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United/Centel states that the technical arrangements contained in its special access tariff provide a good starting point. United/Centel asserts that the technical requirements used to interconnect each of the unbundled elements are industry standards. These industry standards were developed by one or more of the following agencies: BellCore, American National Standards Institute (ANSI), or the International Telegraph and Telephone Consultive Committee (CCITT).

Upon consideration, we believe that the telecommunications industry has developed and created its own set of standards that are widely used for the provision of local traffic. These standards are a reasonable starting point for the provision of unbundled network elements and that this serves the public interest by helping to maintain service quality. Therefore, all parties shall adhere to industry standards for the provision and operation of each unbundled element.

VI. PRICING OF UNBUNDLED ELEMENTS

Section 364.01, Florida Statutes, mandates that the competitive provision of local exchange service is in the public interest. Section 364.161, Florida Statutes, requires unbundling of LEC features, functions, and capabilities, including access to signaling databases, systems and routing processes. The unbundling and resale of certain LEC features, functions and capabilities by competitors allows them to enter the market more quickly and with less cost than if they had to build an entire duplicative network. The statute also requires that unbundled rates not be set below cost but neither may they become a barrier to competition.

Essentially, parties were divided with respect to pricing of unbundled loops: those who advocated pricing at Special Access rates and those who advocated pricing at Total Service Long Run Incremental Cost (TSLRIC). The LECs and those ALECs who had signed agreements with the LECs, such as Florida Cable Telecommunications Association, Inc. (FCTA) and Time Warner, proposed Special Access rates or rates with some contribution in them. The others, including AT&T, MCImetro, MFS-FL, and LDDS, believe that for competition to occur, unbundled loop rates must be priced no higher than TSLRIC. MCImetro also advocates the establishment of deaveraged rates for unbundled loops which will be discussed further.

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A. TSLRIC Data

Although the definitions are similar, there has not been a universally accepted definition of TSLRIC proposed in this proceeding. GTEFL witness Duncan states that it is defined differently depending on the context; in this proceeding, he means the average incremental cost of providing a service as opposed to not providing it at all. MCImetro witness Cornell describes it as the direct economic cost, which includes recovery of the firm's cost of capital, but does not include any contribution above cost. Witness Cornell also explains that the phrase "reasonable return on capital" as expressed in regulatory terms, is called "a normal profit" in standard economic terms.

MFS-FL appears to use Long Run Incremental Cost (LRIC) and TSLRIC interchangeably. For example, witness Devine, in deposition, agreed with Dr. Cornell's definition of TSLRIC, yet he refers to that type of cost as "LRIC." Witness Devine defines LRIC as the direct economic cost of a given facility, including the cost of capital, and represents the cost that the LEC would otherwise have avoided if it had not installed relevant increment of plant, that is, local loops in a given region. This definition is similar to the ones given by MCImetro witness Cornell and GTEFL witness Trimble.

GTEFL witness Trimble explains the concept as follows:

... if the company were to get out of the R-1 residential business, the true TSLRIC would be defined as the total cost to the company with R-1 residential service minus the total cost of the company without residential service, or the total change in cost to the company.

Witness Trimble also noted that for a multi-product firm with significant joint and common costs, it is extremely difficult to calculate a true TSLRIC, and that he knew of no telecommunications company that had actually performed a true TSLRIC study. Therefore, GTEFL developed a two-step process by which it computed two known TSLRIC components: volume-sensitive costs (or LRIC) and the volume-insensitive costs specific to that service, which he describes as fixed costs. He indicated that certain common costs would be appropriate to include as well, but these were not identified and quantified for this proceeding.

United/Centel did not conduct any cost studies for loops at all. United/Centel did not define its cost data as TSLRIC except

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United/Centel did not attempt to develop a substitute or proxy for TSLRIC.

AT&T described TSLRIC as the actual cost that the LEC incurs in providing the unbundled element, either to itself or to a new entrant. According to AT&T, when prices are set at TSLRIC, neither the new entrant nor the incumbent is disadvantaged. Both AT&T and MCImetro argue that TSLRIC is competitively neutral and thus will not be a barrier to competition by causing a price squeeze.

For purposes of this proceeding, we find that the TSLRIC estimates, where provided in accordance with our findings in this proceeding, shall be used to determine whether an unbundled rate meets the statutory requirement. Specifically, no permanent unbundled loop rate shall be set below our best estimate of TSLRIC, as determined by the evidence provided in this proceeding. TSLRIC estimates shall be based on the provider's current or prospective network facilities, as opposed to some theoretically optimal network configuration.

B. GTEFL Cost Data

GTEFL provided approximations of TSLRIC for the loops and ports that it has agreed to provide to MFS-FL. As noted earlier, GTEFL states that true TSLRIC estimates are extremely difficult to produce. Therefore, GTEFL provided estimates that reflect volume sensitive LRIC plus volume insensitive costs. We believe that this approach is reasonable considering the statutory time constraints in this proceeding. GTEFL provided cost data for several types of loops and ports that were requested specifically by MFS-FL.

For loops, the LRIC (or volume-sensitive) cost components included the basic loop costs, by distance, the Drop-In protector, the Main Distribution Frame (MDF) protector, the Network Access Cross Connect (NACC) which connects the port to the loop, Billing & Collection (B&C), and volume-sensitive customer contact/marketing expense. ~~The volume-insensitive components included spare capacity equipment and volume-insensitive customer contact/marketing expense.~~ GTEFL provided data for DS-1 channels and transport costs.

For ports, the LRIC cost components included the Basic Level Switch Interface (the line card that connects the loop and switch), Billing & Collection, Directory Exchange, which relates to costs for telephone directories, and volume-sensitive customer contact/marketing expense. The volume-insensitive component included just the volume-insensitive customer contact/marketing expense. GTEFL provided data for DID and ISDN costs.

