 1996, the Hearing Examiners granted AT&T;'s Motion to Sever, and on October 7, 1996, the Commission established a separate docket, No. 96-0503, initiating an investigation of

GTE's cost studies and the proper allocation of forward-looking common costs. Therefore, for this arbitration, we determine interim prices for the services offered in the Interconnection Agreement.

On November 8, 1996, a Hearing Examiners' Proposed Arbitration Decision was duly served on the parties. Each of the parties filed exceptions and said exceptions are considered herein.

II. JURISDICTION

This cause was initiated by the petition of AT&T; for arbitration of certain terms, conditions and prices for interconnection and related arrangements from GTE, pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act. Section 252(b) specifically empowers this Commission to arbitrate any "open issues" between a requesting telecommunications carrier and an incumbent local exchange carrier ("incumbent LEC" or "ILEC") and sets forth certain procedural requisites for such arbitration by a state commission. Section 252(c) provides the following arbitration standards to be applied by the Commission:

> In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall --
>
> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [Federal Communications] Commission pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and
>
> (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(Act, 252(c)).

III. PARTIAL STAY OF FCC ORDER

As a preliminary matter, we address the stay of portions of the FCC Order. On October 15, 1996 the Eighth Circuit issued a temporary stay of certain portions of the Rules appended to the FCC Order pending full briefing and argument on the merits. Iowa Utilities Board v. Federal Communications Commission, No. 96-3321 (8th Cir. Oct. 15, 1996) (available on Westlaw at 1996 WL 589204). We do not believe that the stay issued by the Eighth Circuit should stop, delay or affect the parties' or this Commission's obligations under the Act.

As an initial matter, the Eighth Circuit stay applies only to certain limited portions of the Rules appended to the FCC order. See Iowa Utilities Board, 1996 WL at *8 n.8 ("The stay pertains only to 51.501-51.515 (inclusive), 51.601-51.611 (inclusive), 51.701-51.717 (inclusive), 51.809, and the proxy range for line ports. . .established in the FCC's Order on Reconsideration, dated September 27, 1996.").

The balance of the FCC Order was not addressed in the Eighth Circuit's ruling and is not subject to the stay. This includes the portions of the FCC Order and Rules dealing with interconnection,

unbundled network elements, services available for resale, collocation, operations support systems, parity and service standards, and numerous other issues to be decided in this arbitration. Consequently, the Commission finds the FCC Order to be authoritative as to those portions which were not stayed by the Eighth Circuit.

The foregoing conclusion bears strongly upon the issues herein. There are many open issues where GTE's position is in direct conflict with the FCC Order and Rules. With respect to such issues GTE, both explicitly and implicitly, urges the Commission to reject the FCC's conclusions found in the First Order. The Commission is of the opinion, however, that this is the wrong forum for GTE to be making such an argument.

Section 252(c) of the Act establishes the standards that this Commission must follow when resolving open arbitration issues. In particular, Section 252(c)(1) requires this Commission's decisions to adhere to "the regulations prescribed by the [FCC] pursuant to section 251." The FCC Order and Rules establish numerous requirements that are not subject to the Eighth Circuit's stay Order. As such, we are compelled to follow those portions of the FCC Order and Rules which remain in full force and effect.

IV. OPEN ISSUES SUBJECT TO ARBITRATION

As discussed above, pursuant to Section 252(b)(1) the Commission is authorized to address and resolve all open issues. Prior to evidentiary hearings, there remained outstanding 69 separate issues, excluding sub-parts, as well as a basic disagreement regarding the overall form and content of the ultimate Interconnection Agreement. Subsequently, the parties have resolved only a few issues.

The parties submitted a matrix which identified and grouped the issues. The briefs which were submitted present, in the same order as the matrix, each parties' respective position. The following discussion of issues mirrors that sequence and presents a brief summation of the positions of AT&T;, GTE and Staff.

ISSUE 1: WHAT IS THE PROPER METHODOLOGY FOR DETERMINING THE PRICES FOR GTE RESOLD SERVICES?

AT&T; asserts that resale prices should be based on avoided retail costs as defined in the FCC Order. FCC Rule 51.609 defines avoided retail costs as those costs that reasonably can be avoided. (Act 252(d)(3); FCC Order 911). AT&T; argues that wholesale rates are to be determined on the basis of retail rates less the portion thereof attributable to billing, collection, and other retail costs that will be avoided by the LEC. (Act 252(d)(3)). Avoided retail costs are those that reasonably can be avoided when an incumbent LEC provides a telecommunications service at wholesale rates to a requesting carrier. (FCC Rule 51.609(b)). AT&T; recognizes that 51.609(b) has been stayed by the Eighth Circuit decision, but argues that the rationale of the FCC is persuasive, and the reasoning is consistent with that adopted previously by this Commission.

AT&T; also points to the fact that this Commission has directed that permanent prices, including wholesale prices, be severed to a separate docket, Docket 96-0503 (October 7, 1996 Order). In this arbitration, the Commission will set only interim prices, which will remain in effect until permanent prices are set pursuant to

the order of the Commission in the separate docket.

AT&T; has proposed a 25% average baseline wholesale discount applicable to all telecommunications services that AT&T; will purchase from GTE. (Merrick Direct, p. 9; AT&T; Interconnection Agreement, Appendix 1 to Attachment 14). Within the Basic Local Service (Residence and Business) category, the baseline discounts for the subcategories range from 20% to 55%, but the weighted average for the category, based on GTE's revenues, is 25%. (Merrick Direct, pp. 9-10; Merrick Ex. PHM-1). The wholesale discount advocated by AT&T; is based upon consideration of a number of things, including the results of the AT&T; simplified avoided cost model, the discount range set forth in the FCC Order, and the weighted average 22.05% discount ordered for Ameritech by the Illinois Commerce Commission in the Illinois resale docket. (Merrick, Tr. 157-58, 175-78). In the event that the Commission does not accept AT&T;'s recommendation, it argues for the adoption of the wholesale pricing proposal of Staff witness Jennings.

GTE maintains that the proper methodology is the one reflected in GTE's Avoided Cost Study, which calculates avoided costs based on GTE's actual operations and workcenters. This type of study is much more precise and reflects a greater level of detail than studies that rely exclusively or primarily on the account groupings established by the Uniform System of Accounts.

GTE submitted two avoided cost studies in the arbitration, but is relying here on its preferred and most thorough study, which better comports with the Act's requirements. This study calculates specific discounts for GTE's five categories of services: (1) usage services, 7.1%; (2) vertical services, 5.5%; (3) residence, 6.6% (4) combined, 6.2%; and (5) advanced services, 15.3%, and results in a composite discount of approximately 7%.

GTE contends that the proper methodology for the arbitrator to rely upon is the one it advocates, where GTE's wholesale prices equal GTE's retail prices minus GTE's net avoided costs. Net avoided costs equal avoided retail costs, offset by the additional costs of providing wholesale service.

GTE's Avoided Cost Study is based on an analysis of GTE's work centers and reflects GTE's current operations. (See GTE Exs. 9.01 (Tab 20)). In this study, GTE analyzed all of its work centers (for example, GTE's customer care center) to determine which activities or functions in each work center would be avoided in a wholesale environment. The costs associated with these "avoided" activities were determined using GTE's actual 1995 cost data. The results of this work center analysis were then used to calculate an avoided cost discount for each of GTE's five service categories: residential services, business services, usage, vertical services, and advanced services. The avoided cost discount for each of these services was calculated on a national basis, because most of the costs that will be avoided are incurred primarily on a national (or regional) basis. (See GTE Ex. 7.00).

GTE's Modified Study, which GTE proposes as an alternative to its avoided cost study in the unlikely event the Eighth Circuit's stay is lifted, is a modification of the MCI avoided cost study that the FCC relied upon, in part, to calculate its default avoided cost discount range. In accordance with Paragraph 909 of the First Report and Order, GTE modified certain inputs to the ARMIS-based model to properly identify its avoided costs. The three basic modifications made by GTE -- direct expense factors, revenue base

calculation, and plant related return and taxes were included as avoided costs -- are discussed in GTE Exhibit 7.00. The latter two modifications actually result in an increase to GTE's avoided cost discount. (Id.)

Staff recommends the same methodology as adopted in the Commission's Order in Docket 95-0458 et al., Consol. That methodology provides that the wholesale price for each service has the same percentage mark-up above the Long Run Service Incremental Costs ("LRSIC") as does the corresponding retail service. In order to accomplish that result, a pro rata amount of contribution must be "attributed" to the direct avoided costs. The equation for calculating the maximum wholesale price for each service is stated as follows:

$$P(w)=P(r)-[TAC(r)-TAC(w)]-[P(r)-TAC(r)]*[1-TAC(w)/TAC(r)]$$

P(w) - wholesale price
P(r) - retail price
TAC(w) - is the wholesale LRSIC plus the wholesale administrative costs associated with that service.
TAC(r) - is the retail LRSIC plus the retail administrative costs associated with that service.

Staff asserts that this method is consistent with Section 252(d)(3) of the Act since the wholesale price is calculated "on the basis of" retail rate excluding costs that can be "attributed" to retailing costs that are avoidable. In addition, this method is efficient and equitable, will allow GTE to recover its forward-looking economic costs, plus a pro rata amount of common costs. (Tr. 902-904)(Staff Ex. 1.00 at 9-16).

Commission Conclusion

The Commission concludes that Staff's methodology for calculating the appropriate wholesale rate should be adopted. Staff's methodology utilizes GTE's retail rates as a starting point. Hence, GTE's costs associated with the provisioning of such retail service will be reflected when arriving at the wholesale rate.

Regarding the controversy regarding whether the use of "avoided" or "avoidable" costs is appropriate, the Commission finds that we have previously addressed this issue in our Wholesale/Resale Order in Docket 95-0458, et al. Our interpretation of the Act is settled, and we believe that calculating the wholesale rate based upon the removal of "avoidable" costs comports with the law. Therefore, with respect to Issues 1a - 1i which follow, the Commission believes that our conclusion herein effectively resolves those issues. For purposes of clarity in this decision, we will list those issues in order to identify those matters at issue between GTE and AT&T;.

ISSUE 1A: ARE ADVERTISING EXPENSES IN THEIR ENTIRETY AN AVOIDED COST?

ISSUE 1B: ARE CALL COMPLETION COSTS (OPERATOR SERVICES) IN THEIR ENTIRETY AN AVOIDED COST?

ISSUE 1C: ARE NUMBER SERVICE COSTS (DIRECTORY ASSISTANCE) IN THEIR ENTIRETY AN AVOIDED COST?

ISSUE 1D: ARE GENERAL & ADMINISTRATIVE COSTS AN AVOIDED COST?

ISSUE 1E: ARE PRODUCT MANAGEMENT COSTS IN THEIR ENTIRETY AN AVOIDED COST?

ISSUE 1F: ARE TESTING AND PLANT ADMINISTRATION COSTS AN AVOIDED COST?

ISSUE 1G: WHAT PERCENTAGE OF SALES EXPENSES IS AN AVOIDED COST?

ISSUE 1H: WHAT PERCENTAGE OF UNCOLLECTIBLE EXPENSES IS AN AVOIDED COST?

ISSUE 1I: DOES THE ACT_S METHODOLOGY FOR DETERMINING WHOLESALE RATES RECOGNIZE ANY NEW COSTS THAT MIGHT BE CAUSED BY THE REQUIREMENT TO OFFER SERVICES FOR RESALE?

ISSUE 1J: IS A VOLUME DISCOUNT APPROPRIATE IN A RESALE ENVIRONMENT, AND IF SO, WHAT SHOULD THE DISCOUNT BE?

AT&T; states that commercial contracts which involve volume or term commitments should reflect correspondingly reduced prices. AT&T; recognizes that a cost basis is required for any volume/term discount. (FCC Order 860). AT&T; further notes that GTE has praised volume discounts, stating that volume discounts stimulate usage to efficient levels by allowing customers to pay rates, at the margin, which more closely reflect incremental cost, and that volume discounts assist customers in making efficient economic choices among different service options. (Merrick Direct, p. 10). Such discounts are also appropriate in light of the decline in costs and risk GTE will experience in a wholesale environment. (Merrick Direct, p. 11). AT&T; alleges that the FCC has recognized that volume and term discounts are permissible under the Act based upon legitimate variations in costs. (FCC Order 860). AT&T; has proposed a minimum volume discount of 0.5% based on 2,800 lines and has requested a maximum discount of 10% based upon a volume of 44,800 lines. (Merrick Direct, p. 10). Additional discounts are set for term commitments.

GTE contends that the Act's provisions governing resale are quite clear; they do not provide for any volume discount. Rather, Section 252(d)(3) provides that wholesale rates are to be based on an incumbent LEC's retail rate minus the LEC's avoided cost -- there is no mention of a "volume discount." Also, there is no evidence that GTE will avoid any additional costs simply because of AT&T;'s "volume" requirements (assuming, of course, these volume requirements are not entirely speculative), and therefore any arbitrary reduction in costs would be contrary to the express language of the Act. Accordingly, the Commission should adopt GTE's recommended wholesale prices as set forth in the appropriate attachment to Mr. Dye's testimony.

Commission Conclusion

The Commission concludes that volume discounts are appropriate in the resale market. Neither Section 252 (d)(3) nor Section 251 (c)(4) prohibit the inclusion of volume discounts for resale. Such a conclusion is also supported in the FCC Order. See, FCC Order 951 and 953.

The Commission notes, however, that in the event costs associated with volume discounts differ from costs for wholesale rates that are not volume-sensitive, GTE may be allowed to demonstrate this difference and alter its volume sensitive rates

accordingly. The Commission also notes that the extent to which GTE's retailing cost may be avoided in a wholesale environment will be addressed in Docket 96-0503.

Neither the 1996 Act nor the FCC Order requires an ILEC to provide a volume discount to a CLEC when the CLEC purchases the services at a wholesale rate. The Commission therefore, will not require GTE to provide a volume discount to AT&T; in excess of the existing wholesale rate. The Commission notes that GTE must provide volume discounts at a wholesale rate where it provides volume discounts to its retail customers. See Issue 16.

ISSUE 2: SHOULD THE COMMISSION ADOPT THE FCC'S "DEFAULT PROXY" DISCOUNT RATES?

AT&T; contends that due to the lack of reliable state-specific cost data for establishing rates, its proposed baseline discount of 25%, is within the FCC default range. (FCC Order 932; FCC Rule 51.611 (resale discount)). AT&T; believes, however, that the Commission need not resolve this issue because it has established that its recommendation of a 25% wholesale discount is proper. Although the FCC default range of 17% - 25% has been stayed, AT&T; asserts that its avoided cost information approximates the amount of retail costs GTE could avoid in a wholesale environment. (See Merrick Direct, pp. 3, 9).

GTE points out that these rates have been stayed by the Eighth Circuit, and that court's ruling is binding upon this Commission. Until further Order of the court, the FCC's proxy rates and pricing rules should be treated as if they never existed. Indeed, to treat them in any other manner would run directly contrary to the policy underlying stays of administrative actions, as expressed over fifty years ago by the Supreme Court in Scripps-Howard Radio, Inc. v. FCC, 316 U.S. 4, 9, 62 S.Ct. 875, 86 L.Ed. 1229 (1942)

Staff recommends that the Commission adopt its proposed pricing methodology and interim discounts for GTE's wholesale services.

Commission Conclusion

In light of our decision to utilize Staff's wholesale pricing methodology in Issue 1, there is no need to utilize the FCC proxy. However, the Commission recognizes that GTE will not be able to implement Staff's pricing methodology until Docket 96-0503 is completed. Therefore, we adopted Staff's recommendation that GTE's wholesale discount rates be set equal to the discounts of Ameritech Illinois in Docket 95-0458 et al., Consol. In situations where GTE offers a service that does not correspond to that offered by Ameritech Illinois, then GTE should apply the average Ameritech Illinois wholesale discount which is currently equal to 17.5 percent.

ISSUE 3: HOW SHOULD THE COST OF INTERCONNECTION AND UNBUNDLED NETWORK ELEMENTS BE CALCULATED, AND WHAT PRICES SHOULD BE ESTABLISHED?

AT&T; posits that GTE is required to set the prices for unbundled network elements and network element combinations at TELRIC. (FCC Rule 51.505). GTE, however, has not provided necessary cost information from which to calculate TELRIC costs. In order to calculate prices for unbundled network elements, AT&T; used Ameritech cost studies for the State of Illinois. (Act

252(b)(4)(B); 252(d)(1) and (2)). AT&T; asserts that the Act requires an incumbent LEC to provide interconnection with its network at "rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252." (Act 251(c)(2)). Further, the Act requires an incumbent LEC "to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252." (Act 252(c)(3)). AT&T; further states that the Act requires this Commission to determine the price for interconnection and unbundled network elements on the basis of the cost of providing the interconnection or the network element. AT&T; also notes that rates are to be nondiscriminatory and may include a reasonable profit. (Act 251(d)(1); see also FCC Rules 51.501-51.515; FCC Order 625-877).

AT&T; proposed that GTE's prices for interconnection and unbundled elements be set at forward-looking, long-run incremental cost, or TSLRIC. (Merrick Direct, p. 12). TSLRIC supports prices at economically efficient levels because it is the forward-looking, long-run incremental cost of providing an entire service at the least cost technologies that are consistent with principles of cost causation. (Kaserman Direct, pp. 18-19). AT&T; states that the FCC has proposed a virtually identical cost methodology, TELRIC. (Kaserman Direct, p. 18). While these rules with regard to TELRIC have been stayed, AT&T; contends that the Commission need not now determine whether TELRIC is an appropriate methodology, as that will be examined in Docket 96-0503. For the purpose of resolving this issue, AT&T; concludes that the Commission need only set interim prices that are consistent with the Act's requirement that prices be based on costs that are nondiscriminatory, and that may include a reasonable profit. (Act, 252(d)(1)).

GTE proposes that the costs for interconnection and unbundled network elements should be calculated based on GTE's cost studies. The prices that are established should be those submitted by GTE, because they are the only prices that are based on GTE state-specific costs, as required by the Act.

GTE used engineering process modules to calculate the incremental costs of local, toll, switched access, unbundled loops, unbundled ports and other network features. (See GTE Exhibit 9.00.) The models are populated with company-specific inputs including actual office or system size, technology, traffic data and mileage information. The modeling process calculates both the volume-sensitive and volume-insensitive costs necessary to develop a TELRIC. The model's results are conservative because GTE did not add any calculations to reflect the increased risks in the local exchange marketplace.

Because the TELRIC methodology does not include any common costs, GTE added a reasonable contribution of common costs based on GTE's actual data. GTE's forward-looking common costs for its network in Illinois are approximately 43% of GTE's total revenues. (See GTE Exhibit 9.00, Attachment 2.) This percentage is to be expected, because it reflects GTE's significant economies of scale -- economies that can be taken advantage of by all requesting carriers through interconnection with GTE's network and through the purchase of unbundled elements.

In developing prices, GTE assigned a reasonable share of its common costs pursuant to the Market-Determined Efficient Component Pricing Rule (M-ECPR). As discussed in the testimony of GTE witness Spulber, the M-ECPR does not afford GTE the opportunity to recover all of its actual costs. Professor Spulber explained that M-ECPR pricing of unbundled network elements will permit certain stranded costs to arise, resulting in economic losses -- for example, losses incurred in the provision of services to preferred classes of customers at regulated prices that are below GTE's actual costs -- unless an end-user charge is established.

GTE maintains that the establishment of an end-user charge is compelled by the Eighth Circuit's Stay Order. Indeed, one of the reasons GTE and other incumbent LECs sought a stay was because the forward-looking TELRIC methodology "does not consider historical or 'embedded' costs (i.e., costs that an incumbent incurred in the past)." (Stay Order at 11). GTE further asserts that there is no doubt that GTE's cost studies are forward-looking TELRIC studies, and therefore an end-user charge must be established in this proceeding so that GTE may, as Professor Spulber explained, "recover the cost of its past investment." (GTE Exhibit 8.00, Direct Testimony of Daniel F. Spulber at 13). This approach is consistent with Section 254(f) of the Act which requires every telecommunications carrier to contribute on an equitable and nondiscriminatory basis, to universal service. The end user charge, by definition, allows for the recovery of subsidies inherent in the existing rate structure. As such, these subsidies are an element of actual costs for which GTE must be compensated.

