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Decision 97-01-045 January 23, 1997

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Petition of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with GTE California, Incorporated.	Application 96-09-012 (Filed September 19, 1996)

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OPINION APPROVING ARBITRATED AGREEMENT

I. Summary

In this decision, we approve an agreement between MCI Telecommunications Corporation (MCI) and GTE California, Incorporated (GTE) for the interconnection of their telecommunications services networks pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the Act).

II. Procedural Background

On September 19, 1996, MCI filed a petition for compulsory arbitration of open issues with respect to a proposed interconnection agreement with GTE pursuant to Section 252(b)(1) of the Act and our implementing rules adopted in Resolutions ALJ-167 and ALJ-168.[1] On September 13, 1996, GTE filed its response to the petition. An arbitration hearing was held by Administrative Law Judge Kenney on October 17-25, 1996. Each of the parties filed a post-hearing brief and a proposed interconnection agreement on November 8, 1996, and a reply brief on November 15, 1996.[2] The Arbitrator's Report was issued on December 11.[3] Parties filed comments on the Arbitrator's Report on December 23, and an agreement conforming to the Arbitrator's Report was jointly filed by the parties on December 24, 1996. Parties then filed comments on the Arbitrated Agreement on January 3, 1997. No parties other than MCI and GTE participated in this arbitration.

III. Standards of Review

The standards for review of interconnection agreements derive in part from the Act and in part from the limitations on Federal Communications Commission (FCC) pricing authority established in the Telecommunications Act of 1934 (and preserved in

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1 At the time MCI filed its petition, Resolution ALJ-167 was in effect. However, prior to the start of hearings, Resolution ALJ-168 came into in effect.

2 Rule 3.13 of ALJ-168 requires reply briefs to be filed within five days after the opening briefs. However, in response to party's motions, parties were granted an additional two days to file reply briefs.

3 Rule 3.17 requires the Report to be issued within 20 days from submission, while Rule 4.2.1 requires parties to submit their Agreement seven days later. In response to MCI's request to postpone the date for filing the Agreement, the parties and the Arbitrator agreed to move the date for issuing the Arbitrator's Report from December 5 to December 11; and to move the date for filing the Agreement from December 12 to December 24.

the 1996 Act) that make state statutes controlling over all intrastate matters. Section 252(d) and Section 252(e) of the Telecommunications Act set forth the standards under which a Commission can review an interconnection agreement adopted through settlement or arbitration.

Under the terms of the Telecommunications Act set forth in Section 252(d), the state commission must resolve arbitrated issues in a manner consistent with the pricing standards contained in the Act. The state commission cannot require an interconnection agreement through arbitration that does not meet the requirements of Section 251 of the Act and the standards set forth in Section 252(d) relating to pricing for interconnection, network elements, transport, termination, and wholesale rates. (Section 252(e)(2)(B) of the Act.) Section 251(d)(3) further provides that the FCC shall not preclude the enforcement of any regulation, order, or policy of a state commission that is consistent with Section 251 and does not substantially prevent its implementation. Section 252(c)(2) instructs the state "to establish any rates for interconnection, services, or network elements according to subsection (d)," without any reference to FCC regulations. Thus, by restricting the FCC, the Act preserves the authority of the states to conduct reviews consistent with their regulatory programs that are adopted pursuant to state statutes, as long as state policies do not prevent implementation of the Telecommunications Act.

Section 252(e)(3) makes it clear that under the Act, states retain broad authority to review all interconnection agreements. Section 252(e)(3) states that "Notwithstanding paragraph (2) ... nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in review of an agreement, including requiring compliance with intrastate telecommunications service quality standards." (Section 252(e)(3) of the Act.) For California, this section has particular relevance because we have already addressed in evidentiary proceedings many interconnection issues pursuant to California's goal of allowing for competition in all California telecommunications markets by January 1, 1997. (Public Utilities Code (PU) §

Both parties agreed that this new schedule would not jeopardize the Commission adhering to the deadlines contained in the Act.

709.5(a).) Our past efforts to resolve interconnection issues, often through elaborate evidentiary proceedings, are consonant with the intentions of the Act both to open telecommunications markets throughout the nation and to preserve state authority to regulate telecommunications utilities consistent with state statutes.

Finally, we note that Section 152(b) of the Communications Act of 1934, a section which was not repealed by the 1996 Act, fences off the FCC from regulating charges, regulations, practices, classifications, services or facilities used for or in connection with intrastate telecommunication service. Thus, the Commission retains broad authority in reviewing interconnection agreements to ensure conformity with state statutes and regulations that affect rates, as well as with the specific authority to ensure that agreements meet the requirements of the Act.

IV. Issues

The issues to be addressed in this decision were substantially framed by the comments filed in response to the Arbitrator's Report and those filed in response to the Arbitrated Agreement. In some comments MCI and GTE merely reargue points on which they did not prevail in the arbitration. Where the Arbitrator's resolution is clearly consistent with the law and this Commission's prior decisions, we will generally not address such comments here. Therefore, this decision primarily addresses instances where MCI's and/or GTE's comments have persuaded us to change the outcome required by the Arbitrator's Report. In other instances, we do not reverse the outcome of the Arbitrator's Report but clarify the meaning of the Arbitrator's Report and/or address certain issues raised by one or both parties.

A. Wholesale Prices

1. Wholesale Discount Rate

The Arbitrator found that the limited time allowed for the arbitration precluded using the arbitration record to define an appropriate discount to be applied to GTE's retail services sold to MCI for resale. Instead, the Arbitrator relied on the interim discounts adopted by this Commission in Decision (D.) 96-03-020 (12% for most services and 7% for residential access lines). We concur with the Arbitrator that the compressed

nature of the arbitration process did not allow for the careful consideration necessary to develop new discount rates and that it was appropriate to rely on the work previously done by GTE, MCI, and others to develop interim discounts.

MCI states that the Arbitrator's Report inappropriately relied on D.96-03-020 to set the wholesale prices for CentraNet, private line, ISDN, directory assistance, and operator services. More specifically, MCI states that by using D.96-03-020 to set the wholesale prices for these services, the Arbitrator's Report fails to reflect certain avoided costs as required by Section 252(d)(3) of the 1996 Act.[4] We agree with MCI, and we shall accordingly require that all of GTE's retail services provided on a wholesale basis reflect the 12% avoided costs discount that was set in D.96-03-020. The only exception shall be residential services which shall be priced using the 7% wholesale discount set in D.96-03-020. We note that our requirement for an across-the-board wholesale discount is consistent with the outcomes in both the AT&T/Pacific and AT&T/GTE arbitration proceedings; and that the separate 7% wholesale discount is consistent with the AT&T/GTE arbitration results. We will continue to examine and adjust the discount rates as appropriate in the generic Open Access Network and Architecture Development (OANAD) proceeding (Rulemaking (R.) 93-04-003/Investigation (I.) 93-04-002).

2. Charge for Resale Service Changeover

Appendix A of the Arbitrator's Report includes a changeover charge of $25.92 (i.e., the nonrecurring rate for switching resale customers from GTE to MCI). MCI states that this rate is anticompetitive and discriminatory since no changeover charge was adopted in either the AT&T/GTE or the AT&T/Pacific arbitrations. MCI believes there should be no changeover charge, but if the Commission is going to permit such a rate, MCI believes it should be equal to the $5.00 rate that local exchange carriers charge to switch customers from one IEC to another IEC (commonly referred to as "PIC charge").

We agree with MCI that the $25.92 changeover charge adopted in the Arbitrator's Report is too high. We have established a schedule for the determination of

permanent changeover charges in Phase III of the Local Exchange Competition proceeding (R.95-04-043/I.95-04-044).[5] Until a permanent changeover charge is set in that proceeding, we will preclude GTE from imposing any changeover charge. We find that GTE will suffer litttle, if any, harm from its inability to impose a changeover charge. This is because GTE's costs to implement a changeover are very low since a changeover only involves the switching of a customer's account from GTE to a resale carrier with no change in facilities or other potentially costly procedures.

3. Aggregation of End User Volumes

The Arbitrator's Report does not require GTE to provide MCI with volume discounts based on the aggregate volume of MCI's resale customers.[6] However, despite the Arbitrator's Report, parties submitted an Arbitrated Agreement that apparently requires GTE to provide MCI with wholesale volume discounts based on the aggregated usage of MCI's retail customers. MCI states that this provision in the Arbitrated Agreement should remain unchanged, while GTE requests that it be modified to effectively preclude aggregation of end user volumes by adding the following GTE-proposed language at the end of Article V, Section 3.2.5:[7] "and Commission orders."

GTE's proposal is reasonable and parties shall incorporate it into the Arbitrated Agreement. We note that this outcomes is consistent with the results of the AT&T/Pacific and the AT&T/GTE arbitrations.

B. Retail Services Subject to Resale

1. CentraNet Resale Requirements

Article V, Section 3.2.1 of the Arbitrated Agreement sets forth a list of requirements for the resale of CentraNet services by GTE to MCI. According to GTE, these requirements force GTE to provide resold CentraNet to MCI on terms and conditions that are not available to GTE's own retail customers. GTE states that under

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4 In D.96-03-020, the wholesale prices for CentraNet, private line, ISDN, directory assistance, and operator services were set to be equal to their respective retail prices.

5 D.96-03-020, p.36.

6 Arbitrator's Report. Pp. 44-45.

7 All references are to the MCI/GTE Arbitrated Agreement unless otherwise indicated.

the Act, it cannot be compelled to provide MCI with resold telecommunications services on terms and conditions different than those that GTE offers to it own retail subscribers.

Our review of the Arbitrated Agreement confirms that it imposes on GTE the obligation to provide MCI with resold CentraNet on terms and conditions that GTE does not offer to its own retail customers. This is not required by the Act. Accordingly, all of the following sections of Article V should be modified as proposed by GTE: Sections 3.2.1.1, 3.2.1.2, 3.2.1.3, 3.2.1.6, 3.2.1.7, 3.2.1.9, and 3.2.1.10. (See GTE's Comments on the Arbitrated Agreement, pp. 33-34)

2. Resale of Voice Mail

The Arbitrator's Report determined that GTE is not required to resell voice mail to MCI since voice mail is not a telecommunications service as defined by the Act.[8] GTE states that contrary to the Arbitrator's Report, Article V, Section 3.2.2.6 of the Arbitrated Agreement requires GTE to provide MCI with network functions (e.g., message waiting indicator) which would enable MCI to resell GTE's voice mail services. GTE states that while MCI may be able to purchase these network functions on an unbundled basis, MCI cannot purchase them as resale services. Accordingly, GTE asks for this section to be deleted.