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MFS-FL states that GTEFL should exclude extra costs such as B&C, customer contact and marketing, as well as spare capacity inventory. MFS-FL proposes that GTEFL and United/Centel be required to resubmit proper cost data for the link, port, cross-connect, and local usage. MFS-FL further proposes that the Commission set interim rates so that local competition is not delayed in the meantime.

MCImetro states that GTEFL's cost studies include high amounts of marketing costs that should not be included in the TSLRIC of unbundled loops. MCImetro argues that LECs should not incur marketing costs on any unbundled network elements. GTEFL witness Trimble testified that these costs do not reflect retail marketing efforts, but rather the sales and support efforts that GTEFL does for interexchange carriers. He believes that this type of support would continue for ALECs in the unbundled environment. He explained that in developing these expenses, GTEFL used data that related to the current support provided to IXCs for special access services since that was information they had available.

We note these marketing or customer support costs were slightly over 12% of the total unbundled 2-wire loop cost. There is no evidence in the record that provides guidance as to what a reasonable proportion of total cost such customer contact/support expenses should be. Witness Trimble acknowledged that GTEFL had not provided specific supporting documentation for the expense numbers submitted.

We disagree with MFS-FL that GTEFL should exclude all B&C, customer contact and marketing, and spare capacity inventory. These types of costs are relevant TSLRIC components because they represent costs that would be avoided in the long run if the LEC did not provide the service. If these are costs which are not incurred if the service is not provided, then they are relevant costs to provide the service. As with the marketing and customer contact expenses discussed above, GTEFL did not provide support for the specific figures it used.

We believe that the cost data which GTEFL provided was a creditable effort, particularly given the time constraints of this proceeding. We believe that, for the most part, it is adequate to set rates for unbundled loops and ports in this proceeding.

One exception is the data provided for the 4-wire DS-1 loop. The TSLRIC estimate that GTEFL provided is higher than the Special Access rate that GTEFL has proposed for this element. In addition, the TSLRIC estimate is higher than GTEFL's currently tariffed rates for the equivalent service in its Private Line and Local Transport

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tariffs as well. Since none of GTEFL's tariffed DS-1 rates cover the cost as submitted, we shall require GTEFL to reexamine the DS-1 loop cost estimate submitted in this proceeding and shall refile it. Alternatively, GTEFL shall explain why its TSLRIC estimate is higher than its proposed rate, current tariffed Special Access charge, for the unbundled DS-1 loop. In addition, GTEFL shall explain why its TSLRIC is higher than the currently tariffed rate for the equivalent service in its current Private Line and Local Transport tariffs. In the meantime, the current DS-1 Special Access rate shall be used as an interim rate for the unbundled 4-wire DS-1 loop.

C. United/Centel Cost Data

United/Centel filed its cost data on the rate elements immediately prior to hearing. United/Centel did not provide cost estimates or proposed rates for most of the requested elements. Instead of cost support, United/Centel cited to old tariffs. However, witness Poag conceded that he was not sure whether costs were in fact provided with those tariffs. He stated that for the 2-wire voice grade analog loop costs that he provided, the studies were old and the costs needed to be updated. Moreover, the loop costs did not reflect unbundled loops, but rather, consisted of the loop portion of residential and business exchange service. Witness Poag testified that the costs could be considered incremental but could not identify them as LRIC or TSLRIC. The only TSLRIC cost data provided, according to witness Poag, were for the 2-wire ports, and for these he submitted different estimates for residential and business ports. For reasons to be discussed, we do not believe that unbundled elements should be priced according to the type of user of the service. There were several elements for which neither costs nor rates were proposed. For those, witness Poag conceded that he was unclear as to what MPS-FL was requesting.

The data provided does not adequately support the development of rates for the elements requested; therefore, United/Centel shall refile cost studies for all elements requested by MPS-FL as found in Section IV of this Order. United/Centel shall organize the data so that we can determine the relevant TSLRIC cost components and the associated amounts. The cost data need not reflect separate estimates for residential and business; it shall include weighted averaged costs for each component. To the extent that TSLRIC is unavailable or a proxy is used, this needs to be stated clearly and the method used explained. These estimates shall be based on the provider's current or prospective network facilities, as opposed to some theoretically optimal network configuration. The cost studies shall conform to the information requirements set forth in Rule 25-

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4.046, Florida Administrative Code. These studies shall be submitted no later than 60 days from the issuance of this Order.

We find the following rates are approved on an interim basis only: 2-W voice grade analog loop at \$15.00; and 2-W analog line port at \$7.00. These rates will be used as an interim mechanism so that ALECs may obtain service as quickly as possible. These interim rates will recover the costs as preliminarily identified by United/Centel.

D. "Price Squeezing" and Imputation

GTEFL argues that there will be no price squeeze if unbundled loop rates are set at Special Access rates, because ALECs will generate revenues from non-basic services. MFS-FL, however, argues that providing simple links at Special Access rates would create a price squeeze. The ALECs also stated that they would not be able to resell competitively at those rates.

MCInetro witness Cornell states that any price above TSLRIC for essential inputs would not permit the LEC to pass an imputation test and would therefore create a price squeeze. MCInetro argues that LEC proposals discriminate because they want to charge special access rates to ALECs for elements which the LECs obtain at TSLRIC. MCInetro argues that if a price squeeze is allowed to occur, then equally efficient firms would not be able to compete. Witness Cornell argues that a proper imputation test would require that the price floor for a LEC retail service (local exchange service) equal: (a) the price charged to ALECs for monopoly inputs (loops), plus (b) the LEC's TSLRIC of all other components of the retail service, such as switching, transport, billing and directory listings. MCInetro states that the LECs' current local exchange rates do not pass an imputation test: local exchange rates would have to more than double to pass the imputation test at the proposed special access rates.

