

DOCKET NO. 960846-TP
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Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the appropriate conditions as required. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCI) requested that BellSouth begin good faith negotiations by letter dated March 26, 1996. Docket No. 960846-TP was established in the event MCI filed a petition for arbitration of the unresolved issues. On July 30, 1996, AT&T and MCI filed a joint motion for consolidation with AT&T's request for arbitration with BellSouth. By Order No. PSC-96-1039-TP, issued August 9, 1996, the joint motion for consolidation was granted. On August 15, 1996, MCI filed its request for arbitration under the Act.

On August 19, 1996, American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. (ACSI) requested that the Commission consolidate its arbitration proceeding with BellSouth with the petitions filed by AT&T and MCI. ACSI filed its petition for arbitration under Section 252 of the Act on August 13, 1996, and Docket No. 960916-TP was established. By Order No. PSC-96-1138-PCO-TP, issued September 10, 1996, ACSI's motion for consolidation was granted.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC order, and requested a stay of the Order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Order.

On October 9 through 11, 1996, we conducted an evidentiary hearing for the consolidated dockets. On November 7, 1996, ACSI reached an agreement with BellSouth that was subsequently approved at our November 12, 1996, Agenda Conference. ACSI filed a notice of withdrawal of its petition for arbitration on November 12, 1996. Accordingly, our decision is limited to AT&T's and MCI's petitions for arbitration with BellSouth. AT&T's and MCI's petitions asked that we arbitrate the unresolved issues with BellSouth in four main subject areas: network elements; resale; transport and termination; and, implementation matters.

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On December 31, 1997, we issued Order No. PSC-96-1579-FOF-TP in which we arbitrated the remaining unresolved issues between AT&T and BellSouth. In the Order, we directed the parties to file agreements memorializing and implementing our arbitration decision within 30 days. The parties filed their arbitrated agreement with the Commission on January 30, 1997 and identified the sections where there were still disputes on the specific language. This recommendation addresses approval of the agreement.

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DISCUSSION OF ISSUES

ISSUE 1: Should the Commission approve the sections of MCI and BellSouth's arbitrated agreement identified in Exhibit A?

RECOMMENDATION: Yes. The Commission should approve the sections identified in Exhibit A. The sections are consistent with Section 251 of the Act and the Commission's arbitration order.

STAFF ANALYSIS: The parties to the proceeding have agreed to the language in the sections identified in Exhibit A. Section 252(e)(2)(B) states that the Commission can only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to section 251, or the standards set forth in subsection (d) of Section 251 of the Act. Staff has reviewed the agreed language for compliance with the Commission's order issued in this proceeding, the Act and the FCC's implementing rules and orders. Staff believes that the language is appropriate. Therefore, staff recommends that the Commission approve the language contained in the sections identified in Exhibit A.

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ISSUE 2: Should the Commission incorporate language in the arbitration agreement for the disputed sections identified in Exhibit B that were not considered in the arbitration proceeding?

RECOMMENDATION: No. The Commission should not incorporate language in the arbitrated agreement for disputed issues that were not part of the arbitration proceeding. These sections should be eliminated from the final agreement approved by the Commission.

STAFF ANALYSIS: The parties to this proceeding have not agreed to language in the sections identified in Exhibit B. Staff has reviewed the issues and the language in Exhibit B addresses. Since those issues were not matters that the Commission arbitrated, staff recommends that the Commission should not establish language for these sections. The sections should be eliminated from the final agreement approved by the Commission.

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ISSUE 3: What language should the Commission include in the arbitrated agreement of MCI and BellSouth for those sections that are in dispute and were included in the arbitration proceeding?

RECOMMENDATION: The Commission should direct the parties to include in the arbitrated agreement the language for the specific sections that are identified in staff's analysis.

STAFF ANALYSIS: The parties to this proceeding have not been able to agree to language for the various sections listed below. In Order No. PSC-96-1579-FOF-TP, the Commission stated that if the parties could not agree on language to memorialize and implement the Commission's arbitration decision, they should each submit their proposed versions of the agreement and the Commission would choose the language that best reflected its decision. Staff's recommendation on the language that should be included is set out below. The Commission should determine what language should be included in the agreement.

Attachment I - Price Schedule

Attachment I is identified as the list of prices approved by the Commission. The parties cannot agree on introductory language discussing the General Principles, Local Service Resale, Unbundled Network Elements, etc. Most of the language was included in subsequent attachments or was not addressed in the issues in the arbitrated proceeding. The only essential pieces of information in the introductory language are the local service resale discount amounts approved in the order. The parties have not even been able to agree on the language incorporating the discount amounts. Staff recommends that the local service resale amounts be included in the price list in Attachment 1, and that all introducing language be eliminated as nonessential to the agreement.

In addition, the parties cannot even agree on all the services to be included in this price list. MCI has listed rates only for services approved by the Commission. BST has incorporated those services plus additional services which it acknowledges the Commission did not order. BST has proposed as interim rates for these services "so that if MCI requires such services prior to the establishment of a permanent rate, there will be a rate available." MCI, on the other hand, states that "[a]ll pricing items not ordered ... are disagreed." Staff recommends that the services and rates in this section should consist only of those approved by the

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Commission. This would include the following:

* The items listed by MCIm on Attachment 1, pages 1-5 through 1-8, of its proposed agreement. Those items match the list approved by the Commission in Order No. PSC-96-1579-FOF-TP.

* The physical collocation rates contained in the Collocation Handbook attached to witness Scheye's testimony, and which were approved on an interim basis. (EXHIBIT 47)

* The virtual collocation rates contained in BST's Access Tariff, which were approved on an interim basis.

* Rates for call termination and transport as approved in the order:

End office termination, per MOU - \$.002

Tandem switching, including transport, per MOU - \$.00125

* BST has correctly set forth the Commission's ruling with respect to cost recovery of Interim Number Portability, and this provision should be included in the final Agreement.

* The local service resale discount amounts should be included in the price list as follows:

Residential service - 21.83%

Business service - 16.81%

No rates were requested or approved for poles, ducts, conduits and rights of way. MCIm and BST have proposed different rates in their respective Agreements. The Commission should not make a determination for these items.