Staff proposes that the prices for interconnection and unbundled network elements should be based on GTE's forward-looking costs. (Staff Ex. 1.00 at 26). However, Staff maintains that GTE has not provided sufficient information in a timely manner. Therefore, Staff has not had an opportunity to determine if GTE's proposed forward-looking costs studies are reasonable. The only other forward-looking pricing option in the record is AT&T;'s proposal to use Ameritech's prices for interconnection and unbundled network elements. Staff believes that the only available forward-looking cost information in the record that can be used are the rates of Ameritech resulting from arbitration 96 AB-003/004.

Staff recommends, consistent with the requirement in Section 252(b)(4)(B), that the Commission find that the best information available is Ameritech's prices for interconnection and unbundled network elements. Since AT&T; has no plans on interconnecting with GTE in the next year nor has the Company developed a facilities build out plan for GTE in Illinois, adopting Ameritech's rates will not harm GTE. (Staff Ex. 1.00 at 6).

Commission Conclusion

The Commission is placed in very difficult position in trying to evaluate the merits of this issue. On one hand, GTE has proffered cost studies to support its proposed pricing of unbundled network elements. Conversely, neither Staff nor AT&T; have had sufficient opportunity to evaluate, with the necessary precision, whether said cost studies are reasonable.

While the Staff's proposal to utilize Ameritech's costs as a proxy has a certain appeal, the Commission does not believe that its use is appropriate. Section 252 (b)(4) provides that a state commission "proceed on the basis of the best information

available," but only when a responding party "refuses or fails unreasonably to respond on a timely basis to any reasonable request." In this instance we cannot conclude that GTE has either refused to respond or that the timing of its response was unreasonable. Moreover, the Commission is concerned that these proxy prices must have some relationship to GTE's costs; especially where the costs are likely to be unique due to the ILEC's operating characteristics. Otherwise, there may be a question as to whether the ultimate pricing was just and reasonable. Consequently, we cannot accept the use of Ameritech's costs in this instance.

Absent the use of Ameritech's costs, the Commission is left only with the cost studies offered by GTE. Clearly, we cannot make any determination as to whether such studies are reasonable: that decision is left to Docket 96-0503. In the interim, however, we believe the use of GTE's cost studies to establish the rates for unbundled network elements should be utilized, with two significant modifications.

First, the Commission rejects the method utilized by GTE to calculate its common costs. As noted by Staff, equating common costs as contribution is a "make whole" proposal. Therefore, GTE is directed to set its rates for interconnection and unbundled network elements equal to its forward-looking costs studies, excluding any contribution toward non-forward-looking costs.

Second, while the Commission cannot comment regarding the intricacies of the cost studies, we do find that GTE's use of an end user charge ("EUC") as part of its pricing component is not supported by this record. As discussed in this record, GTE urges the adoption of an EUC in order to fully recover its costs. However, the EUC appears to be a mechanism that will insulate GTE from the impacts of competition. As such, we will not accept the inclusion of an EUC adder to the costs calculated in GTE's studies. Therefore, the EUC should be eliminated from the calculation of the prices for unbundled network elements.

We reiterate that the application of these prices, reflecting the above modification, is interim in nature. The pricing of such unbundled elements will be finalized in Docket 96-0503 and those prices will be incorporated as the ultimate prices to be used in this Interconnection Agreement. Our decision herein should, in no way, be interpreted or represented as an acceptance of GTE's cost studies at this time.

As Staff noted, there is little likelihood that these interim unbundled network element prices will be utilized. The record demonstrates that AT&T; has no plans on interconnecting with GTE in the next year nor has it developed a facilities build out plan for GTE in Illinois. Consequently, these interim rates should have not deleterious impact on AT&T;.

ISSUE 4: WHAT RATES ARE APPROPRIATE FOR TRANSPORT AND TERMINATION OF LOCAL TRAFFIC?

AT&T; argues that FCC Rule 51.705 authorizes the state commission to set GTE's rates for the transport and termination of local traffic at TELRIC, by default proxy, or by bill and keep. (Act 252(b)(4)(B), 252(d)(1) and (2)). Incumbent LECs are obligated "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." (Act 251(b)(5)).

The starting point for AT&T;'s development of such prices was the price for usage contained in Ameritech Michigan's tariff filing for unbundled network elements, dated July 5, 1996, in response to the Michigan Public Service Commission's Opinion and Order in Case No. U-0860. (Merrick Direct, p. 29). That tariff contained local usage prices of 0.65 cents per initial minute or fraction and 0.22 cents per additional minute or fraction. (Id.). The price for an initial minute contained costs related to call set-up that are not incurred in terminating a call. (Id., p. 30). Thus, the additional minute cost is a good proxy for estimating the cost of terminating a local call. (Id.).

The price per additional minute represents a blend of end office and tandem routed calls. (Id.). Cost ratios among end office routed, tandem office routed, and transit-switched calls were developed from cost information provided informally to AT&T; by Ameritech during negotiations. (Id.). Such ratios were used in conjunction with the tariff price for processing a local call and an adjustment for Illinois-specific cost levels to develop unique prices for end office routed, tandem office routed, and transit-switched calls. (Id.). However, because the Ameritech end office rate fell below the FCC proxy range, AT&T; increased its proposed end office rate to .0020 cents. (Id.). AT&T;'s proposed tandem office routed rate of .0027 cents was set by adding additional tandem switching and transport costs to the end office rate. (Id.). The recommended terminating traffic prices were compared with publicly available information to ensure the prices were reasonable. (Id.). Finally, charges for Busy Line Verification and Busy Line Verification Interrupt (in addition to the Busy Line Verification charge) were developed by adjusting costs provided informally to AT&T; by Ameritech. (Id. at 31).

GTE states that the appropriate rates to be charged are those set forth in GTE's interstate access tariff The appropriate rates that AT&T; should charge to GTE cannot be determined at this time, because AT&T; has not submitted any cost study. Symmetrical pricing is not warranted because, as explained in the testimony of GTE witness Munsell (GTE Ex. 4.00 at 20), AT&T;'s prices likely will be lower than GTE's. Accordingly, AT&T; should be directed to submit its own cost study so that this Commission can establish the prices GTE must pay for transport and termination.

It is Staff's understanding that GTE has proposed a "bill and keep" solution until Docket 96-0503 is completed. (Tr. 492). Staff supports "bill and keep" until such time as rates are established in Docket 96-0503.

Commission Conclusion

The Commission concludes that as an interim measure, the "bill and keep" method should be used. One cautionary note, this solution should only be applied to AT&T;'s local calls. This restriction reflects the fact that AT&T;'s interexchange calls are otherwise regulated by federal access rules.

ISSUE 5: SHOULD BILL-AND-KEEP BE USED AS A RECIPROCAL COMPENSATION ARRANGEMENT FOR TRANSPORT AND TERMINATION OF LOCAL TRAFFIC ON A TEMPORARY OR PERMANENT BASIS?

AT&T; states that bill-and-keep should be used for 12 months as an initial method of setting interconnection charges, until the necessary cost information is available to calculate TELRIC costs. (FCC Order 1055, 1111-13; FCC Rule 51.713; Act

252(d)(2)(B)(i) and (ii)). It is AT&T;'s position that state commissions may impose bill-and-keep arrangements if neither carrier has rebutted the presumption of symmetrical rates and if the volume of terminating traffic that originates on one network and terminates on another network is roughly equal to the volume of terminating traffic flowing in the opposite direction, and is expected to remain so. (FCC Order 1111-12). Traffic between carriers is presumed to be balanced, with the burden of proving an imbalance imposed on the carrier asserting imbalance. (FCC Order 1113). AT&T; asserts that GTE has failed to rebutted this presumption.

GTE has agreed to enter into a "bill and keep" compensation arrangement with the following parameters: First, traffic must be "roughly balanced," i.e., plus or minus ten percentage points for both originating and terminating traffic, which means that the originating/terminating split could be up to 60/40. Second, this "bill and keep" arrangement would apply only to the transport and termination of local traffic. The arrangement would specifically exclude any toll or access traffic. Also, interLATA access traffic must be carried over separate trunk groups, and may not be included with local and local toll traffic. Third, when traffic becomes out of balance (i.e., exceeds the 10% split discussed above), then the "bill and keep" arrangement will end and the parties shall use a reciprocal compensation system, under which the parties shall pay each other their respective rates for transport and termination. (See Testimony of GTE Witness Munsell, GTE Ex. 4.00 at 22-23).

It is Staff's understanding that GTE has proposed a "bill and keep" solution until Docket 96-0503 is completed. (Tr. 492). Staff supports "bill and keep" until such time as rates are established in Docket 96-0503.

Commission Conclusion

The Commission concludes that, as an interim measure, the bill and keep solution is appropriate pending the resolution of Docket 96-0503. By this conclusion, we are not accepting GTE's proposed modifications to the bill and keep issue. We believe that GTE has not demonstrated that there will be an imbalance of traffic which will negatively impact GTE.

ISSUE 6: WHAT METHOD SHOULD BE USED TO PRICE INTERIM NUMBER PORTABILITY AND WHAT SPECIFIC RATES, IF ANY, SHOULD BE SET FOR GTE?

AT&T; argues that interim number portability ("INP") should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively neutral basis. (FCC Order In the Matter of Telephone Number Portability, Docket 95-116, adopted June 27, 1996; Act 251(e)(2)). Costs of number portability are to be borne by all telecommunication providers on a competitively neutral basis. (Act 251(e)(2)). AT&T; states that the FCC Order adopted June 27, 1996 in CC Docket 95-116, In the Matter of Telephone Number Portability, defined the costs of INP as the incremental costs incurred by a LEC to transfer numbers and subsequently forward calls to new service providers using existing RCF, DID or other comparable measures. (FCC Order 134-36). The INP Order describes several approaches to recover these incremental costs on a competitively neutral basis. AT&T; asserts that a reasonable approach is to require each carrier to pay for its own costs. Considering the limited time in which interim portability will be used, AT&T; recommends that the Commission use this approach.

GTE maintains that Section 251(e)(2) of the Act requires that the cost of number portability be borne by all telecommunications providers on a competitively neutral basis. The FCC's Number Portability Order adopted June 27, 1996 in CC Docket 95-116 defined the costs of INP as the incremental costs incurred by a LEC to transfer numbers and subsequently forward calls to new service providers using RCF, DID or other comparable measures (see 134-36). The FCC further provides that states may require tariffs for INP measures, and GTE has such tariffs in some states. GTE's proposed prices reflect the appropriate costs GTE is entitled to recover.

Staff believes that GTE and AT&T; should provide INP to each other at a zero rate. They should be allowed to book their short run marginal costs to a deferred account, subject to later recovery from all telecommunications carriers on a competitively neutral basis as determined by the Commission.

Commission Conclusion

The Commission concurs with Staff that INP should be provided at a zero rate pending this Commission's final resolution of the issue. See, Docket 95-0296 Interim Order (entered November 7, 1996). In the interim, both companies should be allowed to book their short run marginal costs to a deferred account, subject to later recovery from the appropriate telecommunications carriers on a competitively neutral basis as determined by the Commission.

ISSUE 7: WHAT METHOD SHOULD BE USED TO PRICE COLLOCATION?

It is AT&T;'s position that collocation rates should be set at TELRIC. (FCC Order 628-29; Act 251(c)(6); Act 252 (b)(4)(B)). Citing to both the Act and the FCC Order, AT&T; argues that collocation should be subject to the same pricing rules as interconnection and unbundled network elements. (FCC Order 626). Thus, AT&T; recommends that this Commission will apply the same standards used for interconnection and unbundled network elements to its determination of pricing for collocation. (See, e.g., FCC Rule 51.501; FCC Order 625-787).

AT&T; asserts that interim rates for collocation "should be no greater than the effective rates for equivalent services in the interstate expanded interconnection tariff." (FCC Rule 51.514(c)(6)). The FCC has set the ceiling for interim collocation rates and has given the state commissions the authority to establish interim collocation below that ceiling if appropriate. FCC Rule 51.513(c)(6)). AT&T; argues that GTE has not supplied the information to know what the ceiling is. Nor can it be determined if GTE's proposed collocation prices exceed the ceiling. Accordingly, AT&T; states that its collocation prices set forth in Merrick Ex. PHM-4 should be adopted until such time as the Commission establishes permanent prices for collocation in the separate proceeding in which it will consider the TELRIC studies.

GTE argues that virtual collocation rates should be set in accord with GTE's federal virtual collocation tariff. For physical collocation, rates should be set in accord with the rates submitted by GTE, which will soon be filed as GTE's physical collocation tariff. These rates have been set using a method that allows recovery of GTE's costs, including a reasonable share of its joint and common costs, and are therefore fully consistent with the Act.

GTE further asserts that the use of the federal virtual collocation tariff and the rates GTE will submit as its federal physical collocation tariff comports with the rationale and requirements of the FCC's Expanded Interconnection Order.

Staff asserts that, absent any cost data which has been fully reviewed, the best information the Commission has is Ameritech data relating to collocation pricing.

Commission Conclusion

At the outset, the Commission is not persuaded by GTE's position on this issue. As noted herein, the FCC has established parameters for pricing collocation and we believe that GTE's position does not comport with these guidelines. Meanwhile, the Commission is not confident utilizing any other information to establish a permanent price for collocation.

For the interim, we concur with Staff that GTE and AT&T; utilize the collocation prices established for Ameritech. At first blush, one may consider this conclusion to be in conflict with our conclusion in Issue 3. We disagree. At issue herein is the pricing of elements that are not necessarily sensitive to geographic and/or operational characteristics unique to GTE. As a result, it is much more reasonable to believe that Ameritech's costs are comparable to GTE's on this point. Consequently, we believe that a distinction can be drawn between these elements and those in Issue 3. GTE and AT&T; are therefore directed to utilize as a proxy price, until such time as an order is entered in Docket 96-0503, the prices Ameritech will charge AT&T; for collocation.

ISSUE 8: WHAT IS THE PROPER WAY TO CHARGE FOR ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY?

AT&T; contends that prices must be set at TELRIC, be nondiscriminatory, and be imputed into GTE's own local service rates. Prices for pathway facilities should be effective for the term of the Interconnection Agreement. (Act 224; 251(c)(2); FCC Order 628, 672). AT&T; recommends that the establishment of prices for access to poles, conduits, and rights-of-way be deferred until after the FCC completes its rulemaking. In the interim, the lowest tariff or contract price applicable to any provider should be used. (Merrick Direct, p. 35). The existing menu of potential charges, terms and conditions should be critically reviewed to assure competitive neutrality. (Id.).

GTE's position before the FCC will be the same as it is here: to the extent Section 224 of the Act mandates access, GTE must recover the fair market value of the property taken. This is only compensation standard that comports with Minnesota and federal constitutional law. Accordingly, GTE proposes that whatever rates are set should be subject to a "true up" (with interest) once a lawful rate is established.

Staff asserts that, absent any cost data which has been fully reviewed, the best information the Commission has is Ameritech data relating to pricing of access to poles, conduits, and rights-of-way.

Commission Conclusion

The Commission is of the opinion that our conclusion and reasoning as set forth in Issue 7 are applicable to this Issue.

ISSUE 9: WHAT GTE SERVICES SHOULD BE REQUIRED TO BE MADE AVAILABLE FOR RESALE AT WHOLESALE RATES?

AT&T; argues that GTE services available for resale should include all services offered at retail to end-users, including promotional (more than 90 days), proprietary, enhanced, grandfathered, packaged, individual customer based, contracted and sunsetted services. (FCC Rule 51.603; Act 251(c)(4)(A); FCC Order 871, 948, 956, 968). AT&T; argues that commercially viable resale opportunities are vital to the development of competition in the local exchange. Resale is the necessary first step in establishing competition, and facilities placement becomes more feasible as a large stable customer base is established. All pricing options and packages that are available to GTE's retail customers should also be made available to AT&T; for resale to its retail customers so that incumbent LECs, such as GTE, do not enjoy the competitive advantage of withholding product offerings from new market entrants.

In sum, AT&T; argues that there is no statutory basis for limiting the resale duty to basic telephone services; it applies to all telecommunications services provided by the incumbent LEC at retail to subscribers who are not telecommunications carriers. (FCC Order 871).

GTE asserts that it should make all its retail services available for resale at wholesale rates except for the following: below-cost services, promotional offers of 90 days or less; and individual case basis ("ICB") services.

GTE will also make the following services available for resale, but a wholesale discount shall not apply: pay phone services purchased by COCOTS providers, nonrecurring charges; access services; operator services; and directory assistance services. (Meny, GTE Ex. 7.00 at 27-29)

GTE also states that Section 252(c)(4) of the Act requires incumbent LECs not to impose "unreasonable or nondiscriminatory conditions or limitations" on the resale of telecommunications services. Thus, the Act plainly recognizes that incumbent LECs may impose reasonable conditions or limitations on resale.

GTE concludes that its conditions and limitations for below-cost services, promotional offers of 90 days or less, and individual case basis ("ICB") services are reasonable. First, with respect to below-cost services, GTE cannot cover its costs through resale of below-cost services unless such services are first repriced to cover their costs. These services receive contributions from other services, such as intraLATA toll, access, and vertical and discretionary services, all of which are priced above incremental cost. If GTE were required to offer its below-cost services on a wholesale basis, then other carriers would (1) obtain avoided-cost discounts for both below-cost and above-cost services, and (2) be able to pocket the contributions from the above-cost services that had been used to price the other services below-cost. Accordingly, GTE could not cover its total costs unless these services are excluded from GTE's wholesale offerings or are repriced to cover their costs. (Seaman, GTE Ex. 14.00 at 12).

Second, offering promotions and ICBs at wholesale discounts would prevent GTE from differentiating its retail services from

those of its competitors.

GTE realizes that its proposed prohibition on the resale of below-cost services will preclude the resale of most residential services, but competition will not flourish where one competitor is required to subsidize the offerings of others. GTE would not object to the Commission conducting separate proceedings to consider whether and under what circumstances below-cost services should be made available for resale. For example, if rates cannot be rebalanced immediately, then GTE could recover any stranded costs or lost contribution through a system of competitively neutral end-user charges. Upon conclusion of such a proceeding, the parties could revise their interconnection contract to permit the resale of GTE's current below-cost services. This separate proceeding will allow the parties and the Commission more time to consider this significant public policy issue.

Staff recommends that GTE be required to make all retail services available for wholesale services, even those priced below costs, grandfathered, or sunsetted. (Staff Ex. 1.00 at 19.) Staff's asserts that its position is consistent with Section 251(c)(4) of the Act which requires that incumbent LECs offer for resale any telecommunications service provided to retail subscribers who are not telecommunications carriers.

Commission Conclusion

Section 251(c)(4)(A) clearly provides that an ILEC must offer for resale any telecommunications service. Moreover, the FCC Order also requires an ILEC to provide for resale any telecommunication service. 871 Resale restrictions are presumptively unreasonable unless such a restriction is narrowly tailored. FCC Order 939. In this instance, the record does not support the restrictions proposed by GTE. The FCC Order specifically finds that "below-cost services are subject to the wholesale rate obligation of Section 251(c)(4)(A). 956 Likewise, the FCC found no basis to exclude promotional services. 948.

The one restriction that the Commission will approve relates to grandfathered and sunsetted services. Our Order in Docket 95-0458, et al., determined that with regard to such services "the wholesale provider can only provide the requested service to the customers that receive the grandfathered service." Id. at 39. We believe that the narrow tailoring of this restriction comports with the FCC Order. 939.