Section 251(c)(4) of the Act requires Incumbent Local Exchange Carriers (ILECs) to offer for resale at wholesale rates any telecommunication service that the ILEC provides at retail. Therefore, if GTE's retail services include message waiting indicator and other network functions that would enable MCI to provide its own voice mail service, then the Arbitrated Agreement should likewise require GTE to sell these services at wholesale to MCI. Conversely, if such network functions are not provided on a retail basis separate and apart from GTE's voice mail service, then GTE shall not have to sell these network functions at wholesale to MCI, and Article V, Section 3.2.2.6 should be deleted from the Arbitrated Agreement.

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8 Arbitrator's Report, pp. 41-42.

3. Resale of Inside Wire Maintenance

The Arbitrator's Report determined that GTE is not required to resell inside wire maintenance since it is not a telecommunications service as defined by the Act.[9] GTE notes that contrary to the Arbitrator's Report, Article VIII, Section 7.3.1.3 of the Arbitrated Agreement states "[Charges for maintenance work submitted to MCIm][10] shall include any charges for inside wiring work done by GTE employees or contractors, provided on behalf of MCIm." Accordingly, GTE asks that this statement be deleted.

The Arbitrator's Report correctly decided that inside wire maintenance is not a telecommunications service as defined by Act. Therefore, since issues concerning inside wire maintenance cannot be decided by this arbitration, the portion of the Arbitrated Agreement that GTE identified as pertaining to inside wire maintenance should be deleted from the contract.

4. Resale of Pay Telephone Service

Section 3.2.7 of Article V of the Arbitrated Agreement sets forth various requirements to govern GTE's resale of pay telephone service to MCI. GTE requests that this entire section be deleted since it imposes a list of resale requirements over and above what GTE currently offers on a retail basis; and because it requires GTE to provide several types of deregulated services (e.g., Wire Maintenance option) that the Arbitrator's Report excluded from GTE's resale obligation.

Section 251(c)(4) of the Act requires ILECs to offer for resale at wholesale rates any telecommunication service that it provides at retail to subscribers who are not telecommunications carriers. The record in this arbitration does not permit a determination of which pay telephone services, functions, and features contained in the various subsections of Section 3.2.7 are "telecommunications services" provided by GTE on a "retail" basis. Therefore, all of the language in Section 3.2.7 and its subsections shall be replaced with the following: "GTE shall resell to MCI any telecommunications services associated with GTE providing pay telephone service to the public on a retail

9 Arbitrator's Report, pp. 41-42.
10 While this decision uses the term "MCI," the Arbitrated Agreement uses "MCIm."

basis. The terms 'telecommunication service' and 'retail' shall be defined as they are used in the Telecommunications Act, in FCC and Commission orders pertaining to the Act." Parties should not read this contractual provision as applying to any unregulated services (e.g., wire maintenance) over which this Commission has no jurisdiction.

5. Resale of Financial Assistance Programs

Section 3.2.2 of Article V requires GTE to resell "Voluntary Federal and State Subscriber Financial Assistance Programs." According to GTE, there is no distinction between these programs and Lifeline Service which GTE does not have to resell under the terms of the Arbitrator's Report. GTE therefore asks that the first sentence of Section 3.2.2 be deleted.

The record of this arbitration does not permit a determination of whether the "Voluntary Federal and State Subscriber Financial Assistance Programs" are telecommunications services (which GTE must resell) or a government-mandated program (which GTE does not have to resell). Given that the phrase "Voluntary Federal and State Subscriber Financial Assistance Programs" includes the word "program," it shall be assumed these federal "programs" are the same as Lifeline Service (i.e., programs and not telecommunications services), and thus GTE shall not be required to be resell these "programs" in accordance with the Arbitrator's Report.[11] Accordingly, the first sentence of Article V, Section 3.2.2 shall be deleted from the Arbitrated Agreement.

6. Information Regarding Subscriber Status

Article V, Sections 3.2.2, 3.2.2.1, and 3.4.2 require GTE to provide MCI with various information regarding the eligibility of GTE's subscribers to: (1) participate in assistance programs; and (2) qualify as tax exempt or other reduced charge entities. GTE is willing to provide what information it has, but GTE states that should not be required to obtain and provide MCI with information that is not in its possession.

We do not believe it is reasonable to force GTE to provide MCI with information that is not in GTE's possession. We, therefore, find GTE's proposed changes to the

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11 Arbitrator's Report, p. 41.

Arbitrated Agreement on this matter to be reasonable. Accordingly, the following GTE-proposed language should be used to replace all of Section 3.2.2, Sections 3.2.2.1, and 3.4.2: "As part of an authorized transfer of subscriber information to MCIm, GTE will provide such information as GTE may hold as of the date of MCIm's request for the information regarding the subscriber's: (1) participation in federal or state assistance programs; (2) tax exempt status; or (3) eligibility for reduced charges. GTE will not be required to conduct any additional inquiry regarding a subscriber's current status or eligibility to receive such benefits."

C. Prices of Unbundled Network Elements

1. Recurring Charges

The recurring charges for unbundled network elements (UNE) adopted in Appendix 1 to this decision reflect several changes from the original Arbitrator's Report. In particular, these changes reflect both the comments of the parties to the Arbitrator's Report and the Telecommunication Division's comprehensive analysis of GTE's OANAD compliance filing. Tandem Switching has been changed to reflect agreement among the parties. Changes were also made to Custom Calling Features in response to an error pointed out by GTE: The Telecommunication Division inadvertently used high-density estimates instead of statewide averages for the features. Lastly, changes were made to the two-wire loop, four-wire loop, and DS-1 port to reflect corrections made in the underlying OANAD costs. More specifically, rather than use the "hybrid" estimates incorporated in the original report, the Telecommunications Division re-estimated the costs for those elements using the costs submitted in GTE's advice letter ordered in D.96-08-021.

We note that the recurring charges contained in Appendix 1 are the same as those established in D.97-01-022 for the AT&T/GTE arbitration. Both MCI and GTE recommended that the prices resulting from this arbitration be consistent with those established in the previous AT&T/GTE arbitration.

Appendix 2, which contains non-recurring charges (NRCs) is the same as in the Arbitrator's Report with the exception of changeover-related charges which have been

reduced from that set forth in the Arbitrator's Report for reasons discussed elsewhere in this decision.

2. Common Cost Mark-up Factor

Both parties take issue with the Arbitrator's Report development of a 16% overhead factor for the recovery GTE's shared and common costs. GTE argues that its analysis of shared and common costs adequately supports a larger markup for shared and common costs, while MCI argues that the appropriate markup level is the 10% variable overhead factor proposed by the Hatfield model.

We find merit in GTE's argument that 16% is insufficient to allow GTE to recover certain plant and non-plant specific expenses. We will therefore use GTE's analysis of its shared and common costs to establish the markup at 22% which is composed of 10% for corporate overhead and an additional 12% to capture plant-specific, non-specific, and general support expenses. We conclude that the 22% markup will reasonably insure that GTE can recover its shared and common costs.

3. Prices for Conditioning Unbundled Loops

GTE notes that the Arbitrator's Report does not address or include costs (and prices) to condition unbundled HDSL, ISDN, and DS-1 loops. We agree with GTE that it should be able to recover its costs to provide MCI with the conditioned loops. Accordingly, GTE shall be allowed to charge its direct costs to condition a loop, plus a mark-up for shared and common costs as determined elsewhere in this decision. Any disagreement about GTE's costs and/or prices for loop conditioning should be resolved through the dispute resolution process contained in the Arbitrated Agreement.

4. Price for Unbundled Vertical Switching Elements

MCI objects to the inclusion in the Arbitrator's Report of separate costs and prices for vertical switching services. MCI argues that under the FCC's rules, the Commission must produce a single switching price that incorporates all vertical services. However, MCI's argument ignores the language in Paragraph 414 of the FCC's First Interconnection Order, in which the FCC leaves to the states the discretion to treat

vertical switching features as separate network elements. It is therefore appropriate for the Arbitrated Agreement to reflect separate pricing for vertical switching features.

5. Interim Price for Multiplexing

The Arbitrator's Report requires GTE to provide multiplexing as an UNE.[12] Since no cost study had been performed for multiplexing, the Arbitrator's Report requires that within 10 days of receiving a request from MCI for unbundled multiplexing, GTE is to set an interim price based on its costs for multiplexing determined in accordance with the Commission's Total Service Long Run Incremental Cost (TSLRIC) principles, plus a mark-up for common costs. (Arbitrator's Report, pp. 32-33.)

GTE states that it will need more than 10 days to determine the TSLRIC cost for multiplexors, but GTE does not state the amount of time it might need to perform such a cost study. We shall allow GTE 30 calendar days to perform a cost study. However, GTE's need for more time to perform a cost study should not delay the unbundling of multiplexing. Upon request, GTE shall unbundle multiplexing as soon as technically feasible and then back-bill MCI once the cost study is completed.

6. Inclusion of Shared and Common Costs in Price of UNEs

Article VI, Section 2.7.3 states that any UNE not identified in the Arbitrated Agreement will be provided at "TELRIC[13] prices." GTE asks that the Arbitrated Agreement be clarified to state that a reasonable allocation of shared and common costs would also be built into the price of UNEs.

GTE's proposal is reasonable, and the following language should be added to the end of Section 2.7.3: "plus a mark-up for shared and common costs as determined by the Commission."

12 The function of multiplexing is to transition between two levels of the digital hierarchy.
13 TELRIC stands for Total Element Long Run Incremental Cost.

7. Compensation for Transport and Termination With Unbundled Local Switching

GTE and MCI state that they did not discuss or arbitrate the issue of compensation for transport and termination when MCI purchases unbundled local switching from GTE. Therefore, on their own initiative, the parties included Article IV, Sections 3.5 and Appendix E in the Arbitrated Agreement which are based on language from the AT&T/GTE arbitrated agreement. However, the parties disagree on the recovery of certain access charges. Since this issue was "completely unanticipated" the parties left a few sections of Appendix E marked to show areas of disagreement.

Section 252(b)(4) of the Act limits the Commission's authority to decide only on those arbitration issues that were included in MCI's application and GTE's response to the application. Accordingly, the Commission lacks any authority to decide on this matter since it was not included in MCI's application nor in GTE's response to the application. Nonetheless, we will accept an Arbitrated Agreement that contains compensation for transport and termination when MCI purchases unbundled local switching from GTE where such compensation has been agreed to by the parties.

8. Charges for Ordering Combinations of UNEs

Article VIII, Section 3.2.17.3 requires GTE to sell combinations of UNEs without any charge for connection to currently connected UNEs. GTE states that it is entitled to recover its reasonable costs for unbundling, and asks that the last sentence of Section 3.2.15.3 be deleted.

GTE's proposal is reasonable and we shall adopt it.

