

Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



**GTE Network
Services**

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September 23, 1999

Mr. Scott Zimmerman
GTE Communications Corporation
6665 N. MacArthur Blvd.
M/C K03A55
Irving, TX 75039

Dear Mr. Zimmerman:

GTE has received GTE Communications Corporation's ("GTECC") letter stating that, under Section 252(i) of the Telecommunications Act of 1996, GTECC wishes to adopt the terms of the arbitrated Interconnection Agreement between AT&T Communications of the South Central States, Inc. ("AT&T") and GTE that was approved by the Commission as an effective agreement in the State of Kentucky in Docket No. 96-478 ("Terms")¹.

Please be advised that GTE's position regarding the adoption of the Terms is as follows.

In Docket No. 96-478 ("AT&T Communications of the South Central States, Inc." arbitration), the Commission issued an Order on May 13, 1999 ("May Order") requiring GTE to make available to AT&T specific UNEs and UNE "platforms" where the platform already exists in GTE's network, despite the parties' prior agreement to hold these issues in abeyance until the FCC issues new final UNE rules. The parties' prior agreement was predicated on the following.

¹ On January 25, 1999, the Supreme Court of the United States ("Court") issued

Three aspects of the Court's decision are worth noting. First, the Court upheld on statutory grounds the FCC's jurisdiction to establish rules implementing the pricing provisions of the Act. The Court, though, did not address the substantive validity of the FCC's pricing rules. This issue will be decided by the Eighth Circuit on remand.

Second, the Court held that the FCC, in requiring ILECs to make available all UNEs, had failed to implement section 251(d)(2) of the Act, which requires the FCC to apply a "necessary" or "impair" standard in determining the network elements ILECs must unbundle. The Court ruled that the FCC had improperly failed to consider the availability of alternatives outside the ILEC's network and had improperly assumed that a mere increase in cost or decrease in quality would suffice to require that the ILEC provide the UNE. The Court therefore vacated in its entirety the FCC rule setting forth the UNEs that the ILEC is to provide. The FCC must now promulgate new UNE rules that comply with the Act. As a result, it is GTE's position that any provision in the Terms requiring GTE to provide UNEs is nullified.

Third, the Court upheld the FCC rule forbidding ILECs from separating elements that are already combined (Rule 315(b)), but explained that its remand of Rule 319 "may render the incumbents' concern on [sham unbundling] academic." In other words, the Court recognized that ILEC concerns over UNE platforms could be mooted if ILECs are not required to provide all network elements: "If the FCC on remand makes fewer network elements unconditionally available through the unbundling requirement, an entrant will no longer be able to lease every component of the network."

Given the legal landscape discussed above, GTE and AT&T agreed to incorporate into the agreement certain status quo provisions that would permit the parties to seek approval and implementation of the agreement while holding the UNE issue in abeyance until the FCC issued new final rules. Furthermore, the status quo language obviated the need for GTE and AT&T to go through the arduous task of reforming the agreement to properly reflect the current status of the law and then repeat the same process later after the new FCC rules are in place.

Notwithstanding the foregoing, the Commission issued another Order on June 22, 1999 ("June Order") which required GTE and AT&T to delete from the contract the

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Furthermore, GTE does not waive its position that, under the Court's decision, it is not required to provide UNEs unconditionally. Moreover, GTE does not agree that the UNE rates set forth in any agreement are just and reasonable and in accordance with the requirements of Sections 251 and 252 of Title 47 of the United States Code.

Finally, the provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the telecommunications carrier for the delivery of traffic to the Internet are not available for adoption and are not a part of the 252(i) agreement pursuant to FCC Rule 809 and paragraphs 1317 and 1318 of the First Report and Order.

The FCC gave the ILECs the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue.

The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the contract pertaining to reciprocal compensation is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, 900 – 976, etc)".

GTECC's adoption of the AT&T arbitrated Terms shall become effective upon filing of this letter with the Kentucky Public Service Commission and remain in effect no longer than the date the AT&T arbitrated Terms are terminated. The AT&T arbitrated agreement is currently scheduled to expire on August 9, 2002.

As these Terms are being adopted by you pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or

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Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or GTECC that any contractual provision required by the Commission in Docket No. 96-478 (the "AT&T Communications of the South Central States, Inc." arbitration) or any provision in the Terms complies with the rights and duties imposed by the Telecommunications Act of 1996, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and GTECC

expressly reserve their full right to assert and pursue claims arising from or related to the Terms. GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals.

Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

Please indicate by your countersignature on this letter your understanding of and commitment to the following three points:

- (A) GTECC adopts the Terms of the AT&T Communications of the South Central States, Inc. arbitrated agreement for interconnection with GTE and in applying the Terms, agrees that GTECC be substituted in place of AT&T Communications of the South Central States, Inc. in the Terms wherever appropriate.
- (B) GTECC requests that notice to GTECC as may be required under the Terms shall be provided as follows:

To : GTE Communications Corporation
Attention: Mr. Dale Titel, Director – LEC Services
6665 N. MacArthur Blvd
M/C K03E18
Irving, TX 75039
Telephone Number: 972-4665-5304
Facsimile Number: 972-4665-1011

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Sincerely,

GTE South Incorporated

Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C:

GTE Communications Corporation

Scott Zimmerman