In conclusion, all telecommunications services GTE offers to retail customers, subject to the one restriction set forth herein, irrespective of whether the retail price is set below cost or whether they are promotional, grandfathered or sunsetted services, shall be offered at wholesale prices to AT&T;, except for promotions of less than 90 days duration. Sections 24 and 26 of the AT&T; Interconnection Agreement are adopted, subject to the Commission's conclusion herein.

ISSUE 10: SHOULD GTE BE REQUIRED TO OFFER FOR RESALE AT WHOLESALE RATES SERVICES TO THE DISABLED, INCLUDING SPECIAL FEATURES OF THAT SERVICE SUCH AS FREE DIRECTORY ASSISTANCE SERVICE CALLS, IF THAT SERVICE IS PROVIDED BY GTE?

AT&T; asserts that GTE must make each of its retail service offerings available for resale without unreasonable or

discriminatory conditions or limitations. (FCC Rule 51.603, 51.605; Act 251(c)(4)(A)).

GTE maintains that it should not be required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free directory assistance service calls, if that service is provided by GTE.

GTE contends that all social programs that are mandated by law, or by regulation of this Commission, and that provide special rates are the responsibility of the carrier serving a particular customer. The serving carrier should bear the responsibility of (1) ensuring that its customers are eligible to receive the benefits of any social program, and (2) should become eligible to participate in any program or funding mechanism to serve those persons entitled to special rates.

Staff reiterates its arguments in Issue 9.

Commission Conclusion

For purposes of this Issue, the Commission adopts the conclusion and reasoning set forth in Issue 9. GTE, therefore, shall make services to the disabled available to AT&T; at wholesale prices. Section 26.7 of the AT&T; Interconnection Agreement is adopted.

ISSUE 11: WHAT RESALE RESTRICTIONS SHOULD BE PERMITTED, IF ANY?

AT&T; contends that GTE must make each of its retail service offerings available for resale without unreasonable or discriminatory conditions or limitations. (FCC Rule 51.603, 51.609; Act 251(c)(4)). In general, restrictions on resale services are presumed to be unreasonable. The burden of proving the reasonableness of a particular restriction is on the incumbent LEC. (FCC Order 939). AT&T; argues that GTE has failed to offer evidence to overcome the presumption.

In addition to those restrictions discussed in Issue 9, GTE asserts that AT&T; should be prohibited from "cross-class selling," i.e., AT&T; may only resell services to that class of customer obtaining identical services from AT&T;. With this restriction, fair competition will develop because one carrier will not be able to artificially undercut the price of another carrier.

Staff states that the only resale restriction that should be allowed is reselling residential service to business customers, or vice-versa. (Staff Ex. 1.00 at 19.) Such a requirement is consistent with Section 251(c)(4)(B) of the Act.

Commission Conclusion

The Commission concludes that a resale restriction related to cross-class selling of services is permitted. It must be noted that our definition of cross-class selling refers solely to the reselling of services from one class of customers to another distinguishable class. As such, we do not except GTE's definition of cross-class selling.

Furthermore, as more fully discussed in our conclusion in Issue 9, GTE may restrict the resale of grandfathered and sunsetted services to only those customers currently receiving such services. Other than these two restrictions, the Interconnection Agreement

should not reflect any other resale restrictions.

ISSUE 12: WHAT IS A REASONABLE PERIOD FOR ADVANCE NOTIFICATION OF NEW SERVICES?

AT&T; requests forty-five (45) days advance notification of new service offerings in order to be able to provide AT&T; customers with the same provisioning time intervals that GTE provides to its customers. (FCC Rule 51.603; Act 251(c)(4) and (5)). AT&T; asserts that services should be made available to its customers at the same time, for at least the same duration and with the same pricing structure as they are made available to GTE's retail customers.

GTE states that when it or any other incumbent LEC offers a new service, it does so by means of a tariff offering that is subject to review by this Commission. GTE's tariffs provide public notice of all new services; and competitive local exchange carriers have access to such tariff filings, just as the general public does. GTE's tariffs will themselves serve as notification for new services.

Staff recommends that whenever GTE files a tariff for a new noncompetitive retail service, that it also be required to file corresponding wholesale tariff based on Staff's proposed pricing methodology. (ICC Staff Ex. 1.00 at 19). In the event that GTE does not have a completed costs study to set the wholesale rate based on Staff's pricing methodology, then the Company should be allowed to use the average discount rate for a period of 90 days. This is consistent with the Commission's decision in Docket 95-0458 et al., Consol. Order at 23.

However, if GTE classifies the retail service as competitive and the corresponding wholesale service as noncompetitive, Staff states that concurrent filings may not give providers adequate notice of the wholesale services. An effective date for the competitive retail services sooner than the effective date of the noncompetitive wholesale service would give GTE a head start in marketing the service. Staff recommends that at least 45 days notice be given, whether the retail service is classified as competitive or noncompetitive.

Commission Conclusion

Staff's concerns regarding the timing differences of the effective dates of a competitive tariff and a non-competitive tariff are compelling. The FCC Order clearly requires that services which are provided to end users must be made available for resale at the same time. 970.

The Commission is concerned, however, that any competitive advantage GTE might gain will be diminished by AT&T;'s proposed 45 day notice period. Indeed, we believe that such a requirement might create a chilling effect on GTE's efforts to launch new retail services.

In an effort to balance both the Act and the FCC's Order, as well as the competitive aspects discussed above, the Commission concludes that GTE cannot place into effect a competitive retail tariff until such time as a non-competitive wholesale tariff becomes effective. This requirement will absolve GTE from providing notice to AT&T;. In addition, it will allow GTE to immediately begin marketing its competitive retail service while

complying with the FCC Order. Therefore, the parties are instructed to insert into the final Interconnection Agreement a provision which incorporates our conclusion herein.

ISSUE 13: SHOULD GTE BE REQUIRED TO OFFER PUBLIC COIN PAY PHONE LINES TO AT&T; AT WHOLESALE RATES?

AT&T; maintains that the services that independent public payphone providers obtain from GTE are telecommunications services which should be available to telecommunications carriers at wholesale rates. (FCC Order 876; FCC Rule 51.605; Act 251(c)(4)(A)). AT&T; contends that its position is consistent with the FCC Order, which states that pay phones are "telecommunications services that incumbent local exchange carriers provide 'at retail to subscribers who are not telecommunications carriers,' and that such services should be available at wholesale rates to telecommunications carriers." (FCC Order 876).

GTE asserts that under 47 U.S.C. 251(c)(4), it is required to offer for resale at wholesale rates any telecommunications service "that it provides at retail to subscribers who are not telecommunications carriers." GTE does not provide public pay phone lines or service at retail to subscribers; therefore, the resale of public pay phone lines and services is not required under the Act. Furthermore, AT&T; has provided no compelling reason why this obligation should be imposed upon GTE.

To the extent AT&T; is requesting a service or element not required by the Act, GTE maintains that it should not be compelled by this arbitration to waive its statutory rights under 220 ILCS 5/13-502, et al. Under the plain language of the Act, GTE asserts that incumbent LECs need not negotiate terms and conditions that fall outside the duties set forth in 251(b) and (c); and state commissions cannot compel incumbent LECs to do so. If AT&T; or other competitive carriers want to impose terms and conditions upon incumbent LECs that are not included in the Act, then they may file an appropriate state law proceeding.

Staff did not take a position on this issue.

Commission Conclusion

The Commission concludes that GTE should be required to offer payphone lines for resale. The FCC Order specifically requires that ILECs provide public coin payphone lines on a wholesale rate to telecommunications carriers. 876. AT&T; is a telecommunications carrier as defined by the 1996 Act and, therefore, must be provided this service on a wholesale basis.

The Commission is concerned that the FCC's Order discriminates against independent payphone providers ("IPP"). This is due to the fact that IPPs will be paying a retail rate for the payphone access line while a "telecommunications carrier" may purchase the same line at a wholesale rate. Such a result will give a telecommunications carrier an unfair competitive advantage over the IPPs. The Commission, however, is obligated to follow those portions of the FCC Order which remain in effect.

ISSUE 14: SHOULD GTE BE REQUIRED TO OFFER SEMI-PUBLIC PAY PHONE LINES TO AT&T; AT WHOLESALE RATES?

AT&T; states that the services that independent public payphone providers obtain from GTE are telecommunications services which

should be available to telecommunications carriers at wholesale rates. (FCC Order 876; FCC Rule 51.605; Act 251(c)(4)(A)).

GTE asserts that it should not be required to offer semi-public pay phone lines to AT&T; at wholesale rates. Semi-public pay phone service has been deregulated by the FCC and is no longer offered to subscribers at retail under GTE's local exchange tariffs. The analysis under Issue 13 applies with equal force to this issue: namely, this is not an issue for arbitration under the Act.

Staff did not take a position on this issue.

Commission Conclusion

Based upon our conclusion and reasoning in Issue 13, GTE should offer semi-public pay phone lines to AT&T; at wholesale rates. Therefore, AT&T;'s proposed language on this issue is accepted.

ISSUE 15: SHOULD GTE BE REQUIRED TO OFFER COCOT COIN AND COCOT COINLESS LINES TO AT&T; AT WHOLESALE RATES?

Like Issues 13 and 14, AT&T; asserts that the services that independent public payphone providers obtain from GTE are telecommunications services which should be available to telecommunications carriers at wholesale rates. (FCC Order 876; FCC Rule 51.605; Act 251(c)(4)(A)).

GTE believes that it should not be required to offer COPT coin and COPT coinless lines to AT&T; at wholesale rates. GTE will resell these services, but there will be no wholesale discount. Here again, GTE already provides COCOT coin and coinless line services under terms of applicable tariffs, and there is no additional "wholesale discount." Moreover, GTE asserts that the FCC has determined that the incumbent LEC need not make available service to independent public pay phone providers at wholesale rates.

Staff did not take a position on this issue.

Commission Conclusion

Based upon our conclusion and reasoning in Issue 13, GTE should offer COCOT coin and COCOT coinless lines to AT&T; at wholesale rates. Therefore, AT&T;'s proposed language on this issue is accepted.

ISSUE 16: SHOULD EACH AND EVERY RETAIL RATE HAVE A CORRESPONDING WHOLESALE RATE?

AT&T;'s position is that the wholesale pricing structure should mirror GTE's retail pricing structure, as, for example, in volume discounts, flat or measured charges, etc. (FCC Order 871, 907 et seq.; FCC Rule 51.607-51.609). AT&T; notes that all incumbent LECs are required to establish a wholesale rate for each retail service provided. (Act 251(b)(4); FCC Order 871).

GTE maintains that only those retail services that are offered at wholesale should have a corresponding wholesale rate. Nevertheless, retail and wholesale rates for similar services should be structured the same. For example, the costs of below-cost services should be rebalanced before these services are

offered on a wholesale basis, thereby ensuring full and fair competition. GTE also notes that the FCC's First Report and Order does not require the same resale discount for all services. GTE notes that the analysis of Issue 9 applies to this issue as well.

Staff states that such a requirement will prevent the wholesale rate from being greater than the retail rate. This requirement is consistent with Staff's proposed pricing methodology and the Commission's Order in Docket 95-0458 et al., (Staff Ex. 1.00 at 14 Order at 22).

Commission Conclusion

As Staff correctly notes, the Commission has previously concluded that an ILEC's wholesale rate structure must mirror its retail rate structure. (Docket 95-0458, et al., Order at 22). Therefore, the Interconnection Agreement should reflect the fact that GTE's wholesale rate structure must mirror its retail rate structure.

ISSUE 17: SHOULD GTE BE REQUIRED TO ROUTE OPERATOR SERVICES AND DIRECTORY ASSISTANCE CALLS TO AT&T;'S PLATFORMS WHERE AT&T; PURCHASES RESOLD SERVICES UNDER SECTION 251(C)(4) OR STATE LAW?

AT&T; requests a selective routing service, which would automatically route all Operator Services ("OS") and Directory Assistance ("DA") calls to AT&T;'s platform. AT&T; asserts that GTE must unbundle the functionalities for OS and DA in connection with resold services, to the extent technically feasible. (FCC Order 536; Act 251(c)(4)). AT&T; alleges that GTE has failed to prove to the Commission that customized routing in a particular switch is not technically feasible. (FCC Order 418).

AT&T; has indicated that as part of its services as a new LEC, it intends to provide its customers with its own directory and operator services, including operator assistance calls and information calls. AT&T; requested in contract negotiations that GTE provide AT&T; with a selective routing service which would automatically route all operator services and directory assistance calls to AT&T;'s platform to be handled by AT&T; operators.

GTE states that Section 251(c)(4) of the Act only requires GTE to offer for resale at wholesale rates telecommunications services "that it provides at retail to subscribers who are not telecommunications carriers." GTE does not provide operator service or directory assistance call routing "at retail to subscribers who are not telecommunications carriers." Accordingly, GTE is not required to offer these "services" to AT&T; on a wholesale basis, and AT&T; has not provided a compelling reason why GTE should.

GTE has agreed to provide those aspects of operator services and directory assistance that it currently offers at retail along with its local service offering at the appropriate avoided cost standard. This proposal conforms with GTE's duties under the Act.

It is Staff's position that the Act requires incumbent LECs to offer unbundled elements, including those elements that have the capability to automatically route operator services and directory assistance calls directly to AT&T;. The Commission required that Ameritech and Centel make such an offering.

Staff asserts that the FCC requires incumbent LECs, to the extent technically feasible, to provide customized routing, which would include such routing to a competitor's operator service or directory assistance platform. (FCC Order at 536). If the customized routing for a particular switch is not technically feasible, the incumbent LEC, GTE, must prove to the state commission that such routing is not technically feasible. (FCC Order at 418).

Therefore, it is Staff's recommendation that the routing requested by AT&T; should be provided by GTE if technically feasible. If it is not technically feasible, then GTE should make a showing to this Commission that the routing is not technically feasible.

Commission Conclusion

To the extent technically feasible, the Commission concludes that GTE must unbundle both the facilities and functionalities providing OS/DA as separate network elements. Such a conclusion was previously reached by this Commission, as well as adopted by the FCC. (See, Docket 95-0458, et al.; FCC Order 536). Any issues relating to technical feasibility should be brought to this Commission.

As a result of our conclusion, we find that the customized routing requested by AT&T;, set forth in Section 29 and Sections 5.2.1.20 and 5.2.1.21 of Attachment 2 to the AT&T; Interconnection Agreement, should be adopted. The Commission further concludes that we should also impose specific requirements -- milestones -- upon GTE to establish the OS/DA routing AT&T; requests. Therefore, we order that GTE adopt an implementation schedule under which it will begin to implement the capability of rerouting directory assistance and operator services by March 1, 1997, with completion by May 30, 1997, in switches designated by AT&T;. Furthermore, we order GTE to provide AT&T; by January 30, 1997, with a firm rate quote and supporting cost data for rerouting directory assistance and operator services from resold dial tone lines, with the additional provision that the parties would then be able to petition this Commission for a hearing in the event the parties are unable to reach agreement on cost recovery.

ISSUE 18: SHOULD GTE BE REQUIRED TO ROUTE OPERATOR SERVICES AND DIRECTORY ASSISTANCE TO AT&T;_S PLATFORMS WHERE AT&T; PURCHASES UNBUNDLED NETWORK ELEMENTS UNDER SECTION 251(C)(3) OR STATE LAW?

AT&T; requests a selective routing service, which would automatically route all OS and DA calls to AT&T;'s platform. AT&T; maintains that GTE must prove to the state commission that customized routing in a particular switch is not technically feasible. (FCC Order 418, 536; Act 251(c)(3)).

For the reasons discussed under Issue 17, AT&T; asserts that GTE has failed to establish that it is technically infeasible for it to route OS/DA to AT&T;'s operator platforms. It is vital to AT&T;'s ability to compete with GTE that it be able to employ its own OS/DA services. Such routing will also allow AT&T; to efficiently configure its network, resulting in a lower cost structure. AT&T; believes that GTE's issue with cost recovery is only applicable to the resale environment, because the FCC Order makes it clear that the cost of customized routing is included in the rate for the unbundled switching element. (FCC Order 412,

418). Thus, the interim switching rate proposed for use in this arbitration by AT&T; may be deemed to compensate GTE for the capability of re-routing calls for directory assistance and operator services to AT&T;'s platform in the unbundled network environment. (Merrick Ex. PHM-2).

GTE argues that is should not be required to route OS and DA calls to AT&T;'s platforms where AT&T; purchases unbundled network elements under 251(c)(3) of the Act or state law. GTE maintains that its testimony shows that current switch limitations would require GTE to add new switch capacity and to condition its existing switches in order to provide customized routing. GTE highlighted service provisioning and activation process problems.

GTE further contends that AT&T; also ignores the fact that substantial costs will be incurred to provide existing switches with the capability of performing the routing requested by AT&T;. GTE believes these costs could run to many tens of millions of dollars in order to meet AT&T;'s demands for separate OS and DA trunks alone. The interexchange trunk routing requested by AT&T; would increase these costs even further. (Jones, GTE Ex. 1.00 at 20).

GTE also argues that AT&T;'s request also could exhaust the capacity of the switch and adversely affect network capabilities. Also, AT&T;'s proposal for switch unbundling requires GTE first to alter its existing switches to accommodate AT&T;, and then to "undo" what GTE has done when a permanent solution is found. And, of course, GTE must pay for all this under AT&T; position. (Jones, GTE Ex. 1.00 at 21-22).

GTE states that not only does AT&T;'s proposal for routing to AT&T;'s DA and OS platforms present serious and costly operational problems, AT&T;'s request for unbundling of GTE's DA does not cover GTE's costs of implementation. GTE's DA database would have to be modified. Additionally, because there are distinct and specific technical interface requirements between operator position equipment and GTE's DA database, AT&T; would be required to ensure that its equipment can interface with GTE's DA database, and compensate GTE for any modifications GTE might make in order to ensure compatibility. (Jones, GTE Ex. 1.00 at 22-23).

Finally, if GTE were to unbundle the switch as AT&T; requests, AT&T; will be able to avoid access charges, because GTE will have no way of knowing whether a call routed by AT&T; is a local call, an intraLATA call, or a long-distance call. GTE would agree to provide customized routing on an interim, short-term basis upon the following terms and conditions: (1) AT&T; shall submit reasonable requests and identify those geographic areas where it wants customized routing; (2) within a reasonable time after receiving AT&T;'s notification, GTE shall identify its switches serving in the designated area and advise AT&T; whether customized routing is technically feasible for those switches; (3) if customized routing is technically feasible, GTE shall make such routing available within a reasonable time period; (4) AT&T; shall pay all the costs associated with its selective routing request; and (5) the parties shall work to establish a long-term industry solution. (Jones, GTE Ex. 1.00 at 24).

It is Staff's position that the FCC stated in its Order that it requires incumbent LECs, to the extent technically feasible, to provide customized routing which would include such routing to a competitor's operator services or directory assistance platform.

FCC Order at 536. Further, the FCC stated that customized routing, which permits requesting carriers to design the particular outgoing trunks that would carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. The customized routing will permit a new entrant to self-provide OS an DA. (FCC Order at 418).

Staff further notes that this Commission also addressed the importance of unbundling OS and DA in its Order in Docket 95-0458 et al.

Again, Staff recommends that GTE be ordered to unbundle its operator systems to provide AT&T; with the requested network elements. If GTE is unable to unbundle the network elements due to technical feasibility, GTE shall notify the Commission of the limitations of the various switches and provide a date when the switches will be replaced or upgraded to provide the required unbundling.

Commission Conclusion

The Commission concludes that consistent with our decision on Issue 17, and to the extent technically feasible, we adopt the customized routing requested by AT&T;, as set forth in Section 29 and Sections 5.2.1.20 and 5.2.1.21 of Attachment 2 to the AT&T; Interconnection Agreement.