9. Charges for Technical Assistance

Article VIII, Section 3.2.17.6 requires GTE to provide "technical assistance to ensure compatibility between elements." GTE states that MCI may order novel combinations of UNEs which may be technically feasible but do not function at normal levels or cannot be made to function without significant and costly modifications to GTE's network. Accordingly, GTE proposes the following language as a reasonable replacement:

> When MCIm orders combinations of Network Elements, GTE will provide advice, testing and other assistance as may be reasonably necessary if combinations ordered by MCIm prove to be incompatible. The parties will mutually agree on the scope, subject and cost of assistance at such time as MCIm requests assistance.

GTE should be allowed to recover its costs for the services that it provides to MCI. We therefore find GTE's proposal to be reasonable and shall adopt it.

D. Unbundled Network Elements

1. Time Frame For Implementation of MCI-Requested Customized Routing

The Arbitrator's Report required GTE to make available "custom routing"[14] so that MCI may combine unbundled switching elements with other elements or features such as Operator Services and Directory Assistance. The Arbitrator's Report went on to state that it would be reasonable for GTE to obtain the support and endorsement from switch vendors before instituting any "work-around" that might be necessary to implement an MCI request for switch unbundling; and that when a work-around is required, GTE would provide unbundled access no later than six months after receiving a specific request from MCI, or within 30 days of receiving endorsement from the switch vendor, whichever comes first.[15]

GTE asks that the Arbitrator's Report be clarified to state that an MCI request for customized switch routing does not need to be provided within six months where the switch vendor has failed and/or refused to endorse a particular MCI-requested "work around." We shall maintain the six-month requirement. However, there may be instances where it is infeasible or impossible to meet an MCI request for customized routing within six months of MCI's request. In such an instance, GTE may request a waiver from MCI of the six months. Any dispute regarding the timing and/or the technical feasibility of a request for customized routing should be resolved via the dispute resolution process set forth in the Arbitrated Agreement.

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14 With custom routing, MCI customers can dial 411 or 0, for example, and be networked to an MCI-chosen DA/OS platform without dialing any additional numbers.

15 Arbitrator's Report, pp. 29-31.

GTE also asks that the Arbitrator's Report be modified to state that GTE does not need to implement MCI-requested customized switch routing within 30 days of receiving an endorsement from a switch vendor. We shall maintain 30-day requirement, but GTE may request a waiver from MCI of the 30 days if GTE finds it infeasible to meet this requirement. Any dispute regarding the feasibility of the timing for the implementation of customized routing should be resolved via the dispute resolution process set forth in the Arbitrated Agreement.

2. Transport

During the arbitration, MCI and GTEC stated there were no issues regarding the unbundling of common and dedicated transport. However, each party urged the adoption of its proposed contract language pertaining to unbundled common and dedicated transport. The Arbitrator's Report adopted MCI's proposed contract language since it contained greater detail about technical specifications and thus left less room for interpretation and dispute.[16] GTE asks that the Arbitrator's Report be modified to require technical specifications specific to GTE's California network.

We shall not reverse the Arbitrator's Report on this issue. Nonetheless, where parties agree, they may revise the technical specifications for unbundled transport included in the Arbitrated Agreement. Furthermore, to the extent that using MCI's technical specifications for unbundled transport causes GTE to incur additional costs when compared with using GTE's technical specifications, then MCI shall be responsible for bearing these additional costs. Disputes regarding the existence and magnitude of such costs should be resolved via the dispute resolution process set forth in the Arbitrated Agreement.

16 Arbitrator's Report, p. 31.

3. Provision of Features and Functions

Article VI, Section 2.3 of the Arbitrated Agreement requires GTE to provide any "feature, function, capability or service option" that a UNE is capable of providing. GTE states that while a UNE may be theoretically capable of providing a certain function, there may be certain technical limitations in practice. To clarify the possible technical limitations, GTE asks that this section be modified to begin with the words "Subject to the technical limitations set forth in this agreement,".

GTE's proposal is conceptually reasonable, but the language to be adopted shall be as follows: "Subject to technical infeasibility,". The term technical infeasibility shall be defined as it is used in the Act and those FCC orders and Commission decisions pertaining to the unbundling of network elements. Any dispute over what constitutes technical infeasibility should be resolved via the dispute resolution process set forth in the Arbitrated Agreement.

E. Directory Assistance and Directory Listings

1. Use of GTE Directory Assistance Database for Publishing Directories

GTE submitted relatively lengthy and critical comments[17] regarding a one-sentence statement in the Arbitrator's Report addressing the use of GTE's Directory Assistance (DA) database by MCI for publishing directories.

We note that the Arbitrator's Report merely recites GTE's position and makes no decision regarding MCI's use of GTE's DA database for publishing directories.[18] Since the Arbitrator's Report does not decide any issue on this matter, and since GTE cites no provision in the Arbitrated Agreement on this issue, we find it unnecessary to address any further GTE's lengthy comments on this matter.

2. Use of Subscriber Listings

MCI states that GTE should be required to obtain MCI's consent before GTE uses MCI's subscriber list information for any purpose other than Directory Assistance (DA). GTE responds that Article VII, Section 6.2.3 imposes an obligation on GTE to keep MCI's subscriber listings confidential and to limit their use to what is necessary for

17 Comments of GTE on the Arbitrator's Report, pp. 23-34.
18 Arbitrator's Report, pp. 18-19.

directory distribution. However, GTE states that MCI should likewise be required to obtain GTE's consent before MCI uses listings from GTE's DA database for purposes other than providing on-line DA information. According to GTE, both parties have a property interest in their own listings, and the confidentiality of GTE's and MCI's information must be reciprocally protected. As such, GTE asks that Article VII, Section 6.2.3 be modified to reflect a reciprocal obligation on both parties, rather than a one-way obligation running only towards MCI.

GTE's proposal is reasonable and should be incorporated into the Arbitrated Agreement.

3. Fees for the Sale of Subscriber Lists

Section 6.2.3 of Article VII states that "Upon consent, MCIm shall receive its pro-rata share of any amounts paid by third parties [from the sale by GTE] of MCI subscriber listings." In order to remove itself from the position of having to manage MCI's directory listings business for free, GTE asks that it be able to charge MCI "the same service bureau extraction fee charged to GTE by GTE's vendor of directory listings services."

We agree with GTE that it should receive a fee for its efforts to sell MCI's subscribers listing. However, we cannot adopt GTE's proposal that this fee be based on the "service bureau extraction fee charged to GTE by GTE's vendor of directory listings services" since there is virtually no record regarding the purpose or amount of the service bureau extraction fee. Therefore, the Arbitrated Agreement should state that GTE may charge a fee based on its cost to provide the service, plus a reasonable profit. Any disagreement on the fee should be resolved via the dispute resolution process set forth in the Arbitrated Agreement.

4. Inclusion of MCI Information in the Information Pages of GTE's White Pages

In regards to the inclusion of MCI-related information in GTE's white pages, MCI is concerned that the Arbitrator's Report appears to require a result that is more restrictive than intended by either of the parties.

The intent of the Arbitrator's Report was to adopt GTE's position in its entirety, a result which we affirm herein. Accordingly, the Arbitrated Agreement should reflect that: (1) GTE agreed to provide, at no charge, a limited amount of space in the Information Section of its White Pages for MCI's logo and the telephone numbers for MCI's business office, repair service, and billing inquiries; and (2) GTE agreed to sell to MCI one page in the Information Section of its White Pages priced at a 65% discount to the normal rate for a full-page Yellow Pages advertisement.

5. MCI Branded Directory Cover

Article VII, Section 6.217 requires GTE to provide MCI subscribers with directories with MCI-branded covers. MCI and GTE both agree that Section 6.2.17 should be deleted in order to conform to page 21 of the Arbitrator's Report. Consistent with the parties agreement, we order Section 6.2.17 of Article VII to be deleted from the Arbitrated Agreement.

6. Billing for Yellow Pages Listings

Article VII, Section 6.1.2 requires GTE to transfer ownership and billing of all yellow page listings to MCI. GTE states that the Arbitrated Agreement cannot properly impose any requirements regarding yellow pages since yellow page listings are a competitive, unregulated service not subject to the requirements of Sections 251 and 252 of the Act. Moreover, GTE believes that under California law the Commission lacks the jurisdiction or control over yellow page directories to make such an order. (PU Code § 728.2.) Accordingly, GTE asks that all references to yellow page listings in this section be deleted.

We agree with GTE that Section 6.1.2 and its subsections should be modified to delete any reference to transferring "ownership and billing" for listings in GTE yellow

pages from GTE to MCI. However, we find that other references in this section to yellow pages listings should remain.

7. Enhanced Listings

Article VII, Section 6.2.12 requires GTE to become MCI's agent for the sale of enhanced (e.g., bold, indent, and italics) white page and yellow page listings. GTE states that the sale and design of enhanced listings is a competitive industry not subject to regulation by this Commission. Accordingly, GTE asks that this section be deleted in its entirety.

We find that this contractual provision is unnecessary for a successful interconnection agreement. Accordingly, this contractual provision shall be eliminated from the Arbitrated Agreement.

F. Number Portability

1. Division of Access Revenues for Ported Numbers

When a call to a ported number is handed off by an interexchange carrier (IEC) for termination to the end user, both the original LEC and the new LEC use their facilities to terminate the call under current methods of interim number portability (INP). Since IECs pay access charges to LECs for the termination of calls, one of the arbitration issues was how access revenues should be shared between MCI and GTE when a call is ported. The Arbitrator's Report ordered parties to try to reach a negotiated compromise, and if that were not possible, then the parties were directed to adopt the suggested method for sharing access revenues described in FCC Order 96-286, ¶ 140.[19] Parties were subsequently unable to reach a negotiated compromise, and both parties agree that the FCC's suggested method provides inadequate guidance. Since this matter was not addressed in either MCI's or GTE's proposed interconnection agreements, the parties include in their Arbitrated Agreement[20] the same formula for sharing access revenues as found in the AT&T/GTE Arbitrated Agreement.[21]

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19 Arbitrator's Report, p. 18.
20 Arbitrated Agreement, Article XI, Section 2.8.
21 AT&T/GTE Arbitrated Agreement, General Terms and Conditions, Section 41.3.6.

GTE opposes the Arbitrated Agreement's formula for the sharing of access charges on ported numbers and asks that the formula be deleted.[22] According to GTE, the Arbitrated Agreement does not reflect the FCC's suggested method for sharing of access revenues. MCI states that the Arbitrated Agreement should be left unchanged since it properly reflects the FCC's intent.

The FCC in Order 96-286 suggested that access revenues for ported numbers be shared in the same manner as with meet-point billing arrangements. We find the formula in the Arbitrated Agreement is reflective of revenue sharing in a typical meet-point billing arrangement, and the formula shall, therefore, be left unchanged. As noted by the parties, this results in the same sharing of access revenues on ported numbers as in the AT&T/GTE Arbitrated Agreement.

