

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of AT&T Communications : Docket No.
of Pennsylvania, Inc.; Petition for: A-310125F0002
Arbitration of Interconnection : (Interconnection Arbitration)
Agreement with GTE North, Inc. :

RECOMMENDED DECISION

Before
Robert P. Meehan
Administrative Law Judge

As Arbitrator

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I. History Of The Proceeding

On August 8, 1996, the Federal Communications Commission (FCC) issued its First Report and Order, implementing the provisions of the Telecommunications Act of 1996. On August 16, 1996, AT&T Communications of Pennsylvania, Inc. (AT&T) filed its petition for arbitration of an interconnection agreement with GTE North, Inc. (GTE). An Initial Arbitration Conference was held on August 30, 1996, which resulted in the establishment of a procedural schedule for the remainder of this proceeding. The parties participating in the Initial Arbitration Conference were AT&T, GTE, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Office of Trial Staff (OTS).

GTE filed its response to the petition on September 10, 1996. Two (2) conferences were held on September 16-17, 1996, to examine the issues and determine the extent to which the parties would be able to reach an agreement as to any of them. Supplemental comments and/or position statements were filed on September 19, 1996.

Three Arbitration Hearings were held on September 24-26, 1996, in Harrisburg. AT&T, GTE and the OCA presented witnesses, who were subject to cross-examination. In addition to those documents which were assigned specific exhibit numbers, all documents filed in this arbitration proceeding were made part of the record, and can be referred to by all parties, the Arbitrator and the Commission.

GTE filed a motion to deny AT&T's request regarding the implementation of the FCC's default proxy rates, and a brief in support thereof, on September 27, 1996. Post hearing briefs or memoranda on the

arbitration issues were filed on October 2, 1996.

II. Discussion

A. GTE's Motion

In support of its motion that this Commission reject the use of the FCC's default proxy prices in this proceeding, GTE argues that: (a) these default proxy prices were unlawfully promulgated by the FCC, because the FCC does not have the jurisdiction or authority to preempt States on intrastate costing and pricing and to require the States to use the default proxy prices; (b) these default proxy prices are constitutionally and statutorily defective because they do not reflect GTE's joint and common costs or all of GTE's incremental costs; (c) this Commission would be committing an unconstitutional taking of GTE's property by imposing the default proxy prices; and (d) none of the provisions of the FCC's Order, including the default proxy prices, are yet effective.

At the September 16th conference in this proceeding, GTE gave notice to the parties of its intent to file this motion. In giving this notice, GTE referred to its position that the FCC's Order was constitutionally and statutorily defective. At that time, I observed, as noted by the OCA and OSBA in their respective Post Hearing Briefs, that this Commission was not the proper forum in which constitutional and statutory legality challenges could be raised (Tr. 35). Clearly, this Commission does not have the authority to ignore, modify, etc., the Order of the FCC. GTE has not presented any argument which would lead me to conclude that my observation was a misstatement of the law, or in any other way erroneous.

With respect to GTE's argument that the use of the FCC's default proxy prices would constitute an unconstitutional taking of its property, the

OCA notes, at pages 18-19 of its Post Hearing Brief, that this issue was considered and rejected by the FCC (FCC Order of August 8, 1996, at 701). Having reviewed the FCC's Order on this argument, I believe that the OCA's position is correct.

GTE's final assertion in support of its motion is erroneous. GTE argued that the FCC's Order, including the default proxy prices, was not yet effective. Since GTE, at page 4 of its brief in support of its motion, noted that the FCC Order was scheduled to become effective on September 30, 1996, its argument on this point was unpersuasive.

However, on September 27, 1996, the United States Court of Appeals for the Eighth Circuit issued a temporary stay of the effective date of the FCC's Order, pending its resolution of several motions seeking a permanent stay of that Order. It is my understanding that the Court was to hear arguments on the request for a permanent stay of the Order in October. In Footnote 2, on page 2 of its Post Hearing Brief, AT&T expresses the opinion that the Court will likely decide whether to grant a permanent stay of the FCC's Order during the week of October 6, 1996, and that AT&T expects the FCC's regulations to be finalized and binding on this Commission at the time it decides this matter.

The issuance of the temporary stay of the FCC's Order, and the uncertainty of whether and/or to what extent the FCC's Order of August 8, 1996, may become effective prior to the entry of the Commission's Order in this matter, present complicating factors in the preparation of this Recommended Decision. After considering this problem, and noting that the stay is temporary in nature, it is my intent to make my recommendations in

this arbitration proceeding on the bases of all the positions advanced in this matter, including those based on the FCC's August 8, 1996 Order.

B. GTE's Threshold Legal Issues

At pages 2-11 of its Brief, submitted on October 2, 1996, GTE raised a number of legal issues, which will be discussed briefly. The first four (4) issues raised by GTE, Part I(A)(1)-(3), and (B) of its Brief of October 2, 1996, have been dealt with in the preceding section and will not be repeated here.

GTE seeks to have the testimony of the OCA's witnesses, (pages 9-10 of its brief), as well as the testimony of an AT&T witness (page 10 of its brief), disregarded, and AT&T Exhibits 4-8 excluded. As to GTE's argument pertaining to OCA witness Morgan, Mr. Morgan's entire testimony appears at pages 396-409 of the transcript. At the time of his appearance, GTE raised no objections to his appearance and made no motion to strike his testimony for the reason that the witness's qualifications to testify had not been established. Although Mr. Morgan was available to be questioned by GTE, it chose not to do so. GTE makes the same argument with respect to OCA witness Cameron, noting that the witness was permitted to testify, telephonically, over the objections of GTE. My reasons for overruling the objection to the telephonic testimony of this witness are found at page 633 of the transcript. Ms. Cameron's testimony is found at pages 693-695. As with Mr. Cameron, GTE chose not to question Ms. Cameron. As GTE made no objections to the lack of foundation or qualifications of these witnesses at the time they testified, and made no motion to strike their testimony for lack of qualification to

testify in this matter, this argument is not properly raised at this time.

AT&T Exhibit 4 is a document entitled: "The rates for GTE s unbundled elements should be set at the total element long-run incremental costs of those components", and Attachment 1 thereto entitled: "Further comments of AT&T Corp. on August 9th before the Federal Communications Commission in C.C. Docket No. 9645." AT&T Exhibit 5 is a portion of an article entitled: "Local Competition Issues and the Telecommunications Act of 1996", specifically pages 5-17 thereof. As pertains to AT&T witness Murray s testimony, AT&T Exhibit 6 is the Supplemental Comments filed in this proceeding, specifically, pages 12-22. AT&T Exhibit 7 is a two-page printout of the "Hatfield Model." AT&T Exhibit 8 is a single-page document applying the MFS II methodology to develop the wholesale rates by density cell for GTE in this matter. GTE s objections to these Exhibits, which were overruled, are found at pages 443-446 of the transcript. Ms. Murray s testimony is found at pages 419-502 of the transcript. After considering this issue and reviewing the testimony pertaining thereto, I find no basis for excluding either Ms. Murray s testimony or the Exhibits.

Next, GTE argues that its eligibility to be recognized as a "rural telephone company" (RTC) under the Telecommunications Act of 1996 should be confirmed and determined on the record in this proceeding. With respect to this argument, I note that on June 23, 1996, the Commission entered its Order in Re Implementation of the Telecommunications Act of 1996, Docket No. M-00960799. The Commission s discussion of the "rural telephone company exemption" and its application to Pennsylvania ILECs is found at pages 10-18 of that Order. Thereafter, a number of telephone utilities filed petitions

for reconsideration of that Order, including GTE, which filed its petition on July 8, 1996. On September 9, 1996, the Commission entered its Order on the petitions for reconsideration of its June 23, 1996 Order, at M-00960799. At pages 10-11 of the September 9, 1996 Order, the Commission specifically rejected GTE's position that it was entitled to "partial RTC status" for its "Contel" and "Quaker State" study areas. In its October 2, 1996 Brief in this proceeding, GTE notes that it filed, on September 23, 1996, a petition for reconsideration of the Commission's September 9, 1996 Order. In light of the facts that the Commission specifically rejected GTE's claim of partial RTC status, and the filing of GTE's petition for reconsideration of that determination, no recommendation will be made herein concerning this issue.

Lastly, GTE argues that it was denied a full and fair opportunity to present its case because the arbitration hearings were limited to three days. At the Initial Arbitration Conference, held on August 30, 1996, counsel for GTE noted that both it and AT&T proposed three (3) days for the arbitration hearings, i.e., September 24-26, 1996 (Tr. 5-6; prehearing memoranda of AT&T and GTE). In light of the parties' agreement on this point, the Initial Arbitration Order, issued on August 30, 1996, scheduled the days of September 24-26, 1996, as the days for the arbitration hearings. Thus, all parties, including GTE, knew well before the commencement of the hearings, that only three days were set aside for such hearings. Noting the relatively slow pace of the hearings, I made the following observation after the luncheon recess on September 25, 1996 (Tr. 530):

Before we continue with Mr. Sidak's testimony I just want to make an observation that tomorrow is the last day we have for hearings in this case. So I hope the pace picks up, because tomorrow, no later than 5:00 p.m., we are going to be finished. And whatever has

not been presented then will just be taken care of on the basis of the positions submitted by the various parties and the arguments that they make in their post hearing submittals.