ISSUE 19: SHOULD GTE BE REQUIRED TO PROVIDE ACCESS TO ITS DIRECTORY ASSISTANCE DATABASE SO THAT AT&T; MAY PROVIDE ITS CUSTOMERS WITH AT&T; BRANDED DIRECTORY ASSISTANCE?

It is AT&T;'s position that GTE must provide access to its OS and DA databases upon request, including access to read the database and to enter AT&T; customer data. (FCC Order 538; Act 251(c)(3)). AT&T; has requested access to GTE's OS/DA databases so that AT&T;'s operators can provide AT&T;-branded OS/DA assistance. (Conway Direct, pp. 71-73). Meanwhile, AT&T; states that GTE offered no evidence that such access is technically infeasible. AT&T; notes that when it questioned Staff witness Gasparin, he stated that GTE had not documented to his satisfaction that such access is technically infeasible. (Gasparin Tr. 923).

GTE contends that it is not required to provide AT&T; access to its DA database. At the present time, it is not technically feasible for GTE to provide multiple user access to its DA database. GTE's obligations under the Act are limited to providing subscriber lists for the purposes of publishing only. (47 U.S.C. 222(e)). GTE will not provide AT&T; access to its customers listings.

GTE maintains that once the technical issues are resolved the costs associated with development, deployment and ongoing operation must be identified and be paid for by AT&T; (and other parties requesting access) because it, and not GTE, will benefit from the access. To impose any of these costs on GTE would result in an unconstitutional taking of GTE's property.

Staff avers that since GTE has not provided any substantive evidence to the contrary, it recommends that the Commission direct GTE to provide unbundled OS/DA services and branding. This directive should be conditioned on technical feasibility. If GTE finds that it is not technically feasible to provide the requested services, GTE should provide the Commission with documentation that

proves it is not possible to technically provision the services and a timetable in which GTE identifies when the systems will be replaced or upgraded.

Commission Conclusion

The Commission finds that GTE must provide access to databases as unbundled network elements. Such a conclusion is consistent with the FCC Order, 538. In the event that such access is not technically feasible, and consonant with our Order in Docket 95-0458, et al., at 53, GTE must submit a full explanation and showing regarding the problem, along with specific plans and a timetable for achieving compliance.

Therefore, GTE must allow access to its OS/DA databases by AT&T; operators so that AT&T; may provide AT&T;-branded services. Section 19 of the AT&T; Interconnection Agreement is adopted.

ISSUE 20: SHOULD GTE BE REQUIRED TO PROVIDE DIRECTORY LISTING INFORMATION TO AT&T; VIA ELECTRONIC DATA TRANSFER ON A DAILY BASIS SO THAT AT&T; MAY UPDATE ITS DIRECTORY ASSISTANCE DATABASE AND PROVIDE ITS CUSTOMERS WITH AT&T; BRANDED DIRECTORY ASSISTANCE?

AT&T; maintains that GTE must provision the same level of quality of access to the directory assistance database as GTE enjoys. (FCC Order 312-316, 523-525; Section 521(c)(3)). AT&T; states that GTE currently receives daily electronic transfer of directory listing information. Hence, pursuant to the FCC Order and the Act, GTE is required to provide the same service, at the same quality level that GTE receives, to the extent it is technically feasible.

Commission Conclusion

While both GTE and Staff state that the issue has been resolved, it appears that AT&T; is not in agreement.

The Commission concludes that to the extent technically feasible, GTE should provide directory listing information to AT&T; electronically, on a daily basis. For purposes of establishing the appropriate price, we first concur with AT&T; that this is an unbundled network element. As such, the interim price for this element should follow our conclusion in Issue 3.

ISSUE 21: SHOULD GTE BE REQUIRED TO ACCOMMODATE AT&T;'S BRANDING REQUESTS CONCERNING OPERATORS AND DIRECTORY ASSISTANCE?

Though AT&T; has expressed its general intent to rely upon its own operators in supplying local services, AT&T; states that there may be limited situations in which GTE will provide OS and DA to AT&T; customers. Under such circumstances, AT&T; requests that these services either be branded as AT&T; or left completely unbranded. AT&T; states that if GTE were permitted to brand services resold to AT&T;, it would confuse customers and put AT&T; at a competitive disadvantage. Branding is critical to the development of local market competition, as it is perhaps the most effective method for a competing carrier to differentiate its services from those of the incumbent. Finally, AT&T; notes that this Commission has ordered rebranding of OS/DA in the Ameritech Wholesale Order to the extent technically feasible. (Wholesale Order, p. 52).

In order for GTE to accommodate AT&T; branding request, GTE

contends that it would be required to selectively route calls from AT&T;'s customers to AT&T;'s platforms, requiring the installation of separate trunk groups. This issue is identical to issues #17 and #18.

See Staff response to Issue 19.

Commission Conclusion

Based upon our conclusion and reasoning in Issue 19, the Commission is of the opinion that AT&T; must be permitted to brand its services purchased at wholesale from GTE. At this time, GTE did nor present sufficient evidence demonstrating that such a service is technically infeasible. Consequently, Section 18 of the AT&T; Interconnection Agreement is adopted.

ISSUE 22: SHOULD GTE MAKE SECONDARY DISTRIBUTIONS OF DIRECTORIES TO AT&T;'S CUSTOMERS WITHOUT CHARGE?

This issue has been resolved by the parties.

ISSUE 23: HOW SHOULD PIC ("PRIMARY INTEREXCHANGE CARRIER" OR "LONG-DISTANCE CARRIER") CHANGES BE MADE FOR AT&T;'S LOCAL CUSTOMERS AND SHOULD GTE IDENTIFY PIC CHARGES SEPARATELY?

It appears that this issue has been resolved. GTE has agreed that AT&T; will now serve as the contact between its local exchange customer and GTE where a PIC change is required.

As an interim policy, until the Commission adopts rules, Staff recommends that the Commission should follow the guidelines set out in the FCC's recent rules and regulations regarding slamming of interexchange providers. The FCC requires that each provider obtain a letter of authorization (LOA) from the end user before the provider contacts the end user's local exchange provider to make the switch. The FCC also outlines what it considers to be an acceptable LOA. It is Staff's recommendation that a local exchange reseller obtain a similar LOA in order to switch a customer from the existing local exchange provider to a local exchange reseller. The LOA needed to switch local exchange providers should meet the same requirements as the FCC's LOA. In addition, because of the essential nature of local service, the Commission may wish to adopt some of the stricter standards proposed by AT&T;, such as verification by an independent third party and a 14 day waiting period where the reseller submits a marketing package to a potential end user. This approach is consistent with the Commission's order in Docket 95-0458 et al, Consol.

Commission Conclusion

In light of the parties' apparent resolution of this issue, the Commission will not disturb the conclusion. The Commission states, however, that the parties must meet the requirements of Section 13-902 of the Public Utilities Act, which will become effective January 1, 1997. While the Commission has yet to establish rules pursuant to this Section, it must be noted that said Section provides in relevant part that:

> The [Commission's] rules shall be compatible with the verification procedures established by the Federal Communications Commission under the Communications Act of 1996.

Id. Consequently, on this issue the Interconnection Agreement should include provisions consistent with Section 13-902.

ISSUE 24: WHAT AUTHORIZATION IS REQUIRED FOR THE PROVISION OF CUSTOMER ACCOUNT INFORMATION TO AT&T;?

It is AT&T;'s position that a customer's service record may be disclosed for the purpose of enabling the new carrier to provide service under the exception in Section 222(d) of the Act. GTE should not refuse to execute a change "As is" service order for a customer switching to AT&T; local service. (FCC Order 516-523; Act 251(c)(4), 222).

AT&T; believes that customers switching to new interLATA carriers often desire to keep their service exactly as it was previously, even though any particular customer may not be precisely certain which services he or she actually received. In those situations, AT&T; suggests that it requires the ability to determine electronically and in real time those services currently provided to the customer by GTE in order to specifically request those services from GTE. In the alternative, AT&T; has requested that GTE provide a wholesale service ordering process to provision "Migration As Is" orders as part of the service order.

GTE proposes that individual, written authorization from the end user is required before GTE can release customer account information to AT&T;. If AT&T; were able to access directly all GTE customer accounts, the proprietary nature of the information contained in the accounts would be jeopardized. GTE states that it may not disclose this information without the customer's approval. While 47 USC 222(d) does allow all carriers to use such information for purposes related to serving their own customers, it does not permit release of the information to another carrier to serve that customer. GTE concludes that AT&T; can not be allowed under 47 USC 222(c) to have unauthorized electronic access to GTE's customer accounts.

Staff states that AT&T; should have equal access to customer ordering information as GTE provides itself. However, such information should only be provided after the customer has granted AT&T; permission to access the information. Customer permission can be given through various ways. AT&T; could receive written authorization similar to the manner in which primary interexchange carrier selections are made. An alternative method is oral confirmation through the use of a three-way call among GTE, AT&T;, and the customer. Another method is through the use of a password. For example, an AT&T; customer service representative could ask the customer for his/her mother's maiden name.

Staff maintains that the information to be provided should include all services to GTE that the customer subscribes to, including non-regulated services. This information is the customer's, and if he/she decides that AT&T; should have access to it, then GTE should provide access. Furthermore, if AT&T; receives confirmation from the customer to switch from GTE to AT&T;, then GTE should provide a "migration-as-is" service for AT&T; through electronic bonding.

Commission Conclusion

A CLEC such as AT&T; does bear some responsibility for its entry into the local market. As such, it should be AT&T;'s responsibility to develop and maintain its own customer profiles

regarding a customer's credit history. In this way, GTE is not exposed to the additional risk of inadvertently releasing customer information which has not been authorized. To the extent technically feasible, therefore, GTE should provide "migration-as-is" service through electronic bonding for all information other than a customer's credit history.

Both parties should provide to their customers, upon their request, to the extent allowable by relevant statutes and regulations, the customers' own credit histories. A reasonable fee may be charged for this transaction.

ISSUE 25: SHOULD GTE BE REQUIRED TO PERFORM LOOP TESTING ON EVERY NEW LINE UNDER AT&T;' S STANDARD OF ACCEPTANCE, AND PROVIDE REPORTS OF TEST RESULTS TO AT&T;?

AT&T; needs the complete results of loop testing prior to the start of service in order to provide competitive services. AT&T; asserts that Section 251(c)(3) and (4) of the Act, as well as the FCC Order (see 312, 523, 524), obligate GTE to provide at least an equal level of testing of loops serving AT&T;'s local customers as GTE provides for its own customers (or those of affiliates or other ALECs), and to report the results to AT&T; on a prompt basis. At the hearing, GTE agreed that for designing loops, loop reading services such as ISDN or special data circuits will be provided to AT&T; when recorded, subject to special conditioning charges.

GTE asserts that it does not routinely test every loop on new installations for itself, and therefore, should not be required to do so for other carriers. GTE does not record in all cases test results for non-designed loops. For designed loops such as ISDN or special data circuits, loop readings that GTE does record can be offered to AT&T;. However, if there are any special conditioning charges, AT&T; must pay them.

Staff states that GTE should perform loop testing on every new line. This is a standard procedure for a new installation to assure that the line is in good working order.

Commission Conclusion

The Commission concludes that AT&T;'s requests relating to loop testing are reasonable. Again, the FCC Order requires an ILEC to provide, where technically feasible, access or unbundled elements of higher quality. 314 In this instance there has been no demonstration that AT&T;'s request is not technically feasible. So long as AT&T; will pay the costs of this request, GTE should be able to provide this "higher quality" level of service. Therefore, Section 13.1 of Attachment 2 to the AT&T; Interconnection Agreement is adopted to the extent that it is consistent with the Commission's conclusions which resolve Issue 61, supra. We agree with Staff regarding Section 13.1.2.14 of Attachment 2. This Section should be referred to the Implementation Team because the record is unclear on the issue addressed therein.

ISSUE 26: SHOULD GTE BE REQUIRED TO PROVIDE DIALING PARITY THROUGH RESUBSCRIPTION, AND IF SO, ON WHAT SCHEDULE?

It is AT&T;'s position that GTE should be ordered to provide dialing parity immediately for all locations where GTE or its affiliate offers interLATA long distance services. (FCC Rule 51.209(b); 51.211(c)).

GTE and Staff agree that the Commission has already decided this issue with the promulgation of its resubscription rule, 83 Ill. Adm. Code 773.

The Commission has already established a schedule for all LECs in this state to provide dialing parity. 83 Ill. Adm. Code 773. GTE is obligated to meet the time frames set forth therein.

ISSUE 27: SHOULD THE CONTRACT INCLUDE TERMS WHICH REQUIRE GTE TO PROVIDE RESOLD SERVICES, UNBUNDLED NETWORK ELEMENTS, ANCILLARY FUNCTIONS AND INTERCONNECTION ON TERMS THAT ARE AT LEAST EQUAL TO THOSE THAT GTE USES TO PROVIDE SUCH SERVICES AND FACILITIES TO ITSELF?

AT&T; argues that GTE must provide services that are equal to those it provides itself in quality, are subject to the same conditions, and are provided within the same provisioning time intervals. (FCC Rule 51.603, 51.311(b)). Further, the quality of access to an unbundled network element must be superior to that which GTE provides to itself when AT&T; requests this and it is technically feasible. (FCC Order 66, 312-316; FCC Rule 51.311(c); Act 251(c)(2), (c)(3), (c)(4)).

GTE contends that under Section 251 (c)(2)(c), parity only applies to interconnection; it does not appear in the Act's unbundling and resale provisions. Furthermore, existing networks were built to accommodate only one carrier, and alterations to networks may be required to accommodate other carriers. Where required, the costs of such accommodations should be borne by the "cost-causer", AT&T;, not the ILEC.

Staff recommends that there be explicit performance and quality measures specified in the interconnection agreement. Staff also recommends that, per FCC Rule 51.311(c), where technically feasible, the quality of access to an unbundled network element must be superior to that which GTE provides to itself when AT&T; requests it and is willing to pay for the higher costs.

Staff believes it is essential that both parties understand what performance level can be expected from the interconnection agreement. Explicit performance and quality measures will identify the level of service AT&T; can promise its customers. For example, if an AT&T; customer wanted to know when service would be installed, it would not be practical for AT&T;'s customer service representative to respond: "We're not sure, but it will not take any longer than it would if you were a GTE customer."

Explicit performance and quality measures will also enable GTE to plan and deploy its resources appropriately, and reduce confusion and litigation between the parties. If GTE and AT&T; are unable to finalize specific performance benchmarks, Staff recommends the service quality standards contained in ICC Staff Ex. 3.01. In the event that GTE misses a specified performance benchmark for three consecutive months, such as those contained in Exhibit 3.01, Staff recommends a $20,000 discount on the price of services, except in the case of force majeure.

Commission Conclusion

The Commission concludes that GTE is clearly required to provide services at parity with those which it provides to itself, its affiliates and other CLECs, and that it is required to provide greater (or lesser) quality when requested and where technically

feasible. Therefore, the agreement should include terms which require GTE to provide resold services, unbundled network elements ancillary functions and interconnection on terms that are at least equal to those that GTE uses to provide such services and facilities to itself.

Where AT&T; requests services of a quality higher than that provided by GTE, then AT&T; must be responsible for the costs of providing that higher quality of service.

ISSUE 28: MUST GTE DEPLOY ITS RESALE AND UNBUNDLED OFFERINGS IN SPECIFIC TIME-FRAMES, WITH SERVICE GUARANTEES, AND PROVIDE FOR REMEDIAL MEASURES FOR SUBSTANDARD PERFORMANCE?

AT&T; asserts that GTE should have to satisfy explicit performance and quality measures with accompanying remedial procedures. Without such processes GTE would be left to police itself. GTE, as a monopoly supplier/competitor, would have the ability and possible motivation to negatively manipulate the service quality of its competitors in order to advance its own business interests. (FCC Order 55, 970; Act 252(c)(3)).

GTE states that it is required to provide resale and unbundled services on a non-discriminatory basis. But "service guarantees" are not required under the Act, and AT&T; has not explained how GTE would recover the costs associated with such guarantees. GTE asserts that it should not be ordered to enter into service guarantees. GTE contends that "service guarantees" are not permissible under the Section 251 of the Act; and AT&T; has not explained how GTE would recover the costs associated with such guarantees. (Wood, GTE Ex. 11.00, at 34).

Staff recommends that the Interconnection Agreement include consequences for contract non-conformance. Staff does not believe every potential issue between the two parties can be anticipated in a remedial measure, and some issues may still be brought before this Commission or the courts for resolution. However, a properly constructed remedial measure should reduce the number of instances in which the Commission or courts will be required to resolve a dispute between GTE and AT&T;.

If GTE and AT&T; are unable to finalize specific performance benchmarks, Staff recommends the service quality standards contained in Staff Ex. 3.01. In the event that GTE misses a specified performance benchmark for three consecutive months, such as those contained in Exhibit 3.01, Staff recommends a $20,000 discount on the price of services, except in the case of force majeure.

Commission Conclusion

The Commission concludes that the specific time-frames which AT&T; proposes are reasonable. In order to ensure the timely implementation of this agreement, it is necessary to include a time table upon which the parties must adhere. Absent such, any LEC will be less inclined to assist with the opening of its market to competition. Such a conclusion recognizes that any LEC's actions which result in the opening of its market may be torpid absent the proper incentive to carry-out its obligations.

Detailed performance measurements are also required in the Interconnection Agreement so that the parties have a clear

understanding of the applicable performance measures. The parties are directed to finalize specific performance measures within the time-frame set forth below. If the parties are unable to reach an accommodation on the appropriate measures, Staff's recommended standards will be inserted into the ultimate agreement.

In addition, we believe that it is necessary to ensure that these measures are met. To incent compliance, we accept Staff's proposed $20,000 discount on the price of services for which GTE does not meet the quality standards.

ISSUE 29: SHOULD GTE BE COMPELLED TO PROVIDE THE SAME NUMBER OF DIRECTORY PAGES TO AT&T; AS GTE HAS FOR ITS OWN USE FOR BRANDED SERVICE INFORMATION?

AT&T; contends that it should be permitted to obtain this service on the same terms that GTE provides to itself. Additionally, GTE should be required to provide AT&T; with reasonable, nondiscriminatory access to the Customer Guide section of GTE's directory for the listing of AT&T; service information comparable to the information provided regarding GTE services. (Act 251(c)(4)(B); 251(b)(3)).

At the hearing, the parties agreed to accept Staff witness Tate's recommendation that GTE allow AT&T; to provide an information page with AT&T;'s logo in the Customer Guide section of GTE's directories. This page would list branded service information for things such as billing or repair.

The only issue left unresolved was at what price AT&T; would obtain its initial (single) Customer Guide directory page. GTE proposes to grant AT&T; a 35% discount over what its ordinary customers would have to pay. AT&T; contends that GTE's proposal fails to satisfy the nondiscrimination requirement of Section 251(b)(3) and 251(c)(4)(B). AT&T; states that GTE attempts to capture a 65% commission for doing nothing more than complying with the express provisions of the Act cannot constitute nondiscriminatory access.

GTE will list AT&T;'s critical customer contact numbers at no charge. GTE proposes that if AT&T; opts to purchase an additional page to list product and service information, that page will be billed to AT&T; at the rate of 65% of the normal rate for a full page yellow page ad.

It is Staff recommendation that GTE include AT&T;'s installation, repair, and customer service listings in the Information Pages of its directories at the same rate GTE is charged. Additional information pages should be available for a reasonable, cost-based charge.

Commission Conclusion

The Commission concludes that Staff's proposal is reasonable and should be adopted in the Interconnection Agreement. With respect to the pricing of additional information pages the Commission concludes that GTE's proposed discount of 35% is reasonable. Contrary to AT&T;'s position, the Commission is of the opinion that this result does not violate the Act.

ISSUE 30: WHAT UNBUNDLED NETWORK ELEMENTS SHOULD BE PROVIDED TO AT&T;?