Attachment III - Network Elements

<u>Sections</u>	<u>Title</u>
13.4.2.25 - 13.4.2.25.6.3	Performance measures and standards for Line Information Database (LIDB)

MCIm's Proposed Language

13.4.2.25 BST shall provide LIDB performance that complies with the following standards:

13.4.2.25.1 There shall be at least a 99.9% reply rate to all query attempts.

13.4.2.25.2 Queries shall time out at LIDB no more than 0.1% of the time.

13.4.2.25.3 Date in LIDB replies shall have at no more than 2% unexpected data values, for all queries to LIDB.

13.4.2.25.4 No more than 0.01% of all LIDB queries shall return a missing subscriber record.

13.4.2.25.5 There shall be no defects in LIDB Data Screening of responses.

13.4.2.25.6 Group troubles shall occur for no more than 1% of LIDB queries. Group troubles include:

13.4.2.25.6.1 Missing Group - When reply is returned "vacant" but there is no active record for the 6-digit NPA-NXX group.

13.4.2.25.6.2 Vacant Code - When a 6-digit code is active but is not assigned to any subscriber on that code.

13.4.2.25.6.3 Non-Participating Group and unavailable Network Resource - should be identified in the LARG (LIDB Access Routing Guide) so MCIm does not pay access for queries that will be denied LIDB.

MCIm's Rationale: No rationale given.

BellSouth's Proposed Language:

13.4.2.25 With the exception of 13.4.2.25.3, which will be implemented on the effective date of this Agreement, BellSouth shall utilize its best efforts to implement the performance measurements delineated in 13.4.2.25.1 and 13.4.2.25.2 within 6 months of the effective date of this Agreement.

13.4.2.25.1 Percent messages processed within one second.

13.4.2.25.2 Percent LIDB queries handled in a round trip time of two seconds or less.

13.4.2.25.3 BellSouth and MCIIm agree to establish a LIDB forum that may include representatives from other CLECs. Said forum shall determine other measurements necessary to demonstrate service parity.

13.4.2.25.4 To identify CLEC-by-CLEC performance, approximately six months development time is required.

BellSouth's Rationale: The Commission's decision clearly stated that "BellSouth provide to AT&T and MCIIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." Arbitration Order, at pp. 73-74. BellSouth's proposal is consistent with the Commission's decision. The measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCIIm vis a vis its own retail customers. To adopt specific benchmarks, as proposed by MCIIm, is to go well beyond the Commission's intent. Further, the measurements proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCIIm that are not included in BellSouth's proposal are not currently tracked and measured today for BellSouth's own retail purposes.

Staff Recommended Language: Staff recommends that BellSouth should adhere to the direct measures of quality and performance standards proposed by MCIIm in its proposed agreement.

Staff Analysis: The Commission ordered MCIIm and BellSouth to develop direct measures of quality and performance standards for services. The companies have not agreed on performance standards for Line Information Database (LIDB). BellSouth's proposed language for proposed standards is vague and less specific than

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MCI's. BellSouth stated in its rationale that it does not track and measure for itself the same level that MCI requests. BellSouth did not say that it cannot provide MCI's requested standards. Staff therefore recommends that the Commission approve MCI's language for LIDB performance standards.

Attachment IV - Interconnection

<u>Sections</u>	<u>Title</u>
2.4.1-2.4.3	Compensation Mechanisms

MCIm's Proposed Language

Section 2.4

No language provided.

Section 2.4.1

When calls from MCIm are terminating on BST's network through the BST tandem MCIm will pay to BST dedicated transport charges from the IP to the tandem for dedicated or common transport. MCIm shall also pay a charge for tandem switching, a dedicated or common transport to the end office (with mileage calculated as the weighted average of all end offices subtending that tandem), and end office termination.

Section 2.4.2

When BST terminates calls to MCIm's subscribers using MCIm's switch, BST shall pay to MCIm dedicated transport charges from the IP to the MCIm Switching Center for dedicated or common transport. BST shall also pay to MCIm a charge symmetrical to its own charge for tandem switching, tandem-to-end-office transport, and end office termination as identified in Section 2.4.1.

Section 2.4.3

MCIm may choose to establish direct trunking to any given end office. If MCIm leases trunks from BST, it shall pay charges for dedicated or common transport. For calls terminating from MCIm to subscribers served by these directly-trunked end offices, MCIm shall also pay an end office termination. For BST traffic terminating to MCIm over the direct end office trunking, compensation payable by BST shall be the same as that detailed in Section 2.4.2 above.

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MCIm's Rationale: MCIm argues that according to the FCC Rules (47 C.F.R. §51.711(a)(2)), rates for transport and termination shall be symmetrical and reciprocal. MCIm contends that the Rules state that where the switch of a CLEC serves a geographical area comparable to the area served by the ILEC's tandem, the ILECs tandem interconnection rate should apply. MCIm states that it retains the right to pay direct trunking rates to avoid tandem charges if it incurs the expense of installing direct trunking to BST's end offices within the geographical area covered by MCIm's switch. MCIm maintains that this is appropriate under the Act as MCIm would be reducing the cost of transport (including tandem switching) as defined by the Rules (47 C.F.R. §51.701).

MCIm contends that it would be justified in seeking compensation that is higher than BST's tandem rate under 47 C.F.R. §51.711(b), as the ILEC's high market penetration and resulting network utilization is likely to far outweigh any advantage a new entrant might gain through deploying a more efficient network architecture.

BellSouth's Proposed Language

Section 2.4

MCIm may designate an IP at any Technically Feasible point including but not limited to any electronic or manual cross-connect points, collocations, telco closets, entrance facilities, and mid-span meets where mutually agreed upon. The transport and termination charges for local traffic flowing through an IP shall be as follows:

Section 2.4.1

When calls from MCIm are terminating on BellSouth's network through the BellSouth tandem, MCIm will pay to BellSouth local interconnection rates.

Section 2.4.2

When BellSouth terminates calls to MCIm's subscribers using MCIm's switch, BellSouth shall pay to MCIm local interconnection rates.