2. Terms and Conditions for Number Portability.

Article XI, Sections 3 and 4 of the Arbitrated Agreement includes a significant amount of language regarding permanent number portability (PNP). GTE states that because any PNP solution will be an industry-wide solution, that an interconnection agreement between two parties in one state is not the appropriate forum to discuss PNP in anything but the most general terms. GTE's says this principle is reflected in the introductory paragraph of Article XI, Section 3, and in Sections 3.1, 3.1.1, 3.1.2, 3.1.3, 3.1.5, 3.1.6 and 3.1.7. However, GTE states that the more specific PNP terms in the Arbitrated Agreement will be rendered moot by industry standards. Accordingly, GTE requests that the rest of Section 3, aside from the general terms listed above, be deleted. For the same reason, GTE also requests that Section 4 be limited to apply only to interim number portability.

GTE's proposal is reasonable and parties shall corporate it into the Arbitrated Agreement.

G. Reciprocal Compensation When Traffic Is Not Balanced

Section 251(b)(5) of the Act imposes on both MCI and GTEC the duty to establish reciprocal compensation arrangements for the transport and termination of

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22 GTE states that it did not voluntarily previously agree to this split with AT&T, but that it was incorporated into

telecommunications traffic. Pursuant to § 252(d)(2)(A) of the Act, such arrangements must provide for the mutual and reciprocal recovery of each carrier's costs to transport and terminate calls that originate on another carrier's network. Arrangements that afford the mutual recovery of costs through offsets, including waiver (such as bill-and-keep arrangements) are permitted.[23]

The Arbitrator's Report required MCI and GTE to use bill-and-keep arrangements as long as traffic is relatively balanced. The Arbitrator's Report went on to state that traffic would be considered relatively balanced until one party is terminating more than 65% of the total minutes of local traffic. In such an event, the Arbitrator's Report determined that each party should charge its own cost to transport and terminate calls that originate on the other's network.[24]

MCI and GTE disagree on the intent of the Arbitrator's Report when traffic is out of balance (i.e., one party terminates more than 65% of traffic). In particular, parties disagree whether "bill and keep" would still apply to the first 65% of minutes of use (MOUs). GTE requests that if, for example, one party is terminating 72% of traffic, the other party would pay the applicable rate times 7% of the total minutes of traffic. MCI requests that under this example, each party would pay 100% of the costs incurred by the other party to terminate traffic (i.e., no bill and keep for any portion of the traffic MOUs).

We shall adopt GTE's proposal that if one party is terminating more than 65% of traffic, the bill and keep arrangement shall apply to the first 65% of traffic. We note that this arrangement is consistent with the outcome in the AT&T/GTE Arbitrated Agreement.[25]

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the GTE/AT&T Proposed Agreement "by default."
23 Section 252(d)(2)(B)(i) of the Act.
24 Arbitrator's Report, pp. 12-14.
25 AT&T/GTE Arbitrated Agreement, Attachment 14, Section 4.

H. MCI Access to GTE's Poles, Ducts, Conduits, and Rights-of-Way

1. GTE's Legal Ability to Convey Access

GTE believes that the Arbitrated Agreement may require it to provide MCI with access to poles, ducts, conduits, and rights-of-way ("pathways") which GTE has no legal right to provide to MCI. We find no such requirement in the Arbitrated Agreement; indeed, we find that the Arbitrated Agreement is clear that GTE has to provide access to any given pathway only to the extent that GTE owns or controls the pathway.

2. Definition of Right of Way

GTE states that the definition of "right of way" included in Article X, Section 2 is far too expansive, and recommends that Section 2 be deleted and replaced with the following language from the AT&T/GTE Arbitrated Agreement:

> A "Right of Way" (ROW) is the right to use the land or other property of another party to place poles, conduits, cables, other structures and equipment or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations. The existence of a ROW shall be determined in accordance with Applicable Law.

GTE states that with the exception of the last sentence, the above language is also identical to the AT&T/Pacific contract.

We find GTE's proposal to be reasonable and shall adopt it.

3. Information on Pathways in the Possession of GTE

GTE objects to the requirement in Article X, Section 2.3 that information requested by MCI regarding GTE pathways is deemed "available" under the Arbitrated Agreement if it is in the possession of any <u>former</u> agents, contractors, employees, lessors or tenants of GTE. GTE states that it cannot reasonably comply with this requirement. Therefore, GTE requests that the word "former" be deleted.

We find GTE's proposal to be reasonable and shall adopt it.

4. Definition and Payment for Make-Ready Work

GTE requests that the following definition of "Make-ready" be included in the Arbitrated Agreement: "Make-ready work is work required to prepare GTE facilities for attachment, where such work is required solely to accommodate [MCI's] facilities and not to meet GTE's business needs or convenience." GTE states this definition is included in the AT&T/GTE agreement, Attachment 3, Section 3.1.6. In addition, GTE requests that the Arbitrated Agreement be clarified with the following language to require MCI to pay for make-ready work performed on behalf of MCI:

> Any make-ready work performed by GTE on MCI's behalf shall be paid for by MCI.

We find GTE's proposal to be reasonable and shall adopt it.

5. Expansion of GTE Facilities

Article X, Section 2.18 requires GTE to expand its facilities, if necessary, to accommodate MCI's attachment requests. GTE proposes adding language requiring MCI to pay for the costs associated with its facilities expansion requests. More specifically, GTE requests that the following clause be added to the last sentence of Section 2.18:

", at MCI's expense."

GTE also proposes to reimbursement MCI for revenues received from other parties using facilities paid for by MCI.

We find GTE's proposal to be reasonable and shall adopt it.

6. Addition of New Language Regarding Rights of Way

GTE states that although the Arbitrated Agreement contemplates that MCI may request the opportunity to attach its facilities to GTE's poles, the Agreement includes no process for the request, approval, and payment of associated fees to government entities for pole attachments; nor does the Arbitrated Agreement include a process for MCI to submit an application for pole attachments, inspection by MCI of GTE facilities, and so forth. Therefore, GTE requests that the pole attachment procedure language from its originally proposed contract (Appendix I for poles and Appendix J for conduit,

respectively) be included in the Arbitrated Agreement. Alternatively, GTE requests that the Commission order the inclusion of the following portions of GTE's contract with AT&T which set forth the process for request and approval of attachments: Attachment 3, Section 3.3 - Pre-Ordering Disclosure Requirements; Section 3.4 - Attachment requests; Section 3.5 - Authority to Place Attachments; Section 3.9 - Attachment Fees; Section 3.11 - Charges for Unauthorized Attachment; and Section 3.12 - Surveys and Inspections of Attachments.

GTE's proposal is reasonable since it provides more detail and hence less room for interpretation and dispute. Accordingly, the previously cited sections from the AT&T/GTE contract shall be added to the Arbitrated Agreement, but only to the extent the new provisions do not contradict or otherwise void terms and conditions already in the Arbitrated Agreement.

I. Real Time Monitoring of Collocated Equipment

Article IX, Section 14.4.10 requires GTE to provide MCI with real time access to performance monitoring and alarm data with regard to collocation space. GTE states that it does not currently provide this capability to any collocator, and to do so would require a significant expenditure of time and resources that is not required by the FCC or this Commission. GTE suggests the following alternative language:

> GTE shall immediately notify MCIm: (1) if an alarm condition exists with respect monitoring of power; or (2) if backup power has been engaged for any power supporting MCIm's equipment.

We shall keep the current language in the Arbitrated Agreement, but the Arbitrated Agreement should be modified to require MCI to pay for any additional costs for real time monitoring. Also, GTE's proposed language should be added to the Arbitrated Agreement since this language can be used if MCI does not wish to pay for real time monitoring.

J. Miscellaneous Contract Terms

1. Commission Recognition of Parties' Resolution of Disputes

MCI states that disputes between the parties which are resolved voluntarily or via the private arbitration process adopted in the Arbitrator's Report must be filed and

approved by the Commission. This is required, according to MCI, because the rates, terms, conditions, rules, and practices related to the provision of telecommunications services provided by public utilities must be filed publicly and open for public inspection at the Commission. MCI also asserts that the only way the Commission can comply with the PU Code §§ 451 and 452 and prevent unjust discrimination is to review and approve voluntary agreements and private arbitrator's reports.

MCI's position has merit. Therefore, amendments to the Arbitrated Agreement should be submitted by the parties via an advice letter pursuant to Sections IX and XV of General Order 96. The advice letter will be deemed approved after 30 days from the date the advice letter is filed at the Commission without a Commission resolution unless the Commission takes formal action to reject the advice letter. The Director of our Telecommunications Division shall have authority to require information explaining these advice letters, require supplements to the advice letters, and to stay an advice letter while requested information and supplements are pending. The advice letter process shall not be used as a vehicle by one or both parties to appeal the result reached by private arbitration.

2. Performance Standards

The Arbitrator's Report decided that in lieu of requiring specific performance standards relating to MCI's access to GTE's Operational Support Systems (OSS),[26] the parties should use an audit procedure to ensure that MCI receives the same performance that GTE provides to itself.[27] Accordingly, the Arbitrated Agreement excludes performance standards specifically relating to OSS. GTE states that because the Arbitrator' Report did not impose specific performance standards for OSS, all other performance standards should likewise be removed from the Arbitrated Agreement. MCI states that unless the Arbitrator's Report rejected a specific performance standard, then all performance standards contained in the Arbitrated Agreement should remain in conformance with the Arbitrator's instruction that parties should rely on the MCI-

26The AR at 34 described OSS as including "GTE's ordering, maintenance, provisioning, and billing systems."
27 Arbitrator's Report, at 34-35.

proposed contract for topics and issues not explicitly addressed by the Arbitrator's Report.

As a general principle, GTE should provide MCI with resold services, UNEs, and interconnection in the same manner and quality as GTE provides to itself and/or its own subscribers. Requiring specific performance standards is one means to accomplish this goal. The record in this arbitration, however, is insufficient to determine whether the many performance standards contained in the Arbitrated Agreement achieve this goal or, in fact, require GTE to deliver a level of performance to MCI that is either greater or lesser than the performance that GTE provides to itself.

Given the impossibility of the Commission reviewing and litigating scores of different performance standards within the compressed time frame of this arbitration, we shall adopt the following approach. First, GTE shall provide MCI with resold services, UNEs, and interconnection in accordance with any standards established by the Commission, the FCC or other appropriate government entities. Second, GTE shall meet any widely-accepted industry standards. Third, GTE shall provide MCI with resold services, UNEs, and interconnection in the same manner and quality as GTE provides to itself and/or its own subscribers. GTE shall allow MCI to monitor and audit GTE's compliance with this obligation. If MCI finds that it is receiving inferior performance than what GTE provides to itself and its subscribers, MCI should use the dispute resolution procedures contained in the Arbitrated Agreement. Finally, consistent with Section 252(i) of the Act,[28] GTE, at MCI's election, must adhere to any performance standards that are contained in other agreements reached pursuant to Section 252 of the Act.