AT&T; argues that GTE should provide the following items as if they were separate network elements:

- _ NID
- _ Loop distribution
- _ Loop concentrator/multiplexer
- _ Loop feeder
- _ Combined Loop
- _ Local switching, including Data Switching, and all features and functionality inherent to the switch or switch software, including, without limitation, Advanced Intelligent Network (_AIN_) triggers.
- _ Operator Systems/Directory Assistance (OS and DA)
- _ Dedicated transport
- _ Common transport
- _ Tandem switching
- _ Signaling link transport
- _ Signal transfer points
- _ Service control points/databases

(FCC Rules 51.317-319; Act 251(c)(3)).

AT&T; contends that both the Act and the FCC Order impos explicit obligations on incumbent LECs to provide access to network elements on a nondiscriminatory basis and in such a way as to allow market entrants to combine network elements in a manner that fosters competition. When requested, this Commission may order additional network elements unbundled if an incumbent LEC fails to demonstrate such unbundling to be technically infeasible. A network element is considered technically feasible "absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier." (FCC Rule 51.5). AT&T; contends that GTE has not shown that it is technically infeasible to provide the network elements requested by AT&T;. Furthermore, GTE's definition of technical feasibility appears to be inappropriately broad: GTE has made clear that it considers technical feasibility to go beyond mechanical or engineering factors and to include considerations of economic cost and other variables having nothing to do with technical feasibility. Technical and economic feasibility are treated as separate concepts (see, e.g., 47 U.S.C. 254(h)(2)(A)), and AT&T; opines that Congress' choice of the words "technical" and "feasible" cannot be reasonably read to include matters of cost or general practicality. (See FCC Order 201-03).

GTE maintains that it should unbundle and provide access to the following network elements: (1) the network interface device ("NID"); (2) the local loop (the transmission facility which extends from a main distribution frame to the customer premises); (3) the port (the line card and associated peripheral equipment on a GTE end office switch that serves as the hardware termination for the customer's exchange service on that switch and generates dial tone and provides the customer a pathway into the public switched telecommunications network); (4) Transport (the transmission facility which extends from a main distribution frame ("MDF") to either another MDF or a meet point with transport facilities of AT&T; (5) Signaling systems; and (6) the 800/888 database and LIDB (databases for 800 information and line information).

GTE contends that these elements will enable AT&T; to compete effectively in the local exchange marketplace. Also, unbundled transport should be provided under the rates, terms and conditions of the GTE EIS tariff. Several of the specific elements AT&T; wants

GTE to unbundle are discussed and resolved in greater detail in Issue 33-36.

Staff contends that, a minimum, GTE should be required to offer the following unbundled combinations:

(1) Unbundled loop (2 wire, 4 wire, COPs, ISDN);
(2) Unbundled switch;
(3) Unbundled interoffice transport.

The unbundled loop is the transmission path from the network interface at an end user's premises to a distribution frame, digital signal cross-connect panel or a similar demarcation point at the end office. The unbundled switch is all services and functionalities that are provided by a switch or end office. These services include: telephone number and directory listing; dialtone; announcements; access to operators, usage, and interexchange carriers; originating and terminating switching; custom calling features (call forwarding, call waiting, etc.); and CLASS features (caller ID, call return, etc.). Interoffice transport is the transport of usage from an unbundled switch to another switch or to an IXC's point of presence ("POP"). The unbundled switch was addressed in Docket 95-0458 et al., Consol., where the Commission required Ameritech and Centel to provide unbundled switching consistent with Staff's recommendation. GTE should be required to provide the unbundled switch in the same manner as required by the Commission in Docket 95-0458 et al., Consol.

Commission Conclusion

In our Order in Docket 95-0458 et al., we adopted Staff's proposed local switch platform which defined what needs to be unbundled.

ISSUE 31: TO WHAT EXTENT SHOULD AT&T; BE PERMITTED TO COMBINE NETWORK ELEMENTS?

AT&T; asserts that there should be no restrictions on its ability to combine network elements. AT&T; has requested a total of eight different combinations of unbundled elements:

_ Unbundled Network Elements Platform with Operator Systems
_ Unbundled Network Elements Platform without Operator Systems
_ Loop Combination
_ Loop/Network Combination
_ Switching Combination No. 1

Three other network element combinations would be subject to a Bona Fide Request process:

_ Switching Combination No. 2
_ Switching Combination No. 3
_ Switched Data Services

(FCC Rule 51.309, 51.315; FCC Order 292-94, 328-331; Act 251(c)(3)).

AT&T; states that GTE is required to provide unbundled network elements to new entrants such as AT&T; "in a manner that allows requesting carriers to combine such elements in order to provide . . . telecommunications service." (Act 251(c)(3)). This

requirement has been reinforced by the FCC, which found that the Act enables new entrants to combine elements in any manner they choose, and to connect the elements to any equipment they own. (FCC Order 292-97). The combinations AT&T; seeks are all technically feasible and required for AT&T; to compete effectively against GTE. GTE has not provided any evidence demonstrating that the combinations requested by AT&T; are not technically feasible.

GTE avers that AT&T; should be permitted to combine network elements it purchases from GTE with its own elements, subject to certain terms and conditions. AT&T; may lease and interconnect to whatever of these unbundled elements it chooses, so long as AT&T; does not combine unbundled network elements purchased from GTE to bypass resale offerings. AT&T; may combine these unbundled elements with any facilities or services that AT&T; may itself provide, pursuant to the following terms: first, the interconnection shall be achieved by expanded interconnection/ collocation arrangements AT&T; shall maintain at the wire center at which the unbundled services are resident; and second, that each loop or port element shall be delivered to AT&T;'s collocation arrangement over a loop/port connector applicable to the unbundled services through other tariff or contract options; and third, AT&T; shall combine unbundled elements with its own facilities but shall not recombine GTE unbundled elements. (Seaman, GTE Ex. 14.00 at 14).

With respect to the switch, GTE states that it will provide the port. "Unbundling the switch" is a term AT&T; has coined to describe what it wants: a la carte access to each switch function and feature. GTE argues that there are several problems with AT&T;'s approach. First, such unbundling is not technically feasible at this time, and it ignores the limitations on switch capacity. Second, it ignores the tremendous cost that would be associated with trying to develop these features into a-la-carte menu selections; they currently are not configured in that manner. Third, AT&T; would be able to avoid paying access charges. (Seaman, GTE Ex. 14.00 at 15).

It is Staff's position that Section 251(c)(3) states that carriers purchasing unbundled network elements shall be able to combine such elements in order to provide telecommunications service. Therefore, a carrier could selectively purchase unbundled loops, unbundled switch, and transport to provide telecommunications service. In addition, the FCC recognized the unbundled switch combined with an unbundled loop and interoffice transport would promote efficient utilization of the network. Therefore, Staff believes there should be no restrictions imposed on AT&T; with respect to combining network elements.

Commission Conclusion

In interpreting the Act, the FCC Order specifically allows for a company such as AT&T; to combine network elements in any fashion it deems appropriate; 1) so long as such combination is technically feasible and 2) where such combination would not undermine the ability of other carriers to access unbundled elements or interconnect with the ILEC's network. (FCC Order 296). In the event that such a combination is not technically feasible, GTE must submit a full explanation and showing regarding the problem, along with specific plans and a timetable for achieving compliance. Therefore, absent any demonstration that provision of this service is technically infeasible, AT&T; should be permitted to order from GTE the combinations AT&T; has requested in its Interconnection Agreement.

The Commission notes that allowing any combination of network elements may result in a CLEC avoiding an ILEC's access charges. Again, however, we are required to follow the FCC's Order and will therefore impose no restrictions or limitations on the sale or use of unbundled network elements.

ISSUE 32: SHOULD AT&T; BE PERMITTED TO REQUEST A COMBINATION OF NETWORK ELEMENTS WHICH WOULD ENABLE IT TO REPLICATE ANY SERVICES GTE OFFERS FOR RESALE?

AT&T; argues that is should be entitled to request such network element combinations and cites to the FCC rules and the Act in support of its position. (See FCC Rules 51.309, 51.315; FCC Order 292, 328-329; Act 251(c)(3)). AT&T; states that incumbent LECs, such as GTE, are barred from imposing limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunication service in the manner the requesting carrier intends. (FCC Rule 51.309). There is no basis for denying AT&T; the right to recombine unbundled elements to replicate any service GTE offers for resale. Such a restriction was specifically rejected by the FCC. (FCC Order 292, 328-31).

GTE asserts that to allow AT&T; to repackage (or "rebundle") GTE's unbundled elements would eliminate the distinction the Act makes between resale and unbundled elements. Therefore, AT&T; should not be allowed to combine network elements in order to replicate services GTE offers for resale because it would create tariff arbitrage.

Staff outlined four combinations of unbundled elements available on a combined basis which AT&T; requested that GTE offer. Staff contends that any further unbundling of GTE's network should be addressed through a bona fide request process.

Staff further contends that the ability to recombine network elements to provide telecommunications services does not bias facilities based competition or resale competition because the unbundled platform allows a competitor to make a make or buy decision. Setting the unbundled platform rate based on forward-looking economic cost plus a reasonable amount of contribution to cover common cost will allow new LECs to make an economic decision, based on the cost of providing local exchange services, to be a reseller or a facilities based competitor.

Commission Conclusion

The Commission is of the opinion that Section 251(c)(3) does not allow an ILEC to impose any restrictions or limitations on the sale or use of unbundled network elements. This is a position which has also been adopted in the FCC Order, 292. Therefore, AT&T; should be permitted, without limitation or restriction, to request a combination of network elements that would enable it to replicate for resale any services offered by GTE.

ISSUE 33: IS SUB-LOOP UNBUNDLING TECHNICALLY FEASIBLE, AND IF SO, UNDER WHAT TERMS AND CONDITIONS SHOULD IT BE OFFERED?

It is AT&T;'s position that local loops should be unbundled into loop distribution, loop concentrator, multiplexer, and loop feeder subject to market demand on an individual case basis. In

the Central Region, AT&T; has proposed that a Bona Fide Request process be used. (FCC Order 391; FCC Rule 51.317). Subloop elements are those elements that make up the unbundled local loop. The subloop elements identified in this proceeding are Loop Distribution, Loop Concentrator and Loop Feeder. AT&T; has not requested that GTE make available as a standard offering subloop elements, but has instead asked this Commission to find that disaggregation of these loop elements is technically feasible, such that AT&T; could order them on a bona fide request basis.

GTE contends that subloop unbundling is not technically feasible in all instances and, therefore, such subloop unbundling should be offered only on a case-by-case basis. Sub-loop unbundling is very fact-dependent and site-specific; therefore, GTE should not be required to sub-loop unbundle on a company-wide basis. GTE, however, agreed to provide as separate unbundled elements the loop distribution, loop concentrator, and loop feeder on an individual case basis where technically feasible, and where AT&T; pays all the costs associated with such unbundling.

Staff took the position that GTE should be required to offer unbundled loops, unbundled switch, and unbundled transport, with and without operator services and directory assistance. Any further unbundling of GTE's network should be addressed through a bona fide request process. (Staff Ex. 1.00 at 25).

Commission Conclusion

The Commission concludes that absent a showing of technical infeasibility, and consistent with Staff's position, GTE should be required to offer unbundled loops, unbundled switch, and unbundled transport, with and without operator services and directory assistance. Meanwhile, any further unbundling of GTE's network should be addressed through a bona fide request process.

ISSUE 34: WHAT SHOULD THE UNBUNDLED SWITCH ELEMENT INCLUDE?

AT&T; requests all features and functionalities inherent to the switch or switch software, but has agreed to withdraw its demand for Advanced Intelligent Network (_AIN_) triggers. AT&T; asserts that Section 251(c)(3) requires GTE to provide nondiscriminatory access to all network elements on an unbundled basis, and Section 153(29) of the Act defines "network element" to include all "features, functions, and capabilities that are provided by means of such facility or equipment including subscriber numbers, databases, and signaling systems." AT&T; states that GTE has refused full access to its switches, arguing instead that it need only provide access to the switch port to satisfy its unbundling obligations.

GTE contends that the switch element should include the port, which provides AT&T; with basic switch functionality as well as access to all switching functions. Access to the port will enable AT&T; to compete fully in the local telecommunications market. With this access, AT&T; can choose the type of switching services it wants from GTE _ such as vertical features _ and purchase these services separately. GTE argues that the unbundled switching element does not include all features and functionalities inherent to the switch or switch software.

GTE's position on switch unbundling may be summarized as follows: first, vertical features are services, not elements, and therefore need not be unbundled. Second, even assuming vertical

features are elements, the FCC's default proxy rates do not included the costs for such features; in fact, the cost studies the FCC relied upon included only the basic switching feature, not any other features or functionalities. Third, if GTE were required to make available all the features and functionalities a switch is capable of providing to all requesting carriers, it would need to increase substantially its switch capacity.

Commission Conclusion

With respect to this issue, the Commission adopts the conclusion and analysis set forth in Issue 30. In addition, the Commission relies on the FCC Order which determined that when an unbundled switch is purchased, all features, functionalities and capabilities should be included therein. (FCC Order 263 and 412). Our conclusions should, therefore, be incorporated in the final Interconnection Agreement.

ISSUE 35: SHOULD GTE PROVIDE AT&T; WITH ACCESS TO ITS AIN, AND IF SO, UNDER WHAT TERMS AND CONDITIONS?

This issue has been resolved.

ISSUE 36: SHOULD GTE BE REQUIRED TO EXCHANGE AIN TRANSACTION CAPABILITIES APPLICATION PART MESSAGES BETWEEN GTE END OFFICES AND AT&T; SERVICE CONTROL POINTS VIA INTERCONNECTION OF AT&T;'S SS7 NETWORK TO THE GTE SS7 NETWORK?

This issue has been resolved.

ISSUE 37: SHOULD GTE PROVIDE AT&T; ACCESS TO GTE_S SS7 SYSTEM, AND IF SO, AT WHAT POINTS AND UNDER WHAT TERMS AND CONDITIONS?

This issue has been resolved.

ISSUE 38: IS GTE REQUIRED TO PROVIDE UNBUNDLED SIGNALING ELEMENTS (STP, ACCESS TO SCP DATABASES, LINKS, ETC.) AT COST-BASED RATES? IS ACCESS TO GTE'S SCP DATABASE AN UNBUNDLED NETWORK ELEMENT AS DEFINED IN THE ACT?

During the evidentiary hearings the parties resolved all aspects of this issue but the price to be charged for AT&T;'s access to unbundled signaling elements. What remains in dispute is the issue of cost-based rates for these elements.

We have resolved pricing issues for unbundled network elements previously. (See Issue 3, supra.). The interim prices established in Issue 3 will remain in effect until final prices are established in Docket 96-0503.

ISSUE 39: SHOULD AT&T; HAVE ACCESS TO GTE'S UNUSED TRANSMISSION MEDIA ("DARK FIBER")?

AT&T; contends that unused transmission media should be made available. There is a presumption in favor of unbundling if it is technically feasible. (FCC Order 281). Further unbundling is to be decided by the state commissions. (FCC Order 427). Dark fiber is unused transmission media (e.g., optical fiber, copper twisted pairs, coaxial cable), which have no lightwave or electronic transmission equipment terminated to operationalize its transmission capabilities. The FCC declined to address the

unbundling of an incumbent LEC's dark fiber, stating that it lacked "information on whether dark fiber qualifies as a network element." (FCC Order 450). It left to individual states the task of deciding whether to unbundle dark fiber. (FCC Order 366).

It is AT&T;'s position that dark fiber is a network element and that it is technically feasible to provide access to dark fiber. AT&T; further states that GTE did not dispute that the provision of dark fiber is technically feasible. Instead, GTE responded only that, according to its construction of the Act, dark fiber is not a network element, and thus, need not be unbundled. The only issue is thus whether dark fiber qualifies as a network element.

GTE answers in the negative to this issue. GTE argues that, in relevant part, 47 USC 251(c)(3) requires that GTE provide AT&T; nondiscriminatory access to network elements on an unbundled basis at any technically feasible points. A "network element" is a "facility or equipment used in the provision of a telecommunications service." (47 USC 153(45)). Inasmuch as "dark fiber" is not used in the provision of a telecommunications service, GTE is not obligated under the Act to provide AT&T; access to said dark fiber.

GTE states that the Act defines a "network element" as a "facility or equipment used in the provision of a telecommunications service. (47 USC 153(45)). GTE maintains that fiber circuits must be "lit" to be used. "Dark" fibers are unlit and are not in use to provide a telecommunications service. Therefore, "dark" fiber does not meet the statutory definition of a "network element."

Staff pointed out that the FCC Order at 51.5 defines a network element to include, among other features, functions and capabilities, the function of transmission which is the function of dark fiber. (Staff Ex. 2.00 at 13-15).

It is the recommendation of Staff that the Commission direct GTE to provide dark fiber to AT&T; upon a bona fide request from AT&T;. Clearly, dark fiber, when activated by its electronics, provides a transmission medium. Allowing AT&T; to utilize dark fiber will provide another transmission medium for AT&T; to use and thereby promote competition.

Commission Conclusion

The Commission concludes that this record supports a finding that dark fiber is a network element which should be provided upon a bona fide request from AT&T;. Thus, unused transmission media fiber should be made available to AT&T; upon a bona fide request from AT&T;. Section 4 of Attachment 3 to the AT&T; Interconnection Agreement should be accepted.

ISSUE 40: SHOULD GTE BE REQUIRED TO PROVIDE BOTH DEDICATED AND COMMON LOCAL TRANSPORT TO AT&T; ON AN UNBUNDLED BASIS?

AT&T; contends that dedicated and common transport should be unbundled and provided at TELRIC prices. (FCC Order 440, 443, 444). Dedicated transport provides an interoffice transmission path between two AT&T;-designated locations, such as two GTE central offices or a central office and an AT&T; network component. Common transport is an interoffice transmission path between GTE network elements that carries the traffic of more than one carrier. AT&T; asserts that GTE has offered no support for its claim that it is

technically infeasible to unbundle dedicated and common local transport. Instead, GTE suggests that AT&T; obtain dedicated and common transport from GTE's access tariffs at the rates and terms specified in those tariffs.

GTE states that it should provide dedicated transport and common local transport as separate items out of its access tariff. GTE already provides dedicated transport and common local transport as single items in its access tariff. These services are already provided on a wholesale basis.

Staff contends that Upon review of the FCC Order at 440, 441 and 442, it is clear that the FCC requires the incumbent to unbundle the interoffice transmission facilities and that the rates and charges are to be consistent with the Federal Act. Therefore, Staff recommends that GTE be directed to comply with the Federal Act in its rates and charges for these elements.

Commission Conclusion

The Commission concludes that, based upon the FCC Order as discussed above, GTE should be required to provide AT&T; with dedicated and common local transport as an unbundled network element. As for the interim price for this unbundled element the Commission adopts GTE's proposed TELRICs found in GTE Ex. 9, attachment 3. The two qualifications to this price is that there should be no inclusion of non-forward-looking common costs as calculated by GTE or any type of EUC in the interim price. This qualification is consistent with our conclusion in Issue 3.

ISSUE 41: ARE OPERATOR SYSTEMS (I.E., GTE-PROVIDED OPERATOR SERVICES AND DIRECTORY ASSISTANCE) SEPARATE NETWORK ELEMENTS THAT GTE SHOULD BE REQUIRED TO UNBUNDLE?

AT&T; opines that 536 of the FCC Order requires that incumbent LECs unbundle operator services and directory assistance to the extent technically feasible. Other LECs have agreed to offer these services on an unbundled basis, using varying technical solutions. (Act 3(a)(45); FCC Order 536; Act 251(c)(3)).

AT&T; states that Operator Systems are systems which provide operator and automatic call handling and billing, special services, customer telephone listings and optional call completion services. Operator Systems comprise two end-user services: (i) OS, which provide operator handling for call completion, operator or automated billing assistance after a customer has dialed a number and special services, including Busy Line Verification, Operator-Assisted Directory Assistance and Rate Quotes; and (ii) DA, which provides local customer telephone number listings, with the option to complete the call at the caller's direction.