Witness Cornell offers three alternative solutions: 1) raise local rates; 2) reduce the prices charged to ALECs for essential inputs; or 3) Universal Service Fund (USF). MCInetro recommends reducing rates to ALECs in the short run by setting rates at TSLRIC with deaveraged loops; in the long run, local rates should be raised to affordable levels and the difference should be funded by means of a USF mechanism. MCInetro argues that this is the only solution under the current regulatory regime where unbundled loops must cover costs, and local rates are capped below the claimed average cost of an unbundled loop.

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Time Warner agrees with NCImetro that the proper imputation standard would require the incumbent LEC to recover from the retail service the price charged to entrants for monopoly inputs, plus all the other costs of providing the retail service. Alternatively, a LEC could reduce the price of its monopoly elements to avoid a price squeeze and to pass an imputation test. However, Time Warner disagrees with NCImetro that exercising this alternative would require pricing the inputs at TSLRIC. Time Warner also endorses NCImetro's third alternative, where local rates are frozen, to rely on the USF to make up the difference between TSLRIC and the unbundled loop.

We believe that to be able to compete, the ALECs must pay rates for essential inputs that do not result in a price squeeze by exceeding the rates charged by their competitors, the LECs, for their retail local exchange services. Given the statutory restrictions that LEC unbundled rates must not be set below cost, and that basic local rates may not increase prior to January 1, 1999, we find that the best course is to set rates now for essential monopoly inputs at or near TSLRIC. We agree with NCImetro witness Cornell that in the long run, if necessary, local rates could be raised to affordable levels and any difference could be funded by means of a USF mechanism.

E. Contribution to Shared and Common Costs

United/Centel argues that using Special Access tariffed rates avoids price discrimination because unbundled rates are not priced differently from rates charged to other providers, such as IXC's, MSP's, and AAV's. According to United/Centel, pricing at incremental costs is inappropriate because the relevant services are cross elastic with toll and switched access; LECs would not recover their shared and common costs; and incremental cost pricing would make end users subsidize ALECs. United/Centel asserts that its proposed pricing would not create a price squeeze, and that special access rates would reasonably reflect TSLRIC plus some contribution.

GTEFL endorses the concept of the Efficient Component Pricing (ECP) rule, which, according to GTEFL, requires that prices fall between Stand-Alone costs and TSLRIC. Specifically, GTEFL advocates the ECP, which would set the price of unbundled loops at the lesser of: 1) the TSLRIC of the element, plus related wholesale marketing activities, plus the contribution that would have been received from the use of the element in the provision of the LEC's own end-user service; or 2) the stand-alone cost of the unbundled element. GTEFL argues that pricing at TSLRIC would drive firms out of business since there would be no recovery of shared and common costs. In addition, GTEFL argues that the

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Federal Telecommunications Act of 1996 provides for cost recovery plus a reasonable profit. However, GTEFL did not ultimately propose to apply ECP, stating that prices should be set at a level comparable to where they would be in a competitive marketplace. Since application of ECP would result in rates which could be undercut by competitive providers, GTEFL proposed to price unbundled loops at Special Access tariffed rates.

According to GTEFL's studies, this results in an unbundled business loop of \$61.69, and an unbundled residential loop of \$28.67. These rates include the contribution from toll, access and vertical service revenues that go along with the loop when an ALEC takes the customer. But these amounts exceed the Stand Alone cost, as well as the cost to an entrant to provide the loop itself. Thus, GTEFL proposes \$23.00 for an unbundled loop, which is the same as the 2-wire special access line. GTEFL states that pricing this way will prevent arbitrage. Also, GTEFL states the special access price for a two-wire loop provides 12% contribution.

Time Warner and FCTA agree with the LEC positions that unbundled rates should include contribution. Time Warner believes that pricing at TSLRIC eliminates the incentive for facilities-based competitors to build out their networks and also endorses requiring that LEC retail services pass an imputation test. Time Warner also agrees with the LECs that deaveraging of loop rates should be done in conjunction with universal service reform.

MFS-FL, MCImetro, AT&T and LDDS advocate the pricing of essential monopoly elements at TSLRIC. MFS-FL asserts that the LEC cost studies that were submitted are inadequate; thus, MFS-FL proposes to set interim rates based on the costs submitted and require both LECs to refile true LRIC studies. Generally, MFS-FL states that the retail rates in the tariff for bundled services should cover the sum of the prices for applicable unbundled monopoly elements. MFS-FL objects to the LEC proposal to set rates at Special Access prices because unbundled loops are not the same as special access channels. Although there may be only slight physical differences, MFS-FL states that there are significant differences in technical standards, engineering and operational practices.

MCImetro advocates two basic pricing principles. First, the price for essential inputs, such as those which cannot be competitively provided in the near term, should be set at TSLRIC, which includes cost of capital but no contribution in excess of that normal profit. Second, the price for elements which can be competitively provided in the near term should be set by the market, and could contain contribution. According to witness

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Cornell, the essential inputs include loops, loop concentration, and transport. MCImetro asserts that ports should be unbundled and made available for resale; however, they need not be priced at TSLRIC since they are more likely to be provided competitively. MFS-FL agrees that ports need not be priced at TSLRIC, and proposed that they be priced at the retail rate of the bundled service less the sum of the LRICs of the loop and the cross-connect.

MCImetro, MFS-FL, and AT&T assert that there should be no contribution in the loop rates. According to MFS-FL, LRIC (TSLRIC) pricing of unbundled elements is essential to the development of local exchange competition. AT&T states that when loops are priced at TSLRIC, both the LEC and the ALEC incur the same loop costs, and then both have the same opportunity to recover their joint and common costs from retail services. MCImetro states that including contribution raises the price floor down to which competition can force rates. MCImetro witness Cornell argues that the point of requiring loop unbundling is that it is not clear that economically, it will ever be viable to establish a complete duplicate of the LECs' distribution and feeder networks. She also makes the point that if such facilities-based competition ever does occur in certain areas and not in others, establishing TSLRIC-based rates will not impede the market.