At the commencement of the hearings, at 9:00 a.m. on September 26, 1996, GTE expressed its concern that it will not have been given a fair opportunity to present its case, and that it was prepared to continue the proceeding as long as necessary, into the evening or again on September 27, 1996 (Tr. 629). At the conclusion of the hearing of September 26, 1996, all documents submitted by the various parties, which had not been assigned a specific exhibit number, were made part of the record, and the parties instructed on how to refer to such documents in their post hearing submittals.

Inasmuch as this is an arbitration proceeding, as opposed to litigating a traditional case before the Commission, I believe that, by making all remaining documents part of the record and permitting all parties to refer to and utilize the same in their post hearing arguments, no party has been denied the full and fair opportunity to present its case.

C. Pricing Issues

1. Wholesale Discount Rate

The positions taken by AT&T and GTE with respect to this issue clearly demonstrates the deep division between them, reflecting the differing legal positions each has adopted.

It is AT&T's position, under Paragraphs 911 and 912 of the FCC's Order, that the wholesale price is to be based on a formula of retail price minus avoided costs, and that the FCC has interpreted the statutory avoided cost language to mean those costs which would no longer be incurred by an ILEC

if it were to cease retail operations and provide all of its services through resellers. Based on Paragraphs 917-920 and 928 of the FCC s Order, AT&T submitted an avoided cost study in this proceeding which treats the following direct costs of serving customers, plant specific and non-plant specific expenses as avoidable in the percentages indicated:

Direct costs of serving customers

Customer Service Costs (Acct. 6623)--90%
Product Management Costs (Acct. 6611)--67%
Sales Costs (Acct. 6612)--100%
Call Completion Costs (Acct. 6621)--100%
Number Service Costs (Acct. 6622)--48%

Plant And Non-Plant Specific Costs

Operator Systems Expense--100%
Operation Testing (Acct. 6533) and Plant Administration
Expenses (Acct. 6534)--20%

In addition, AT&T developed an indirect allocation expense factor to determine the percentage of the following indirect expenses that would be avoided by GTE in a wholesale environment:

General Support Expenses (Accts. 6121-6124)
Executive and Planning (Accts. 6711-6712)
General and Administrative (Accts. 6721-6728)

AT&T calculated the factor by dividing its claimed GTE direct avoided costs by GTE's total direct costs. The resulting factor for determining the percentage of these indirect costs that would be avoided is 18.7%. With respect to Uncollectibles Expense (Acct. 5301), AT&T calculates that 90% of such costs will be avoided by GTE.

On the basis of its avoided cost study, AT&T claims that the wholesale discount rate should be set at 28.6%, exclusive of the Gross Receipts Tax plus any "cost onsets" that GTE may incur. AT&T Post Hearing Brief, pages 10-32.

GTE also submitted avoided cost studies. The studies submitted by GTE do not follow the method outlined by the FCC in its Order. Rather, GTE asserts the studies are consistent with the language of Section 252(d)(3) of the Telecommunications Act of 1996, in that the studies identify only those costs which will actually be avoided by providing wholesale service to AT&T.

It is GTE's position that this recognizes the reality of competition that will develop under this Act, in that it will be a provider of both wholesale and retail services. Thus, according to GTE not all of the costs identified by AT&T will be avoided, and certainly not in the percentages calculated by AT&T.

Like AT&T, GTE also calculated a factor to determine the percentage of indirect costs that would also be avoided. However, its method of calculating this factor differs from the one used by AT&T. To calculate this factor, GTE divided the total direct costs that it identified as actually being avoided by its total costs (direct and indirect).

Based on its method of calculating the avoided costs, GTE's Pennsylvania-specific study (GTE Ex. 2B) indicates that the wholesale discount rate for GTE should be 10.16%. Its Pennsylvania-specific cost study for Contel (GTE Ex. 3B) indicates that the wholesale discount rate for Contel should be 10.96%. Additionally, GTE submitted an analysis of the MCI ARMIS model used by the FCC (GTE Ex. 4). According to GTE, this indicates that the maximum wholesale discount rates that should be allowed are 14.5% for GTE and 15.7% for Contel. Although GTE does not specifically indicate, it appears that these calculated wholesale rates are exclusive of the Gross Receipts Tax. GTE Brief of October 2, 1996, pages 12-17.

The OCA criticizes AT&T's calculation of the wholesale discount rate by noting that AT&T's calculation of the wholesale discount rate deviates from the FCC's method in, at least, two respects. First, AT&T derived its indirect cost allocation factor by dividing its total calculated avoided direct costs by GTE's total direct cost, whereas the FCC's method is to derive this factor based on the ratio of total direct avoided costs to total

expenses. Second, AT&T treats certain maintenance expenses as direct avoided costs, even though such expenses were deemed not to be avoided by the FCC.

The OCA also criticizes GTE's calculation of this rate. According to the OCA, GTE's national avoided cost studies deviate from the FCC's ARMIS-based avoided cost model. The approach of GTE's national study is to identify those costs that would be avoided when GTE's Pennsylvania services are provided at wholesale rather than retail, and, thus, focuses on the distribution level. This study identifies the costs associated with the retail activities of five service categories, ranging from 5.5% to 15.3%, and develops a composite "weighting" to calculate the national 7% wholesale discount rate for GTE.

As to GTE's Pennsylvania-specific avoided cost study which calculates the wholesale discount rate of 10.16% for GTE and 10.96% for Contel, the OCA asserts that this study understates the discount for a number of reasons. First, the Pennsylvania-specific study is based on a modified version of the national study, which excludes at least one category of costs.

Second, it includes miscellaneous revenues, but does not exclude any costs associated with such revenues as being avoided. Third, it fails to include depreciation expense in the calculation of the overhead avoided cost factor.

To determine an appropriate wholesale discount rate for this proceeding, the OCA prepared an analysis of GTE's avoided cost study, using the guidelines set forth by the FCC. The method used to prepare that analysis is found at pages 7-8 of the OCA's Supplemental Filing, and the results are presented in Schedule 2 of the OCA's Supplemental Filing. For this proceeding, the OCA calculates a wholesale discount rate of 19.87%, exclusive

of the Gross Receipts Tax.

The OTS submits that the wholesale discount rate for this proceeding should be within the FCC interim default range. As noted by the OTS the FCC default range for the wholesale discount rate is between 17% and 25% below retail rate levels. The OTS has not suggested a specific percentage within this range that should be used in this proceeding. OTS Post Hearing Brief, pages 6-7.

In its Post Hearing Brief, the OSBA repeats its support for the use of the FCC default proxy rates for all pricing issues in this, as well as other arbitration proceedings under the Telecommunications Act of 1996.

Having reviewed and considered the positions of the parties on this issue, I recommend that the wholesale discount rate for this arbitration proceeding be set at 19.87%, exclusive of the Gross Receipts Tax, as calculated by the OCA. In my opinion, the OCA calculation of this rate is more consistent with the guidelines of the FCC than either of the calculations submitted by AT&T or GTE.

2. Cost-Based Pricing Issues

According to AT&T, there are only two (2) methods by which the rates for the unbundled network elements can be set under the FCC s Order. The first method is by using a state-commission reviewed and approved cost study that complies in all respects with the TELRIC method contained in the FCC s Order. The second method is to utilize the default proxy prices contained in the FCC s Order, on an interim basis, until such time as this Commission can complete its review of a proper TELRIC study. Although AT&T

believes the Hatfield Model is a proper method for performing a TELRIC study, it advocates the use of the FCC default pricing proxies as a faster, administratively simpler and less costly approach to establishing prices on an interim basis. With respect to the cost studies submitted by GTE, AT&T argues that they should be rejected. First, GTE's claimed TELRIC/TSLRIC studies do not comply with the FCC's standards. Second, GTE's Market determined Efficient Component Pricing Rule (M-ECPR) had been considered and rejected by the FCC. For these reasons, AT&T urges the use of the FCC default pricing proxies. AT&T Post Hearing Brief, pages 35-44.

It is GTE's position that the rates for these elements should be set, not at the FCC default pricing proxies, but on the basis of the TELRIC study it submitted in this proceeding, including a reasonable allocation of joint and common costs. In this regard it is asserted that the TELRIC study is forward-looking in nature and is consistent with the Telecommunications Act of 1996. GTE notes that its pricing method, the M-ECPR, permits competition to develop, but creates "stranded investment" that it is entitled to recover under the Federal and state constitutions. GTE Brief of October 2, 1996, pages 18-27.

It is the position of the OCA that, under the FCC's Order, the rates for the various unbundled elements must not exceed the TELRIC for that element, plus a reasonable allocation of forward-looking common costs ("markup"). According to the OCA, the FCC also imposed two conditions on the allocation of common costs. First, the sum of the TELRIC and the "reasonable allocation" of common costs cannot exceed the stand-alone cost of producing the element. Second, the sum of the allocations for all elements and services

(excluding retail costs) must equal the total forward-looking costs attributable to operating the ILEC s total network. The OCA proposes that the Commission establish a markup for unbundled loops that is no greater than the markup which a LEC realizes on its most competitive network services. Noting that the necessary calculations have not been made for GTE, the OCA suggests the use of an allocation factor to determine the extent of any markup on the basis of information pertaining to two (2) ILECs in California and information submitted in the AT&T/Bell arbitration proceeding. OCA Supplemental Filing, pages 8-13.

a. Unbundled Network Elements

i. Unbundled Loop Rates

The FCC default pricing proxy for the unbundled loop rate is \$12.30 on a statewide "weighted" average, for Pennsylvania.