AT&T; alleges that GTE has acknowledged that it is technically feasible to unbundle GTE's OS/DA services. The FCC has concluded that OS/DA is one of the minimum network elements that should be unbundled. (FCC Rule 51.319(g)). Moreover, AT&T; notes that this Commission required Ameritech to provide OS/DA to AT&T; in its Order entered in the Wholesale Docket. (Docket 95-0458, et al., Order at 45). We are informed that many incumbent LECs provide other incumbent LECs with OS/DA currently.

GTE argues that operator systems are not separate network elements that need to be unbundled at this time. GTE refers to the discussion of its position under Issues 17, 18, and 19.

On this issue, Staff reasserts the position it presented in Issue 17.

Commission Conclusion

The Commission is of the opinion that its conclusion and analysis set forth in Issue 17 should be adopted as the same for this Issue.

ISSUE 42: WHAT ARE THE APPROPRIATE INTERCONNECTION POINTS FOR THE TRANSPORT AND TERMINATION OF TRAFFIC?

AT&T; argues that it must be permitted to design its network architecture and specify the interconnection points and trunking arrangements, including the ability of inter connecting at GTE end offices and access tandems AT&T; deems most appropriate. This should include the ability to use two way trunk groups and mix traffic on those trunk groups. If GTE denies a request for a particular method of obtaining interconnection, GTE must prove to the state commission that the requested method is not technically feasible. (FCC Rule 51.321; Act 251(c)(2)).

The parties disagree as to what the Act requires. GTE contends that AT&T; may interconnect with GTE at any of the minimum technically feasible points required by the FCC, but only where such interconnection will not threaten network reliability or security. AT&T;, however, is responsible for all the costs of interconnection.

Staff cites FCC Rule 51.321 which provides that:

"...an incumbent LEC shall provide, on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.".

Based on this Rule, Staff argues that GTE should be ordered to adhere to the requirements of this Rule which also sets forth the methods required in claiming that a particular premise is not available due to technical reasons or space limitations.

Commission Conclusion

The Commission concludes that the Rule Staff cites is applicable to GTE. As such, absent demonstration that AT&T;'s request is unreasonable, GTE must provide interconnection where AT&T; requests. In this instance, GTE has not established that AT&T;'s requested interconnection methods are technically infeasible. We note, however, that the FCC Order allows for the consideration of network reliability in determining whether access at a particular point is technically feasible. 198.

Therefore, subject to the technical feasibility considerations cited above, the Commission approves the interconnection methods set forth in Sections 36 through 42 of the AT&T; Interconnection Agreement. In addition, the Companies must abide by existing Commission rules, including 83 Ill. Adm. Code 725.

ISSUE 43: SHOULD GTE BE REQUIRED TO PROVIDE TANDEM-TO-TANDEM SWITCHING FOR THE PURPOSE OF TERMINATING AT&T; LOCAL AND

INTRALATA TRAFFIC?

AT&T; contends that it should be permitted to switch traffic tandem-to-tandem on GTE's network. It argues that tandem switching unbundling is technically feasible. (FCC Order 425). AT&T; has requested the ability to interconnect with GTE in GTE's individual end offices or at tandem switches. AT&T; seeks this flexibility because, unlike an existing independent telephone company, AT&T; will be serving multiple locations in GTE's territory using potentially widely-deployed, multiple switches. AT&T; notes that GTE does not argue that such interconnection is technically infeasible -- in fact, GTE admits that interconnection arrangements such as AT&T; has proposed are commonplace. Rather, AT&T; submits that GTE "cannot agree to this kind of interconnection agreement" because it believes that AT&T; has not agreed to a billing arrangement that allows it to recover all its costs related to inter-tandem traffic.

GTE proposes that it shall provide tandem switching if AT&T; interconnects at the GTE tandem, but need not provide tandem-to-tandem switching until such time as (1) AT&T; has entered into one of the existing intraLATA toll compensation mechanisms (e.g., ITAC); or (2) signaling and AMA record standards support the recognition of multiple tandem switching events. In this way, the parties can ensure proper billing for inter-tandem switching.

Staff recommends that the services should be provided, upon AT&T; providing a bona fide request. Accordingly a mechanism should be developed so that costs may be recovered by GTE where appropriate.

Commission Conclusion

As noted above, the parties have agreed to allow AT&T; to provide tandem-to-tandem switching. As to the appropriate billing method, we concur with GTE that signaling and AMA record standards should be utilized. The use of such records is the standard industry practice. The Commission does not believe that this is the appropriate forum to evaluate the merits of current industry billing methods.

ISSUE 44: HOW SHOULD THE COST OF ACCESS TO OSS BE RECOVERED?

AT&T; argues that GTE is required to provide competing carriers with non-discriminatory access to operation support systems ("OSS") functions under just, reasonable and nondiscriminatory terms. The costs associated with OSS interfaces should be recovered on a competitively neutral basis. (FCC Order 516-517; Act 251(c)).

While GTE will develop such "electronic bonding" required by the Act to access necessary operations support systems functions, it is entitled to recover all of its costs resulting from the design, testing, development, implementation and ongoing support of such gateway access. GTE states that it will have no use for the electronic interfaces it develops for AT&T;.

If the Commission decides to treat OSS as an unbundled network element -- which GTE strongly urges the Commission not to do -- GTE contends that the pricing should be determined by applying its TELRIC model. Under TELRIC pricing, all of the development costs for these interfaces are to be paid by AT&T;. These development costs are nonrecurring costs and should be structured within the pricing of the total operations system network element pricing

(that would also include usage) so as to be recovered by GTE within three years. (Wood, GTE Ex. 11.00, p. 31, l. 20 - p. 32, l. 9)

GTE submits that the correct course of action for this Commission to take is to order the ALECs--in this case, AT&T;--to pay GTE all of its costs associated with the design, testing, deployment, implementation, and ongoing support for their requested access to GTE's OSS, including both interim and long-term measures. These payments to GTE would, of course, be in addition to any licensing fees AT&T; might need to pay the third-party owner of GTE's OSS. The Commission should also recognize that GTE cannot produce firm cost estimates until after industry standards have been set and the carriers supply GTE with their access specifications.

Staff contends that the cost of OSS should be recovered in the manner in which they are incurred. This approach is consistent with the Commission's Order in Docket 95-0458 et al., and 83 Ill. Adm. Code 791, the Commission's cost of service rule.

Commission Conclusion

The Commission concludes that Staff's proposal should be adopted and included in the Interconnection Agreement: thus, being consistent with our Order in Docket 95-0458 et al. and our cost of service rule. 83 Ill. Adm. Code 791. Therefore, cost associated with the provision of this service shall be borne by the cost causer[s]. At this time, the subject electronic interface has yet to be fully developed. Hence, there is no way of knowing the price of this element. The final price of this element should be determined in Docket 96-0503 and incorporated as the price for purposes of this Agreement.

ISSUE 45: SHOULD GTE BE REQUIRED TO PROVIDE AT&T; ACCESS TO OSS (OPERATOR SERVICE SYSTEMS) THROUGH ELECTRONIC INTERFACES?

AT&T; believes that operational interfaces must be provided at parity with GTE. Nondiscriminatory access necessarily includes access to the functionality of any internal gateway systems GTE employs in performing pre-ordering, ordering, provisioning, maintenance, repair and billing functions for itself. (FCC Order 520-527; Act 251(c)).

GTE states that at this time, direct access is not required by the parties. AT&T; has agreed to accept access to OSS functions through a nationally standardized gateway. Since the hearing in this matter, the parties have reached an agreement with regard to the timing for providing gateway interfaces. Although national standards have not been set, GTE is actively working toward implementing a gateway that might not be based on such standards. It has targeted to complete this gateway by the end of March 1997. Once national standards are in place, GTE will modify its gateway if necessary and if requested by AT&T;. It is GTE's understanding that AT&T; has agreed to accept this interim solution.

Staff states that GTE is obligated to provide this interface. There are basically five separate elements of operational support systems: (a) Pre-service ordering, (b) Service order/provisioning, (c) Access to the directory listing/databases, (d) Access to repair and maintenance, and (e) Daily usage data.

In Staff's opinion, each of these requests are necessary in order to establish a proper wholesale/resale market.

Commission Conclusion

The Commission concludes that nondiscriminatory access to OSS is both technically feasible and essential to the development of a competitive local service market. It is our understanding that pursuant to the FCC Order, such a gateway must be in place by January 1, 1997. (FCC Order 525). Consequently, even if the parties arrive at an agreement on this issue, this Commission lacks the authority to grant any extension of time beyond that date. The Commission therefore adopts Section 30 and the applicable provisions of Attachments 4, 5, 6 and 7 to the AT&T; Interconnection Agreement.

ISSUE 46: ON WHAT BASIS SHOULD OSS ELECTRONIC INTERFACES BE IMPLEMENTED?

AT&T; states that GTE should be ordered to immediately implement a mutually acceptable real-time interface (gateway) for local service delivery as an interim measure while an electronic interface is being developed. Fully electronic interfaces must be provided no later than January 1, 1997. (FCC Order 525). AT&T; avers that this requirement is not discharged by offering access that requires human intervention. (FCC Order 520, 523; Act 251(c)).

For GTE's statement on this issue, see Issue 45.

Commission Conclusion

As noted in Issue 45, the FCC has already established a date by which GTE must be in compliance. Therefore, we conclude that the implementation date is January 1, 1997.

ISSUE 47: SHOULD AT&T; HAVE ACCESS TO OSS PROCESSES THROUGH ELECTRONIC INTERFACES FOR UNBUNDLED ELEMENTS?

It is AT&T;'s position that GTE should be ordered to immediately implement a mutually acceptable real-time interface (through a gateway) for local service delivery as an interim measure while an electronic interface is being developed. Fully electronic interfaces must be provided no later than January 1, 1997. (FCC Order 525). This requirement is not discharged by offering access that requires human intervention. (FCC Order 523; Act 251(c)(3)).

For GTE's position, see Issue 45.

Commission Conclusion

The Commission's prior decision in Issue 45 results in AT&T; having access to OSS processes through electronic interfaces for unbundled elements. Therefore, Section 30 and the applicable provisions of Attachments 4, 5, 6 and 7 to the AT&T; Interconnection Agreement are adopted.

ISSUE 48: WHAT METHODS OF INTERIM NUMBER PORTABILITY SHOULD GTE BE REQUIRED TO PROVIDE?

It is AT&T;'s position that GTE should provide number portability through three distinct, technically feasible options: (i) remote call forwarding ("RCF"); (ii) Local Exchange Routing Guide ("LERG") Reassignment; and (iii) route indexing ("RI"), in

addition to any other technically feasible method in compliance with the FCC Orders. AT&T; requires all three options in order to meet the distinctive needs of its various customer segments. (Act 251(b)(2); 3(a)(46)). AT&T; cites Section 251(b)(2) of the Act which, it argues, obligates LECs to provide number portability wherever it is technically feasible. An absence of number portability, it concludes, presents an impediment to competition.

It is GTE's position that INP can be made available through either RCF or DID. GTE states that neither LERG reassignment nor direct number route indexing ("DNRI") is appropriate. With respect to DNRI, GTE states that it is not currently available over its network. As for LERG reassignment, GTE argues that this would require elimination of the industry standard for routing calls.

Staff recommends that GTE offer to AT&T; RCF and direct inward dialing ("DID") as currently proposed by GTE for INP. In addition, GTE should offer LERG Reassignment, also called NXX Migration. Staff feels that GTE should not incur the cost for the short time Route Indexing would be used pending implementation of the long term number portability solution. In addition the FCC recognized that the capability to provide RCF and DID number portability already exists in most of today's network's and no additional upgrades are necessary.

Commission Conclusion

Based upon our review of the facts herein the Commission concludes that GTE should offer to AT&T; RCF, DID and LERG reassignment for INP. The costs associated with DNRI are not defined in the record. It is clear, however, that the costs to implement DNRI may be significant. Considering that we are only establishing an interim solution pending final FCC action, the Commission is of the opinion that GTE should not be obligated to implement the proposed DNRI solution.

With respect to LERG reassignment, the Commission is not persuaded by GTE's arguments on this point. LERG reassignment is technically feasible. Moreover, there is no evidence that the costs involved will be significant. GTE, therefore, is required to provide LERG reassignment as an INP option.

While RCF, DID and LERG reassignment may not suffice in all circumstances, the Commission believes that such options will be adequate in the interim. As such, our conclusions herein should be incorporated into the final Agreement.

ISSUE 49: WHEN AND IN WHAT CIRCUMSTANCES SHOULD COLLOCATION BE PERMITTED?

AT&T; states that GTE must provide collocation to any requesting telecommunications carrier. AT&T; does not dispute GTE's right to implement reasonable security measures; however, GTE cannot use such measures to unreasonably limit the use by AT&T; of the collocated space. (FCC Rule 51.323; Act 251(c)(6)).

GTE proposes that AT&T; be permitted to collocate at central offices, service wire centers and tandem switches. AT&T; should not be permitted to collocate at vaults or manholes, nor should AT&T; be permitted to collocate at remote units unless a given unit offers routing or rating capability and has sufficient space. GTE can implement reasonable security measures to protect equipment and facilities of GTE and other collocators. Also, GTE can reserve

space for future needs in any site where collocation is requested. Finally, AT&T; should pay all the costs associated with collocation, based on the "cost-causer" principle.

Staff states that the standards for physical and virtual collocation are set forth in the FCC Rule 51.323. Basically, an incumbent LEC shall allocate space for the collocation of equipment of carriers within or on its premises to carriers on a first-come, first-served basis. When the space has been exhausted, the incumbent carrier shall not be required to lease or construct additional space to provide physical collocation. An incumbent LEC may also retain a limited amount of floor space for its own specific future use, provided that the incumbent may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own use.

Commission Conclusion

The Commission concludes that FCC Rule 51.323 sets forth the appropriate rules for collocation. In short, GTE must provide AT&T; the opportunity to collocate such equipment as set forth in the Rule, subject to limited considerations. Based upon this conclusion, Sections 35.2, 35.4.1, and Attachment 3 (2) of the AT&T; Interconnection Agreement are adopted.

ISSUE 50: WHAT TYPES OF TELECOMMUNICATIONS EQUIPMENT MAY BE COLLOCATED ON GTE'S PREMISES?

It is AT&T;'s position that GTE must permit the collocation of any type of equipment used for interconnection or access to unbundled network elements. (FCC Order 581; FCC Rule 51.323(b); Act 251(c)). The principal issue in dispute between the parties regarding what equipment may be collocated in GTE's space is whether AT&T; may collocate Remote Switching Modules ("RSMs"). AT&T; argues that, contrary to GTE's claim, the FCC Order does not foreclose the collocation of hybrid equipment such as RSMs. Rather, the Order provides only that incumbent LECs are generally not required to permit collocation of "switching" equipment because, based on information before the FCC at that time, it was not readily apparent to the FCC that the equipment would be used for the "actual interconnection of access to unbundled network elements." (FCC Order 581).

GTE argues that under the language of the Act, Section 251 (c)(6), AT&T; should be permitted to install only equipment that must be near GTE network elements in order to make interconnection technically feasible. Such equipment is limited to concentration and circuit termination equipment (including optical line terminating equipment and multiplexers). Concentration equipment aggregates multiple loops to a single loop for more efficient transport. Termination equipment allows a CLEC to convert the optical signals on its loops to electrical signals that can be used by GTE's network equipment. Because current cross-connection technology limits the maximum distance between these various pieces of equipment, collocation is necessary and should be permitted for concentration and termination equipment. GTE asserts that no similar justification exists for collocating switches, enhanced services equipment and customer premises equipment.

Staff states that the equipment used for interconnection and access to unbundled network elements is to include, but not be limited by, "transmission equipment, optical terminating equipment,

multiplexers and equipment to terminate basic transmission facilities pursuant to FCC Rules and 64.1401 and 64.1402."

Commission Conclusion

As we have determined in the 96 AB-003/96 AB-004 arbitration, AT&T; should not be allowed to collocate switching equipment on GTE's premises. The RSM at issue here appears to be a device that will be used for switching. If so, we conclude that AT&T; cannot collocate this piece of equipment on GTE's premises.

ISSUE 51: SHOULD GTE BE REQUIRED TO PROVIDE INTERCONNECTION BETWEEN CARRIERS AT COST BASED RATES WHEN THOSE CARRIERS ARE BOTH COLLOCATED AT A GTE PREMISE?

It is AT&T;'s position that GTE must permit interconnection between collocating telecommunications carriers on its premises. (FCC Rule 51.323(h)). AT&T; cites to Section 251(c)(6) which provides: "physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier . . . ." AT&T; asserts that the linking of two collocated carriers at the same incumbent LEC office constitutes an interconnection, in that it would be used for the exchange of traffic, and not for the transport or termination of traffic. Thus, the linking of the two collocated carriers' equipment would be "necessary for interconnection" and would satisfy Section 251(c)(6).

GTE asserts that the Act does not require the ILEC to allow cross-connection of carriers on the ILEC's premises for the purpose of bypassing the ILEC's network. The purpose of collocation is interconnection or access to the unbundled network elements of the ILEC. Where GTE does allow such interconnection, it may charge rates based upon GTE's costs. GTE will permit the interconnection via cross-connects of the collocated equipment of different CLECs as long as the provisioning of the cross-connect by GTE or the CLECs shall be at the option of GTE, the connected equipment is used for interconnection with GTE or access to GTE's unbundled network elements, space is available, reasonable security arrangements can be provided, and the CLECs pay all costs associated with the cross-connect.

Staff sees no policy reason why GTE should be permitted to unilaterally preclude carriers from interconnecting with each other in a GTE collocated space. In fact, it would be inefficient to require separate interconnection if the two carriers are already collocated in the same central office.

Commission Conclusion

It is the Commission's understanding that GTE will allow two competing carriers collocating at the same GTE premises to interconnect directly with each other. Further, the Commission understands that AT&T; accepts GTE's requirement that the collocated CLECs would interconnect via a GTE unbundled network element. This being the case, then GTE should price this as an unbundled network element. Until a final price is determined, the interim prices previously established for unbundled network elements shall be used. See Issue 3.

ISSUE 52: WHAT LIMITS, IF ANY, MAY GTE IMPOSE UPON THE USE OF THE COLLOCATED SPACE?

AT&T; states that no limits may be imposed regarding the use of collocated space, with the exception of reasonable security requirements. (FCC Order 581; FCC Rule 51.323(i)). The center of this issue focuses on the term "necessary" found in Section 251 (c)(6). AT&T; urges this Commission to adopt the FCC interpretation, which explained in unambiguous terms that "[a]lthough the term 'necessary,' read most strictly, could be interpreted to mean 'indispensable'. . . for the purposes of section 251(c)(6) 'necessary' does not mean 'indispensable' but rather 'used' or 'useful.'" (FCC Order 579). AT&T; rejects GTE's interpretation of the term "necessary" to mean "essential." AT&T; concludes that such an interpretation would be anti-competitive.

Under 47 USC 251(c)(6), GTE states that competitive LECs are permitted to collocate only equipment that is necessary for interconnection or access to unbundled network elements. This interconnection and any unbundled element accessed by the competitive LEC must be used to provide local exchange services. AT&T; may use collocated space only to collocate equipment necessary for interconnection or access to unbundled elements under the Act, and AT&T; must use its equipment for offering local exchange service. Meanwhile, GTE has the right to reserve space in any facility where collocation is sought by AT&T;.

GTE maintains that it can limit the use of its space by AT&T; to only such equipment that is necessary for interconnection or access to unbundled network elements as allowed by 47 USC 251(c)(6). Furthermore, as a provider of last resort, GTE should be allowed to reserve a reasonable amount of space for the purpose of fulfilling its duties.