Section 2.4.3

MCIm may choose to establish direct trunking to any given end office. If MCIm leases trunks from BellSouth, it shall pay charges for dedicated or common transport. For

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calls terminating from MCIm to subscribers served by these directly trunked end offices, MCIm shall also pay BellSouth's local interconnection rates. For BellSouth traffic terminating to MCIm over the direct end office trunking, BellSouth shall pay the same interconnection rates.

BellSouth's Rationale: BellSouth argues that these sections are not addressed in the arbitration; however, it does propose language.

Staff's Recommended Language

Section 2.4

MCIm may designate an IP at any Technically Feasible point including but not limited to any electronic or manual cross-connect points, collocations, telco closets, entrance facilities, and mid-span meets where mutually agreed upon. The transport and termination charges for local traffic flowing through an IP shall be as follows:

Section 2.4.1

When calls from MCIm are terminating on BellSouth's network through the BellSouth tandem, MCIm will pay to BellSouth the tandem switching rate.

Section 2.4.2

When BellSouth terminates calls to MCIm's subscribers using MCIm's switch, BellSouth shall pay to MCIm the appropriate interconnection rate(s). BellSouth shall not compensate MCIm for transport and tandem switching unless MCIm actually performs each function.

Section 2.4.3

MCIm may choose to establish direct trunking to any given end office. If MCIm leases trunks from BellSouth, it shall pay charges for dedicated or common transport. For calls terminating from MCIm to subscribers served by these directly trunked end offices, MCIm shall also pay BellSouth the end office switching rate. For BellSouth traffic terminating to MCIm over the direct end office trunking, BellSouth shall pay the same rate.

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Staff's Analysis: Staff believes MCI's language exceeds the scope of the arbitration. However, since the Commission did determine the appropriate rates for tandem and end office switching, staff believes that, with some modification, BST's language would be acceptable.

It should be noted that the portions of the FCC rules that MCI used in its rationale are currently stayed.

Attachment VI - Rights of Way (ROW), Conduits, and Pole Attachments

Sections Title

1.1.28 Spare Capacity Definition

MCIm's Proposed Language

The term "spare capacity" refers to any pole attachment space, conduit, duct or inner-duct not currently assigned or subject to a pending application for attachment/occupancy. Spare capacity does not include an inner-duct reserved for maintenance, repair, or emergency restoration.

MCIm's Rationale: All companies should not have their own spare inner duct. There is not enough existing capacity for all companies to have their own. Only one duct should be used for all companies.

BellSouth's Proposed Language

The term "spare capacity" refers to any pole attachment space, conduit, duct or inner-duct not currently assigned or subject to a pending application for attachment/occupancy. Spare capacity does not include an inner-duct (not to exceed one inner-duct per party) reserved by BellSouth, MCIm, or a third party for maintenance, repair, or emergency restoration.

BellSouth's Rationale: The issue contained within the definition of spare capacity is related to the issue of a common emergency duct, as proposed by MCIm, or a maintenance, repair or emergency restoration reserved duct for any telecommunications carrier who wishes to reserve such capacity. BellSouth's reservation of a spare for emergency purposes, and allowing other carriers similarly to reserve spares, is consistent with this Commission's decision regarding the reservation of space. The common emergency duct raises question and potential confusion about access to the common duct and priority of service restoration, which could inappropriately complicate responding to emergencies.

Staff Recommended Language:

Staff recommends that BellSouth's proposed language be approved for Attachment VI, Section 1.1.28

Staff Analysis: The dispute in this section is whether just one common emergency duct or a maximum of one emergency duct per party should be excluded from the definition of Spare Capacity.

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Staff agrees with BST's argument that the concept of one common duct to handle maintenance and emergencies will lead to confusion, require a system of priorities for access to the emergency duct and could complicate response to emergencies.

Sections Title

1.2.9.5 Reservation of Ducts for Emergencies

MCIm's Proposed Language

Where BellSouth has available ducts and inner ducts, BellSouth shall offer such ducts and inner ducts for MCIm's use. One full-sized (Typically 4 inch diameter) duct and inner duct shall be assigned for emergencies. If BellSouth or any other service provider utilizes the emergency duct or inner duct, and such duct or inner duct was the last unoccupied full-sized duct or inner duct in the applicable cross-section, said provider shall, at its expense, reestablish a clear, full-sized duct or inner duct for emergency restoration as soon as possible. If occupancy of the emergency duct or inner duct by BellSouth or other service provider was for non-emergency purposes, such occupancy shall be subject to immediate removal should an emergency arise calling for the need of a restoration conduit. In the event that an emergency situation causes a service outage, pole and/or duct access will be afforded without discrimination to service providers, with the following prioritization: (i) fire, police and/or hospital facilities, and (ii) facilities impacting the greatest number of people consistent with an intention to best serve the needs of the people.

MCIm Rationale: BST should establish one set of emergency spares for everyone, not require all companies to pay for their own emergency duct. Requiring this will use up existing capacity at double the rate and exhaust critical ROW quickly.

BellSouth's Proposed Language

BellSouth proposed to delete this section

BellSouth's Rationale: BellSouth will reserve space for itself for maintenance spares that will also be utilized by BellSouth in cases of emergency, based upon a one-year forecast. Further, in compliance with the Commission's decision, BellSouth will allow any telecommunications provider to reserve such space for maintenance and emergency purposes, based upon a one-year forecast.

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BellSouth's position is consistent with the Commission's determination on this issue and is also the most efficient approach to the issue of use of space in cases of emergency. MCI's position is quite the contrary. MCI requires that BellSouth assign a full-sized duct for emergencies that will be common for all occupants of the conduit space. In cases where the emergency is service-affecting to more than one occupant, the access to the common emergency duct would be determined by a priority list as set forth by MCI in its contract language. MCI's common emergency duct is simply not practical. BellSouth's experience shows that most emergencies affect all occupants of the space and therefore prioritization of need would, more often than not, be an issue. Secondly, allowing all telecommunications providers to serve a maintenance or emergency duct totally avoids the issues of prioritization and access to the common duct. Lastly, MCI's position is contrary to the Commission's determination. The Commission's determination provides a solution to the issue of emergencies while MCI's language merely adds a level of complexity and will require BellSouth to reserve additional space in conduit for emergencies.