Upon consideration, we do not believe that ECP produces a desirable result. A competitive market does not thrive on indifference. If a LEC is rendered indifferent by virtue of the pricing of its services as to whether it serves the customer or not, the reason for establishing competition is eliminated. There is no longer any incentive for the LEC to seek to attract customers, and the market is no longer driven by competition. If competitive providers do not have to compete, the consumer will not be served well. Therefore, we do not agree with GTEFL that ECP is an appropriate approach to determining prices.

United/Centel and GTEFL have opted for price cap regulation under which there is an assumption of a greater degree of competitive risk. However, the LECs seem to presume that they are entitled to the same revenue or at least contribution protection that they had under rate-of-return regulation. Their positions seem to indicate that they should not be required to assume any competitive risk at all.

We also disagree with United/Centel's argument that charging different rates to ALECs than those charged to Interexchange Carriers (IXC), cellular carriers, and Alternative Access Vendors (AAVs) is discriminatory. First, ALECs are a different class of customer than IXCs, AAVs, and cellular providers. Also, the

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unbundled loops and ports at issue are not the same end-to-end tariffed services provided to IXCs, AAVs, and cellular providers. Moreover, if there still are any concerns about arbitrage, use and user restrictions are the standard method of addressing the problem. Thus, only ALECs could purchase the unbundled network elements at the prices approved in this proceeding.

Moreover, the evidence in the record indicates that the loops are not going to be competitively provided in any meaningful way in the foreseeable future. Thus, the LEC is the only realistic source for this element. We believe that loops should be priced at a level that approximates TSLRIC. Therefore, the LECs' proposed application of their Special Access rates to unbundled loops is denied.

GTEFL submitted proposed rates for all the port elements requested by MFS-FL. GTEFL proposes to charge a flat monthly rate plus a usage charge for ports. The flat rates cover the identified TSLRIC estimates. GTEFL also proposes to charge associated tariffed DID and ISDN charges where applicable. The usage charge would be identical to the Shared Tenant Service (STS) usage rate. Witness Trimble testified that he does not expect to see much demand for unbundled ports.

United/Centel proposed rates and provided cost estimates for some but not all of the requested ports. United/Centel proposes that the 2-wire analog port rates differ between residential and business. United/Centel does not propose a separate usage charge for ports but includes a usage component in its cost estimate.

We agree with GTEFL that ports may not be in high demand from the LECs and believe that they may be more widely available from alternative sources. Many ALECs own their switches, can provide their own ports, and can resell them to other ALECs as well. Ports can therefore either be priced with some contribution, or "market priced."

However, we do not believe that it is appropriate or necessary to decide a usage rate for ports. We have been asked by MFS-FL to determine rates for unbundled components. MFS-FL has requested loops and ports, but it did not request local switching in this proceeding which is what the usage rate would cover. The ALECs can obtain that from the LEC if they want, and at this point, the LECs may charge STS usage rates if that is what the ALECs are willing to pay. If MFS-FL or any other ALEC does not agree with that, and if it cannot resolve this issue with the LECs, it may request that the Commission decide this matter. We note that no party specifically objected to the usage rates proposed by GTEFL.

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F. Distance and Density Sensitive Loop Rates

ALECs advocate unbundling loops even further through deaveraging loop rates by distance and density. MFS-FL argues that any proposed rate that does not consider this distance-sensitivity, and more importantly, does not consider line density, is fundamentally flawed and could severely impair facilities-based local exchange competition.

NCImetro contends, based on the evidence in the record, that under the LECs' proposed flat special access rates, shorter loops would provide a greater level of contribution than the longer loops because the cost of longer loops is higher. At a flat averaged rate, the effect would be to charge all loops a share of the non-integrated pair gain costs, even though shorter loops do not use pair gain technology. Witness Cornell stated that customers would be better off if loop rates were deaveraged by distance and density. Deaveraging helps identify areas that need universal service support and allows rural customers to benefit from competition that they might otherwise not have. NCImetro also argues that setting unbundled loop prices equal to deaveraged costs would help minimize the chance for a price squeeze in higher density areas, which would enhance the likelihood of competitive entry in such areas. NCImetro also notes that the official corporate position for United/Centel on this issue is that loop prices should be deaveraged, at least by distance.

NCImetro proposes that unbundled loop prices for GTEFL be based on density and distance and that for United/Centel, the rates should be based on distance only for now since that is all it provided. NCImetro suggests requiring United/Centel to refile TSLRIC studies incorporating both distance and density. Since United/Centel separated the loop costs between residential and business, that would have to be modified as well. We will not design rates for resale that distinguish between residential and business, because there would be no way to monitor or enforce the intended use. We agree with NCImetro's statement that the costs of the loops should be expressed in terms of the functionality and not the projected service to be provided over them.

The LECs acknowledge the distance and density aspects of loop costs. They state, however, that although deaveraged loops are appropriate in theory, the Commission should not allow such deaveraging until LECs can also deaverage. United/Centel states that distance sensitive pricing was not included in MFS-FL's petition, and therefore is not ripe for decision now. The LECs say they should be allowed to deaverage at the same time as ALECs, or they would be competitively disadvantaged.

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We believe that eventually loop rates may need to be deaveraged as the market develops. However, this proceeding was initiated by petitions of MFS-FL requesting that we resolve issues between MFS-FL, GTEFL, and United/Centel which they were unable to resolve during their negotiations. Deaveraging local loops was not part of the negotiation process according to United/Centel. We agree with United/Centel that it is premature to require deaveraging of the loop rates at this time.

G. Selling Unbundled Loops and Ports Together

MFS-FL maintains that the ability to combine unbundled loops with unbundled ports is crucial to its ability to compete for local traffic. However, United/Centel does not want to allow the connection of unbundled loops with unbundled ports.