Commission Conclusion

The FCC Order and accompanying Rule set forth the parameters by which an ILEC, such as GTE, may limit the use of collocated space. (FCC Order 579-581; FCC Rule 51.323(i). The Commission concludes that the FCC Rule and analysis set forth in the FCC Order should be applied to determine how collocated space may be used.

ISSUE 53: DOES GTE HAVE THE RIGHT TO RESERVE SPACE FOR ITS OWN USE OR DENY ACCESS FOR SPACE REASONS?

AT&T; argues that GTE's insistence on retaining space for itself, based on a five year planning horizon, renders processes for ordering and provisioning collocated space meaningless. (FCC Order 604; FCC Rule 51.323(a),(f); Act 251(c)(6)). To be able to compete effectively, AT&T; states it requires a process that will enable it -- as well as other new entrants -- not only to obtain space in GTE offices and structures for its present needs, but also to secure space (as GTE now does) based on forecasted future growth. AT&T; states that if GTE were permitted to reserve space in its offices and structures on a five-year planning horizon, it would have a effective weapon against competition and would be able to "lock-out" competitive LECs during that time period.

Because of its provider-of-last-resort duties, GTE contends that it has the right to reserve space for its own use. For this purpose, a 5-year planning horizon for reservation of space is just and reasonable. The real issue is what limits to set on GTE's right. In the past, GTE notes that this Commission has allowed it a five-year planning horizon for reserved space and facilities.

This is a just and reasonable planning horizon.

Staff believes that the answer to this question should come on a case-by-case basis. If GTE cannot provide the requested collocated space, GTE should provide justification to this Commission of that finding. As part of its justification, any future space which has been allocated in advance of the actual placement of equipment must be justified. Also, AT&T; should be allowed to participate in this justification process.

Commission Conclusion

At the outset, the Commission believes that GTE cannot reserve space based upon a five-year planning horizon. While the Commission has previously allowed GTE to work on such a schedule, the regulatory landscape at both the state and local level has been transformed in the meantime. The Act, the FCC Order and its accompanying Rule does not allow for the type of reservation of space requirements GTE requests. (See, FCC Order, 604; Section 251(c)(6)).

GTE's right to reserve space or deny access to AT&T; must be considered on a case-by-case basis. It will be GTE's burden to justify its actions in the regard.

ISSUE 54: SHOULD GTE BE REQUIRED TO MAKE ADDITIONAL CAPACITY AVAILABLE TO AT&T; FOR COLLOCATION IF GTE DOES NOT HAVE CURRENT SPACE AVAILABLE? IF SO, IN WHAT TIME FRAME SHOULD GTE MAKE SUCH CAPACITY AVAILABLE?

It is AT&T;'s position that GTE should not be excused from offering physical collocation unless there is no practical way of offering additional space by breaking into contiguous space, taking AT&T; needs into account when planning renovations of existing space, leasing additional space, or relinquishing space held for "future use." (FCC Order 585, 605; FCC Rule 51.323(a) and (f)). AT&T; states that "[a] process must be established . . . which will enable a new entrant to obtain space today and to forecast for growth that will likely occur in the future, as well as to accommodate the ILEC's own growth forecasts and space needs." (Conway Direct, p. 94). AT&T; asserts that is does not require that GTE build or lease new space solely to provide physical collocation space to it or other telecommunication carriers requesting physical collocation space, but requires GTE to make every effort to accommodate competing carriers whenever there is a practical way to do so.

GTE argues that its duty is to provide collocation at its premises. (47 USC 251(c)(6)). Clearly, the word "premises" refers to an incumbent LEC's existing space, not the space (or premises) that a LEC could or might acquire for its own benefit or for the benefit of a third party. Given this clear and unambiguous statutory language, GTE believes that it should not be required to make available additional space where GTE's existing space is insufficient to accommodate a collocation request. Staff concurs with GTE's position.

Commission Conclusion

The Commission concurs with GTE that once its current space is exhausted, it has no obligation to construct or acquire additional facilities to meet the demands of CLECs who wish to collocate. This conclusion comports with the FCC Order on this issue. 585.

ISSUE 55: SHOULD AT&T; HAVE ACCESS TO GTE'S POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY AT PARITY WITH GTE?

AT&T; contends that GTE should be required to make conduits, ducts, pole attachments, and rights-of-way available to AT&T; on a basis at least equal to which GTE provides itself. AT&T; states that the FCC has adopted its interpretation of "non-discriminatory" access. (FCC Order 1157; Act 224(f)). AT&T; notes that Sections 224(f)(1) and 251(b)(4) of the Act require LECs to afford access to their poles, ducts, conduits, and rights-of-way to competing LECs on rates, terms, and conditions that are nondiscriminatory. By this, AT&T; concludes, the FCC understood that an incumbent LEC may not discriminate in favor of itself. (FCC Order 1157, 1170).

GTE contends that there is no provision of the Act requiring that GTE provide access to its own poles, ducts, conduits, and rights-of-way to competitive carriers "at parity" with GTE. GTE acknowledged that it is required to treat all requesting carriers in a non-discriminatory manner, and GTE has agreed to do so. Moreover, GTE should be able to deny access to its poles, ducts, conduits, and rights-of-way for legitimate safety, reliability and engineering concerns.

Staff's response is that GTE must provide access to its poles, ducts, conduits and rights-of-way at parity. Staff states that the Act provides that incumbent local exchange carriers provide access to poles, ducts, conduits and right-of-ways. Section 251(b)(4). The FCC noted, in its Order at 1123, that this directive seeks to ensure that no party can use its control of the enumerated facilities and property to impede, adversely or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in such markets.

Commission Conclusion

The Commission concludes that AT&T; is entitled to access to all of GTE's poles, ducts, conduits, and rights-of-way on a basis at parity with that enjoyed by GTE. Again, the FCC has delineated that a CLEC's access to such items must be on par with the ILEC. (FCC Order 1157). The Commission notes, however, that there may be limited instances where conditions of access are imposed. (FCC Order 1143). In the event there is disagreement over such conditions, such controversy should be resolved on a case by case basis.

ISSUE 56: DOES THE TERM "RIGHTS-OF-WAY" IN SECTION 224 OF THE ACT INCLUDE ALL POSSIBLE PATHWAYS FOR COMMUNICATING WITH THE END-USER?

This issue concerns the definition or scope of the term "right-of-way" as used in Section 224 of the Act. To the extent that GTE owns or controls paths, AT&T; argues that GTE must share them with the ALECs. In support of this proposition, AT&T; states that the FCC has stated that the access obligations of Section 224(f) apply when, as a matter of state law, the utility owns or controls the pathway. (FCC Order 1123, 1178-1179, 1185). While acknowledging that there is no definition of the term, AT&T; defined "right-of-way" to include easements, licenses, leases or other permissions, obtained from either public or private third parties, for access to land or other property, including the right of access to land and facilities owned by an incumbent LEC and the right to

use discrete spaces in buildings, building complexes or other locations. Meanwhile, AT&T; contends that GTE's definition of the term "right-of-way" is a narrow definition which included only the legal right to place poles or conduits across public or private property.

GTE maintains that the term "rights-of-way" has been included in 47 USC 224 since the statute's enactment in 1978. In all this time, the term rights-of-way has never been interpreted to include "all possible pathways for communicating with the end user." This term should be construed in accordance with its common, everyday meaning. Therefore "pathways" such as cable vaults, entrance facilities, equipment rooms, and telephone closets are not "rights-of-way" within the meaning of the Act. GTE concludes that it should not provide access to such facilities.

GTE states that the areas identified by AT&T; as "pathways" are not part of the distribution network used to place GTE's facilities. Rather, they are the linking point between GTE's facilities and the customer's premises equipment. Moreover, such "pathways" generally are not owned or controlled by GTE. GTE is able to place its equipment in these areas through arrangements negotiated with the premises owners. There is nothing to prevent AT&T; from making its own arrangements. In this regard, GTE has represented that it will not discourage property owners from agreeing to similar arrangements with AT&T;, nor will GTE enter into agreements that in any way restrict the owner's ability to grant such access to AT&T;.

Staff concludes that the both the Act and the FCC Order at 1185, were specific in their language to provide access to poles, ducts, conduits and right-of-ways. Section 251(b)(4). The FCC Order at 1123 explains that this directive (non-discriminatory access to all poles, ducts, conduits and rights-of-way owned or controlled by the utilities) ensures that no party can use its control of such facilities and properties to impede competition. With the above facts in mind, Staff recommends that the language that specifies the four facilities as depicted by GTE be included in the interconnection agreement. Therefore, reference to pathways should not be included.

Staff agrees with GTE's position. Staff recommends that once a bona fide request is made, and if AT&T; finds that it is being impeded in providing, installing and maintenance of its telecommunications and cable equipment, then AT&T; should file a complaint with this Commission to seek resolution.

Commission Conclusion

The Commission concurs with GTE and Staff that AT&T;'s use of the term "pathways," as applied herein, is not proper. Both the Act and the FCC Order set forth the appropriate parameters, and these are limited to all poles, ducts, conduits and rights-of-way. Moreover, the FCC declined to adopt such a broad definition when AT&T; offered it in comments to the FCC. 1185. Therefore, the Commission concludes that AT&T;'s proposal for this Issue should be rejected.

ISSUE 57: MAY GTE RESERVE SPACE FOR ITS FUTURE USE ON/IN ITS POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY?

AT&T; does not dispute GTE's ownership rights. AT&T; asserts that it is willing to pay a fair rent for the occupation of these

structures, but GTE must make conduits, ducts, pole attachments, and rights-of-way available to AT&T; on a basis that is at least equal to that which GTE provides for itself. (FCC Order 1157). AT&T; argues that Section 224(f)(1) of the Act imposes a specific duty on the owners and holders of poles, conduits and rights-of-way who are "utilities" -- a definition which includes incumbent LECs such as GTE -- to provide non-discriminatory access to competing telecommunication carriers. AT&T;'s contention is simply that GTE is required to make its conduits, ducts, pole attachments and rights-of-way available on a parity basis, and that reserving space for its own use results in discrimination. Otherwise, AT&T; concludes that GTE discriminates when it reserves capacity for its own use to the exclusion of others.

GTE asserts that it owns its facilities and is entitled to reserve space for its future use. In fact, if GTE were not allowed to do so, GTE would suffer an unconstitutional "taking" in violation of its rights under the Fifth Amendment. Moreover, as a public policy matter, GTE has special service obligations by virtue of its status as the provider of last resort. Because GTE must be able to serve new customers readily, it must always have reserve capacity.

Finally, GTE does not agree with the FCC's conclusion that non-electric utilities, such as GTE, are not permitted to reserve space on their own facilities under the nondiscriminatory access requirement of Section 224. GTE believes that the FCC's conclusion, coupled with the access rate requirements of Section 224 and the FCC's implementing regulations, effect a "taking" of GTE's property in violation of the Fifth Amendment of the U.S. Constitution.

Staff contends that the FCC, at 1165 and 1170 address the reservation of space for incumbent LECs regarding poles, ducts, conduits and rights-of-way and prohibits the practice as being discriminatory per Section 224(f)(1) of the Act.

Commission Conclusion

The FCC Order clearly concludes that a LEC's reservation of space for poles, conduits, ducts and right-of-ways is improper and discriminatory under the Act. 1170. This portion of the FCC Order has not been stayed by the Eighth Circuit and, thus, we find it controlling. GTE's arguments that the FCC erred in its decision on this issue is not properly before this Commission. As such, we reject GTE's position and concur with the positions of AT&T; and Staff. For purposes of this issue, Sections 35 and 36 and Attachment 3 (3) to the AT&T; Interconnection Agreement are hereby adopted.

ISSUE 58: SHOULD GTE BE REQUIRED TO MAKE ADDITIONAL CAPACITY AVAILABLE TO AT&T; FOR POLES, DUCTS, CONDUITS AND ROWS IF GTE DOES NOT HAVE SPARE CAPACITY? IF SO, SHOULD GTE PROVIDE ADDITIONAL CAPACITY WITHIN A REASONABLE TIME FRAME?

In sum, AT&T; avers that GTE is required to expand capacity when none is available. (FCC Order 1157, 1161-1164, 1170; Act 224(f)(1)). Citing to the FCC Order, AT&T; states that because an incumbent LEC is able to take the steps necessary to expand capacity if its own needs so require, it is required to do the same for other telecommunications carriers who are obviously not in a position to make expansions for themselves. (FCC Order 1161-

63). Therefore, GTE should be required to make additional capacity available to AT&T; for poles, ducts, conduits and rights-of-way if GTE does not have spare capacity.

GTE states that this issue is almost identical to Issue 54. GTE should not be required to expand its existing capacity to accommodate the needs of AT&T; or other requesting carriers.

Staff states that the FCC Order, at 1162, provides that since modifications will be borne only by the parties directly benefiting from the modification, the utility should provide such modifications. If there are any physical limitations or safety concerns regarding the expansion, GTE should make such a showing to the Commission.

Commission Conclusion

Both the 1996 and the FCC Order differentiate between premises used for collocation and a CLEC's ability to access poles, ducts, conduits and rights-of-way. (Compare, 585 with 1162). From this the Commission concludes that GTE may not deny access on the basis of insufficient capacity without first showing that it cannot create the necessary space by modifying the pole, duct, conduit, or right-of-way, or by taking other reasonable steps. However, any costs associated with the construction of these additional facilities shall be borne by the CLEC requesting such facilities. The Commission concludes that Section 3 of Attachment 3 to the AT&T; Interconnection Agreement is adopted subject to any modifications necessitated by our decisions herein.

ISSUE 59: WHAT SHOULD THE TERM OF THE AGREEMENT BE?

AT&T; asserts that the interconnection agreement should be binding for five years, but prices can be reopened after three years. AT&T; opines that it is unreasonable to expect a renegotiation after only two years. By incorporating the Bona Fide Request, New Services process, and ADR process, sufficient flexibility for changed conditions over a five year term on non-price matters will be provided.

GTE sides with ICC Staff witness TerKeurst's recommendation that the initial term of the proposed interconnection agreement be two years. (See Seaman, GTE Ex. 14.00, p. 18) Ms. TerKeurst points out that there are areas of uncertainty in the way Staff perceives GTE would furnish and price interconnection and unbundled network elements. (TerKeurst, Staff Ex. 7.00 at 4). Ms. TerKeurst relied upon Staff witness Jenkins' observations that AT&T;'s business plans do not contain plans, at this time, to build local facilities in GTE's Illinois operating areas; that AT&T; has no plans to interconnect with GTE in GTE's five Midwestern states within the next year; and that AT&T; has stated that there is no immediate need for interconnecting with GTE for local services. (Jenkins, Staff Ex. 1.00 at 6 TerKeurst, ICC Staff Ex. 7.00 at 4). Ms. TerKeurst even questioned the need of the appropriateness of including interconnection terms in the proposed agreement because AT&T;'s business plans do not include plans to build local facilities. (TerKeurst, Staff Ex. 7.00 at 5).

Commission Conclusion

The Commission concludes that the appropriate term for this Agreement should be three years. We believe that such a term strikes a balance which combines stability for a new entrant such as

AT&T;, while recognizing that the near future may create other unknown circumstances which will impact GTE and/or AT&T; thus necessitating substantial modification to the existing agreement.

The Commission recognizes that this term is different from the one established in our arbitration decision in 96 AB-003/96 AB-004. However, not only are the parties to this proceeding different, the operating characteristics, market strategies and incentives before the parties appear to be quite disparate from those in the other proceeding.

One final note, the Commission is concerned about what will transpire upon the expiration of the three year term for this Agreement. Obviously, we do not want a situation where local exchange competition will be negatively affected due to the lapse of this Agreement. To this end, we direct the parties to include in the ultimate Agreement a provision which will allow this initial Agreement to remain in full force and effect pending the execution and implementation of a superseding interconnection agreement. Within ninety days prior to the termination of the interconnection agreement, AT&T; is directed to present a request for a superseding interconnection agreement with GTE. The Commission believes that such a provision will ultimately protect the customers and the market during a time when they will be continuing to acclimate to the concept of local exchange competition.

ISSUE 60: SHOULD THE AGREEMENT BE IMPLEMENTED WITHOUT IMPAIRING GTE'S RIGHT TO FILE TARIFFS IN THE NORMAL COURSE OF BUSINESS?

AT&T; does not dispute GTE's right to file tariffs. AT&T; disagrees with GTE's assertion that a tariff may supersede or change any terms of an Interconnection Agreement between AT&T; and GTE. But to the extent that a tariff or other agreement provides more favorable terms, these should be provided to AT&T; on a non-discriminatory basis. (FCC Rule 51.809; Act 252(i)). Therefore, AT&T; believes that the Interconnection Agreement should define the duties and obligations of the parties for its five-year term, and that GTE can not be permitted to unilaterally obtain changes in the contract terms through the filing of tariffs with this Commission.

GTE contends that, as a regulated entity, it has both a right and an obligation to file tariffs that are not superseded by the Act. If AT&T; believes that a particular tariff filed by GTE improperly interferes with the parties' agreement, AT&T; can take appropriate action with the Commission.

Under the Universal Telephone Service Protection Law of 1985, 220 ILCS 5/13-101, et seq., GTE has the right and duty to file tariffs. Ms. TerKeurst points out that AT&T; is concerned that later tariff filings by GTE should not supersede or change terms of the interconnection agreement; yet, at the same time, AT&T; believes that, to the extent a tariff or other agreement provides more favorable terms, these should be available to AT&T; on a nondiscriminatory basis. Ms. TerKeurst's proposal that the issue is a contract term-by-term issue that the parties need to specify clearly in the contract to be prepared based upon the Hearing Examiners' findings on the issues addressed herein is reasonable. (TerKeurst, Staff Ex. 7.00 at 6).

Commission Conclusion

GTE should be allowed to file its tariffs in a normal course of business. The Commission concludes, however, that GTE tariffs may not, sua sponte, supersede or change terms of the Interconnection Agreement. Clearly, where GTE offers a new retail service it must also offer the same service at a wholesale rate. Moreover, where GTE changes its retail rate for a specific service, GTE must correspondingly change its wholesale rate for the same service. Consequently, there will be instances where a new tariff filing may impact the Agreement. However, allowing a tariff filing to supersede the terms of the Interconnection Agreement would effectively render the concepts and implications of the Agreement a nullity.

In the event there are certain terms that are subject to change, it is left to the parties to identify such terms. At this point no such terms have been identified.

ISSUE 61: SHOULD THE AGREEMENT PROVIDE FOR AN ACCELERATED DISPUTE RESOLUTION PROCEDURE IN CASES OF _SERVICE AFFECTING_ DISPUTES?

The parties' approaches to dispute resolution appear to be similar. GTE proposed initial negotiation between the parties, then mediation, and finally binding arbitration for unresolved disputes. AT&T;'s Interconnection Agreement provides a dispute resolution process, including arbitration, while permitting a party to seek a Commission or FCC determination in appropriate circumstances. In addition, AT&T; has proposed expedited procedures for _service-affecting_ disputes. (FCC Order 55). The expediting procedure appears to be at issue.

AT&T; believes that its dispute resolution does not compromise this Commission's right and obligation to regulate the provision of telecommunications services within Illinois. Conversely, AT&T; asserts that GTE's proposed dispute resolution process must be rejected for this reason alone. As AT&T; understands the issue, GTE's dispute resolution process does not provide for an appeal to this Commission of the arbitrator's award. This is not acceptable to AT&T;.

GTE argues that absent the parties' agreement, the new service request provisions requested by AT&T; which are subject to the alternate dispute resolution process should not be imposed on GTE. There are in place today sufficient process before the Commission for AT&T; to request new services to be provided by GTE which should be subject to Commission review and not to the review of an arbitrator.