AT&T does not propose using the FCC default pricing proxy directly. Rather, AT&T proposes that the unbundled loop rates be set in a manner similar to the method used to determine those rates in the MFS II proceeding. AT&T developed a ratio between the FCC proxy of \$12.30 and the rates in MFS II. It then applied the ratio to the MFS II rates, and assumed that all of GTE s lines are within density cells 3 and 4. On this basis, AT&T proposes the following local loop rates for this arbitration:

Density Cell 1:	\$ 7.45
Density Cell 2:	\$ 8.60
Density Cell 3:	\$11.76
Density Cell 4:	\$15.10

According to AT&T, this produces a statewide "weighted" average for GTE of \$12.29, and, thus, complies with the FCC Order. AT&T Post Hearing Brief, page

45.

GTE, utilizing its "TELRIC/TSLRIC" study together with its M-ECPR, proposes that the rate for its proposed 2-wire unbundled loop be set at \$27.17 for this arbitration. GTE Brief of October 2, 1996, page 20.

The OCA, using information submitted by Bell in the MFS II proceeding, and assuming that GTE would have lines in all four density cells, proposes the following local loop rates:

Density Cell 1: \$ 7.80
Density Cell 2: \$ 9.00
Density Cell 3: \$12.31
Density Cell 4: \$15.81

According to the OCA, this produces a statewide "weighted" average of \$12.30.

OCA Supplemental Filing, pages 18-20.

The OTS specifically proposes use of the FCC default pricing proxy of \$12.30, without any of the adjustments or calculations used by AT&T, GTE or the OCA. OTS Post Hearing Brief, pages 7-9.

I recommend that the local loop rates be set in the manner proposed by the OCA. In my opinion, the OCA has presented the most reasonable calculation of the rates for this element of the unbundled network.

ii. Network Interface Device (NID)

It is AT&T's position that the interim rate for the unbundled NID should be set at \$0.59 per minute. According to AT&T, this rate is based on the Hatfield Model's results for GTE in Pennsylvania, and will appropriately compensate GTE for the actual costs of the NID. The testimony of AT&T's witness on this point is that the inputs upon which the Hatfield Model's result is based appear to result in a conservatively high estimate of GTE's incremental cost for the NID. AT&T Post Hearing Brief, page 48.

GTE's position is that the Hatfield Model is unreliable and should not be considered in setting rates for the unbundled network elements. Rather, GTE asserts that the rates for these elements should be set using its TELRIC/TSLRIC studies, which it submitted in this arbitration proceeding. Additionally, GTE argues that it has demonstrated that the FCC proxy pricing rates are inappropriate because they fail to recover GTE's costs. For the

NID, GTE proposes a rate of \$1.50 per minute, which is 10% above its TELRIC/TSLRIC studies. GTE Brief of October 2, 1996, pages 18-21.

The time period available to conduct this arbitration proceeding has not been sufficient to permit a thorough analysis of the TELRIC/TSLRIC studies submitted by GTE. Thus, as an interim rate, I recommend that the price for the unbundled NID be set at \$0.59 per minute. As noted by the OTS (OTS Post Hearing Brief, page 9), permanent rates, based on an approved TELRIC, can be set at the conclusion of the Commission's analysis of the cost studies.

iii. Non-Recurring Charges

At pages 46-47 of its Post Hearing Brief, AT&T argues that GTE's proposed non-recurring charges be rejected. According to AT&T, the rates proposed by GTE significantly overstate the actual costs that GTE may incur in provisioning unbundled network elements to CLECs, such as AT&T. Thus, AT&T requests that GTE should be required to complete a new study and propose rates for non-recurring charges that comply with the FCC Order as quickly as possible.

I note that GTE Exhibit 15, at pages 4 and 8, contain proposed rates for non-recurring charges for GTE and Contel, respectively. Although GTE references this Exhibit at page 22 of its Brief of October 2, 1996, that reference appears to be in the context of its position on a "bill and keep" arrangement. I could not find any specific argument in GTE's brief that the proposed rates for non-recurring charges contained in this Exhibit be accepted for an interconnection agreement with AT&T.

I decline to recommend the proposed rates for non-recurring charges set forth at pages 4 and 8 of GTE Exhibit 15. On an interim basis, I recommend that the costs of non-recurring charges be borne by GTE, at its initial cost and expense. Permanent rates for non-recurring charges can be implemented at the conclusion of the Commission's analysis of an approved TELRIC study. AT&T would then be required to reimburse GTE for the costs of such non-recurring charges, which had initially been borne by GTE, at its initial cost and expense.

iv. Dedicated Transport

For the cost of dedicated transport, AT&T proposes using the FCC default proxy price, which is the ceiling of GTE's existing interstate rates.

GTE proposes that its Interstate Dedicated Transport rates be used to price this item. Although neither party specifically addressed this matter in their respective briefs, there does not appear to be any significant difference in their positions.

Accordingly, I recommend, on an interim basis, that the interconnection agreement set the rate for dedicated transport at the ceiling of GTE's interstate rates for this service.

v. Common Transport

AT&T proposes the rates for common transport be set at the FCC default pricing proxy, which is the ceiling, based on the weighted average of GTE's interstate DS1 and DS3 rates. GTE proposes that the rates for common transport be the same as its Interstate Common Transport rates. As with dedicated transport, this matter was not specifically addressed by these

parties in their respective briefs.

Accordingly, I recommend, on an interim basis, that the interconnection agreement set the rates for common transport at the ceiling of GTE s interstate rates for this service, based on the weighted average of GTE s interstate DS1 and DS3 rates.

vi. Signaling

AT&T proposes the use of the FCC default pricing proxy for signaling, which is the ceiling of GTE s interstate rates. I could not find any specific reference to this matter in GTE s Brief of October 2, 1996, or any Exhibit of GTE proposing a different rate.

Accordingly, I recommend, on an interim basis, that the interconnection agreement set the rate for signaling at the ceiling of GTE s interstate rates.

b. Interconnection Rates

i. End Office Call Completion And Local Switching

AT&T proposes that the FCC's pricing proxy range of \$0.002-\$0.004 per minute be used to set interim rates for both end office call completion and the traffic-sensitive charge for local switching, until such time as the Commission establishes permanent rates based on an approved TELRIC study. It specifically proposes, as an interim rate, the mid-point of the FCC's default pricing proxy range, or \$0.003 per minute. According to AT&T, the FCC's default pricing proxy range most nearly approximates GTE's actual costs of providing those services. AT&T opposes the use of GTE's interstate switched access rates for call termination because, according to AT&T, those rates mark a significant departure from the requirements of the Telecommunications Act for cost-based rates. AT&T Post Hearing Brief, pages 48-50.

It is GTE's position that the rates for interconnection and unbundled elements should be based on the TELRIC studies it submitted in this arbitration proceeding. According to GTE, using its TELRIC studies to set these rates will enable GTE to recover its costs, plus a reasonable profit. With respect to rates for transport and termination of local traffic, GTE asserts that the appropriate rates are those contained in its interstate access tariff. GTE Brief of October 2, 1996, pages 24-26.

At pages 5-6 of its Post Hearing Brief, the OTS states its support for the use of the mid-point of the FCC's default pricing range of \$0.003 per minute, to set the interim rates for these services.

There is no question that the rates proposed by GTE for these services are substantially higher than suggested by the FCC's default pricing

proxy range, and the specific rate proposed by both AT&T and the OTS. Given the significant differences in the rates proposed for these services by AT&T and GTE, I believe the positions of the OTS and AT&T, that the default pricing proxies be used to set interim rates, are the more reasonable approach.

Accordingly, I recommend, on an interim basis, that the rates for end office call completion and local switching be set at \$0.003 per minute.

ii. Tandem Switching

AT&T proposes, on an interim basis, that the rate for tandem switching be set at \$0.0045 per minute. This rate is derived by adding the FCC's default pricing proxy of \$0.015 per minute for tandem switching to its proposed rate of \$0.003 per minute for end office call completion. It is AT&T's position that the proposed rate of \$0.045 per minute will adequately compensate GTE for providing this service. AT&T Post Hearing Brief, pages 50-51. It is GTE's position that the rate for tandem switching be set at its interstate rate. GTE Brief of October 2, 1996, pages 24-26.

Again, I believe the suggestion of the OTS for the establishment of interim rates is the appropriate approach. Accordingly, I recommend, on an interim basis, that the rate for tandem switching be set at \$0.0045 per minute.

c. Pricing Of Number Portability

It is AT&T's position that the FCC's Order requires that the costs associated with interim number portability (INP) be borne by all telecommunications carriers, including ILECs like GTE. It objects to the

rates proposed by GTE for the reason that they do not comply with the requirements of the FCC's Order. Noting that Bell Atlantic and MFS have recently petitioned the Commission for the commencement of a proceeding to establish a cost recovery mechanism that satisfies the requirements of the FCC's INP Order, AT&T suggests, as an interim arrangement, that the parties simply track ported numbers, with provisions for a "true up" after a new INP cost recovery mechanism is implemented, at which time AT&T will compensate GTE for any ported numbers in accordance with the terms of that mechanism and the numbers ported. AT&T Post Hearing Brief, pages 51-52.