BellSouth's reservation of a spare for emergency purposes, and allowing other carriers similarly to reserve spares, is consistent with the Commission's decision regarding reservation of space. The common emergency duct raises questions and potential confusion about access to the common duct and priority of service restoration, which could inappropriately complicate responding to emergencies.

The issue contained in Section 1.2.9.5 was not the subject matter of the arbitration proceeding between the companies. MCI should not now be allowed to bring these issues to the Commission for its consideration. Resolution of these issues are not essential to MCI's successful operation in the local market.

Notwithstanding the foregoing, BellSouth has no objection to MCI reserving a duct for itself for emergency purposes and then to offer to share such capacity with other telecommunications carriers willing to enter into such a sharing arrangement.

Staff Recommended Language:

BellSouth will allow MCI and other parties to reserve capacity under the same time frames, terms and conditions that it affords itself. This includes reservations of emergency ducts as well as ducts for growth and other purposes.

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MCIm, if it so chooses may reserve one emergency duct for itself and then offer to share this duct with other telecommunication carriers that are willing to enter into such a sharing agreement.

Staff Analysis: Staff does not believe that one common duct for emergencies and maintenance would be an efficient or manageable arrangement. Questions on priorities and impediments to restoration of service could arise under a common duct arrangement. Staff does believe that the concept, as ordered in Issue 11, of requiring BST to allow MCIm and other parties to reserve capacity under the same time frames, terms and conditions that it affords itself is equitable and is in compliance with the Act.

Staff also believes that BST should allow MCIm to reserve an emergency duct for itself and then offer to share that capacity with other carriers that are willing to enter into such a sharing agreement.

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Attachment VIII - Ordering and Provisioning

Section Title

Section 2.1.5 Subscriber Payment History

Section 2.1.5.3

MCIm Proposed Language

2.1.5.3 BST shall provide to MCIm a real-time, electronic interface to BST subscriber information systems which will allow MCIm to obtain the customer payment history information as detailed above. The parties shall mutually agree upon restrictions that will appropriately safeguard subscribers' privacy.

MCIm Rationale: CLECs should have electronic access to some CPNI to answer inquiries from potential subscribers on a competitively neutral basis. A signed LOA clearly cannot be administered as part of this process. BST seeks to unnecessarily limit CLEC's ability to access information that is essential to the sales process.

BST's Proposed Language:

According to BST's January 30, 1997 language proposal, this section should be deleted.

BST's Rationale: MCIm is inappropriately seeking to treat a customer's credit history as CPNI. In fact, the FCC has determined that credit information is not CPNI. See, Filing and Review of Open Network Architecture Plans, 4 FCC Record 1, paragraph 412 (1988).

Staff Recommended Language: Staff recommends the Commission approve MCIm's proposed language for inclusion in the arbitration agreement.

Staff Analysis: BellSouth contends that this issue was not part of the arbitration. Staff disagrees. CPNI and the use of a blanket LOA were part of the arbitration procedure. Although credit history may not have been specifically discussed, it certainly falls under the category of customer information. Therefore, staff recommends the Commission approve MCIm's language as proposed for inclusion in the arbitration agreement.

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Section 2.1.5.4

MCIm Proposed Language

2.1.5.4 Until such time as the Parties reach agreement on the restrictions described in 2.1.5.3, BST shall provide MCIm with requested customer payment history information, as detailed above, based upon MCIm's blanket representation that MCIm will obtain the subscriber's authorization to obtain such data in advance of any request.

MCIm Rationale: Electronic interfacing should also be made available for customer credit history information, and should not require MCIm to provide a written LOA. The Blanket LOA Authorization requirements should apply.

BST's Proposed Language:

According to BST's January 30, 1997 language proposal, this section should be deleted.

BST's Rationale: A blanket letter of authorization does not adequately safeguard a customer's right to privacy with respect to credit history. BellSouth agreed to provide credit history on the condition the customer authorizes it to do so. Customer authorization is not appropriately reflected in a blanket letter of authorization.

Staff Recommendation: Staff recommends the Commission approve MCIm's proposed language for inclusion in the arbitration agreement.

Staff Analysis: BellSouth contends that this issue was not part of the arbitration. Staff disagrees. CPNI and the use of a blanket LOA were part of the arbitration procedure. Although credit history may not have been specifically discussed, staff believes it should be considered customer information. Therefore, staff recommends the Commission approve MCIm's language as proposed for inclusion in the arbitration agreement.

<u>Section</u>	<u>Title</u>
Section 2	Ordering and Provisioning
<u>Section 2.3.2</u>	<u>Ordering and Provisioning for Resale Services</u>

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MCIm Proposed Language:

2.3.2.6. BST shall provide MCIm on-line access to telephone number reservations by January 1, 1997.

MCIm Rationale: BST should have complied with the FCC requirements to have such systems in place by now. Additional delays are unjustified.

BST Proposed Changes to MCIm Language

2.3.2.6. BST will provide MCIm on-line access to telephone number reservations by December 31, 1996, but no later than April 1, 1997. Until on-line access is available via electronic interface, BellSouth agrees to provide MCIm with a ready supply of telephone numbers as described in Section 2.1.8.2.

BST's Rationale: BellSouth's language reflects its intent to provide on-line access as expeditiously as practicable. The dates reflected in BellSouth's proposal are realistic and are consistent with the testimony of BellSouth witnesses.

Staff Recommendation: Staff recommends the Commission approve BST's proposed language for inclusion in the agreement.

Staff Analysis: Staff agrees with BST that this issue was not addressed in the arbitration proceeding. Despite this, BST has proposed language for inclusion in the agreement. Therefore, staff recommends the Commission approve BST's language for inclusion in the agreement.

