The following example illustrates GTE's point:

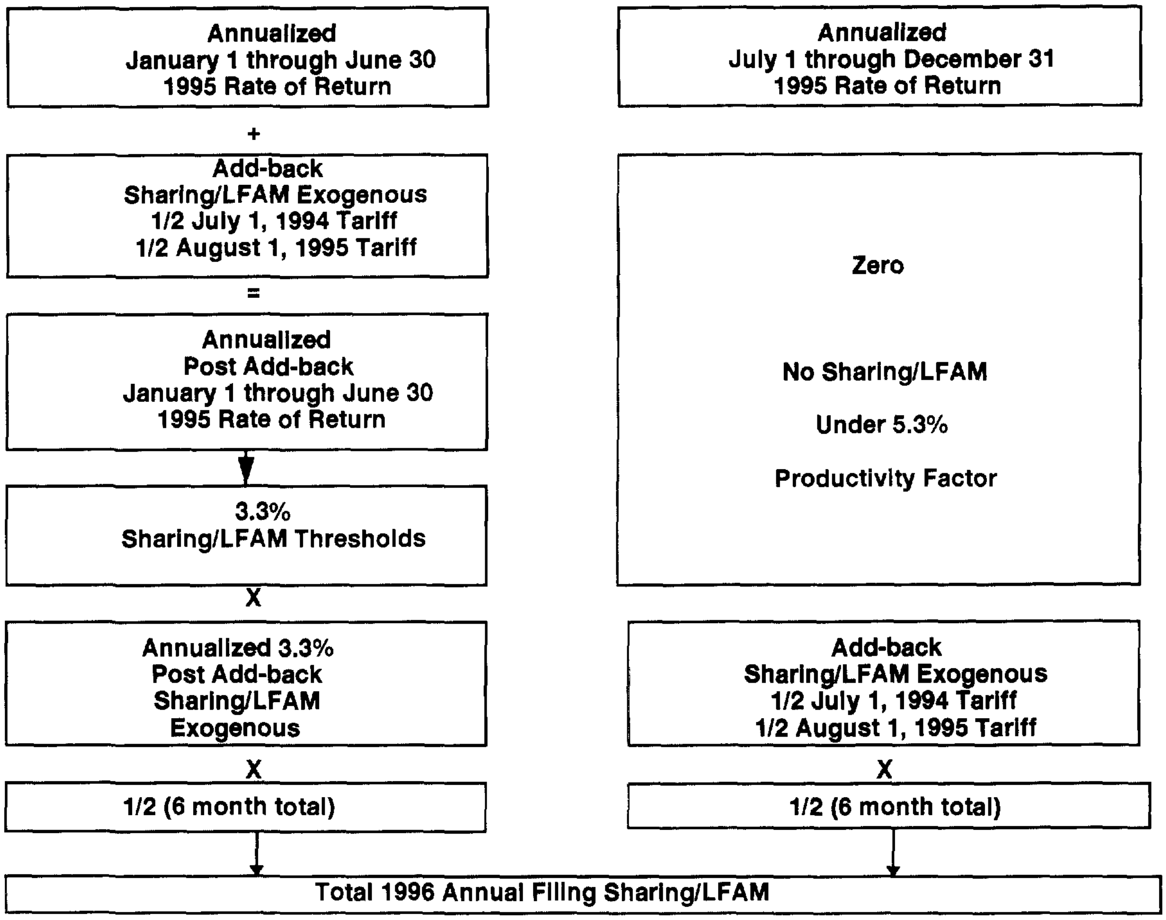
Prior to the annual filing the PCI = 90.0000

	Normal Filing Adjustment	Additional 1/11th Adjustment	Total PCI Adjustment
Inflation Less Productivity	-1.0000	-0.0909	-1.0909
Sharing/LFAM	-6.0000	-0.5455	-6.5455
Long Term Support	1.0000	-0.0909	1.0909
Miscellaneous	-1.0000	-0.0909	-1.0909
Total	-7.0000	-0.63464	-7.6364

Had the 1995 filing proceeded normally, the resulting PCI would have been 83.0000 (90.0000 - 7.0000). Instead, the one month delay required the inclusion of a 1/11th adjustment factor. With this factor, the PCI was reduced to 82.3636 (90.0000 - 7.6364). With the reversal of the 1/11th adjustment prior to the 1996 filing, the PCI will be at 83.0000. This is the same as it would have been had the 1995 filing been effective July 1.