GTE's position is that the rates for INP should be determined according to GTE's pricing and costing methods, or a state-approved tariff, where appropriate. According to GTE the FCC's INP Order allows for a forward-looking cost method for INP, and that GTE has submitted such a method, which should be adopted in its entirety. GTE Brief of October 2, 1996, page 27.

On an interim basis, until an appropriate INP cost recovery mechanism is implemented, I believe that AT&T's position should be accepted. Accordingly, I recommend that the interconnection agreement provide that, for INP, the parties track the ported numbers and, upon the implementation of an approved INP cost recovery mechanism, there shall be a true up and appropriate compensation paid for the ported numbers in accordance with that cost recovery mechanism.

d. Collocation

AT&T's position on this matter is that GTE's soon to be refiled interstate rates for physical collocation should be adopted for physical

collocation, but only on an interim basis. AT&T argues that such interim rates would be subject to future FCC action in its Expanded Interconnection proceeding, and to the establishment of TELRIC-based rates by this Commission.

AT&T Post Hearing Brief, page 53.

GTE's position is that its cost studies and pricing methods are consistent with the Telecommunications Act of 1996, in that they provide for recovery of all its costs, including a reasonable share of its joint and common costs and, thus, should be used to set the rates for physical collocation. GTE Brief of October 2, 1996, page 27.

I recommend that the rates for physical collocation, contained in GTE's soon to be refiled interstate rates for physical collocation, be set as the interim rates for physical collocation, subject to both future action by the FCC in its Expanded Interconnection proceeding and to the establishment of TELRIC-based rates by this Commission.

3. End-User Surcharge

The OCA and the OTS oppose GTE's suggestion for the imposition of an end-user surcharge. OCA Post Hearing Brief, pages 15-17, and OTS Post Hearing Brief, pages 9-11.

GTE's position with respect to such an "end-user surcharge" is found in its Response to AT&T's petition, at Tab VIII, pages 13-15. According to one of GTE's witnesses, the proposed "end-user surcharge" is considered by GTE to be an appropriate way for GTE to recover its "stranded costs." At page 25 of its Brief of October 2, 1996, GTE notes that it is requesting this

Commission to establish a competitively neutral "end-user surcharge" so that it can recover its stranded cost.

On this issue, I am in agreement with the positions of the OCA and the OTS. Accordingly, I recommend that GTE not be permitted to establish and implement an "end-user surcharge" as part of the rates, terms and conditions of this arbitration proceeding.

D. Quality Of Service Issues

1. Operational Interfaces

It is AT&T's position that Section 251 of the Telecommunications Act of 1996 prohibits GTE from placing unreasonable or discriminatory conditions on the provision of resold telecommunications services and unbundled network elements. According to AT&T, this means that the services GTE provides to AT&T cannot be inferior to those GTE provides to itself. AT&T argues that this Section requires that there must be service equality between the functions GTE performs for itself and those it delivers to AT&T. AT&T argues that to achieve this service equality, GTE must provide AT&T with the same electronic interfaces via gateways to GTE's operations support systems (OSS) and databases that GTE gives itself, for four broad categories of transactions: pre-ordering, ordering/provisioning, maintenance/ repair, and billing.

AT&T argues that the FCC's Order (523) requires an incumbent LEC must provide nondiscriminatory access to their operations support functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself. Such nondiscriminatory access necessarily

includes access to the functionality of any internal gateway systems the incumbent employs in performing the above functions for its own customers. Additionally, AT&T notes that the FCC's Order (525) requires ILECs, including GTE, that have not already effected such access to comply with this requirement by January 1, 1997. Accordingly, AT&T asserts that GTE must provide AT&T and other new entrants with access to its electronic databases by that date.

AT&T also criticizes the objections advanced by GTE with respect to: (a) providing this access; (b) seeking to postpone implementation of this access; (c) the technical infeasibility of GTE to meet the January 1, 1997 deadline; and (d) cost recovery for the implementation of such access. With respect to the issue of cost recovery, and based on the classification of OSS as unbundled network elements under the FCC's Order (516), AT&T objects to bearing all of the costs associated with developing the electronic interfaces.

Rather, and based on the FCC's classification of OSS as unbundled network elements, AT&T proposes that the costs of those systems should be reflected to the greatest possible extent in a TELRIC rate for that element. Such a rate will properly spread the costs of this element among all carriers.

As to the specific costs incurred in establishing the electronic interfaces required under the Act and the FCC order, AT&T states that it is willing to pay its fair share, but that it should not have to pay the entire costs itself, because it, like other new entrants, will be incurring substantial costs of its own developing their own interfaces and gateways. Thus, AT&T believes that these "generic" implementation costs should be shared not only with other new entrants, but with GTE itself, which will receive the

benefit of these enhanced electronic capabilities in its wholesale business.

Thus, concludes AT&T, GTE has no legitimate basis for avoiding its obligation to establish the necessary electronic interfaces to its OSS, and it should be directed to undertake that implementation immediately. Furthermore, AT&T requests that GTE be directed to provide AT&T with a firm cost estimate and supporting data for AT&T's share of the legitimate costs of that implementation by January 1, 1997, with the additional provision that the parties would then be able to petition the Commission for an expedited hearing in the event the parties are unable to reach agreement on cost recovery. AT&T Post Hearing Brief, pages 53-57.

GTE notes that, under the FCC's Order, it is required to provide access to its OSS functions under the same terms and conditions as provided to itself or other customers. However, GTE asserts that, while the FCC's Order directs the provision of nondiscriminatory access to OSS by January 1, 1997, that Order does not require direct access to its OSS at this time. Rather, according to GTE, the FCC's Order states that the ideal approach would be for each incumbent LEC to provide access to OSS through a nationally standardized gateway once those standards are developed by the industry. GTE further states that, depending on the industry's progress, the FCC will determine, in the near future, if a separate Notice of Proposed Rule Making or other action will be required to guide industry efforts at arriving at appropriate national standards for access to OSS.

It is GTE's position that providing direct access to its systems, databases and OSS functions by a non-GTE local service provider is not a simple matter, because the current systems and databases used by GTE for these

OSS functions were developed over several years for access by one company, not multiple providers, and contain millions of lines of code. Thus, according to GTE, the systems and databases used to provide these OSS functions will have to be partitioned to prevent access by non-GTE providers to GTE's and other CLEC's customer information and facilities, and one of AT&T's witnesses agreed that electronic interfaces should not jeopardize the integrity or security of GTE's operations support systems and described the gateways that should be put in place to provide the appropriate protection. Thus, concludes GTE, full electronic bonding by AT&T to GTE's OSS systems for use in local service competition is not technically feasible at this time.

Additionally, GTE described some of AT&T's requests as unreasonable and argues they should be rejected. These are:

- a. AT&T wants real-time direct access to all of GTE's operations support systems.
- b. AT&T wants GTE and all CLEC's to pay for AT&T's OSS access requests.
- c. AT&T wants its requirements for OSS access developed by 1997.
- d. AT&T does not want GTE to make PIC (primary interexchange carrier) changes on its customer accounts by other interexchange carriers contrary to current industry process standards.
- e. AT&T wants access to GTE's customer records prior to migration of the customer to AT&T.

GTE requests that, as a result of this arbitration proceeding, it be allowed to continue OSS access development discussions with AT&T. However, GTE will: (a) provide access to OSS functions as required by the Telecommunications Act of 1996 and the FCC Order; and (b) develop the electronic interfaces to its OSS systems that AT&T requests to be unbundled as

a network element, as long as they meet industry standards.

On the matter of cost recovery, it is GTE's position that AT&T must pay for any cost GTE incurs in developing the electronic bonding requested by AT&T for access to OSS. According to GTE, since the FCC's Order states that OSS and the associated interfaces are separate network elements that can be unbundled and purchased, it follows that unbundled elements are not free. Thus, the Act does not require GTE to absorb the cost of electronic interface development. Such capital investment will be made at the request of AT&T. Such new systems would inure completely to the benefit of AT&T. They would be no benefit to GTE at all, because unlike other unbundled elements that have also been used by GTE for its local service, GTE itself will have no use for the electronic interfaces. Accordingly, it is GTE's position that, under TELRIC pricing, all of the development costs for these interfaces are to be paid by AT&T. These development costs are non-recurring 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. However, if other CLECs utilized the functionality developed and paid for by AT&T, then the cost for that development would be shared. At that time, AT&T could be rebated a portion of the development cost. GTE Brief of October 2, 1996, pages 28-32.

Some of GTE's objections to AT&T's request, specifically those pertaining to access to customer records and processing PIC changes, are discussed in Part II, D, 3 and 5, of this Recommended Decision.

Although a temporary stay of the FCC's Order has been imposed by the Eighth Circuit Court of Appeals, I believe the date of January 1, 1997

should be used as the deadline for GTE to provide access to its OSS by AT&T.