Section 2.5 Performance Measurements and Reporting (entire section)

New MCIm Proposed Language

2.5 Performance Measurements and Reporting

2.5.1 In providing Services and Elements, BST will provide MCIm with the quality of service BST provides to itself and its end-users. BST's performance under this Agreement shall provide MCIm with the capability to meet standards or other measurements that are at least equal to the level that BST provides or is required to provide by law or its own internal procedures, whichever is higher. BST shall satisfy all service standards,

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measurements, and performance requirements set forth in the Agreement and the performance standards that are specified in Attachment 8 of this Agreement. In the event that BST demonstrates that the level of performance specified in Attachment 8 of this Agreement are higher than the standards or measurements that BST provides to itself and its end users pursuant to its own internal procedures, BST's own level of performance shall apply.

2.5.1.1 The Parties acknowledge that the need will arise for changes to the performance standards specified in Attachment 8 during the term of this Agreement. Such changes may include the addition or deletion of measurements or a change in the performance standard for any particular metric. The parties agree to review all performance standards on a quarterly basis to determine if any changes are appropriate.

2.5.1.2 The Parties agree to monitor actual performance on a monthly basis and develop a Process Improvement Plan to continually improve quality of service provided as measured by the performance standards.

2.5.2 BST, in providing Services and Elements to MCIm pursuant to this Agreement, shall provide MCIm the same quality of service that BST provides itself and its end-users. This attachment includes MCIm's minimum service standards and measurements for those requirements. The Parties have agreed to five (5) categories of performance standards: (1) Provisioning; (2) Maintenance; (3) Billing (Data Usage and Data Carrier); (4) LIDB; and (5) Account Maintenance. Each category of performance standards include measurements which focus on timeliness, accuracy and quality. BST shall measure the following activities to meet the goals provided herein.

2.5.2.1 All performance standards shall be measured on a monthly basis and shall be reported to MCIm in a mutually agreed upon format which will enable MCIm to compare BST's performance for itself with respect to a specific measure to BST's performance for MCIm for that same specific measure. Separate measurements shall be provided for residential subscribers and business subscribers.

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2.5.2.2 Performance standards being measured pursuant to this Agreement shall be reviewed by MCIm and BST quarterly to determine if any additions or changes to the measurements and the standard shall be required or, if process improvements shall be required.

2.5.3 Provisioning Performance Standards

2.5.3.1 Installation functions performed by BST will meet the following performance standards:

Product or Service	Interval Standards
INSTALLATION	
Lines/trunks with no premises visit:	
Business	
1-20 lines	98% met within 3 business days
21-40 lines	98% met within 7 business days
41-60 lines	98% met within 12 business days
Over 60 lines	To be negotiated
Residential	98% met within 24 hours of Service Order receipt by BST
Lines/trunks with premises visit:	
Business	
1-20 lines	98% met within 5 business days
21-40 lines	98% met within 10 business days
41-60 lines	98% met within 14 business days
Over 60 lines	Individual case basis
Residential	98% met within 72 hours of Service Order receipt by BST
Business lines/trunks; plant or other facilities not available	Individual case basis

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<u>Centrex station lines</u>	
1-20 lines	98% met within 5 business days
21-50 lines	98% met within 8 business days
Over 50 lines	Individual case basis
<u>Unbundled network elements</u>	
Business or Residential	98% met within 2 days
<u>Other unbundled elements</u>	
Business or Residential	98% met within 5 days
<u>FEATURE CHANGES</u>	
Orders received before 12:00 p.m.	99% completed on day of receipt
Orders received after 12:00 p.m.	99% completed before 12:00 p.m. next Business Day

<u>Product or Service</u>	<u>Interval</u>
<u>SERVICE DISCONNECTS</u>	
<u>With no premises visits</u>	
Business or Residential	98% met within 4 hours after receipt of Service Order
<u>With CO change or subscriber premises visit</u>	
Business or Residential	98% met within 24 hours after receipt of Service Order
<u>Unbundled switching elements</u>	
Business or Residential	98% met within 4 hours
<u>Other unbundled elements</u>	

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Business or Residential	98% met within 24 hours
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Committed Due Date

Resale:

Residence: >99% met
Business: >99.5% met
UNE: > 98% met

Service Orders Provisioned Correctly as Requested

Resale:

Residence: >99% met
Business: > 99.5% met
UNE: > 99% met

Missed Appointments

Residence: < 1%
Business: 0%

Firm Order Confirmation within:

Manual - within 24 hours 99% of the time
Electronic - within 4 hours 99% of the time

Notice of reject or error status within 1 hour of receipt 98%
of the time

No trouble reports within 30 days of installation - 99% of the
time

Time to complete any Suspend/Block/Restore order 4 hours > 99%
after receipt by BST

For expedited due date confirmation, BST shall confirm to MCI
within two (2) Business Hours > 99% after BST receipt of such
request from MCI whether BST can complete an initially-
submitted order within the expedited interval requested by
MCI. Confirmation may be provided by BST via telephone call
with follow up confirmation to be provided by BST according to
normal procedures and measurement intervals.

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MCIm Rationale: Here, MCIm is specifying guidelines and standards necessary for MCIm to be able to efficiently process billing information. Agreement between the parties on these type of issues is essential to ensure accurate and timely billing. It is not sufficient for BST to say only that they will implement "controls" and "procedures."

BST's Proposed Language:

BellSouth will use its best efforts to implement the performance measurements as set forth below within six months of the effective date of this agreement.

Installation functions performed by BellSouth will be measured in the following manner:

Percent Central Office Completions in 0 to 1 days (includes all N, T, and C order activity requiring Central Office Work). This measurement shall reflect all CLEC activity vis a vis BellSouth activity.

Percent Installations Provisioned in 5 calendar days

Percent Missed Appointments

Percent Trouble Reports within 30 days of a Service Order (measures Percent of Total Trouble Reports caused by Troubles on Access lines with Service Order Activity)

Percent Firm Order Confirmations provided within 24 hours

Percent Notice of Order Reject or Error within 1 hour of receipt

BST's Rationale: The Commission's decision clearly stated that "BellSouth provide AT&T and MCIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." (Order No. PSC-96-1579-FOF-TP, pp. 73-74) BellSouth's proposal is consistent with the Commission's decision. The measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCIm vis a vis its own retail customers. To adopt specific benchmarks, as proposed by MCIm, is to go well beyond the Commission's intent. Further, the measurements proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCIm that are not included in BellSouth's proposal are not

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currently tracked and measured today for BellSouth's own retail purposes.