To dispel the uncertainty created by the submissions of MCI and AT&T, the Commission should clarify that the 1996 sharing obligation for LECs selecting the no-sharing option should be performed as follows:

Sharing Calculation



In summary: GTE believes that the above methodology satisfies the requirements associated with the sharing obligation incurred for 1995. Accordingly, the Commission should clarify that the above methodology, using an annualized six months rate of return, is appropriate for LECs to use in calculating sharing for the 1996 tariff filing.

PART THREE: COMMON LINE

I. ADOPTING A PER-LINE CCL FORMULA REQUIRES A PRODUCTIVITY FACTOR ADJUSTMENT FOR WHICH THERE IS NO RECORD IN THIS PROCEEDING.

Based on the tentative conclusion of the *First Report & Order* (at paragraphs 266-69) that LECs do not significantly affect CCL demand growth, AT&T (at 13) and MCI (at 21) urge the Commission to change to a per-line CCL formula immediately. MCI (at 20) states that "changing to a per-line formula should cause no additional confusion."

As AT&T (at n.4) recognizes, changing to a per-line formula for CCL would require a downward adjustment to the productivity factor. The determination of the appropriate productivity adjustment for a changeover to a per-line methodology would have to be made. This would require the development of a record in a further proceeding.

As the *First Report & Order* (at paragraph 271) recognizes, a TFP-based productivity methodology may not require a common line adjustment. Further, the *First Report & Order* (at paragraph 145) tentatively concludes that a TFP-based methodology should be adopted. AT&T (at n.4) directly recognizes this as does MCI (at 20) by suggesting LECs would not have to recompute their PCI for common line. MCI indirectly is noting the relationship between productivity methodologies (*i.e.*, TFP) and the development of PCIs.

In summary: Adopting a per-line formula would require a change in the productivity factor which would, in turn, require another proceeding. Yet, the *First Report & Order* has already tentatively concluded that, in a further notice in this proceeding, the FCC should adopt a TFP-based methodology that would render a per-line adjustment formula moot.

PART FOUR: SALES AND SWAPS

I. ADDING FURTHER COMPLEXITY TO THE SALES AND SWAPS OF EXCHANGES WOULD BE COUNTERPRODUCTIVE.

MCI (at 22-23) challenges the Commission's decision not to "require the LECs to take an exogenous change to reflect the increased Universal Service Fund ("USF") or triple-DEM subsidy that the purchasing LEC would receive."[36] MCI insists:

> The Commission is mistaken in its analysis of where the change in costs lies. When the purchasing LEC determines how much it will pay for the exchange, it necessarily considers the flow of income, including any subsidy payments, it will receive. Thus, the price the selling LEC receives reflects a premium for the amount of the subsidy. The premium must be captured for ratepayers.[37]

In support of this proposition, MCI cites the wrong case. It cites at n.47 "Democratic Central Committee v. Metropolitan Washington Transit Authority 485 F.2d 847 (D.C. Dir. 1973) cert. denied sub nom. D.C. Transit System v. Democratic Central committee, 415 U.S. 935 (1974)."[38] The case cited concerns an emergency provision for rate increase; it does not deal with "capture" of a "premium" for ratepayers.

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[36] *Footnote omitted.*

[37] *Footnote omitted.*

[38] The correct reference to this case is: "Democratic Central Committee v. Washington Metropolitan Area Transit Commission, 485 F.2d 847 (D.C. Cir. 1973)...."

Presumably, MCI intended to refer to a case of similar name: *Democratic Central Committee of the District of Columbia v. Washington Metropolitan Area Transit Commission*, 485 F.2d 786 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 935 (1974).