With respect to the development of the electronic interfaces, it appears, from the testimony of one of AT&T's witnesses, that AT&T agrees that there should be a national standard for such interfaces. It further appears, from the testimony of this witness, that AT&T would like to use the results of the California mediation proceeding on OSS as the basis for a national agreement with GTE on this matter, assuming these two parties can reach agreement on functionality and schedule (Tr. 717-718). In my opinion, both of these positions are reasonable. Accordingly, I recommend that GTE not be required to develop electronic interfaces to provide AT&T with direct, real time access to its OSS, but that GTE be required to develop such interfaces in accordance with national industry standards, or in accordance with a national agreement with AT&T based on the results of the California mediation proceeding, whichever occurs first.

Concerning the determination of the appropriate costs to be paid for the development of the electronic interfaces, I believe AT&T's proposal should be accepted. Thus, GTE should be required to provide AT&T with a Pennsylvania-specific firm cost estimates and supporting cost data for the development of such interfaces. However, in light of the preceding recommendation, I decline to set a date certain, as requested by AT&T, for GTE to provide the cost estimates and supporting data. I also believe that AT&T's suggestion for expedited review of the cost estimates, in the event the two parties cannot reach agreement, should also be accepted. Accordingly, I recommend that GTE be required to provide AT&T with Pennsylvania-specific firm cost estimates and supporting cost data for the development of the electronic

interfaces no later than 45 days after the development of national standards for such interfaces, or after reaching a national agreement with AT&T for such interfaces based on the results of the California mediation proceeding, whichever occurs first.

With respect to the matter of allocating any cost recovery, my recommendations are the same as set forth in Part II, D, 4 of this Recommended Decision (pertaining to other billing and operations issues) and are based on the same reasons. Accordingly, I recommend that the interconnection agreement provide for AT&T to pay for the Pennsylvania-specific costs of GTE's development of electronic interfaces made necessary to provide the direct access to its OSS requested by AT&T, with provision for GTE to make refunds to AT&T for a portion of the costs so paid in the event other CLECs request the same services and use the same interfaces.

2. Interim Interface Arrangements

After reviewing the positions of the parties (AT&T Post Hearing Brief, pages 57-58; GTE Brief of October 2, 1996, pages 32-33), it does not appear that there are any material disputed issues of fact concerning interim interface arrangements. AT&T notes that, if the recovery of costs by GTE for the implementation of the interim arrangement is an issue, AT&T's position on the cost recovery for these arrangements is the same as its position on the "permanent solution." There is no indication in GTE's Brief on this matter that it seeks any cost recovery for the implementation of interim interface arrangements. Accordingly, no recommendation pertaining to the recovery of costs for the implementation of the interim interface arrangements is

necessary.

3. Enabling Customers to Switch From GTE to AT&T

Section 702 of the Telecommunications Act of 1996 amends 47 U.S.C. by adding Section 222 (pertaining to privacy of customer information).

It is AT&T's position that the easier it is for a customer to change local exchange service providers, the development of competition will be promoted. Thus, AT&T seeks to be able, when it is reselling GTE's services, to request that GTE change the customer "as is", with all existing service features, to AT&T, when such a customer selects AT&T as its local exchange service provider. According to AT&T, 47 U.S.C. 222(d) permits it to have all information pertaining to such a customer, including information that would be considered as Customer Proprietary Network Information (CPNI).

GTE's position is that acceding to AT&T's request that customers be changed "as is" would result in its disclosure of CPNI in violation of Section 222. According to GTE, Section 222(d) permits telecommunications carriers to use CPNI for purposes related to serving their own customers, but it does not permit the release of that information to another carrier to serve that customer. It is the position of GTE that it is only permitted to release or disclose a customer's CPNI upon its receipt of the customer's written necessary information it needs to provide service to a customer directly from the customer.

On this matter, I concur with the position taken by GTE. Thus, AT&T's request for an "as is" transfer of a customer from GTE to AT&T should be rejected. Requiring GTE to obtain the affirmative written consent of the

customer prior to the release or disclosure of that customer's CPNI to AT&T will not, in my opinion, constitute the erection of a significant barrier to new entrants or impede the development of competition. Accordingly, I recommend that the interconnection agreement require the submission of a customer's affirmative written consent to the release or disclosure of that customer's CPNI, before GTE may release or disclose that information to AT&T.

4. Other Billing And Operations Issues

The parties have agreed, in principle, that GTE will provide AT&T with billings for wholesale services, unbundled network elements and interconnection, as well as providing usage recording services. The parties have not agreed, however, as to how the costs of the systems development and operation to provide these services are to be paid.

AT&T objects to paying all of the costs of the systems development and operation. It asserts that such services will likely be provided by GTE to all new entrants who purchase resold services and unbundled elements from GTE. Thus, AT&T seeks a mechanism that would allocate the costs of the systems development and operations among all carriers.

GTE claims that it is not required by the FCC's Order to absorb the costs of creating a billing system to provide AT&T with the services it has requested. According to GTE, any enhancement of its billing system required to meet or satisfy AT&T's request should be paid for by AT&T. GTE notes that, in the event other CLECs choose to use the same billing system, they should also be required to share in the costs of its development paid by AT&T that may be shared with other CLECs.

It is clear that both of these parties seek a means of paying for the costs of the systems development and operation to provide the services requested by AT&T that would protect each from bearing the entire cost. As I understand AT&T's suggestion, the development of a competitively neutral mechanism that would allocate the recovery of these costs among all carriers, would result in GTE bearing a portion of these costs to provide services that have been requested by AT&T, and, perhaps, may be requested by other CLECs in the future. Because these costs are associated solely with providing the services requested by AT&T, I decline to accept its position. I do not believe that GTE should be required to bear any portion of the costs of enhancement to its billing system made necessary by AT&T's request for these specific services.

GTE's position that AT&T pay the costs for the billing system enhancements necessary to provide AT&T with the requested services, with provision for refunds as other CLECs request the use of the same system and services, is analogous or similar to provisions pertaining to line extensions found in the tariffs of many Pennsylvania utilities. For line extensions, the customer initially requesting service, and for whom an extension is necessary, pays the cost of the line extension, in accordance with the utility's tariff.

As future customers connect to and take service from the line that had been paid for by the first customer, that customer is entitled to refunds, determined in accordance with the tariff. In this way, it is assured that all receiving the benefits of the line extension bear a proportionate share of its costs.

Accordingly, I recommend that the interconnection agreement

provide for AT&T to pay for the costs of GTE s enhancements to its billing system made necessary to provide the billing and recorded usage services requested by AT&T, with prov event other CLECs request the same services and use the same billing system enhancements.

5. Processing PIC Changes When AT&T Is The Resale Carrier

The positions of the parties are found at page 60 of AT&T s Post Hearing Brief and pages 37-38 of GTE s Brief of October 2, 1996. An extensive discussion of this matter is not necessary.

I recommend that the interconnection agreement contain a provision that upon GTE s receipt, from any source whatsoever, of a request for a change in the primary interexchange carrier of a local exchange service customer of AT&T, through AT&T s resale of GTE s wholesale services, GTE shall forward or refer all such requests to AT&T for processing.

6. Limitations On Access To Rights-Of-Way, Collocation Space

Section 251(c)(6) of the Telecommunications Act of 1996 imposes on ILECs the obligation to provide, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the ILEC on rates, terms and conditions that are just, reasonable and nondiscriminatory. This Section also provides that an ILEC may provide for virtual collocation if it demonstrates to a State Commission that physical collocation is not practical for technical reasons or because of space limitations.

In addition, Section 703 of the Telecommunications Act of 1996

(pertaining to pole attachments), amended 47 U.S.C. 224 by adding Subsections (f)(1) and (2). These provisions require utilities to provide any telecommunications carrier with nondiscriminatory access to any pole, conduit, or right-of-way owned or controlled by the utility. However, a utility providing electric service may deny a telecommunications carrier access to its poles, ducts, conduits or rights-of-way, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering standards.

In this proceeding, AT&T seeks access to GTE's poles, conduits and rights-of-way, and, for the purpose of providing an interconnection with GTE, to collocate "remote switching modules" (RSMs) on the premises of GTE. AT&T objects to GTE's insistence on limiting access to its poles, conduits and rights-of-way, in order to reserve space for GTE's future use. AT&T also objects to GTE's attempt to limit the type of equipment that may be collocated to provide an interconnection to preclude the use of RSMs. According to AT&T, the FCC's Order left it to the State commissions to determine whether RSMs can be collocated because they are actually used for interconnection or access to unbundled network elements. AT&T Post Hearing Brief, pages 61-64.

It is GTE's position that collocation of RSMs is not required because such equipment is not necessary for interconnection or access to unbundled elements. GTE observes that RSMs are switching equipment, and that if it were required to permit collocation of switching, existing space for collocation would quickly be exhausted. Additionally GTE faults AT&T for failing to specify the GTE premises where AT&T desires to collocate equipment.

It is GTE's position that the FCC's Order recognizes the need for ILECs to

reserve floor space for defined future uses. As to the collocation of AT&T equipment on or in GTE's poles, conduits or rights-of-way, it is GTE's initial position that the Telecommunications Act constitutes an unconstitutional taking of its property. In addition, GTE asserts that the FCC's Order permits any utility, including ILECs, when considering pole attachment requests, to take into account issues of capacity, safety, reliability and engineering, provided that such an assessment is done on a nondiscriminatory basis. GTE Brief of October 2, 1996, pages 39-49.

