

Connie Nicholas  
Assistant Vice President  
Wholesale Markets-Interconnection



**GTE Network  
Services**

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972/718-4586  
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February 28, 2000

Mr. Patrick M. Green  
Vice President – Carrier Relations  
Jato Operating Two Corp.  
1099 18th Street, Suite 2200  
Denver, CO 80202

Dear Mr. Green:

GTE has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the “Act”), Jato Operating Two Corp. (“Jato”) 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 (the “Terms”)<sup>1</sup>. I understand you have a copy of the Terms. Please note the following with respect to your adoption of the Terms.

1. By your countersignature on this letter, you hereby represent and commit to the following three points:
  - (A) Jato adopts the Terms of the AT&T arbitrated agreement for interconnection with GTE and in applying the Terms, agrees that Jato shall be substituted in place of AT&T in the Terms wherever appropriate.
  - (B) Jato requests that notice to Jato as may be required under the Terms shall be provided as follows:

To : Jato Operating Two Corp.  
Attention: Mr. Patrick M. Green  
1099 18th Street, Suite 2200  
Denver, CO 80202  
Telephone number: 303/226-8397  
FAX number: 303/226-5628  
E-Mail Address: [pgreen@jato.net](mailto:pgreen@jato.net)

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<sup>1</sup> These “agreements” are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect then-effective FCC rules and other applicable law.

- (C) Jato represents and warrants that it is a certified provider of local telecommunications service in the State of Kentucky, and that its adoption of the Terms will cover services in the State of Kentucky only.
2. Jato's adoption of the AT&T arbitrated Terms shall become effective upon GTE's 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.
  3. As the 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 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. 96-478, or to seek review in any way of any provisions included in these Terms as a result of Jato's 252(i) election.
  4. 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 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). 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. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by either GTE or Jato that any contractual provision required by the Commission in Docket No. 96-478 (the AT&T arbitration) or any provision in the Terms complies with the rights and duties imposed by the Act, the decision of the FCC and the Commissions, the decisions of the courts, or other law, and both GTE and Jato expressly reserve their full right to assert and pursue claims arising from or related to the Terms.
  5. GTE reserves the right to deny Jato's adoption and/or application of the Terms, in whole or in part, at any time:
    - (a) when the costs of providing the Terms to Jato are greater than the costs of providing it to the AT&T;
    - (b) if the provision of the Terms to Jato is not technically feasible; and/or

- (c) to the extent Jato already has an existing interconnection agreement (or existing 252(i) adoption) with GTE and the Terms were approved before the date of approval of the existing interconnection agreement (or the effective date of the existing 252(i) adoption).
6. The provisions of the Terms that might be interpreted to characterize traffic destined for Internet as local traffic or requiring the payment of reciprocal compensation are not available for adoption. As noted above, pursuant to Rule 809, the FCC gave ILECs the ability to deny 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 this exception. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Despite the foregoing, some forums have required reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based.
7. Should Jato attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, GTE reserves its rights to seek appropriate legal and/or equitable relief.

Please sign this letter on the space provided below and return it to the undersigned.

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 of paragraph 1:

JATO OPERATING TWO CORP.

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(SIGNATURE)

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(PRINT NAME)

c: R. Ragsdale - GTE