

Connie Nicholas  
Assistant Vice President  
Wholesale Markets-Interconnection



**GTE Network  
Services**

HQE03B28  
600 Hidden Ridge  
P.O. Box 152092  
Irving, TX 75038  
972/718-4586  
FAX 972/719-1523

July 20, 1999

Joe Buck  
PV Tel  
1999 East Stone Drive, Suite 419  
Kingsport, TN 37660

Dear Mr. Buck:

GTE has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, PV Tel wishes to adopt the terms of the arbitrated Interconnection Agreement between 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)<sup>1</sup>. I understand PV Tel has a copy of the Terms

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

On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court vacated Rule 51.319 of the FCC's First Report and Order, FCC 96-325, 61 Fed. Reg. 45476 (1996) and modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, No. 97-826, 1999 U.S. LEXIS 903 (1999).

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, any provisions in the Terms requiring GTE to provide UNEs are 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.”

The Terms which PV Tel seeks to adopt do *not* reflect the Court’s decision, and any provision in the Terms that is inconsistent with the decision is nullified.

GTE anticipates that after the FCC issues new final rules on UNEs, this matter may be resolved. In the interim, GTE would prefer not to engage in the arduous task of reforming agreements to properly reflect the current status of the law and then to repeat the same process later after the new FCC rules are in place. Without waiving any rights, GTE proposes that the parties agree to hold off amending (or incorporating the impact of the decision into) the Terms and let the section 252(i) adoption proceed by maintaining the status quo until final new FCC rules are implemented (the “New Rules”), subject to the following package of interdependent terms:

1. GTE will continue to provide all UNEs called for under the Terms until the FCC issues the New Rules even though it is not legally obligated to do so.

4. By making this proposal (and by agreeing to any settlement or contract modifications that reflect this proposal), GTE does not waive any of its rights, including its rights to seek recovery of its actual costs and a sufficient, explicit universal service fund. Nor does GTE 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.
5. The provisions of the contract that might be interpreted to require reciprocal compensation or payment as local traffic from GTE to the CLEC 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.

GTE believes that the first four conditions above are adequately explained by the first part of this letter. The reason for the last condition is 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 CLEC 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)"

In sum, GTE believes its proposal as described above would maintain the status quo

Joe Buck  
July 20, 1999  
Page 4

As these Terms are being adopted by PV Tel pursuant to statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of its position as to the illegality or unreasonableness of the Terms or a portion thereof, nor does it constitute a waiver by GTE of all rights and remedies it may have to seek review of the Terms, or to petition the Commission, other administrative body, or court for reconsideration or reversal of any determination made by the Commission pursuant to arbitration in Docket No. 96-AB-005, or to seek review in any way of any provisions included in these Terms as a result of PV Tel's 252(i) election.

Nothing herein shall be construed as or is intended to be a concession or admission by either GTE or PV Tel that any contractual provision required by the Commission in Docket No. 96-AB-005 (the AT&T 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 PV Tel 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 PV Tel attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. 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 only:

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

Joe Buck  
July 20, 1999  
Page 5

To : PV Tel  
Attention: Joe Buck  
1999 East Stone Drive, Suite 419  
Kingsport, TN 37660  
Telephone number: 423/578-1961

- (C) PV Tel represents and warrants that it is a certified provider of local dialtone service in the State of Kentucky, and that its adoption of the Terms will cover services in the State of Kentucky only.

Sincerely,

GTE South Incorporated

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Connie Nicholas  
Assistant Vice President  
Wholesale Markets-Interconnection

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

PV Tel

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For PV Tel

c: A. Lowery – NC999142 – Durham, NC  
D. Robinson - HQE03B73 - Irving, TX