Staff Recommended Language: Staff recommends the Commission approve MCIm's new proposed language. The Commission should also approve that portion of BST's language requiring that BST implement the performance measurements within 6 months of the effective date of the arbitration agreement.

Staff Analysis: Staff believes that more specific measurements are needed and that MCIm will need this information to correctly bill for service. MCIm's new proposed language is, for the most part, less stringent than its originally proposed language, and should be less of a burden for BST to comply with. BST has expressed concern with having to track a measurement that it does not currently track. Staff can see no reason why systems cannot be developed to track such measurements. Staff recommends setting these values because it believes there is a need to provide the parties with specificity in these areas. However, staff recognizes that the parties may desire to change DMOQs established by the Commission. Staff would point out that Sections 2.5.1.1 and 2.5.1.2 provide the parties with the ability to review the DMOQs and adjust them when and where needed based on tracking data. Staff notes that BST includes a date for completion of a system implementing performance measurements (6 months from the effective date of the arbitration agreement). MCIm did not include a date. Therefore, staff recommends the Commission approve MCIm's new proposed language. The Commission should also approve that portion of BST's language requiring that BST implement the performance measurements within 6 months of the effective date of the arbitration agreement.

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<u>Section</u>	<u>Title</u>
Section 3	Connectivity Billing and Recording
<u>Section 3.4</u>	<u>Performance measurements and Reporting (entire section)</u>

MCIm Proposed Language

3.4 Performance Measurements & Reporting

3.4.1 BST shall meet the following performance measurements for the provision of EMR records:

3.4.1.1 **Timeliness:** 99.94% of all records recorded each day shall be received by MCIm within one (1) calendar day of their recording. 100% of all such records should be received within five (5) calendar days of their recording.

3.4.1.2 **Accuracy:** No more than 60 errors per one (1) million records transmitted

3.4.1.3 **Completeness:** There shall be no more than 20 omissions per one (1) million records.

MCIm Rationale: Here, MCIm is specifying guidelines and standards necessary for MCIm to be able to efficiently process billing information. Agreement between the parties on these type of issues is essential to ensure accurate and timely billing. It is not sufficient for BST to say only that they will implement "controls" and "procedures."

BST has yet to propose performance measures on the matters contained in this section. MCIm welcomes the opportunity to further discuss these measures with BST.

BST's Proposed Language:

BellSouth and MCIm will incorporate the Connectivity Billing and Recording service into the BellSouth and MCIm Future Optimum State (FOS) billing forum. Said forum will develop appropriate billing measurements for service parity.

BST's Rationale: The Commission's decision clearly stated that "BellSouth provide AT&T and MCIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." (Order No. PSC-96-1579-FOF-TP, pp. 73-74) BellSouth's proposal is

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consistent with the Commission's decision. MCI's previous proposals relating to billing have included standards that are in many cases immeasurable, and are unattainable. BellSouth's proposal to use the standards developed through the Future Optimum State (FOS) billing Forum is a reasonable and appropriate compromise.

Staff Recommended Language: Staff recommends the Commission approve MCI's proposed language.

Staff Analysis: Staff believes that more specific measurements are needed and that MCI will need this information to correctly bill for service. BST's proposal of using the FOS billing forum will delay the implementation of the performance measurements. BST states that the "[s]aid forum will develop the appropriate billing measurements for service parity." (emphasis added) Judging from this language, the performance measurements may not even be in the development stage. BST has expressed concern that "MCI's previous proposals relating to billing have included standards that are in many cases immeasurable, and are also unattainable." Staff can see no reason why systems can not be developed to track such standards. Staff recommends setting these values because it believes there is a need to provide the parties with specificity in these areas. However, staff recognizes that the parties may desire to change DMOQs established by the Commission. Staff would point out that Sections 2.5.1.1 and 2.5.1.2 provide the parties with the ability to review the DMOQs and adjust them when and where needed based on tracking data.

<u>Section</u>	<u>Title</u>
Section 4	Provision of Subscriber Usage Data
<u>Section 4.4</u>	<u>Performance Measurements (entire section)</u>

New MCI Proposal for Performance Measures

4.4 Performance Measurements

4.4.1 Account Maintenance. When notified by a CLEC that an MCI Customer has switched to CLEC service, BellSouth shall provision the change, and notify MCI via CONNECT:Direct that the customer has changed to another service provider ("OUTPLOC") within one (1) business day, 100% of the time.

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4.4.1.1 When notified by MCIIm that a customer has changed his/her PIC only from one interexchange carrier to another carrier, BST shall provision the PIC only change and convey the confirmation of the PIC change via the work order completion feed with 100% of the orders contained within one (1) business day.

4.4.1.2 If notified by an interexchange carrier using an '01' PIC order record that an MCIIm Customer has changed his/her PIC only, BST will reject the order and notify that interexchange carrier that a CARE PIC record should be sent to the serving CLEC for processing. 100% of all orders shall be rejected, and the respective interexchange carrier properly notified, within one (1) business day of BST's receipt of the PIC order from the interexchange carrier.

4.4.2 File Transfer

BST will initiate and transmit all files error free and without loss of signal.

Metric:

Number of FILES Received
----- X 100
Number of FILES Sent

Notes: All measurement will be made on a rolling period.

Measurement:

Meets Expectations 6 months of file transfers without a failure

4.4.3 Timeliness

BST will mechanically transmit, via CONNECT:Direct, all usage records to MCIIm's Message Processing Center three (3) times a day.

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Measurement:

Meets Expectations 99.94% of all messages delivered on the day the call was Recorded.

4.4.4 Completeness

BST will provide all required Recorded Usage Data and ensure that it is processed and transmitted within thirty (30) days of the message create date.