We agree with the ALECs that these items together are important for resale. Section 364.161(1), Florida Statutes, requires that a LEC unbundle all of its network features, functions and capabilities for resale. There are two limitations on this statutory directive: 1) the price cannot be below cost; and 2) the Commission cannot require the resale of "currently tariffed, flat-rated, switched residential and business services" prior to 1997. The combination of unbundled loops and ports at the approved rates does not run afoul of either of these limitations. Moreover, in view of the statutory directive to promote competition, these limitations should be narrowly construed. Therefore, we find that the ALECs shall be allowed to combine unbundled loops and unbundled ports.

H. GTEFL's Taking Arguments

GTEFL asserts that it will lose contribution and market share. Specifically, GTEFL contends that forcing the loss of contribution constitutes an impermissible taking of GTEFL's property. GTEFL argues that prices should not be set at LRIC or TSLRIC because it will be unable to obtain any contribution to their joint and common and/or shared costs. GTEFL contends that LRIC and TSLRIC do not recover all costs nor provide a profit to the firm. Further, GTEFL asserts that pricing the unbundled loop at TSLRIC does not cover any of GTEFL's embedded costs in providing the loop. GTEFL also argues that denying it recovery of these costs is inconsistent with the Federal Telecommunications Act of 1996 which authorizes the incumbent LEC to recover reasonable profit after the LEC's costs are recovered. GTEFL asserts that the Commission should immediately address this expected loss of contribution in a comprehensive universal service docket or some other proceeding to avoid confiscation of GTEFL's property.

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Further, GTEFL argues that it is entitled to rates which return to the company all funds expended in the deployment of assets under the de jure local monopoly which was in effect until January 1, 1996. GTEFL contends that the investments and costs were previously recovered through rate mechanisms and control of entry into the telecommunications field by the Commission and thus constituted an express regulatory compact between the Commission and GTEFL. With the revisions to Chapter 364, GTEFL contends that the state has abandoned the regulatory compact by opening the local exchange market to competition. GTEFL asserts that while the state previously allowed recovery of these investments, the Commission now jeopardizes the financial integrity of GTEFL.

Specifically, GTEFL takes issue with MPS-FL's assertion that GTEFL must price its services at LRIC levels, requiring GTEFL to forego recovery of all service-specific incremental volume insensitive costs as well as shared common costs. GTEFL asserts that neither the Commission nor any other governmental agency is permitted to impose confiscatory rates on one line of a company's business simply because the company can theoretically afford those losses by generating additional revenue on other lines of business. Such a notion, GTEFL argues, would permit the government to impose below-cost pricing on any profitable company. GTEFL argues that mandatory below-cost pricing on a particular line of business is unconstitutional even if the company is able to make up those losses from revenues generated from other businesses and cites to the following case for support. Brooks-Scanlon Co. v Railroad Commission, 251 U.S. 396 (1920).

Although we cannot rule on whether our decision will be unconstitutional, we can address the concerns which GTEFL asserts implicate the takings clause.

Implicit in GTEFL's arguments is the notion that this Commission owes GTEFL an increase in local rates to replace the company's potential losses of expected contribution and profit. GTEFL is asking that we look at potential revenue losses, albeit under the disguise of alleged constitutional violations. Even if it could be predicted with certainty that there would be major losses, GTEFL does not have a per se statutory right that it must recover profit and contribution as a result of unbundling and reselling services. Even under the rate-base regulation regime in Chapter 364, GTEFL was merely afforded the opportunity to earn a fair return on its investment, not a guarantee of a return. Further, under the new, price-regulated regime in Chapter 364 that GTEFL has elected, GTEFL is not guaranteed a specific return in this competitive environment. Moreover, even if the losses come to

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fruition, such losses, if necessary, can be addressed through appropriate Commission proceedings.

Property interests are not created by the Constitution, but rather are delineated by existing rules or understandings that stem from an independent source such as state law. Ruckelshaus v. Mangers Co., 467 U. S. 986, 1000 (1984) citing Webb's Fabulous Pharmacies, Inc v. Beckwith, 449 U.S. 155, 161 (1980).

As previously stated, under Sections 364.161 and 364.162, Florida Statutes, the LEC is required to unbundle its network features, functions, and capabilities and offer them for resale to the extent technically and economically feasible. If the parties cannot negotiate an agreement, then this Commission's obligation is to set rates for such services, features, functions, capabilities, or unbundled local loops at rates that are not below cost. This Commission is also obligated by statute to ensure that the rate must not be set so high that it would serve as a barrier to competition. The incumbent LEC has no statutory or constitutional right to contribution above cost for unbundled services. Most significantly, the unbundled rates we have established for GTEFL meet our obligation to ensure that the rates are not below GTEFL's costs.

GTEFL argues that setting rates based on TSLRIC is inconsistent with the Federal Telecommunications Act of 1996. GTEFL states that basing rates on TSLRIC violates the Act because: 1) it does not cover any of GTEFL's embedded costs in providing the loop; and 2) it denies a reasonable profit to GTEFL as provided in the Act. We disagree with GTEFL's arguments. First, Section 252(c)(1)(A) of the Act provides that just and reasonable rates shall be based on the cost of providing the network element. Basing rates on TSLRIC meets Section 252(c)(1)(A) of the Act, because TSLRIC is the cost of providing the service. Second, Section 252(c)(1)(B) provides that just and reasonable rates may, not must, include a reasonable profit. As discussed previously, TSLRIC includes recovery of the cost of capital or a reasonable profit; therefore, we cannot sustain GTEFL's argument.

In anticipation of speculation that GTEFL will experience lost revenues as a result of unbundling, GTEFL believes that this Commission must order an immediate rate rebalancing or explicit subsidy payments when unbundled rates go into effect. Even if we agreed that there was a possibility of major revenue losses, that mere possibility would not give rise to an immediate rate increase. To the extent GTEFL does experience revenue losses, there are specific procedures for relief set forth in Chapter 364. First, under Section 364.051(5), Florida Statutes, if GTEFL believes that

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circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services, it may petition the Commission for a rate increase. This Commission shall grant such a petition only after an opportunity for a hearing and a compelling showing of changed circumstances. Second, under Section 364.025, Florida Statutes, GTEFL may seek a subsidy towards its universal service obligations. Specifically, GTEFL must file a petition showing that competition has eroded its ability to support universal service and identify the amount of subsidy needed. See Order No. PSC-95-1592-FOF-TP.