As with GTE's constitutional challenge to the FCC's Order, this Commission cannot adjudicate its constitutional challenge to 47 U.S.C. 224, as amended by the Telecommunications Act of 1996. There is no doubt that, under this Act, GTE is required to permit collocation of the equipment of AT&T on GTE's premises necessary for interconnection or access to the unbundled network elements. In my opinion, RSMs should be considered to be equipment necessary for interconnection or access to the unbundled network elements, and GTE should be required to permit the collocation of such equipment on its premises. It is also clear that GTE is required to permit collocation of AT&T equipment on and in GTE's poles, conduits and rights-of-way. However, these obligations should not be considered to be unlimited. GTE should be permitted to make reasonable reservations of space for specific future uses when considering AT&T's request to collocate equipment on the premises of GTE. Similarly, GTE should be permitted to consider issues of capacity, safety, reliability and engineering when considering the request of AT&T for the collocation of equipment on or in the poles, conduits or rights-of-way of GTE, as long as the consideration of such issues is not done in a discriminatory

manner. See, FCC's Order, 586 and 1176. At the same time, where a request by AT&T has been denied by GTE, AT&T should be permitted to petition the Commission for review and expedited hearing on a denial of a collocation request.

Accordingly, I recommend that the interconnection agreement contain a provision requiring GTE to permit AT&T to collocate equipment necessary for interconnection or access to GTE unbundled network elements, including remote switching modules, on the premises of GTE, and to permit the collocation of AT&T equipment on GTE's poles, conduits and rights-of-way, subject to the following conditions: (a) that GTE may make reasonable reservations of space for specific future uses when considering a request by AT&T for the collocation of equipment necessary for interconnection or access to GTE's unbundled network elements, including the collocation of remote switching modules; (b) that GTE, in considering a request by AT&T to collocate equipment on or in GTE's poles, conduits or rights-of-way, may take into account issues of capacity, safety, reliability and engineering, provided that any such assessment is done in a nondiscriminatory manner; and (c) if GTE denies any request by AT&T for the collocation of equipment on the premises of GTE, or on or in GTE's poles, conduits or rights-of-way, AT&T may petition this Commission for expedited review and hearing of the collocation request denial.

7. Directory Distribution

AT&T has agreed to pay the same rate that GTE asserts that it pays for the secondary (outside of the

normally scheduled delivery times) distribution of white pages directories to retail customers of AT&T. However, AT&T seeks to ensure that this rate is not double recovered by GTE, once through the wholesale rate and again as a specific charge. According to AT&T, the possibility of a double recovery of this charge is the result of the different methods used by the two carriers in their avoided cost methods. In its avoided cost study, AT&T treated this charge as an avoided cost. GTE, however, in its avoided cost study, treats this charge as an unavoided cost and recovers it in the wholesale rate for services.

GTE seeks to impose a \$2.49 charge per directory for secondary distributions. According to GTE, this is the same rate that it is charged by the directories company for secondary distributions, it is cost-based, reasonable, and treats AT&T no differently than GTE is treated.

Clearly, a "double recovery" of a charge should not be permitted to occur. Thus, if GTE wishes to have AT&T pay the same rate that it pays for secondary directory distributions, the costs of this distribution must be treated as "avoided costs." However, if GTE wishes to have the charges associated with secondary directory distributions treated as "unavoided costs" and recoverable through the wholesale rate, then it cannot impose a separate specific charge for such secondary distributions. To provide parity on

this matter, I recommend that AT&T be required to pay the same rate paid by GTE for secondary directory distributions, and that the charges for such distributions be treated by GTE as "avoided costs."

8. Directory Assistance And Operator Services

As part of its service as a new local exchange carrier, AT&T intends to provide its customers with AT&T's own directory and operator services. To accomplish this, AT&T seeks to have GTE route all 411 and operator traffic from AT&T customers to AT&T's operator and directory assistance platform. According to AT&T, the FCC's Order explicitly requires ILECs to route calls by customers of competing carriers to any directory assistance or operator services platform selected by the CLEC, whenever it is feasible to do so. AT&T further notes that the FCC found that such routing is technically feasible in many switches, and places on an ILEC the burden of proving, on a switch-by-switch basis, that such routing is not feasible. AT&T believes that the routing can be accomplished either through the "line class code" solution, or by an AIN approach. However, AT&T's concern is not with how the routing is accomplished, but that it be accomplished. Lastly, AT&T asserts that there is no issue of cost recovery for such routing because the cost of the routing is deemed to be included in the FCC default proxy price for

the unbundled switch element. Any question of cost recovery is only relevant in the resale environment.

To resolve this issue, AT&T requests that the Commission establish a timetable for GTE under which it will begin to implement the capability of routing of directory assistance and operator services by April 1, 1997, with completion by June 30, 1997, in those switches designated by AT&T. In addition, GTE should be required to provide AT&T, by November 30, 1996, with a firm rate quote and supporting cost data for rerouting directory assistance and operator services from resold dial tone lines, with the proviso that the parties could petition the Commission for an expedited hearing in the event the parties cannot reach agreement on cost recovery. Finally, and as an interim measure, AT&T requests that GTE be required to "unbrand" its directory assistance and operator services until the rerouting solution is fully implemented.

GTE's position on this is that it does not have the technical capability to provide the requested routing. To provide for the routing requested by AT&T, GTE would have to augment the capability of its switches. Although specific cost data has not been provided in this proceeding, GTE believes that this could cost in the tens of millions of dollars. It is GTE's position, based on the FCC's Order, that it must be allowed to recover its costs from AT&T that will be incurred in modifying its system to comply with this request.

GTE is willing to provide the customized routing requested by AT&T, but only if unbundling the switch and the costs of adding new capacity or conditioning existing switches.

In the absence of specific cost data for making necessary modifications to GTE's switches to provide the customized routing requested by AT&T, I decline to accept the FCC's interim default proxy price as including the costs of any necessary modifications. For the same reason, I decline to accept GTE's position that AT&T should be required to pay all of the costs associated with unbundling the switch, adding new capacity, or conditioning existing switches.

I do believe, however, that there should be timetables to provide for the implementation of the customized routing sought by AT&T, but not the specific dates and deadlines proposed by AT&T. Accordingly, I recommend that AT&T designate the switches it seeks to be used to provide the customized routing, and provide that designation to GTE by November 30, 1996. I also recommend that GTE be required to provide AT&T with Pennsylvania-specific firm quote rates and supporting cost data separately for: (a) unbundling the switch; (b) adding capacity; (c) conditioning existing switches; and (d) the rerouting of directory assistance and operator services from resold dial tone lines, by January 2, 1997, subject to the condition that either party may petition the Commission for an expedited hearing in the event they are

unable to agreement on cost recovery. Further, I recommend that GTE begin implementing the capability to provide the customized routing requested by AT&T by July 1, 1997, with completion by September 30, 1997. Finally, I decline to recommend that GTE be required to "unbrand" its directory assistance and operator services until the customized routing is fully implemented.

9. Directory Listing Of AT&T Service Information

AT&T and GTE have reached agreement that AT&T will have a full page in the Customer Guide section of each GTE Pennsylvania telephone directory on which AT&T can place its customer information. The only remaining matter to be resolved here is the appropriate price to be paid for this listing.

It is AT&T's position that the price it should pay for this listing should be no greater than the rate GTE pays its Yellow Pages subsidiary for one page of customer information, even if that results in AT&T paying a higher price than that proposed by GTE. According to AT&T, this proposal is in keeping with the principles of competitive neutrality contained within the Telecommunications Act of 1996.

GTE, on the other hand, proposes that, for a full page listing in the Customer Guide section of its directories,

AT&T pay a price equal to 65% of the price for a full page yellow pages advertisement in each directory. According to GTE, its proposed price for this listing is reasonable and should be adopted.

It is not known, on this record, what the price is that GTE pays for a full page of customer information in its own directories. Similarly, it is not known what 65% of the price for a full page advertisement in GTE's Yellow Pages means in terms of actual dollars. Notwithstanding these omissions from the record, I believe that all providers of local telecommunications services, ILECs and CLECs alike, should pay the same rate or price for a full page of customer information in the Customer Guide section of an ILEC's directory. Therefore, I recommend that the price for a full page of AT&T service information in the Customer Guide section of each GTE Pennsylvania telephone directory be set equal to the price that GTE pays for a full page of customer information in its own directories.

E. Limitations And Restrictions

1. Types Of Services Available For Resale

In this arbitration proceeding, AT&T requests that GTE be required to offer, at wholesale rates, any telecommunications service that GTE provides at retail rates to subscribers, who are not telecommunications carriers. It

is AT&T's position that GTE's proposed limitations on the types of services that would be made available for resale have been rejected in the FCC's Order. According to AT&T, under the FCC's Order there are only three exceptions to the requirement that an ILEC offer all of its services at wholesale rates. First, an ILEC is not required to offer discounts on promotions lasting less than 90 days. Second, residential services cannot be resold to business customers. Third, services for low income customers can only be resold to customers who qualify.

It is GTE's position that it will offer for resale all of the services it now provides on a retail basis, except for: below-cost services; promotional services; services that are already provided on a wholesale basis; grandfathered services; discounted calling plans; AIN services; non-recurring charge services; pay phone lines; semi-public pay phone lines; and COCOT coin and coinless lines. See GTE's Response to AT&T's petition, Tab VII, pages 22-24, and GTE Brief of October 2, 1996, pages 57-58.