Following this decision, parties should submit an Arbitrated Agreement that incorporates the previously described outcome on performance standards. If no agreement can be reached, at MCI's election the parties should incorporate performance standards for GTE that were previously adopted by the Commission in other

28 Section 252(i) of the Act states that a LEC "shall make available any interconnection service, or network element provided under agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."

arbitrations. Otherwise, where no agreement can be reached, then the GTE-proposed modifications and deletions of the performance standards contained in the following sections of Arbitrated Agreement (as set forth in GTE's Comments on the Arbitrated Agreement) should be adopted:

> Article VI: Sections 3.3.1, 10.2.4.1-.2, 12.4.2.7-.9, 12.4.2.15, 12.4.2.22-.25, 17.2.5, 17.4.3.3, and 17.4.3.13 (note that the GTE-proposed modification to Section 3.3 is not adopted). Instead of deleting all of Section 7.2.6, this section shall be retained to enable MCI to monitor and audit GTE's obligations under the Arbitrated Agreement, except that the two subsections shall be modified to read as follows:
>
> > 17.2.6.1.1 At MCIm's request, GTE will provide access to the Network Element sufficient from MCIm to test the performance of that Network Element.
> >
> > 17.2.6.1.2 At MCIm's request, GTE will perform tests to confirm performance and provide MCIm with documentation of test procedures and results. MCIm shall reimburse GTE for its reasonable costs incurred to perform MCIm-requested test.
>
> Article VIII: Sections 3.1.1.2.1, 3.1.1.3, 3.1.1.4, 3.2.2.5, 3.2.2.5.3, 3.2.4.2, 3.2.4.3, and 3.2.12.1.2. Note that Section 7.1.11 is not deleted as requested by GTE since this section requires GTE to perform, at MCI's request, "root cause analysis" if GTE does "not provide performance and service quality parity." This section is consistent with the audit process.
>
> Article XI: Sections 4.2, 4.5, and 4.6.

3. Uncollectible and Unbilled Revenues Due to Actions of Third Party

GTE states that the Article III, Sections 15.1.2 and 15.1.3 impose an absolute liability on GTE for MCI's revenue losses associated with malicious or unauthorized use/alternation of GTE's network, and that the contract does not limit liability to cases where GTE has acted unreasonable or negligently. GTE asks that language in the Arbitrated Agreement be stricken in its entirety, and that parties be directed to further discuss reasonable arrangements for the minimization of fraud.

We note that GTE's contract with AT&T that was approved by us in D.97-01-022 contains an almost identical provision, with the exception that in the AT&T/GTE

contract GTE's liability is limited to refunding recurring and nonrecurring charges to AT&T and not AT&T's lost revenues.[29] We find that this is a more reasonable outcome, and the Arbitrated Agreement should be modified to reflect this result.

4. Branding of GTE Service Personnel

GTE requests that the following language be added to Article III, Section 17.1: "GTE personnel [performing work on behalf of MCI] shall not be prohibited from identifying themselves as employees of GTE." GTE's request is consistent with the Arbitrator's Report[30] and shall be adopted.

5. Required Level of Service

GTE objects to Article III, Section 23 on the basis that it requires GTE to always perform its obligations "at a performance level no less than the highest level which it uses in its own operations." GTE requests that that Section 23 be entirely stricken.

We shall not grant GTE's request. However, the Arbitrated Agreement should reflect that GTE shall meet its obligations to MCI on parity with the level of service that GTE gives to itself, its customers, or its affiliates under similar circumstances. To the extent that MCI seeks a higher level of service, MCI will have to reimburse GTE for its costs to provide the higher level of service.

6. Remedies for Failure to Switch Customers

Article III, Sections 26.2 and 26.3 impose a monetary remedy in the event that GTE does not switch a subscriber to MCI in a timely manner. GTE proposes that if there is to be such a "penalty," that it apply to both parties, and that it also cover cases where GTE or MCI improperly changes a carrier selection by submitting a change without customer authorization.

The Arbitrator's Report required that contract terms and conditions be reciprocal. Accordingly, Sections 26.2. and 26.3 should be revised to make them apply to both MCI and GTE. GTE's proposal to apply the monetary remedy to cases where GTE or MCI improperly changes a carrier selection by submitting a change without

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29 AT&T/GTE Arbitrated Agreement, filed on December 16, 1996, Attachment 9, Section 2.
30 Arbitrator's Report, pp. 48-49.

customer authorization conforms with Section 258 of the Act and should, therefore, be adopted.

7. Option to Elect Terms from Other Interconnection Agreements

Article III, Sections 29 and 30 allows MCI to obtain the benefit of any other terms that GTE may agree to with third parties. GTE states this language will conflict directly with the stay by the Eighth circuit of the FCC's First Report and Order's "pick and choose" provisions.

Section 252(i) of the Act states that an ILEC "shall make available any interconnection service, or network element provided under agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." The language contained in Sections 29 and 30 imposes obligations on GTE that are broader than those required by Section 252(i) of the Act. Accordingly, the parties shall delete Sections 29 and 30 in their entirety and replace these sections with language modeled on that contained in the AT&T/Pacific agreement approved by the Commission in D.96-12-034 (see the Agreement between Pacific Bell and AT&T Communications of California, Inc., dated December 19, 1996, General Terms and Conditions, Section 5).

8. Notification of Area Transfers and Local Access Transport Area (LATA) Boundary Changes

Article V, Section 3.4.3 imposes on GTE the obligation to notify MCI "of all area transfer" and "LATA boundary changes." GTE states that the term "area transfer" means any changes to network architecture that might impact MCI subscribers, and that GTE is already required to provide notification of such changes in Article V and Article VIII, and hence it is redundant. With regard to LATA boundary changes, GTE states that this is under the control of the FCC, and that the FCC's public notice procedure provides MCI with adequate notice. For these reasons, GTE requests the entire section be deleted.

We agree with GTE and shall require that Section 3.4.3 be deleted.

9. E911 Interconnection

Article VII, Section 3.4.5.4. requires GTE to interconnect direct trunks from the MCI network to E911 Public Service Answering Points. GTE requests that the words "and if technically feasible" be added after "If required by MCIm" at the beginning of the section.

We find GTE's proposal to be reasonable and shall adopt it.

10. E911 Information Requirements

Various sections of Article VII pertaining to 911/E911 services require GTE to provide MCI with information that GTE states it does not retain, generate, or otherwise have. GTE thus requests various sections of Article VII be deleted.

We do not believe it is reasonable to force GTE to provide MCI with information that is not in GTE's possession. Accordingly, GTE's request to delete this requirement from Article VII shall be adopted.

11. Provision of 911/E911 Service by the Lead Teleco

GTE states that Article VII requires it to provide certain 911 services and functions that can only be provided by the telephone company that is the primary provider of 911/E911 service in a given area, also referred to as the "lead teleco." GTE states that in many service areas, it is not the "lead teleco" and thus has no way to provide the services requested by MCI. As such, GTE requests that various sections of Article VII pertaining to 911/E911 services be modified to begin with the words "Where GTE is the lead teleco,".

GTE's proposal is reasonable. Accordingly, GTE's request to begin various sections of Article VII with the words "Where GTE is the lead teleco," is adopted (see GTE's Comments on Arbitrated Agreement, p. 47).

12. Access to ALI/DMS Database

Article VII, Section 3.4.6.1 would apparently allow MCI direct access to the ALI/DMS database. GTE is concerned that unmediated access to its database would jeopardize the security of its database, and requests that MCI be allowed access via a "gateway." As such, GTE requests that words "ALI/DMS database" in the first

sentence of the this section be replaced with the words "ALI Gateway to the ALI/DMS database."

GTE's proposal is reasonable and shall be adopted.

13. Use of Hot Key to Transfer Subscriber Account Inquiries

Article VII, Section 5.9 requires that "GTE shall direct subscriber account and other similar inquiries to the subscriber service center designated by MCIm." GTE does not object to this general obligation. However, the Arbitrated Agreement contains the additional language regarding "use of GTE's 'hot key' transfer service when technically feasible." GTE states that it does not presently have the capability to perform such transfers, and is not required to incur the cost of implementing a system that would allow such direct connections. Furthermore, GTE states that the "hot key" requirement did not appear in either party's proposed contract, and thus is not an issue that is subject to decision by this arbitration. Accordingly, GTE asks that the hot key requirement be deleted.

GTE's proposal is reasonable and the ""hot key" requirement shall be deleted from the Arbitrated Agreement.

14. Updates to Line Information Data Base (LIDB)

Article VII, Section 5.13 states as follows:

> "GTE shall update the Line Information Data Base (LIDB) for MCIm subscribers at cost. Additionally, GTE must provide access to LIDB for validation of collect, third party billed, and calling card billed calls at cost."

GTE states that when MCI is serving an end user through resale or an unbundled port, and MCI has not separately unbundled LIDB or purchased LIDB for resale, GTE is only required to provide LIDB updates on the same basis as it provides such updates to its own end users. Otherwise, MCI would receive services it has not unbundled at, essentially, unbundled prices. To accurately reflect GTE's obligation to provide LIDB services, GTE recommends that the words "at cost" in this section be replaced with the words "in the same manner as it provides such services to its own end users."

GTE's proposal is generally reasonable and shall be adopted, with modifications, so that Section 5.13 reads as follows:

> "GTE shall update the Line Information Data Base (LIDB) for MCIm subscribers at cost. Additionally, GTE must provide access to LIDB for validation of collect, third party billed, and calling card billed calls in the same manner as it provides to itself and its own end users."

15. Confirmation of Ported Status for BLV/BLVI

GTE states that Article VII, Section 5.14 must be deleted since an operator performing Busy Line Verify or Busy Line Verify/Interrupt (BLV/BLVI) services cannot readily ascertain whether a number is ported or not as is required by this section.

There is an insufficient record in this arbitration to determine whether GTE is capable of providing the requested function. Accordingly, parties shall modify this section to require GTE to provide the requested function if it is technically feasible to do so. Any dispute over the technical feasibility of the requested function should be resolved via the dispute resolution process contained in the Arbitrated Agreement.

16. Provision of Updated Information

GTE states that it cannot provide to MCI on a daily basis the updates to 11 different types of information listed in Section 6.1.7 of Article VII.[31] However, GTE states that it will provide this information "within a reasonable time sufficient to allow MCI to order listings accurately." GTE also states that it cannot provide such updates by electronic exchange as required by this section, but that it will make such updates available via electronic exchange as soon as possible, consistent with the availability of other electronic interfaces. Accordingly, GTE requests that the wording "updates within one business day of change and via electronic exchange" be deleted and replaced with "updates within a reasonable amount of time after changes and, when available, via electronic exchange."

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31 Among the types of information covered by Section 6.1.7 are: A matrix of NXX to central office; standard abbreviations acceptable for use in listings and addresses; and a list of all available directories and their close dates.