GTEFL also argues that mandatory interconnection and unbundling by definition provides physical access to its tangible property. GTEFL states that interconnection allows MFS-FL to move its traffic over GTEFL's network which is then physically invaded by the bits and bytes transmitted by MFS-FL. GTEFL contends that the movement of bits of information across telephone wires constitutes a physical invasion of GTEFL's private property. GTEFL relies on Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982), for the proposition that the appropriate compensation for this physical taking is to compensate the property owner for the full opportunity cost of the physical invasion. This argument would have been more appropriately raised in the interconnection proceeding in Docket No. 950985-TP; nevertheless, we will address GTEFL's arguments in this unbundling proceeding.

A similar argument was raised by the LECs when this Commission ordered mandatory physical collocation in Phase I of the expanded interconnection docket. See Order No. PSC-94-0285-FOF-TP, issued March 10, 1994. This Commission stayed its order when the FCC ordered mandatory virtual rather than physical collocation. See Order No. PSC-94-1102-FOF-TP, issued September 7, 1994. In that order, this Commission was persuaded by the argument that property dedicated for the public purpose is subject to a different standard when, pursuant to statutory authorization, a regulatory body mandates certain uses of that property in the furtherance of its dedicated use. This Commission was not persuaded by the LECs' argument that a mandatory physical occupation is a per se taking.

In this case, ~~the~~ statutory authorization is provided by Chapter 364, Florida Statutes. Effective interconnection and unbundling and the adequate provision of telecommunications service require that this Commission mandate interconnection and unbundling of the local loop and such purposes do not turn statutorily authorized regulation into a taking.

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Loretto is relied upon by GTEFL as authority for the taking analysis based upon an ad hoc factual inquiry of:

- 1) The economic impact of the regulation;
- 2) The extent to which it interferes with investment-backed expectations; and
- 3) The character of the governmental action.

Loretto is also relied upon for the proposition that a permanent physical occupation represents a per se taking and that an ad hoc inquiry is only reached in the absence of such a permanent physical occupation. In Loretto, the Court stated:

We affirm the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. Id. at 441

This Commission previously found that an objective reading of Loretto is that if there is a permanent physical occupation there is a taking. This is the case regardless of the size of the occupation. In Loretto, the permanent occupation was the attachment of wires and a box to the exterior of a building.

In the instant case, GTEFL objects to the possible mandate of interconnection and unbundling of its local loop to effectuate statutorily authorized interconnection and unbundling. However, based on Loretto, it appears that such interconnection would be a taking if opposed by GTEFL. Such an interpretation would make it impossible for this Commission to regulate telecommunications pursuant to its statutory mandate.

GTEFL contends that it must be compensated for the full opportunity cost of the physical invasion of its private property. We believe that Loretto is not the appropriate standard to employ regarding the Commission's statutorily authorized regulation of the LEC's property. Loretto involved neither the taking of a common carrier's property nor government regulation of a common carrier. This distinction is central to any taking analysis.

A lawful governmental regulation of the service of common carriers, though it may be a burden, is not a violation of constitutional rights to acquire, possess, and protect property, to due process of law, and to equal protection of the laws, since those who devote their property to the uses of a common carrier do so subject to the right of

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governmental regulation in the interest of the common welfare. . . . Even where a particular regulation causes a pecuniary loss to the carrier, if it is reasonable with reference to the just demands of the public to be affected by it, and it does not arbitrarily impose an unreasonable burden upon the carrier, the regulation will not be a taking of property, in violation of the Constitution. State ex rel. Railroad Com'rs v. Florida East Coast Ry. Co., 49 So. 43-44 (Fla. 1909) (Emphasis added).

It has long been established that property which has been dedicated to a public purpose can be regulated and even permanently physically occupied as long as the regulation involves the dedicated public purpose. See Munn v. Illinois, 94 U.S. 113, 126 (1876). Under this analysis, the taking issue is not reached except to the extent that there is inadequate compensation for the use of the property or a mandate to use the property in a manner to which it has not been dedicated. Neither case is present here.

Although we cannot determine the appropriate compensation for a taking, we certainly have the authority to establish the appropriate rates for the provision of telecommunications service in Florida. Provided that the rates are not confiscatory, we have the statutory authority to establish nondiscriminatory rates, terms, and conditions for resale.

I. Conclusion

Based upon the foregoing, we find that GTEFL's rates for unbundled loops shall approximate TSLRIC. Unbundled ports may be set at reasonable market prices. Based on the evidence in the record, we find that the monthly recurring rates for the unbundled elements for GTEFL shall be set as follows:

Loops

- 1A. 2-W voice grade analog loop: \$ 20.00
- 1B. 4-W voice grade analog loop: \$ 25.00
- 2. 2-W ISDN digital grade loop: \$ 20.00
- 3. 4-W DS-1 digital grade loop: \$250.00 - First System
 \$154.00 - Add'l System

Ports

- 4. 2-W & 4-W analog line ports: \$ 6.00
- 5. 2-W ISDN digital line port: \$ 20.00
- 6. 2-W analog DID trunk port: \$ 6.00 plus tariffed DID charges

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- 7. 4-W DS-1 digital DID trunk port: \$ 60.00 plus tariffed DID Charges
- 8. 4-W ISDN DS-1 digital port: \$350.00

The rate shown above for the 4-W DS-1 digital grade loop is an interim rate. GTEFL shall either refile its cost information or explain why its proposed rate (current Special Access DS-1 rate) is below its cost estimate, and why the TSLRIC is higher than currently tariffed rates for the equivalent service in GTEFL's Special Access, Private Line, and Local Transport tariffs. This information shall be filed no later than 60 days following the issuance of this Order.