Metric:

Total number of Recorded Usage Data records delivered during current month minus Number of Usage Call Records held in error file at the end of the current month

-----X 100
Total number of Recorded Usage Data Records delivered during current month

Measurement:

Criteria

Meets Expectations \geq 99.99% of all records delivered

4.4.5 Accuracy

BST will provide Recorded Usage Data in the format, and with the content as defined in the current BellCore EMR document.

Metric:

Total Number of Recorded Usage Data Transmitted Correctly

-----X 100
Total Number of Recorded Usage Data Transmitted

Criteria

Measurement:

Meets Expectations \geq 99.99% of all recorded records delivered

4.4.6 Data Packs

BST will transmit to MCI all packs error free in the agreed-upon format.

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Measurement:

Meets Expectations 6 months of Transmitted Packs without a rejected pack

Notes: All measurements will be made on a Rolling Period.

4.4.7 Recorded Usage Data Accuracy

BST will ensure that the Recorded Usage Data is transmitted to MCIm error free. The level of detail includes, but is not limited to: detail required to Rating the call, Duration of the call, and Correct Originating/Terminating information pertaining to the call. The error is reported to BST as a Modification Request (MR). Performance is to be measured at two levels defined below. MCIm will identify the priority of the MR at the time of hand-off as Severity 1 or Severity 2. The following are MCIm expectations of BST for each:

Measurement:

Severity 1:

Meets Expectations $\geq 90\%$ of the MR fixed in ≤ 24 hours and 100% of the MR fixed in ≤ 5 days

Severity 2:

Meets Expectations $\geq 90\%$ of the MR fixed in 3 Days and 100% of the MR fixed in ≤ 10 days

MCIm Rationale: Here, MCIm is specifying guidelines and standards necessary for MCIm to be able to efficiently process billing information. Agreement between the parties on these types of issues are essential to ensure accurate and timely billing. It is not sufficient for BST to say only that they will implement "controls" and "procedures."

BST's Proposed Language:

BellSouth and MCIm will incorporate the OLEC Daily Usage File (ODUF) service into BellSouth and MCIm Future Optimum State (FOS) billing forum. Said forum will develop the appropriate billing measurements for service parity.

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BST's Rationale: The Commission's decision clearly stated that "BellSouth provide AT&T and MCIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." (Order No. PSC-96-1579-FOF-TP, pp. 73-74) BellSouth's proposal is consistent with the Commission's decision. MCIm's previous proposals relating to the daily usage file have included standards that are in many cases immeasurable, and are unattainable. BellSouth's proposal to use the standards developed through the Future Optimum State (FOS) billing Forum is a reasonable and appropriate compromise.

Staff Recommended Language: Staff recommends the Commission approve MCIm's new proposed language with the omission of the words "via CONNECT:Direct."

Staff Analysis: Staff believes that more specific measurements are needed and that MCIm will need this information to correctly bill for service. MCIm's new proposed language is, for the most part, less stringent than its originally proposed language, and should be less of a burden for BST to comply with.

Staff proposes to omit the words "via CONNECT:Direct" from MCIm's new proposed language. We do not know the meaning of the term, and it was not addressed in the proceeding. In the event this is a procedure or system that BST has not already developed, we will not recommend that usage records be required to be transmitted that way. The effect of this change is that BST may mechanically submit the required records via the most efficient method to accomplish the requirements of this section.

BST has expressed concern with having to track a measurement that it does not currently track. Staff can see no reason why systems can not be developed to track such measurements. Staff recommends setting these values because it believes there is a need to provide the parties with specificity in these areas. However, staff recognizes that the parties may desire to change DMOQs established by the Commission. Staff would point out that Sections 2.5.1.1 and 2.5.1.2 provide the parties with the ability to review the DMOQs and adjust them when and where needed based on tracking data. BST's proposal of using the FOS billing forum will delay the implementation of the performance measurements. BST states that the "[s]aid forum will develop the appropriate billing measurements for service parity." (emphasis added) Judging from this language, the performance measurements may not even be in the development stage. Therefore, staff recommends the Commission approve MCIm's new proposed language with the omission of the words "via CONNECT:Direct."

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<u>Section</u>	<u>Title</u>
Section 4.5	Reporting

MCIm's Proposed Language:

4.5 Reporting

4.5.1 BST shall agree to develop reports to be used for local usage data performance measurement within (sixty) 60 days of the Effective Date of this Agreement.

4.5.2 In addition to the reporting requirements stated above BST shall produce and publish annually with respect to its network and service quality performance, a report which will provide evidence that BST shows no undue discrimination by BST among CLECs or between BST retail and other CLECs with respect to quality of service.

4.5.2.1 The specific services to be included in the Performance Measurement Report, its format, measurement timeframe, and initial implementation date shall be as required by MCIm.

MCIm Rationale: Here, MCIm is specifying guidelines and standards necessary for MCIm to be able to efficiently process billing information. Agreement between the parties on these types of issues are essential to ensure accurate and timely billing. It is not sufficient for BST to say only that they will implement "controls" and "procedures."

BST's proposed language in its January 30, 1997 "Proposed Language and Rationale and letter for disputed contract provisions:

BellSouth and MCIm will incorporate the OLEC Daily Usage File (ODUF) service into BellSouth and MCIm Future Optimum State (FOS) billing forum. Said forum will develop the appropriate billing measurements for service parity.

BST's Rationale: The Commission's decision clearly stated that "BellSouth provide AT&T and MCIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." (Order No. PSC-96-1579-FOF-TP, pp. 73-74) BellSouth's proposal is consistent with the Commission's decision. MCIm's previous proposals relating to the daily usage file have included

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standards that are in many cases immeasurable, and are unattainable. BellSouth's proposal to use the standards developed through the Future Optimum State (FOS) billing Forum is a reasonable and appropriate compromise.

BST's proposed language - as contained in its copy of the arbitration agreement:

BellSouth proposes to delete Section 4.5

Staff Recommended Language: Staff recommends the Commission approve MCI's proposed language, except for Section 4.5.2 and 4.5.2.1.