Additionally, GTE states that some of the specific information required by this section may not be available. For example, GTE states it can provide listings of NXXs by central office, but does not itself produce a "matrix" as required by Section 6.1.7.1. Accordingly, GTE asks that the words "to the same extent GTE provides to itself" must be added after "GTE shall provide to MCIm" in Section 6.1.7.

GTE's proposal is generally reasonable and we shall adopt it. However, GTE's proposed language should be clarified to require GTE to provide the information to MCI in the same time frame and in the same manner as GTE provides the information to itself.

17. Training at No Charge

Article VIII, Section 1.3.6.2 requires GTE to provide, at no charge, training to MCI personnel regarding the use of GTE's OSS systems. GTE states that it is entitled to recover its costs, and as such the second sentence of this section must be deleted and replaced with the following:

> GTE may recover the reasonable costs of such training from MCIm, at a price to be negotiated by the parties.

We find that GTE should be allowed to recover its costs for the services that it provides to MCI. We therefore find GTE's proposed modification to the Arbitrated Agreement to be reasonable, and we shall require the parties to include the modification in the Arbitrated Agreement.

18. Reservation of Numbers and Installation of NXXs

Article VIII, Sections 2.1.4.2 and 2.1.4.3 require GTE to: (1) reserve telephone numbers for MCI's exclusive use; and (2) install MCI's NXXs in GTE's switches according to the local calling area as defined by MCI. With regard to the first requirement, GTE states it should not be obligated to reserve numbers for MCI since MCI can obtain numbers from the North American Numbering Plan Administrator, just like any other telephone carrier.

With regard to the second requirement, GTE states it should not be required to install and house MCI's NXXs in GTE's switches because when MCI purchases resale services or UNEs, it will have no need to install NXXs in GTE's switches since the

necessary line numbers will be included with the purchased services or network elements. Furthermore, GTE states if it is required to install numbers based on MCI defined local calling areas, GTE will be required to make costly programming changes to adapt its switches to the second local calling area.

We shall not require GTE to reserve telephone numbers for MCI's exclusive use. This practice would not only be discriminatory, but it would also undermine our efforts to conserve numbering resources in NPAs (i.e., area codes) where there is jeopardy of number exhaust. Nor shall we require GTE to install MCI's NXXs in GTE's switches according to the local calling area as defined by MCI, since there is too little information in the record to determine whether this is required under the Act in the first place and, if so, whether it would be technically feasible. Accordingly, Sections 2.1.4.2 and 2.1.4.3 shall be deleted in their entirety.

19. Notification to IXCs

GTE states that a local interconnection agreement is not the proper place to impose IXC reporting requirements on GTE, and that MCI has no conceivable interest in GTE's business relations with affiliated or non-affiliated IXCs. GTE therefore objects to its inclusion of Article VIII, Section 3.1.3 in the Arbitrated Agreement and requests that the section and all of its subsections be deleted.

We agree with GTE and order that Article VIII, Section 3.1.3 be excluded.

20. Payment of Rendered Bills

Article VIII, Section 4.7 allows MCI to pay GTE within 45 calendar days of the date of a bill, or 35 days after receipt of the bill, whichever is later. GTE states this is not consistent with the payment terms in previous arbitrated agreements submitted to the Commission for approval. According to GTE, the previous arbitrated agreements specify payment within 30 calendar days of the date of a bill or 20 days after receipt, whichever is later. (See, Pacific/MCI Agreement, 150; Pacific/AT&T Agreement, Att. 13, Sections 13.1 through 13.2; GTE/AT&T Agreement, Att. 6, Section 2.2.1.) Accordingly, in order to provide all of the parties with a consistent commercial standard for payment of outstanding bills, GTE asks that the intervals in this section be changed to comport with previous arbitrated agreements.

We find that it is reasonable to require MCI to pay GTE within 30 calendar days of the date of a bill or 20 days after receipt, whichever is later. Parties shall accordingly modify the Arbitrated Agreement to reflect this outcome.

21. Information Regarding Emergency Restoration and Procedures

Article VIII, Section 7.1.7 requires GTE to provide MCI with various information regarding GTE's service restoration plans in the event of emergency or disaster. GTE states that clauses (iii) through (v) of this section would force GTE to provide real time access to status reports, an inventory of equipment, and methods and procedures for dispatch of equipment. GTE says it does not have this information, and that these clauses should be deleted and the paragraph renumbered accordingly.

We are amazed and distressed that GTE has no inventory of equipment nor written methods and procedures for the dispatch of equipment. Nonetheless, we do not believe it is reasonable to force GTE to provide MCI with information that is not in GTE's possession. Accordingly, GTE's proposal to delete clauses (iii) through (v) of Section 7.1.7 shall be adopted.

22. Application of GTE's EIS Tariff

GTE states that Article IX must contain references to its EIS Tariff (i.e., GTE's tariff for physical and virtual collocation filed with the FCC pursuant to its Expanded Interconnection Service (EIS) regulations) which provides the baseline obligations of GTE to provide collocation to all requesting parties on a nondiscriminatory basis. GTE states that excepting MCI from these generally applicable terms and conditions would create an administrative burden for GTE. Although the provisions of Article IX are largely additional and complementary to the provisions of the EIS Tariff, GTE would still be required to apply one set of standards to MCI and another set of standards to other collocators. Accordingly, GTE requests that the following be added to the end of Article IX, Section 1.1 of the Arbitrated Agreement:

> The terms and conditions of GTE's Expanded Interconnection Services Tariff effective November 16, 1996 (as it may be amended from time to time, the "EIS Tariff"), shall apply in all respects to virtual and physical collocation. The terms and

conditions set forth in this Article shall apply in addition to the terms and conditions of the EIS Tariff.

GTE's proposal is reasonable and shall be adopted. We clarify, however, that where there is a conflict between the EIS tariff and Article IX, then Article IX shall prevail.

23. Law Enforcement Interface

GTE recommends that Article XIII, Section 3 be modified to state that GTE will facilitate law enforcement activities for MCI on the same basis that GTE provides these services to itself. In particular, GTE states it will provide the installation and information retrieval requested by MCI on a 24-hour, 7-day a week basis in emergencies only. Furthermore, given that GTE incurs a cost of providing these services, GTE believes it should be allowed to bill appropriate charges to MCI. Finally, GTE asks that this section be modified to reflect that GTE will refer law enforcement agencies to MCI in non-emergency situations. GTE 's proposed modifications to the Arbitrated Agreement are follows:

> 3.1 Except to the extent not available in connection with GTE's operation of its own business, GTE shall provide seven day a week/twenty-four hour a day installation and information retrieval pertaining to emergency traps, assistance involving emergency traces and emergency information retrieval on customer invoked CLASS services including, without limitation, call traces requested by MCIm.
>
> 3.2 GTE agrees to work jointly with MCIm in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for MCIm end users will be billed to MCIm.
>
> 3.3 GTE will, in non-emergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc., is an MCIm end user and shall refer them to MCIm.

As a general principle, GTE should provide MCI with the same level of service that GTE provides to itself or its subscribers; and MCI should be required to pay for the

services it receives from GTE.[32] GTE's proposed modifications to the Arbitrated Agreement meet this objective, and we shall accordingly adopt them. We note that the GTE/AT&T Arbitrated Agreement, (Attachment 9, Section 3, Subsections 3.1, 3.2, and 3.3) contains language that is virtually identical to that we are adopting herein.

24. Missing Prices

Article XIV, Section 1.8 states that "[i]f a provision references prices in Appendix C or if a provision specifically refers to a price or prices, but does not reference Appendix C, and there are no corresponding prices already set forth in Appendix C for such item, such price shall be considered 'To Be Determined' (TBD)." GTE believes that the Arbitrated Agreement, as currently written, would require prices in two situations that may not fall within Section 1.8. First, the Arbitrated Agreement requires that if MCI requests a higher level of access or performance standards greater than what GTE provides to itself or its subscribers, then MCI is to pay the additional costs of such improved access or performance. According to GTE, the cost of such upgrades may not come within the language cited above. Second, the Arbitrated Agreement contains numerous sections that require GTE to provide a service at some unspecified cost. GTE states that these unspecified costs may not be covered by the language cited above. In order to assure that these two situations are covered by the Arbitrated Agreement, GTE requests that Section 1.8 be modified to read as follows:

> In the following situations, Appendix C may not provide prices for an item, service or technical upgrade provided by either party under this Agreement: (1) a provision references prices in Appendix C and there are no corresponding prices already set forth in Appendix C; (2) a provision specifically refers to a price or prices, but does not reference Appendix C and there are no corresponding prices already set forth in Appendix C; or (3) a provision requires either party to provide an item, service or technical upgrade but does not explicitly mention cost recovery, and there are no corresponding prices already set forth in Appendix C. In any of these situations, such price shall be considered "To Be Determined" (TBD).

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32 To the extent that the service requested by MCI is greater than what GTE provides to itself, MCI should reimburse GTE for its costs to deliver this higher level of service. Conversely, if MCI's quality of service is lower than what GTE provides to itself MCI should receive an offsetting benefit to make up for the lower level of service received from GTE.

GTE's proposal is reasonable since it provides more detail and hence less room for interpretation and dispute. Accordingly, GTE's proposed language should be incorporated.

V. Conclusion

In this decision, we have directed the parties to make several changes to the Arbitrated Agreement filed on December 24, 1996. With these changes, the agreement appears to be consistent with the Act and is approved. We will direct the parties to file an executed copy of an agreement conforming to this decision (the Conformed Agreement) no later than ten days from today. While the Conformed Agreement should enable the parties to begin interconnecting their systems, we recognize that some of terms of the agreement provide temporary solutions that will be in place only until we issue further decisions in other dockets. For example, in our OANAD docket we intend to re-examine the discount rates to apply to wholesale prices for resold services.

In D.96-12-034 and D.97-01-022, we took a significant step by approving the interconnection of AT&T's network with Pacific Bell's and GTE's networks, respectively. With this decision, we take another large step by interconnecting MCI with GTE. While all subsequent arbitrated agreements must stand on their own merits, we fully anticipate that the lessons learned through the development of these complex agreements will ease the process of creating agreements between these incumbent carriers and other competitors into the Arbitrated Agreement.

Findings of Fact

1. The limited time available for the arbitration precluded using the arbitration record to define an appropriate discount to be applied to GTE's retail services sold to MCI for resale.

2. The Arbitrator relied on the interim wholesale discounts adopted in Decision 96-03-020 (12% for most services and 7% for residential access lines).

3. The prices set in D.96-03-020 for the resale of CentraNet, private line, ISDN, directory assistance, and operator do not include a discount to reflect certain avoided costs as required by Section 252(d)(3) of the 1996 Act.