United/Centel shall refile its cost studies providing estimates of TSLRIC for all elements as approved in Section IV of this Order. United/Centel shall organize the cost studies so that we can determine the relevant TSLRIC cost components and the associated amounts. The cost data need not reflect separate estimates for residential and business and shall include weighted average total costs for each component. To the extent that TSLRIC is unavailable or that a proxy is used, this shall be stated clearly and the method used explained. These cost studies shall conform to the information requirements set forth in Rule 25-4.046, Florida Administrative Code, and shall be submitted no later than 60 days from the issuance of this Order.

Also, we find that the following rates for United/Centel are approved on an interim basis only:

- 2-W voice grade analog loop: \$ 15.00
- 2-W analog line port: \$ 7.00

For GTEFL and United/Centel, TSLRIC estimates, where provided in accordance with our findings, shall be used to determine whether an unbundled rate meets the statutory requirement. That is, no permanent unbundled loop rate shall be set below our best estimate of TSLRIC, as determined by the evidence provided in this proceeding. TSLRIC estimates shall be based on the provider's current or prospective network facilities, as opposed to some theoretically optimal network configuration, assuming no facilities are in place.

Further, we find that ALECs shall be allowed to combine unbundled loops and unbundled ports for GTEFL and United/Centel.

Finally, all tariffs required to be filed in this section shall be filed no later than 30 days following the issuance of this

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Order. They shall become effective fifteen days following the date that complete and correct tariffs are filed.

VII. OPERATIONAL ARRANGEMENTS

GTEFL and MFS-FL signed a partial co-carrier agreement which pertained to this issue; however, GTEFL and MFS-FL were not able to fully agree on this subject, so we did not approve it as a stipulation. The agreement states that each party will use its best efforts to address, within 60 days, certain operational issues which remain to be resolved by GTEFL and MFS-FL. The only aspect to which MFS-FL and GTEFL do not agree is the handling of further operational disputes that may arise.

Time Warner, MCImetro, and FCTA argue that United/Centel and GTEFL should provide, on an automated basis, ordering, repair, and testing and any other administrative systems needed wherever possible. LDDS's position is that the requests and proposals presented in this docket do not necessarily meet the needs of these petitioners in the future nor may they meet the needs of future competitors. AT&T supports MFS-FL's position which is described below.

MFS-FL states that for it to efficiently offer service, United/Centel and GTEFL should make the following terms and conditions available for unbundled elements:

- 1) United/Centel and GTEFL should be required to apply all transport-based and switched-based features, functions, service attributes, grades-of-service, and installation maintenance and repair intervals which apply to bundled service to unbundled links.
- 2) United/Centel and GTEFL should permit any customer to convert its bundled service to an unbundled service and assign such service to MFS-FL, with no penalties, rollover, termination or conversion charges to MFS-FL or the customer.
- 3) United/Centel and GTEFL should bill all unbundled facilities purchased by MFS-FL on a single consolidated statement per wire center.
- 4) United/Centel and GTEFL should provide MFS-FL with an appropriate on-line electronic file transfer arrangement by which MFS-FL may place, verify, and receive confirmation on orders for unbundled elements, and issue

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and track trouble-ticket and repair requests associated with unbundled elements.

United/Centel argues that it is not necessary for us to address detailed operational issues at this time, and that it is willing to work in good faith with MFS-FL to address the operational concerns. United/Centel states that since it will be difficult to predict the areas in which we will be called upon to arbitrate operational disputes between United/Centel and ALECs, it is premature to decide detailed operational issues at this time. Instead, United/Centel asserts that detailed operational issues are best left to the parties, with resolution by the Commission on a case-by-case basis.

United/Centel disagrees with MFS-FL that United/Centel should permit any customer to convert its bundled service to an unbundled service and assign such service to MFS-FL, with no penalties, rollover, termination or conversion charges to MFS-FL or the customer. United/Centel states that there are nonrecurring costs involved in making the changes necessary in the network and the records to change an end user's service, and that United/Centel should be allowed to recover direct costs from direct cost causers, including MFS-FL. United/Centel proposes that it use its existing nonrecurring charges associated with residence or business service as an alternative to the nonrecurring charges that are in the special access tariff until such time as it is able to develop nonrecurring charges that are appropriate for unbundled loops.

United/Centel also disagrees with MFS-FL with respect to the mechanized arrangement by which MFS-FL may place, verify, and receive confirmation on orders for unbundled elements, and issue and track trouble-ticket and repair requests associated with unbundled elements. United/Centel states that it should not be required to develop new systems simply to allow electronic interconnection in the manner desired by each ALEC. However, United/Centel states that if the existing systems can be used to effect such transfer of information or if minor modifications can be made to the existing systems, then it would be willing to negotiate such transfers with MFS-FL.

GTEFL argues that any applicable termination charges, as specified in its existing tariffs, would apply when any customer converts its bundled service to an unbundled service and assigns such service to MFS-FL. Further, GTEFL states that it cannot agree to do all of the work to discontinue billing GTEFL's customer and institute billing to MFS-FL at no charge. GTEFL states that it is patently unfair to force it to bear the costs of these changes simply to hold down MFS-FL's cost of entry. The interests of all

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carriers, both incumbents and new entrants, must be balanced if open and effective competition is to develop. In addition, GTEFL asserts that if GTEFL has a customer on some type of contract arrangement with termination liability, then those termination liability charges should apply when the customer terminates early.

GTEFL does not disagree that some type of on-line electronic file transfer system by which ALECs may place, verify, and receive confirmation on orders for unbundled elements, and issue and track trouble-ticket and repair requests associated with unbundled elements should be developed. In addition, GTEFL asserts that developing such a system is in its interest and has agreed to work with the industry in developing a standard system.