GTE agrees with ICC Staff witness TerKeurst's statement that the parties would have a wide variety of options available to them before this Commission if disputes arise during the life of the final agreement. There is the right to file a complaint with this Commission. New non-competitive services can be requested under 220 ILCS 5/13-505.5. Requests for unbundling of non-competitive services can be made under 220 ILCS 5/13-505.6. There exists a bona fide request process under 83 Ill. Adm. Code 790.320 for loops, ports, and loop sub-elements.

Staff does not recommend that the Commission impose an alternative dispute process absent an agreement between the parties. (Staff Ex. 7.00 at 9-10). The parties have a wide variety of options available if disputes arise that the parties cannot resolve. (Staff Ex. 7.00 at 10-11; Tr. at 939). Staff

suggests that the Commission may wish to pursue legislative remedies so that it has stronger enforcement mechanisms. (Staff Ex. 7.00 at 11; Tr. at 943-944).

Commission Conclusion

Absent an agreement between the parties on this issue, the Commission is disinclined to impose an ADR process on an unwilling party. Each party has an assortment of options available in the event a dispute arises between the parties. Moreover, the Commission continues to retain its authority to oversee the local exchange market. As such, we are obligated to ensure that the providers of local telecommunications services serve the public interest. So long as we maintain such jurisdiction over these matters, the parties can bring such disputes to this forum.

ISSUE 62: SHOULD THE AGREEMENT PROVIDE FOR A MOST FAVORED NATIONS CLAUSE?

AT&T; states that GTE is required to make available to it, without unreasonable delay, any more favorable terms for individual services, network elements, and interconnection which GTE offers to others. (FCC Rule 51.809; FCC Order 1310, 1316; Act 251(i)). AT&T; contends that Section 252(i) of the Act requires an incumbent LEC to make available for a reasonable period of time any interconnection, service or network element provided under an agreement approved under Section 252 to which it is a party, to any other requesting telecommunication carrier upon the same terms and conditions as those provided in the agreement. The FCC interprets 252(i) of the Act to enable a requesting carrier to choose among individual provisions contained in publicly filed interconnection agreements, thus entitling all parties to "most favored nation" status even if they fail to include such a term in their agreement. (FCC Order 1310, 1316). While the FCC Order in this regard has been stayed, AT&T; urges the Commission to accept the rationale of the FCC's conclusion.

It is GTE's position that if the agreement included a Most Favored Nations ("MFN") clause, then the parties would have little or no incentive to negotiate, thereby frustrating one of the principal purposes of the Act. GTE further asserts that a MFN clause is the same as the "Pick-and-Choose" clause which was stayed by the U.S. Court of Appeals for the Eighth Circuit.

Staff recommends that the agreement provide that GTE comply with Section 252(i) of the Act. Section 252(i) provides that a "local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under [Section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

Staff sees no need for the language in the agreement to try to paraphrase or go beyond Section 252(i). Thus, Staff recommends the rejection of both GTE's and AT&T;'s proposed language.

Commission Conclusion

Staff properly notes that Section 252(i) provides the framework by which a CLEC may choose a certain term or terms from an agreement entered into between the ILEC and another CLEC. Whether the language of Section 252(i) encompasses such items as prices offered to other CLECs is currently one of the issues on

appeal before the Eighth Circuit; and this issue has been stayed by the Court. The Commission concludes, therefore, that at this time, a CLEC such as AT&T; cannot choose a price that is offered to another CLEC under the terms of a separate interconnection agreement. As such, we cannot accept AT&T;'s proposal.

The Commission, however, is of the opinion that GTE remains obligated to meet the strictures of Section 252(i), as the Act remains in full force and effect. Therefore, the subject Interconnection Agreement must only reflect GTE's obligations under Section 252(i).

ISSUE 63: SHOULD THE AGREEMENT PROVIDE FOR A BONA FIDE REQUEST PROCESS?

AT&T; states that a Bona Fide Request process is a necessary element for an Interconnection Agreement of this magnitude. The AT&T; proposed Bona Fide Request and New Service processes address product services and network elements that are not provided for in detail in the Interconnection Agreement or which may be required in the future. AT&T; explained the time required to work out the details of certain service offerings, as well as the difficulty of anticipating and providing for all future needs in the Interconnection Agreement, particularly where new technologies are being developed and customer demands are likely to change. Having these processes in place permits the parties to take additional time to consider certain elements and services requested by AT&T;.

GTE does not object to a Bona Fide Request process to resolve implementation issues under the proposed interconnection agreement. However, for the reasons discussed under Issue 61, GTE objects to including requests for new service under this category.

Staff maintains that AT&T; provides bona fide request and new service ordering processes in Section 4, Appendix 5 and Appendix 6 of Attachment 12. GTE recognizes that a bona fide request process may be a viable way to remove some of AT&T;'s long term requests from this proceeding. Staff encourages GTE and AT&T; to continue negotiations on this issue.

Further, Staff does not support GTE being required in the interconnection agreement to provide truly new services that are not addressed in the agreement. Other procedures, including those in Section 251 and 252 of the Act, Sections 13-505.5 and 13-505.6 of the Illinois Public Utilities Act, and Section 790.320 of 83 Ill. Adm. Code 790, are available for such situations. (Staff Ex. 7.00 at 13-14).

Absent agreement between AT&T; and GTE, Staff recommends that the Commission adopt the language in Schedule 2.2 to the October 15, 1996 draft interconnection agreement between AT&T; and Ameritech Illinois. (ICC Staff Ex. 7.00 at 14-15).

Commission Conclusion

The Commission concludes that a bona fide request process is essential to the implementation of this Agreement. This process, however, should not be utilized when requesting new services. The Public Utilities Act provides a means by which AT&T; may request a new service. As such, this answers the issue. Therefore, the Commission directs the parties to include in their interconnection agreement language similar to that adopted by the Commission in resolving the bona fide request issue in the interconnection

agreement between AT&T; and Ameritech Illinois.

ISSUE 64: SHOULD GTE BE REQUIRED TO ACCEPT FINANCIAL RESPONSIBILITY FOR UNCOLLECTIBLE AND/OR UNBILLABLE REVENUES RESULTING FROM GTE WORK ERRORS, SOFTWARE ALTERATIONS, OR UNAUTHORIZED ATTACHMENTS TO LOCAL LOOP FACILITIES?

AT&T; asserts that GTE should be required to accept responsibility for its actions or lack of actions by accepting financial responsibility for uncollectible or unbillable revenues caused by GTE work errors, accidental or malicious alterations of software, or unauthorized attachments to local loop facilities. AT&T; believes it is reasonable to expect GTE, as the supplier and entity best able to prevent certain errors and losses, to assume responsibility for actual losses caused by GTE's work errors, accidental or malicious alterations of software, or unauthorized attachments to local loop facilities from the main distribution frame up to and including the network interface device.

GTE contends that it is unreasonable to impose a strict liability standard upon GTE. Nor should GTE be required to meet quality standards different from or greater than those adhered to by GTE in its regular conduct of business. GTE argues that it should not be required to indemnify AT&T; for any and all losses associated with the features or services GTE provides. The contract should contain a provision limiting GTE's liability to the charges associated with the time out of service.

Staff states that to the extent that AT&T; incurs uncollectible or unbillable revenue due to inappropriate actions or lack of appropriate actions by GTE, Staff believes it is reasonable to require GTE to indemnify AT&T;.

Commission Conclusion

Initially, the Commission concludes that GTE should be liable to AT&T; for any uncollectible or unbillable revenues resulting form the willful action of a GTE employee or agent directed at AT&T; or an AT&T; customer. Clearly, GTE should not be able to limit its liability under these circumstances; it would be detrimental to our policies on local competition as well as general considerations of public policy. Thus, the Interconnection Agreement must contain a provision to that effect.

With respect to the negligence issue, the Commission concludes that it is unnecessary to include in the Interconnection Agreement any discussion of GTE's tort liability which may arise due to the negligence of its employees or agents. Common law tort principles will address any issues which arise concerning the actions GTE's employees or agents.

By this conclusion, the Commission addresses GTE's concerns regarding their exposure to strict liability standards. Moreover, Illinois tort law precludes negligence actions based solely on economic damages. Moorman Mfg. Co. v. National Tank Co., 91 Ill.2d 69 (1982). Meanwhile, this conclusion also precludes the improper limitation of damages associated with negligence. Consequently, the Commission believes that application of common law will balance the interests of both parties.

ISSUE 65: TO THE EXTENT NOT OTHERWISE SPECIFICALLY RESOLVED HEREIN, WHAT TERMS AND CONDITIONS SHOULD BE INCLUDED IN THE AGREEMENT ADOPTED IN THIS ARBITRATION PROCEEDING?

AT&T; states that it has submitted an agreement which complies with the federal and state laws and is a reasonable and workable commercial agreement. AT&T; contends that its Interconnection Agreement meets the requirements of Section 251 of the Act and the FCC Order and Rules thereunder, whereas the GTE Interconnection Agreement does not. AT&T; further asserts that its Interconnection Agreement also provides a reasonable schedule for implementation of the terms and conditions by the parties (Section 3 of Attachment 12), whereas the GTE Interconnection Agreement does not. Consequently, AT&T; that its proposal should be adopted in full as the Agreement of the parties in this arbitration.

GTE proposes that within 90 days of the date of the Commission's decision on the issues presented herein, the parties will submit to the Hearing Examiners a contract incorporating said resolution of issues. To the extent the parties have been unable to agree on the necessary contractual language, they will submit their proposed language and the Hearing Examiners will select the necessary language without further explanation. The Hearing Examiners will file the submit the final contract with the Commission.

Staff has not proposed specific contract language, due to the voluminous number of issues, time and resource constraints, and the difficulty in comparing the two vastly different draft agreements. Staff Ex. 7.00 at 16. Staff provided four agreements that have already been reached, or that have largely been negotiated, as possible sources of reasonable contract language: the Ameritech/MFS agreement (Staff Ex. 7.01), the Ameritech/Winstar agreement (Staff Ex. 7.02), the Centel/MFS agreement (Staff Ex. 7.03), and the October 15, 1996 "redlined" draft interconnection agreement between Ameritech and AT&T; under consideration in Docket 96 AB-003/004 (Staff Ex. 7.04).

Staff recommends that, to the extent the Commission does not adopt explicit contract language, the Commission require that AT&T; and GTE submit, within 45 days, a completed interconnection agreement consistent with the Commission's resolution of the disputed issues to the Commission for its review under Section 252(e)(1) of the Act.

Commission Conclusion

The plethora of issues presented by the parties, coupled with the time constraints imposed upon the Commission, effectively preclude us from drafting and imposing specific contract language to be inserted in the Interconnection Agreement. In addition, AT&T; and GTE have proposed such starkly different Agreements that it makes it almost impossible for this Commission to cobble together an Agreement which will properly detail all of the necessary provisions.

The Commission concludes, therefore, that within 45 days from the date of this decision, AT&T; and GTE are directed to submit to the Commission a complete interconnection agreement which, among other things, reflects the conclusions set forth herein. To incent the parties to act in good faith and with due diligence the Commission makes the following conclusion: demonstration that one party has not acted in good faith or with due diligence will result in our adopting in total the non-offending party's proposed agreement, as modified by our conclusions herein.

ISSUE 66: SHOULD THE AGREEMENT IMPOSE MATERIAL AND RECIPROCAL OBLIGATIONS UPON BOTH PARTIES WITH RESPECT TO MATTERS OTHER THAN RECIPROCAL COMPENSATION ARRANGEMENTS FOR TRANSPORT AND TERMINATION?

AT&T; argues that GTE's request to impose reciprocal obligations on AT&T; is inappropriate and outside the scope of this arbitration. The obligations at issue herein are those of an incumbent LEC under Section 251. (FCC Order 10, 15, 155, 220, 997, 1231; Act 251(c)). AT&T; states that the FCC has repeatedly emphasized that the purpose of the Act is to open up the incumbent LEC monopoly in local exchange markets, not to enhance the superior bargaining power inherent in the incumbent LEC's monopoly position. (FCC Order 10, 15). AT&T; further asserts that the Act established negotiation and arbitration processes to provide a mechanism for new entrants to enter the market, not to enhance the formidable advantage held by the incumbent LECs.

GTE maintains that the imposition of reciprocal obligations on the parties will encourage competition. AT&T; should have the same obligations as GTE under the interconnection agreement. If the obligations AT&T; seeks to impose upon GTE will improve the development of competition, then the imposition of those standards upon AT&T; will doubly serve such worthy purpose.

While neither the Act nor the FCC's Order specifically address this issue, Staff believes that the Commission, acting as arbitrator, may impose material and reciprocal obligations upon both parties with respect to matters other than reciprocal compensation arrangements for transport and termination to the extent that the obligations imposed are consistent with the goals and policies enumerated by Congress in the Act. Staff does not believe competition would be furthered by imposing on new LECs all obligations of the incumbent LEC.

Staff believes the Commission should address this issue on a case-by-case basis.

Commission Conclusion

The Commission is sympathetic to the arguments raised by GTE. We recognize that in order for competition to be fully and fairly implemented, all providers of local exchange services should be working under the same obligations and responsibilities. To further this policy, we will be investigating the obligations of CLECs in a future proceeding. For purposes of this arbitration, however, we cannot impose such obligations on AT&T; at this time and remain in compliance with the FCC Order.

The Commission concludes that GTE's proposal should be rejected. Initially, Section 251(c) specifically identifies the additional obligations of incumbent local exchange carriers. Said Section does not require non-incumbent LECs to provide interconnection. (FCC Order, 220). Additionally, the FCC recognized that these negotiations and arbitrations do not concern the unbundling or leasing the new entrants' networks. (Id., 155).

The Commission is of the opinion, therefore, that the Interconnection Agreement should not include provisions which impose mutual and reciprocal obligations on both AT&T; and GTE with respect to interconnection, access to rights-of-way, or matters other than reciprocal compensation for transport and termination.

ISSUE 67: SHOULD GTE BE REQUIRED TO PROVIDE BILLING AND USAGE RECORDING SERVICES FOR RESOLD SERVICES, INTERCONNECTION AND UNBUNDLED ELEMENTS, AND IF SO, WHAT TERMS AND CONDITIONS APPLY TO SUCH SERVICES?

Both parties agree that GTE should be required to provide billing and usage recording services for resold services, interconnection and unbundled elements. Their mutual understanding ceases, however, regarding the terms and conditions which should apply to such services. AT&T; contends that the services should be provided pursuant to Attachments 6 and 7 of its Agreement and has proposed a process which addresses billing, validation, payment methods, billing disputes and other similar matters. The proposal includes the use of electronic billing with an implementation date of July 1, 1998. (Appendix A to Attachment 6). Attachment 7 proposes a set of procedures regarding the recording by GTE of customer usage data needed for AT&T; to bill its customers.

GTE witness Wood testified that the parties have been working to establish and define mutually agreed-to processes to provide billing and usage recording functions agreeable to the parties. The terms and conditions applicable to such functions are being determined on an ongoing basis. (Wood, Tr. 840, l. 5-11).

Staff recommends that the Commission adopt AT&T; proposed contract language rather than having the implementation team to address this issue. Daily usage data is necessary to allow the reseller the ability to bill its own end users. If GTE is not required to provide this service, then the reseller would be at a competitive disadvantage. Customers would be less inclined to select alternative providers unless they receive at least the same level of service quality. (Staff Ex. 1.00 at 28).

Commission Conclusion

Based on the arguments of AT&T; and Staff, the Commission concludes that in order for GTE to bill AT&T; for wholesale services, interconnection and access to unbundled network elements, a process must be established. Attachments 6 and 7 to the AT&T; Interconnection Agreement should be incorporated into the ultimate Interconnection Agreement.

ISSUE 68: IF GTE IS REQUIRED TO PROVIDE THE SERVICES IDENTIFIED IN ISSUE 67, HOW SHOULD THE COSTS OF PROVIDING THESE SERVICES BE RECOVERED, AND FROM WHOM?

AT&T; maintains that GTE is required to provide competing carriers with nondiscriminatory access to operations support systems. (47 USC 251(c)(3); FCC Order 516-17). Operations support includes the necessary systems to record customer usage and bill customers. AT&T; states that GTE needs these systems in order for it to recover appropriate charges for its resold services, network elements and interconnection, just as new entrants need them to determine what to bill their customers and what to pay to GTE. AT&T; asserts that there will be benefits to new entrants and to GTE resulting from the development and availability of these billing systems, and that the costs of development and implementation should be recovered in a competitively neutral manner. Consequently, it would not be appropriate for AT&T; to bear the full cost of such systems.

GTE states that costs should be recovered from the cost-causer and should be paid as they are incurred. In this instance, AT&T; is

the "cost-causer," therefore, the obligation to pay all costs properly falls upon AT&T;.

Staff contends that the cost of OSS should be recovered in the manner in which they are incurred. This approach is consistent with the Commission's Order in Docket 95-0458 et al., and 83 Ill. Adm. Code 791, the Commission's cost of service rule.

Commission Conclusion

The Commission concludes that Staff's proposal should be adopted and included in the Interconnection Agreement. Cost associated with the provision of this service, shall be born by the cost causer[s]. Consequently, such costs should be recovered in a manner consistent with our Order in Docket 95-0458 et al., and our cost of service rule. 83 Ill. Adm. Code 791.

ISSUE 69: SHOULD AT&T; BE CHARGED FOR 800/888 DATABASE DIPS THAT RESULT IN THAT CALL BEING ROUTED TO GTE AS THE 800/888 SERVICE PROVIDER?

This issue concerns GTE's proposal to charge AT&T; for 800/888 database dips. A "dip" is an inquiry by a switch seeking information for the routing of a call, and for these purposes a dip occurs when an AT&T; customer dials a "GTE" 800/888 number. From the testimony, it appears that GTE wishes to charge AT&T; for inquiries to GTE's SCP associated with routing calls to a GTE 800/888 number.

AT&T; argues that it should not have to pay for database dips which are for calls for which AT&T; receives no revenue and only GTE as the 800/888 service provider receives revenue. (Act 251(c)(3) and (4)). In sum, AT&T; argues that GTE proposes to charge AT&T; for completing a call to GTE's own customer.

GTE contends that AT&T; should be charged for all 800/888 database dips, regardless where the call is being routed. GTE's proposed charge for database dips to GTE's 800/888 database is required to recover the appropriate costs for database 800/888 functionality. Receiving revenue on an 800 call and receiving revenue for performing 800 database dips allow for the recovery of separate and distinct costs. GTE notes that such recovery is an industry practice.

Staff took no position on this issue.

Commission Conclusion

It is the Commission's understanding that, currently, the charge for the database dip goes to whatever entity owns or administers the 800/888 number. Now that local competition is upon us, the situation slightly differs. So long as AT&T; is purchasing GTE services at wholesale, or via unbundled network elements, when an AT&T; customer dials an 800/888 number, GTE will still be performing the dip function. Should GTE own any 800/888 numbers, and be required to route such a call to itself, the issue is whether GTE should pay for the database dip.

The Commission first concludes that where an 800/888 call is ultimately routed to an 800/888 number owned by GTE, GTE must pay for the database dip. Where an AT&T; customer is making such a call, AT&T; is currently being charged for accessing GTE's database. The Commission concludes that where such a situation takes place,

GTE must either: 1) provide such database access free of charge at the time access takes place; or 2) if 1 is not technically feasible, then credit AT&T; for those amounts related to database dips used to ultimately route call to GTE owned or administered 800/888 numbers.

V. COMPLIANCE WITH ARBITRATION STANDARDS

After a review of the issues and conclusion set forth herein, the Commission concludes that it has met the standards imposed by Section 252(c) of the Act. Our conclusions meet the applicable requirements of Section 251, plus the FCC Order. In addition, we have established both interim prices, as well as noted that final prices will be incorporated in this Interconnection Agreement pending the resolution of Docket 96-0503. Finally, our conclusions herein establish an implementation schedule which meets the our obligation under Section 252(c).

By Order of the Commission this 3rd day of December, 1996.