4. The $25.92 changeover charge adopted in the Arbitrator's Report is too high.

5. The Arbitrated Agreement filed by the parties (referred to hereafter as the "Arbitrated Agreement") does not comply with the finding in the Arbitrator's Report that GTE does not need to provide MCI with volume discounts based on the aggregate volume of MCI's resale customers.

6. The Arbitrated Agreement requires GTE to provide resold CentraNet to MCI on terms and conditions that are not available to GTE's own retail customers.

7. The Arbitrated Agreement does not comply with the finding in the Arbitrator's Report that GTE is not required to resell inside wire maintenance since this is not a telecommunications service as defined by the Act.

8. The Arbitrated Agreement requires GTE to resell "Voluntary Federal and State subscriber Financial Assistance Programs" which are not telecommunications services.

9. The Arbitrated Agreement requires GTE to provide MCI with information that is not in GTE's possession.

10. The common cost mark-up factor of 16% adopted by in the Arbitrator's Report is too low.

11. A common cost of markup of 22% allows GTE to recover its costs for corporate overhead, plant-specific and non-specific, and general support expenses.

12. The Arbitrator's Report does not address or include costs (and prices) to condition unbundled HDSL, ISDN, and DS-1 loops.

13. GTE will need more than 10 days to determine the TSLRIC cost for multiplexors once MCI requests that multiplexing be unbundled.

14. GTE and MCI did not discuss or arbitrate the issue of compensation for transport and termination when MCI purchases unbundled local switching from GTE.

15. Section 252(b)(4) of the Act limits the Commission's authority to decide only on those arbitration issues that were included MCI's application and GTE's response to the application.

16. The Arbitrated Agreement requires GTE to sell combinations of unbundled network elements (UNEs) without any charge for connection to currently connected UNEs.

17. MCI may order novel combinations of UNEs which may be technically feasible but do not function at normal levels or cannot be made to function without significant and costly modifications to GTE's network.

18. While a UNE may be theoretically capable of providing a certain function, there may be certain technical limitations in practice.

19.The Arbitrated Agreement requires GTE to sell MCI's subscriber listings and turn over all of the revenues from such sales to MCI without any fee or payment to GTE.

20. MCI and GTE agree that the portion of the Arbitrated Agreement which requires GTE to provide MCI subscribers with directories with MCI-branded covers should be deleted in order to conform to page 21 of the Arbitrator's Report.

21. The Arbitrated Agreement requires GTE to transfer ownership and billing of all MCI subscriber yellow page listings to MCI.

22. The Arbitrated Agreement requires GTE to become MCI's agent for the sale of enhanced (e.g., bold, indent, and italics) white page and yellow page listings.

23. FCC Order 96-286 suggests that access revenues for ported numbers be shared in the same manner as with meet-point billing arrangements. The formula for sharing access revenues in the Arbitrated Agreement is reflective of revenue sharing in a typical meet-point billing arrangement.

24. The Arbitrated Agreement includes language regarding the terms and availability of permanent number portability that will be rendered moot by industry standards.

25. The Arbitrated Agreement is clear that GTE has to provide MCI with access to any given pathway only to the extent that GTE owns or controls the pathway.

26. Although the Arbitrated Agreement contemplates that MCI may request the opportunity to attach to GTE poles, the Arbitrated Agreement includes no process for the request, approval, and payment of associated fees to government entities for pole attachments; nor does the Arbitrated Agreement include a process for an MCI to submit an application for pole attachment, inspection by MCI of GTE facilities, and so forth.

27. The Arbitrated Agreement requires GTE to provide MCI with certain 911 services and functions that can only be provided by the telephone company that is the primary provider of 911/E911 service in a given area, also referred to as the "lead teleco." In geographic areas where GTE is not the lead teleco, GTE is unable to provide certain 911 the services and functions required by the Arbitrated Agreement.

28. The Arbitrated Agreement would allow MCI direct, unmediated access to GTE's ALI/DMS database. Such unmediated access could jeopardize the security of the ALI/DMS database.

29. The Arbitrated Agreement contains a requirement that GTE shall direct subscriber account inquiries to the subscriber service center designated by MCI through the use of GTE's "hot key" transfer service. The "hot key" requirement did not appear in either party's proposed contract.

30. The Arbitrated Agreement requires GTE to provide, at no charge, training to MCI personnel regarding the use of GTE's OSS systems.

31. The requirement in the Arbitrated Agreement for GTE to reserve telephone numbers for MCI's exclusive use would undermine Commission efforts to conserve numbering resources in NPAs (i.e., area codes) where there is jeopardy of number exhaust.

32. The Arbitrated Agreement imposes unreasonable IXC reporting requirements on GTE.

Conclusions of Law

1. The compressed nature of the arbitration process did not allow for the careful consideration necessary to develop new wholesale discount rates and it was appropriate for the Arbitrator to rely on the work previously done by GTE, MCI, and others to develop interim wholesale discounts.

2. The Commission should apply the wholesale discount rates of 12% for all retail services except for a 7% wholesale discount for residential access lines.

3. It would be inappropriate to consider here any adjustments to the wholesale discount rates adopted in D.96-03-020.

4. Use of the 12% wholesale discount rated set in D.96-03-020 for setting the wholesale price of CentraNet, private line, ISDN, directory assistance, and operator services is necessary in order to reflect certain avoided costs as required by Section 252(d)(3) of the 1996 Act.

5. GTE should assess no interim charge for changeovers.

6. The Arbitrated Agreement should be modified to comply with the finding in the Arbitrator's Report that GTE is not required to provide MCI with volume discounts based on the aggregate volume of MCI's resale customers.

7. Under the Act, GTE cannot be compelled to provide MCI with resold telecommunications services on terms and conditions different than those that GTE offers to it own retail subscribers.

8. The Arbitrated Agreement should be modified so that GTE is not compelled to provide MCI with resold telecommunications services on terms and conditions different than those that GTE offers to it own retail subscribers.

9. The Arbitrated Agreement should be modified so that GTE is not compelled to resell services and programs not covered by the Act.

10. The recurring charges for unbundled network elements adopted in the Arbitrator's Report should be changed to reflect the comments of the parties as well as the Telecommunications Division's comprehensive analysis of GTE's OANAD compliance filing ordered in D.96-08-021.

11. The common cost markup of 16% established in the Arbitrator's Report should be increased to 22% in order to allow GTE to recover its costs for corporate overhead, plant-specific and non-specific, and general support expenses.

12. The Arbitrated Agreement should be modified so as to allow GTE to recover its costs to provide MCI with unbundled conditioned loops.

13. It is appropriate for GTE to charge for vertical switching features so long as such charges are based on costs approved by this Commission.

14. The Arbitrated Agreement should be modified to allow GTE to have 30 calendar days to perform a cost study to determine the TSLRIC cost for multiplexors once MCI requests that multiplexing be unbundled.

15. The Arbitrated Agreement should be modified to state that a reasonable allocation of shared and common costs shall be included into the price of UNEs not specifically identified in the Arbitrated Agreement.

16. The Commission lacks authority under Section 252(b)(4) of the Act to decide on the issues not included in MCI's application nor GTE's response to the application.

17. The Arbitrated Agreement should be modified to allow GTE to recover its reasonable costs to connect newly sold UNEs to currently connected UNEs.

18. The Arbitrated Agreement should be modified as follows: (a) when MCI orders combinations of Network Elements, GTE will provide advice, testing and other assistance as may be reasonably necessary if combinations ordered by MCI prove to be incompatible; and (b) the parties will mutually agree on the scope, subject and cost of assistance at such time as MCI requests assistance.

19. In instances where it is infeasible or impossible to meet an MCI request for customized routing within six months of MCI's request as required by the Arbitrator's Report, GTE should be able to request a waiver from MCI of the six month requirement.

20. In instances where it is infeasible or impossible for GTE to meet an MCI request for customized routing within 30 days from receiving an endorsement from a switch vendor as required by the Arbitrator's Report, GTE should be able to request a waiver from MCI of the 30 day requirement.

21. To the extent that using MCI's technical specifications for unbundled transport causes GTE to incur additional costs when compared with using GTE's technical specifications, then MCI should be responsible for bearing these additional costs.

22. MCI and GTE each have a property interest in their subscriber listings which should be protected by the Arbitrated Agreement.

23. The Arbitrated Agreement should be modified so that MCI and GTE are each required to obtain the other's consent before using the other's listings for any purpose other than Directory Assistance.

24. The Arbitrated Agreement should be modified so that GTE will receive a fee for its efforts to sell MCI's subscribers listing that is based on GTE's cost to provide the service, plus a reasonable profit.

25. The Arbitrated Agreement should reflect that: (1) GTE will provide, at no charge, a limited amount of space in the Information Section of its White Pages for MCI's logo and the telephone numbers for MCI's business office, repair service, and billing inquiries; and (2) GTE will sell to MCI one page in the Information Section of its White Pages priced at a 65% discount to the normal rate for a full-page Yellow Pages advertisement.

26. The requirement that GTE is to provide MCI subscribers with directories with MCI-branded covers should be deleted from the Arbitrated Agreement.

27. The requirement that GTE is to transfer ownership and billing for yellow page listings to MCI should be deleted from the Arbitrated Agreement.

28. The requirement that GTE is to become MCI's agent for the sale of enhanced white and yellow page listings should be deleted from the Arbitrated Agreement.

29. The Arbitrated Agreement properly reflects the FCC's suggestion in Order 96-286 that access revenues for ported numbers be shared in the same manner as with meet-point billing arrangements.

30. The Arbitrated Agreement properly reflects that "bill and keep" should still apply to the first 65% of minutes of use (MOUs) even when one party is terminating more than 65% of total MOUs.

31. The definition of "right of way" included in Article X, Section 2 of the Arbitrated Agreement should be replaced with the following: "A 'Right of Way' (ROW) is the right to use the land or other property of another party to place poles, conduits cables, other structures and equipment or to provide passage to access such structures and equipment. A ROW may run under, on, or above public or private property (including air space above public or private property) and may include the right to use discrete space in buildings, building complexes, or other locations. The existence of a ROW shall be determined in accordance with Applicable Law."

32. GTE should not be compelled to provide MCI with information that is not in GTE's possession.

33. The following definition of "Make-ready" should be included in the Arbitrated Agreement: "Make-ready work is work required to prepare GTE facilities for

attachment, where such work is required solely to accommodate [MCI's] facilities and not to meet GTE's business needs or convenience."

34. The Arbitrated Agreement should be modified to require MCI to pay for make-ready work performed on behalf of MCI.

35. The Arbitrated Agreement should be modified to require MCI to pay for facilities expansion requests.

36. Amendments to the Arbitrated Agreement resulting from the resolution of disputes between the parties must be filed at the Commission.

37. As a general principle, GTE should provide MCI with resold services, unbundled network elements, and interconnection in the same manner and quality as GTE provides to itself, its own subscribers, or its affiliates under similar circumstances. The record in this arbitration is insufficient to determine whether the many performance standards contained in the Arbitrated Agreement achieve this goal or, in fact, require GTE to deliver a level of performance to MCI that is greater or lesser than the performance that GTE provides to itself.