In addition to misidentifying the case, MCI completely misunderstands and misstates its import. MCI argues for an automatic process whereby ratepayers "capture[]" an unidentified "premium" supposed to have been paid on sales and swaps of exchanges. The *Democratic Central Committee* court specifically rejected any such automatic process:

> [C]onsumers do not succeed to such gains [in value of operating utility properties] simply because they are users of the service furnished by the utility....[39]

Under *Democratic Central Committee*, any entitlement of ratepayers to gains in a carrier's property value depends on a complex examination of equitable considerations:

> The allocation between investors and consumers of capital gains on in-service utility assets ... rests essentially on equitable considerations. The allocative process ... necessitates a delicate balancing of the interests of investors and consumers in light of the governing equitable principles. The constant effort must be a distribution of the gains as fairness and justice may require....[40]

This "delicate balancing" involves two equitable principles: <u>First</u>: "[T]he right to capital gains on utility assets is tied to the risk of capital losses."[41] <u>Second</u>: "[H]e who bears

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[39] *Id.*, 485 F.2d at 805.

[40] *Id.*, 485 F.2d at 821, *footnotes omitted.*

[41] *Id.*, 485 F.2d at 806. *See* further discussion of this principle as "accepted in ratemaking law." *Id.* at 807.

the financial burden of particular utility activity should also reap the benefit resulting therefrom."[42]

In practice, the Commission has reviewed transactions involving sales and swaps of exchanges on an individual basis and, where necessary, has imposed requirements on the parties as a condition for approval. Therefore, there is no need for any generic change in the price cap plan to account for sales and swaps of exchanges.

In summary: The Commission should reject MCI's argument concerning sales and swaps of exchanges. The FCC has sensibly decided to invest its resources in more productive directions, and GTE applauds the wisdom of this decision.

PART FIVE: PRICING FLEXIBILITY

I. THE COMMISSION'S RELAXATION OF PRICING CONSTRAINTS IS APPROPRIATE AND LONG OVERDUE.

MCI (at 23-24), discussing the Commission's relatively minor relaxation of the pricing rigidity contained in the price cap rules, says it "welcomes the opportunity for LECs to quickly and easily lower their access charges...." but is "concerned that the increased downward flexibility may have the effect of permitting some individual rates to increase more than under the current plan."

GTE was greatly disappointed at the lack of pricing flexibility provided to LECs in the *First Report & Order*. It is:

1. Four years since the initiation of a program (price caps) to release LECs from the inequities of rate of return regulation,

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[42] *Id.*, 485 F.2d at 806. *See* discussion of this principle, *id.* at 808-811.

2. Well into the second decade after the divestiture of AT&T and the Bell Operating Companies, and

3. Approaching the second decade since the emergence of LEC network competition.

GTE has many times urged the Commission to grant exchange carriers far more pricing flexibility than this modest change that MCI is concerned about.

MCI offers an interesting "down is up" argument that the Commission should quickly reject. MCI suggests the additional lower pricing flexibility allowed will provide the opportunity for just that, lower pricing flexibility. GTE responds that MCI's concern that some rate elements might go up as a result could conceivably come true. But any increases would be the result of LEC price positioning to more adequately address an increasingly competitive environment, and would be limited by the extent of price reductions.

MCI (at 24) also calls for the Commission to "articulate its criteria for determining what pricing flexibility is necessary for the LEC ... before [the Commission] changes the pricing flexibility it grants the LEC." The Commission has committed itself to developing appropriate mechanisms for defining local markets, and criteria for classifying them according to the degree of competition. However, the finding in the *First Report & Order* (at paragraph 410) -- that increased flexibility to reduce prices will benefit consumers -- is independent of any such development.

In summary: The minimal action taken by the Commission is not going to result in anti-competitive or unreasonable prices. The Commission should deny MCI's request. GTE will continue to urge the FCC to move forward expeditiously to address additional pricing flexibility desperately needed by the LECs in an ever- increasing competitive marketplace.

Respectfully submitted,

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June 29, 1995

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Comments In Opposition To Petitions For Reconsideration" have been mailed by first class United States mail, postage prepaid, on the 29th day of June, 1995 to the following parties:

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