Generally, under Section 251(c)(4)(A) of the Telecommunications Act of 1996, ILECs are required to offer for resale, at wholesale rates, any telecommunications service the ILEC provides at retail rates to subscribers who are not telecommunications carriers. By definition, any service currently offered by GTE at wholesale rates would not be

subject to this provision. Subsection (B) authorizes State Commissions to prohibit a reseller that obtains, at wholesale rates, a telecommunications service that is available at retail rates only to a specific category of subscribers from offering that service to a different category of subscribers.

Thus, under Subsection (B), a reseller could not offer residential telephone service to a business customer and could not offer "Lifeline" services to any customer that would not qualify for such a service.

However, under the terms of Section 251(c)(4) of the Telecommunications Act of 1996, all other services which the ILEC offers at retail rates, no matter how those retail rates have been determined, must be made available, at wholesale rates, for resale. In addition to the restriction permitted by Subsection (B) of this Act, I would exclude short-term promotions, i.e. those lasting 90 days or less, from this requirement, as did the FCC.

Accordingly, I recommend that the interconnection agreement require that GTE offer for sale, at wholesale rates, all telecommunications services it offers at retail rates to subscribers who are not telecommunications carriers, except for promotions lasting 90 days or less, subject to the following condition: that AT&T may not resell any service it obtains at a wholesale rate, which service is only offered by GTE at retail rates to a specific class or classes of

customers, to a customer of a different class or classes.

2. Identification And Use Of Unbundled Network Elements

This issue pertains to unbundling the switch. It is the position of AT&T that under Sections 3(45) and 251(c)(3) of the Telecommunications Act of 1996, that GTE is required to make all of the functions, features and capabilities programmed into its switches available to competitors on reasonable and non-discriminatory terms, including the various "vertical" features of the switch, such as "call waiting", "call forwarding", etc. As I understand AT&T's position, the use of the FCC's interim default proxy price range of between \$0.002-\$0.004 per minute includes all of the functions, features and capabilities of the switch. AT&T also notes that the FCC's Order rejected GTE's position that additional features of the switch be made available to new entrants on an "ala carte", i.e., individually priced basis.

GTE notes that switches are computers that provide call related capabilities and functions such as "dial tone", "basic switching", "custom calling features", etc. GTE is prepared to unbundle all of the switches features, functions and capabilities. However, in doing so, GTE suggests that AT&T, and any other CLEC, requesting unbundled switching elements, should provide a forecast of the anticipated demand for switch resources. Such information is needed to allow for

appropriate planning. As I understand GTE's position the prices for the various functions, features and capabilities of the switch, as shown on GTE Ex. 18, would be in addition to its fixed and MOU charges for local switching, it proposes in this proceeding.

I believe that one of the purposes of the Telecommunications Act of 1996 is to promote and foster competition in the telecommunications industry, including competition on the local exchange level. In my opinion, GTE's proposal for individually pricing the features of the switch would result in erecting a barrier to new entrants, and, thus, would be contrary to the purpose of the Telecommunications Act. Accordingly, I recommend that GTE's proposed individual pricing of the various features of the switch be rejected.

3. Ability To Connect Multiple Unbundled Elements To Provide Service

As part of this arbitration proceeding, AT&T seeks to be able to combine various elements of GTE's unbundled network for resale in providing telecommunications service. According to AT&T, Section 251(c)(3) of the Telecommunications Act of 1996 requires GTE to provide unbundled network elements in such a manner that the CLEC may combine the various elements.

GTE opposes the inclusion of such a provision in the interconnection agreement. According to GTE, allowing the recombination of unbundled elements would allow by-pass of access charges and permit avoidance of the appropriate resale pricing standards. Including such a provision would create an unwarranted opportunity for arbitrage.

Section 251(c)(3) of the Telecommunications Act of 1996 provides, in pertinent part, that:

An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

In my opinion, the language of this Section could not be more clear. Accordingly, I recommend that the interconnection agreement include a provision allowing AT&T to combine various elements of GTE's unbundled network to provide telecommunications service.

4. Interconnection Between Two Carriers Collocated On GTE s Premises

AT&T seeks to have included in the interconnection agreement a provision requiring GTE to permit CLECs physically collocated on GTE s premises to make direct interconnections between and among the CLECs, so long as the collocated equipment was itself used for interconnection with the ILEC or access to the ILEC s unbundled network. AT&T basis its request on 592-595 of the FCC s Order.

Initially, GTE opposed this request. However, at page 65 of its Brief of October 2, 1995, GTE states that it is willing to permit interconnections between CLECs collocated on the premises of GTE, provided: (a) the provisioning of the cross-connect is at the option of GTE; (b) the connected equipment is used for interconnection with GTE or access to GTE s unbundled network elements; (c) space is available; (d) reasonable security arrangements can be provided; and (e) the CLECs pay all costs associated with the cross-connect.

I believe that GTE s position with respect to permitting interconnections between CLECs collocated on its premises is consistent with 585, 592-595 and 598 of the FCC s Order. Accordingly, I recommend that the interconnection agreement permit the interconnection between two or more CLECs collocated on the premises of GTE, subject to the conditions stated by GTE.

5. Responsibility For Unbillable And Uncollectible Revenue

AT&T seeks to have included within the terms of any interconnection agreement, a provision that would indemnify AT&T from any loss of revenues resulting from GTE's negligence. According to AT&T, it is currently an accepted practice in the telecommunications industry that the company that is in the first position to identify and prevent fraud should do so. AT&T asserts that, as a wholesale provider of services, GTE is the only party in a position to effectively prevent certain types of billing fraud and work errors. Thus, at page 72 of its Post Hearing Brief, AT&T requests that the interconnection include a provision:

[I]ndemnifying AT&T for losses caused by GTE's negligence in causing, or its lack of actions in preventing, unbillable or uncollectible AT&T revenues resulting from GTE work errors, software alterations, or unauthorized attachments to local loop facilities.

GTE objects to the inclusion of such a provision in any interconnection agreement. According to GTE, the proposal submitted by AT&T is the equivalent of strict liability. GTE Brief of October 2, page 66.

AT&T states that the accepted practice in the telecommunications industry is that the company in the first position to detect and prevent fraud should do so. However, there is no indication in this statement, or in the record of

this arbitration proceeding, that it is also the accepted practice in this industry that the "negligence" of the company in failing to detect and/or prevent fraud renders it monetarily liable to another company. In the event the occurrence of such "negligence" should result in identifiable revenue losses, the recovery of such losses should be in accordance with established legal and/or equitable principles in an appropriate judicial forum. I decline to recommend the inclusion of the provision sought by AT&T.

6. Term Of The Interconnection Agreement And GTE s
Ability To Supersede The Negotiated Or Arbitrated Terms
And
Conditions

For this arbitration proceeding, AT&T has proposed that the term of the interconnection be set at five (5) years, and that GTE should not be permitted, through changes in its tariff, to supersede the negotiated or arbitrated terms and conditions of such an agreement. Considering the extent and scope of the Telecommunications Act, GTE proposes that the term of the agreement should be for a term of only two (2) years, and that it should be permitted to supplement the agreement through tariff filings from time to time.

Considering that this is the first time that competition will be introduced into the local, basic telephone service industry, I believe that a term of five (5) years, as proposed by AT&T is too long. At the same time, in order to

provide for some period of stability in the dealings between AT&T and GTE, as well as for their respective customers, during the term of the agreement, I believe that a term of two (2) years, as proposed by GTE is too short. Accordingly, I recommend that the term of the interconnection agreement that will result from this arbitration proceeding be set at three (3) years.

I reject GTE's position that it should be permitted to supplement the agreement, from time to time, through tariff filings. Of course, this will not prevent GTE from submitting such tariff changes as it deems appropriate, nor will it prevent the Commission from exercising its authority to determine the lawfulness, justness and reasonableness of any proposed tariff change. However, any interconnection agreement between GTE and a CLEC under the Telecommunications Act of 1996, whether negotiated or arbitrated or both, should be exempt from all such tariff changes.

III. RECOMMENDED ORDER

In consideration of the foregoing, IT IS RECOMMENDED THAT:

1. The motion of GTE North, Inc., seeking the rejection of the FCC's default pricing proxies in this arbitration proceeding, is denied.

2. The wholesale discount rate for this arbitration proceeding be set at 19.87%, exclusive of the Gross Receipts Tax.

3. The unbundled loop rates be set, to produce a statewide weighted average of \$12.30, as follows:

Density Cell 1:	\$ 7.80
Density Cell 2:	9.00
Density Cell 3:	12.31
Density Cell 4:	15.81

4. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an approved TELRIC study, the rate for the unbundled network interface device be set at \$0.59 per minute.

5. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an approved TELRIC study, the costs associated with non-recurring charges be borne by GTE North, Inc., at its initial cost and expense, subject to reimbursement by AT&T Communications of Pennsylvania, Inc., in accordance with the permanent rates.

6. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an

approved TELRIC study, the rate for dedicated transport be set as the ceiling of the interstate rates of GTE North, Inc., for this service.

7. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an approved TELRIC study, the rate for common transport be set as the ceiling of the interstate rates of GTE North, Inc., for this service, based on the weighted average of the interstate DS1 and DS3 rates of GTE North, Inc.

8. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an approved TELRIC study, the rate for signaling be set as the ceiling of the interstate rates of GTE North, Inc.

9. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an approved TELRIC study, the rates for end office call completion and local switching be set at \$0.003 per minute.

10. Pending the establishment of permanent rates upon the completion of the Commission's analysis of an approved TELRIC study, the rate for tandem switching be set at \$0.0045 per minute.

11. Pending the implementation of an approved interim number portability cost recovery mechanism, AT&T Communications of Pennsylvania, Inc., shall track the numbers ported. Upon the implementation of an approved interim number

portability cost recovery mechanism, appropriate compensation be paid in accordance with that mechanism and the numbers ported.

12. Subject to both future action by the Federal Communications Commission in its Expanded Interconnection proceeding, and the establishment of TELRIC-based rates by this Commission, the rates for physical collocation shall be equal to the interstate physical collocation rates to be refiled by GTE North, Inc.

13. The proposal of GTE North, Inc., for the establishment and implementation of an "end-user surcharge", as part of this arbitration proceeding, is denied.

14. GTE North, Inc., shall provide access to its operations support systems to AT&T Communications of Pennsylvania, Inc., no later than January 1, 1997.

15. GTE North, Inc., shall not be required to develop electronic interfaces, at this time, to provide AT&T Communications of Pennsylvania, Inc., with direct access to the operations support systems of GTE North, Inc.

16. GTE North, Inc., shall develop electronic interfaces to provide AT&T Communications of Pennsylvania, Inc., with direct access to the operations support systems of GTE North, Inc., in accordance with national industry standards to be developed, or in accordance with any national agreement between it and AT&T Communications of Pennsylvania,

Inc., resulting from the California mediation proceeding pertaining to operations support systems.

17. GTE North, Inc., shall provide Pennsylvania-specific firm cost estimates and cost supporting data for the development of the electronic interfaces necessary to provide AT&T Communications of Pennsylvania, Inc., direct access to the operations support systems of GTE North, Inc., no later than 45 days after the establishment of national industry standards for such interfaces, or after reaching a national agreement with AT&T Communications of Pennsylvania, Inc., for operations support systems resulting from the California mediation proceeding.

18. In the event that AT&T Communications of Pennsylvania, Inc., and GTE North, Inc., are unable to reach agreement on the cost recovery for the development of the electronic interfaces requested by AT&T Communications of Pennsylvania, Inc., either or both of them may petition this Commission for expedited review and hearing on the matter of the appropriate cost recovery of such costs.

19. The agreed upon or approved costs for the development of the electronic interfaces requested by AT&T Communications of Pennsylvania, Inc., shall be paid by AT&T Communications of Pennsylvania, Inc., at its initial cost and expense, subject to pro rata refunds in the event other competing local exchange carriers request the same direct

access to the operations support systems of GTE North, Inc., and are able to use the same interfaces developed for AT&T Communications of Pennsylvania, Inc.

20. GTE North, Inc., shall not be required to release or disclose customer proprietary network information to AT&T Communications of Pennsylvania, Inc., for any customer switching from GTE North, Inc., to AT&T Communications of Pennsylvania, Inc., except upon receipt of such a customer's affirmative consent to such release or disclosure.

21. Any enhancements to the billing system of GTE North, Inc., which are required to be made to enable GTE North, Inc., to provide the wholesale billing and usage recording services requested by AT&T Communications of Pennsylvania, Inc., shall be paid by AT&T Communications of Pennsylvania, Inc., at its initial cost and expense, subject to pro rata refunds in the event other competing local exchange carriers request the provision of the same services from GTE North, Inc., and use the same billing system enhancements.

22. Upon the receipt by GTE North, Inc., from any source whatsoever, of a request for a change in the primary interexchange carrier of any telephone service subscriber who is a local exchange service customer of AT&T Communications of Pennsylvania, Inc., the request shall be forwarded or referred to AT&T Communications of Pennsylvania, Inc., for processing.

23. GTE North, Inc., shall permit the collocation of equipment of AT&T Communications of Pennsylvania, Inc., necessary for interconnection or access to unbundled network elements, including remote switching modules, and shall permit the collocation of equipment of AT&T Communications of Pennsylvania, Inc., on and in the poles, conduits and rights-of-way of GTE North, Inc., subject to the following conditions:

a. That GTE North, Inc., may make reasonable reservations of space for specific future uses when considering a request from AT&T Communications of Pennsylvania, Inc., for the collocation of equipment necessary for interconnection or access to the unbundled network elements;

b. That GTE North, Inc., in considering a request from AT&T Communications of Pennsylvania, Inc., to collocate equipment on or in the poles, conduits or rights-of-way of GTE North, Inc., may take into account issues of capacity, safety, reliability and engineering, provided that any such assessment is done in a nondiscriminatory manner; and

c. AT&T Communications of Pennsylvania, Inc., may petition this Commission for expedited review and hearing concerning any denial by GTE North, Inc., of a request for the collocation of equipment on the premises of GTE North, Inc., or on or in its poles, conduits and rights-of-way.

24. For secondary directory distributions, AT&T Communications of Pennsylvania, Inc., shall pay to GTE North, Inc., the same rate that GTE North, Inc., pays its directories

company for such distributions, provided that GTE North, Inc., treat such costs as avoided costs in its avoided cost study.

25. AT&T Communications of Pennsylvania, Inc., shall designate the switches it seeks to have used for the provision of customized routing of calls for directory assistance and operator services, and to provide that designation to GTE North, Inc., by November 30, 1996.

26. GTE North, Inc., shall provide to AT&T Communications of Pennsylvania, Inc., by January 2, 1997, with Pennsylvania-specific firm quote rates and supporting cost data, for the provision of customized routing of calls for directory assistance and operator services, separately for each of the following items: (a) unbundling the switch; (b) adding capacity; (c) conditioning existing switches; and (d) the rerouting of directory assistance and operator services calls from resold dial tone lines.

27. In the event that AT&T Communications of Pennsylvania, Inc., and GTE North, Inc., are unable to reach agreement on the cost recovery for the provision of customized routing of directory assistance and operator services calls, as requested by AT&T Communications of Pennsylvania, Inc., either or both of them may petition this Commission for expedited review and hearing on the matter of the appropriate cost recovery of such costs.

28. GTE North, Inc., shall begin to implement the

capability to provide the customized routing of directory assistance and operator services calls requested by AT&T Communications of Pennsylvania, Inc., by July 1, 1997, with full implementation of these services to be completed by September 30, 1997.

29. The price to be paid by AT&T Communications of Pennsylvania, Inc., for a full page listing of AT&T service information in the Customer Guide section of the Pennsylvania directories of GTE North, Inc., shall be equal to the price that GTE North, Inc., pays its directories company for a full page listing of its service information in the Customer Guide section of its own Pennsylvania directories.

30. GTE North, Inc., shall offer for sale to AT&T Communications of Pennsylvania, Inc., at wholesale rates, all telecommunications services it offers at retail rates to subscribers who are not telecommunications carriers, except for promotions lasting 90 days or less, subject to the following condition: That AT&T Communications of Pennsylvania, Inc., may not resell any service it obtains at a wholesale rate, to any customer of AT&T Communications of Pennsylvania, Inc., who is not a member of the same class or classes of customers.

31. GTE North, Inc., in unbundling its switches, shall not impose separate charges for each and every function, feature and capability of the switches.

32. AT&T Communications of Pennsylvania, Inc., in the provision of telecommunications service, may combine any of the various elements of the unbundled network of GTE North, Inc.

33. GTE North, Inc., shall permit interconnections between two or more competing local exchange carriers collocated on the premises of GTE North, Inc., subject to the following conditions:

a. The manner in which such interconnections are made shall be at the option of GTE North, Inc.;

b. The connected equipment is used for interconnection with GTE North, Inc., or for access to the unbundled network elements of GTE North, Inc.;

c. Space is available to make the interconnection;

d. Reasonable security arrangements can be provided; and

e. The competing local exchange carriers pay all of the costs of the interconnection.

34. The terms of the interconnection agreement, whether negotiated or arbitrated, between AT&T Communications of Pennsylvania, Inc., and GTE North, Inc., shall be exempt from any tariff changes filed by either of them during the term of the agreement.

35. The interconnection agreement between AT&T Communications of Pennsylvania, Inc., and GTE North, Inc., shall be for a term of not less than three (3) years.

Date: October 10, 1996

ROBERT P. MEEHAN
Administrative Law Judge

- (a) Application of AT&T Communications of Pennsylvania, Inc.; Petition for Arbitration of Interconnection Agreement with GTE North, Inc.
- (b) On August 16, 1996, AT&T Communications of Pennsylvania, Inc., filed a petition for arbitration of interconnection agreement with GTE North, Inc. Arbitration conferences were held on August 30 and September 16-17, 1996. Arbitration hearings were held on September 24-26, 1996. Post hearing briefs have been filed.
- (c) Judge Meehan, as Arbitrator, issued a Recommended Decision providing for the rates, terms and conditions of the interconnection agreement, as set forth in the Ordering Paragraphs.

bjm