38. GTE should provide MCI with resold services, UNEs, and interconnection in accordance with any performance standards established by the Commission, the FCC, and other appropriate government entities.

39. GTE should provide MCI with resold services, UNEs, and interconnection in accordance with any widely-accepted industry performance standards.

40. GTE should allow MCI to audit GTE in order for MCI to ensure that GTE is providing it with resold services, unbundled network elements, and interconnection as follows: (1) in the same manner and quality as GTE provides to itself and/or its own subscribers; (2) in conformance with performance standards established by the FCC, the Commission or other appropriate government entity; and (3) in conformance with widely-accepted industry standards.

41. Section 252(i) of the Act requires that GTE, at MCI's election, must adhere to any performance standards and other terms and conditions that are contained in other agreements reached pursuant to Section 252 of the Act.

42. The Arbitrated Agreement should be modified so that GTE's liability to MCI for the actions of third parties is limited to refunding recurring and nonrecurring charges to MCI.

43. The Arbitrated Agreement should be modified so as not to prohibit GTE personnel performing work on behalf of MCI from identifying themselves as GTE employees.

44. Article III, Sections 26.2 and 26.3 of the Arbitrated Agreement should be revised to make these Sections apply to both MCI and GTE.

45. GTE's proposal to apply the monetary remedy to cases where GTE or MCI improperly changes a carrier selection by submitting a change without customer authorization conforms with Section 258 of the Act and should, therefore, be adopted.

46. Article V, Section 3.4.3 of the Arbitrated Agreement, which imposes on GTE the obligation to notify MCI "of all area transfer" and "LATA boundary changes," should be deleted.

47. Article VII, Section 3.4.5.4. of the Arbitrated Agreement, which requires GTE to interconnect direct trunks from the MCI network to E911 Public Service Answering Points, should be modified to add the words "and if technically feasible" after "If required by MCIm" at the beginning of the section.

48. Where 911/E911 services are provided only by a "lead teleco" the Arbitrated Agreement should be modified so that GTE is obligated to provide such services only if GTE is the lead teleco.

49. The Arbitrated Agreement should be modified so that GTE only needs to provide MCI with mediated access to the ALI/DMS database via a gateway.

50. The portion of Article VII, Section 5.9 of the Arbitrated Agreement which imposes on GTE the obligation of "use of GTE's 'hot key' transfer service when technically feasible" should be deleted.

51. Article VII, Section 5.13 of the Arbitrated Agreement should be modified to read as follows: "GTE shall update the Line Information Data Base (LIDB) for MCIm subscribers at cost. Additionally, GTE must provide access to LIDB for validation of

collect, third party billed, and calling card billed calls in the same manner as it provides to itself and its own end users."

52. The Arbitrated Agreement should be modified to reflect that GTE is entitled to recover its costs for training MCI personnel regarding the use of GTE's OSS systems.

53. The Arbitrated Agreement should be modified to reflect that GTE should not be required to reserve telephone numbers for MCI's exclusive use.

54. The Arbitrated Agreement should be modified to delete the requirement for GTE to install MCI's NXXs in GTE's switches according to the local calling area as defined by MCI.

55. Article VIII, Section 3.1.3 in the Arbitrated Agreement, which imposes IXC reporting requirements on GTE, should be deleted.

56. Article VIII, Section 4.7 of the Arbitrated Agreement should be modified to require MCI to pay GTE within 30 calendar days of the date of a bill or 20 days after receipt, whichever is later.

57. The Arbitrated Agreement should be modified as described in the body of this decision to reflect GTE's proposed changes regarding the application of the EIS tariff, Law Enforcement Interface, To Be Determined Prices.

58. The Arbitrated Agreement, if modified as directed in this order, is reasonable and consistent with the Act.

59. The Arbitrated Agreement, when conformed to include the revisions required in this decision, should be approved.

O R D E R

IT IS ORDERED that:

1. The local interconnection agreement filed on December 24, 1996, by MCI Telecommunications Corporation and GTE California, Incorporated with the modifications directed in this decision, is approved pursuant to the requirements of the Telecommunications Act of 1996.

2. The parties shall file an executed copy of an agreement conforming to this decision within 10 days of the date of this order and shall also provide to the Telecommunications Division a version thereof in electronic form in hyper text markup language format.

3. Amendments to the Conformed Agreement shall be submitted by the via an advice letter. Such advice letters will be deemed approved without a Commission Resolution thirty (30) days from the date the advice letter is filed at the Commission unless the Commission takes formal action to reject an advice letter. The Director of the Telecommunications Division shall have authority to require additional information explaining the contents of the advice letters and to require parties to file supplements to their advice letters. The Director of the Telecommunications Division may the also stay the effective date of an advice letter while requested information and supplements are pending. The advice letter process shall not be used as a vehicle by the parties to appeal the result reached by private arbitration.

4. Application 96-09-012 is closed.

This order is effective today.

Dated January 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

	Network Element	Price	Source
1			
	2-Wire Loops, per month	$16.81	OANAD
	4-Wire Loops, per month	$31.85	OANAD
	ISDN Loop	TBD	N/A
2			
	NID	TBD	N/A
3			
	2-Wire Port, per month	$4.58	OANAD
	DS-1 Port Trunk-side, per month	$54.67	OANAD
	End Office Switching, per MOU	$0.0036286	OANAD
	-Call Waiting, per month	$0.02	OANAD
	-Call Forwarding, per month	$0.12	OANAD
	-Speed Call 8, per month	$0.10	OANAD
	-Speed Call 30, per month	$0.16	OANAD
	-3 Way Calling, month	$0.65	OANAD
	-Cancel Call Waiting, per month	$0.01	OANAD
	-Number Redial, per month	$0.04	OANAD
	-Remote Call Forward, per month	$2.73	OANAD
	-Smart Ring, per month	$0.01	OANAD
	-Call Restrict I, per month	$1.92	OANAD
	-Call Restrict II, per month	$1.92	OANAD
	-Call Restrict III, per month	$1.92	OANAD
	-Call Restrict IV, per month	$1.92	OANAD
	-Automatic Busy Redial, per month	$0.13	OANAD
	-Automatic Call Return, per month	$0.04	OANAD
	-VIP Alert, per month	$0.12	OANAD
	-Call Block, per month	$0.17	OANAD
	-Special Call Forwarding, per month	$0.16	OANAD
	-Special Call Acceptance, per month	$0.12	OANAD
	-Special Call Waiting, per month	$0.12	OANAD
	-Call Tracing Service, per month	$0.04	OANAD
	-Calling Number ID, per month	$0.04	OANAD
	-Cancel Calling Number, per month	$0.07	OANAD
	-Cancel Calling Number, per month	$0.07	OANAD
4			
	Tandem Switching, per avg MOU	$0.0015000	Parties Agreed
5			
	Common Transport		
	Transport Termination, per avg MOU	$0.0001943	OANAD
	Transport Facility per Mile, per avg MOU	$0.0000212	OANAD
	-2 Wire Voice, per month	$30.17	OANAD
	-4 Wire Voice, per month	$39.53	OANAD
	-DS1 Standard 1st System, per month	$171.37	OANAD
	-DS1 Standard Additional System, per month	$171.37	OANAD
	-DS3 Protected, Electrical, per month	$738.50	OANAD
	-DS1 to Voice MUX, per month	$262.85	OANAD
	-DS3 to DS1 MUX, per month	$373.55	OANAD
	-DS0 Facility per Air-Line-Mile, per month	$3.81	OANAD
	-DS1 Facility per Air-Line-Mile, per month	$0.95	OANAD
	-DS1 per Termination, per month	$37.97	OANAD
	-DS3 Facility per Air-Line-Mile, per month	$22.62	OANAD
	-DS3 per Termination, per month	$344.54	OANAD
	-DS1 to Voice MUX, per month	$262.85	OANAD
	-DS3 to DS1 MUX, per month	$373.55	OANAD

	Network Element	Price	Source
6			
	STP Port, per port / month	$502.24	OANAD
	56 Kbps Link, per link	$49.28	OANAD
	56 Kbps Link, per Air-Line-Mile	TBD	N/A
	DS-1 Link, per link	TBD	N/A
	DS-1 Link, per Air-Line-Mile	TBD	N/A
	Database Usage		
	LIBD, per query	TBD	N/A
	800, per query	TBD	N/A
	other		
	Signal Transfer Point, per termination	$0.000076	OANAD
	Signal Control Point, per termination	$0.000061	OANAD
7			
	Directory Assistance, per query	$0.23	OANAD
	Station to Station, cost / call	$0.50	OANAD
	-Oper Assisted Calling Card, cost / call	$0.41	OANAD
	-Collect, cost / call	$0.77	OANAD
	-Coin Sent Paid, cost / call	$0.02	OANAD
	-Third Number, cost / call	$1.24	OANAD
	Person to Person, cost / call	$1.13	OANAD
	-Oper Assisted Calling Card, cost / call	$1.12	OANAD
	-Collect, cost / call	$1.12	OANAD
	-Coin Sent Paid, cost / call	$1.12	OANAD
	-Third Number, cost / call	$1.44	OANAD
	-Busy Verification, cost / call	$0.87	OANAD
	-Busy Interrupt, cost / call	$0.96	OANAD
	-Mechanized Calling Card, cost / call	$0.05	OANAD
8			
	Traffic in Balance, per MOU		
	Traffic out of Balance +/- 15%, per MOU	$0.0036286	OANAD
9			
	EISCC (Cross-Connect Jumper)		
	-DS0, per month	$2.10	OANAD
	-DS1, per month	$5.25	OANAD
	-DS3, per month	$45.40	OANAD
	Collocation, other	TBD	N/A

(END OF APPENDIX 1)

APPENDIX 2

		Non-Recurring Prices
1	[redacted]	
	Service Ordering (loop or port)	
	Initial Service Order, per order	$31.71
	Transfer of Service Charge, per order	$15.83
	Subsequent Service Order, per order	$8.55
	Customer Service Record Search, per request	$5.14
	Installation	
	Unbundled Loop, per loop	$14.03
	Unbundled Port, per port	$14.03
	Loop Facility Charge, per order (note 1)	$79.74
2	[redacted]	
	Service Ordering	
	Initial Service Order, per order	$0.00
	Subsequent Service Order, per order	$0.00
	Installation, per line	$33.81
	Outside Facility Connection Charge, per order (note 2)	$79.74
3	[redacted]	
	SPNP, per number ported	$10.47

Note 1: The Loop Facility Charge will apply when field work is required for establishment of a new unbundled loop service.

Note 2: The Outside Facility Connection Charge will apply when field work is required for establishment of a new resale service.

(END OF APPENDIX 2)