MFS-FL agrees that GTEFL should not have many different systems and that they should attempt to have one for GTE nationwide. In addition, MFS-FL states that with regard to rolling over service, there are additional costs associated with the conversion, and MFS-FL would pay for the jumper cable on the main distribution frame and the service order charge in order to convert.

We understand that there are many operational issues that will arise as the ALECs begin to provide service. The following operational arrangements should help to minimize problems between the ALECs and LECs in a competitive market.

We agree with MFS-FL that United/Centel and GTEFL should be required to apply all transport-based and switched-based features, functions, service attributes, grades-of-service, and installation maintenance and repair intervals which apply to bundled service to unbundled links because the change in service providers should be transparent to the end-user.

However, we do not believe that MFS-FL's request for rolling over service should be at no charge to the ALEC. Witnesses for GTEFL and United/Centel stated that there are specific nonrecurring charges that are necessary to cover the costs of converting service to the ALECs. Even MFS-FL agreed that there are costs and that the ALECs should pay for these nonrecurring costs of conversion. Further, GTEFL points out that there may be situations in which the LEC customer is under a contract and termination liability charges would apply if the contract is terminated early. Therefore, we find that MFS-FL's request that United/Centel and GTEFL should permit any customer to convert its bundled service to an unbundled service and assign such service to MFS-FL, with no penalties, rollover, termination or conversion charges to MFS-FL or the customer is denied.

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We also find that the appropriate nonrecurring charges for conversion of bundled loops to unbundled loops shall apply and that the termination liability charges for early termination of contracts shall also apply. Termination liability charges shall be pursuant to existing tariffs for the specific service. Nonrecurring charges for the conversion of bundled loops to unbundled loops shall be based on their costs. However, United/Centel stated that it has not developed nonrecurring conversion charges. Therefore, in the interim, United/Centel shall use its currently tariffed nonrecurring charges associated with residence and business service for the conversion of bundled loops to unbundled loops. United/Centel shall submit cost studies which reflect the nonrecurring costs of converting bundled service of the LEC to unbundled service for the ALEC. United/Centel shall file these cost studies and proposed terms, conditions, and rates for conversion within 60 days from the issuance of this Order.

We find that MFS-FL's request that United/Centel and GTEFL bill all unbundled facilities purchased by MFS-FL on a single consolidated statement per wire center is denied because there is insufficient support for this request. However, we believe that some type of billing arrangement should be negotiated between the LECs and ALECs for the ordering of unbundled elements. Therefore, we require United/Centel and MFS-FL to develop a billing arrangement to be filed with the Commission within 60 days of the issuance of this Order.

We believe that the mechanized intercompany operational procedures supported by the ALECs are appropriate, since similar procedures are currently used today between LECs and IXCs. In addition, mechanized procedures will be the most efficient means for both LECs and ALECs to operate together in the same markets. However, the parties need to work together to determine how much these interfaces will cost, how long they will take to develop, and who should pay for them. Such mechanized systems should conform to industry standards, so that they will function for all interconnecting companies. Therefore, we find that mechanized intercompany operational procedures, similar to the ones between IXCs and LECs today, shall be jointly developed by MFS-FL and United/Centel and shall conform to national industry standards that are currently being developed.

We believe that for the future, parties should attempt to resolve operational problems that arise. If the parties cannot reach a resolution, they can request resolution of the problem with the Commission by filing a petition or motion.

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We also find that GTEFL and MFS-FL shall continue to negotiate as outlined in their partial co-carrier agreement. If an agreement is reached on these operational issues, it shall be filed with this Commission before it becomes effective. If no agreement is reached within 60 days of the issuance of this Order, then GTEFL shall adhere to the same operational arrangements that are ordered for United/Centel.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that the stipulation attached to this Order as Attachment A and reached between MFS-FL and GTEFL is hereby approved and by reference incorporated herein. It is further

ORDERED that any intervenor ALEC who fully participates in this proceeding is bound by the resolution of the issues. Such ALEC is still free to negotiate its own rates. To the extent negotiations fail, the affected ALEC may petition the Commission to set unbundling rates. It is further

ORDERED that United/Centel shall offer the following elements on an unbundled basis: 1) 2-wire and 4-wire analog voice grade loops; 2) 2-wire ISDN digital grade loop; 3) 4-wire DS-1 digital grade loop; 4) 2-wire and 4-wire analog line ports; 5) 2-wire ISDN digital line port; 6) 2-wire analog DID trunk port; 7) 4-wire DS-1 digital DID trunk port; and 8) 4-wire ISDN DS-1 digital trunk port. It is further

ORDERED that United/Centel shall allow ALECs to collocate loop concentration equipment as set forth in the body of this Order. It

Attachment III

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI for)
arbitration of certain terms and)
conditions of a proposed agreement with)
GTE Florida, Incorporated)
concerning interconnection and resale)
under the Telecommunications Act of)
1996)
_____)

Docket No. _____

Filed: August 26, 1996

**MCI'S PETITION FOR ARBITRATION
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

MCI Telecommunications Corporation (MCIT), individually and on behalf of its affiliates, including MCImetro Access Transmission Services, Inc. (MCImetro) (collectively, MCI) hereby petitions the Florida Public Service Commission (Commission) to arbitrate, pursuant to Section 252(d) of the Telecommunications Act of 1996 (Act),¹ certain terms and conditions of a proposed agreement between MCI and GTE Florida, Incorporated (GTEFL).

PARTIES

1. Petitioner's full name and its official business address for its Florida operations are:

MCI Telecommunications Corporation
Suite 700
780 Johnson Ferry Road
Atlanta, GA 30342

2. MCIT holds certificates from the Commission as an interexchange carrier (IXC), alternative local exchange telecommunications company (ALEC), alternative access vendor (AAV) and pay telephone service provider (PATS). MCImetro holds certificates

¹ Throughout this Petition, references to sections of the Act refer to the Communications Act of 1934 (47 U.S.C. 151 et seq.) as amended by the Telecommunications Act of 1996.