Staff Analysis: Staff believes that more specific measurements are needed and that MCI will need this information to correctly bill for service. It is unclear if BST is proposing language for inclusion in the section, or deletion of the section. BST has expressed concern with having to track a measurement that it does not currently track. Staff can see no reason why systems can not be developed to track such measurements. Staff recommends setting these values because it believes there is a need to provide the parties with specificity in these areas. However, staff recognizes that the parties may desire to change DMOQs established by the Commission. Staff would point out that Sections 2.5.1.1 and 2.5.1.2 provide the parties with the ability to review the DMOQs and adjust them when and where needed based on tracking data. BST's proposal of using the FOS billing forum will delay the implementation of the performance measurements. BST states that the "[s]aid forum will develop the appropriate billing measurements for service parity." (emphasis added) Judging from this language, the performance measurements may not even be in the development stage. Staff believes Sections 4.5.2 and 4.5.2.1 go beyond what is necessary for MCI to provide service. Therefore, staff recommends the Commission approve MCI's proposed language.

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<u>Section</u>	<u>Title</u>
Section 5	MAINTENANCE

5.4 Performance Measurements and Reporting.

New MCI Proposal for Performance Measures

5.4 Performance Measurements and Reporting

5.4.1 Where an outage has not reached the threshold defining an emergency network outage, the following quality standards shall apply with respect to restoration of Local Service and Network Elements or Combination. Total outages requiring a premises visit by a BST technician that are received between 8 a.m. to 6 p.m. on any business day shall be restored within four (4) hours of referral, ninety percent (90%) of the time.

Total outages requiring a premises visit by a BST technician that are received between 6 p.m. and 8 a.m. on any day shall be restored during the following 8 a.m. to 6 p.m. period in accordance with the following performance metric: within four (4) hours of 8 a.m., ninety percent (90%) of the time. Total outages which do not require a premises visit by a BST technician shall be restored within two (2) hours of referral, eighty-five percent (85%) of the time.

5.4.2 Trouble calls (e.g., related to Local Service or Network Element or Combination degradation or feature problems) which have not resulted in total service outage shall be resolved within twenty-four (24) hours of referral, ninety-five percent (95%) of the time, irrespective of whether or not resolution requires a premises visit. For purposes of this Section, Local Service or a Network Element or Combination is considered restored, or a trouble resolved, when the quality of the Local Service or Network Element or Combination is equal to that provided before the outage, or the trouble, occurred.

5.4.3 The BST repair bureau shall provide to MCI the "estimated time to restore" with at least ninety-seven percent (97%) accuracy.

5.4.4 Repeat trouble reports from the same customer in a 30 day period shall be less than one percent (1%). Repeat trouble reports shall be measured by the number of calls

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received by the BST repair bureau relating to the same telephone line during the current and previous report months.

5.4.5 BST shall inform MCIm within ten (10) minutes of restoration of Local Service, Network Element, or Combination after an outage has occurred.

5.4.6 If service is provided to MCIm Subscribers before an Electronic Interface is established between MCIm and BST, MCIm will transmit repair calls to the BST repair bureau by telephone. In such event, the following standards shall apply: The BST repair bureau shall answer its telephone and begin taking information from MCIm within twenty (20) seconds of the first ring, ninety-five percent (95%) of the time. Calls answered by automated response systems, and calls placed on hold, shall be considered not to meet these standards.

5.4.7 BST will miss meeting end user appointments that require a premise visit less than 1% of the time.

MCIm Rationale: Here, MCIm is specifying guidelines and standards necessary for MCIm to be able to efficiently process billing information. Agreement between the parties on these types of issues are essential to ensure accurate and timely billing. It is not sufficient for BST to say only that they will implement "controls" and "procedures."

BST's Proposed Language:

The maintenance measurements set forth below shall be implemented on the effective date of this agreement.

Maintenance functions performed by BellSouth will be measured in the following manner:

Percent Out of Service (OOS) Troubles Cleared within 24 hours

Percent Missed Appointments for BellSouth reasons

Repeat Trouble Reports in 30 days

Percent Calls Answered within 20 seconds. This measurement shall reflect all CLEC activity vis a vis BellSouth activity.

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BST's Rationale: The Commission's decision clearly stated that "BellSouth provide AT&T and MCIm telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates." (Order No. PSC-96-1579-FOF-TP, pp. 73-74) BellSouth's proposal is consistent with the Commission's decision. The measurements reflected above will, upon completion of the necessary adjustments to BellSouth's measurement systems, report BellSouth's performance for MCIm vis a vis its own retail customers. To adopt specific benchmarks, as proposed by MCIm, is to go well beyond the Commission's intent. Further, the measurements proposed by BellSouth will only require modification to BellSouth's current measurements. On the other hand, those measurements proposed by MCIm that are not included in BellSouth's proposal are not currently tracked and measured today for BellSouth's own retail customers.

Staff Recommended Language: Staff recommends the Commission approve MCIm's new proposed language.

Staff Analysis: Staff believes that more specific measurements are needed and that MCIm will need this information to correctly bill for service. MCIm's new proposed language is, for the most part, less stringent than its originally proposed language, and should be less of a burden for BST to comply with. BST has expressed concern with having to track a measurement that it does not currently track. Staff can see no reason why systems can not be developed to track such measurements. Staff recommends setting these values because it believes there is a need to provide the parties with specificity in these areas. However, staff recognizes that the parties may desire to change DMOQs established by the Commission. Staff would point out that Sections 2.5.1.1 and 2.5.1.2 provide the parties with the ability to review the DMOQs and adjust them when and where needed based on tracking data.

<u>Section</u>	<u>Title</u>
Section 6.1	Miscellaneous Services & Functions - General Requirements

6.1.3.15 Operator Services

MCIm's proposed language:

6.1.3.15 Where INP is deployed and when a BLV/BLI request for a ported number is directed to a BST operator and the

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query is not successful (i.e., the request yields an abnormal result), the operator shall confirm whether the number has been ported and shall direct the request to the appropriate operator.

MCI's Rationale: BST has had this request for a significant length of time and has still not been able to perform the necessary tests to satisfy their needs. These tests are not required by MCI.

BST's Proposed Language:

Where INP is deployed and when a BLV/BLI request for a ported number is directed to a BST operator and the query is not successful (i.e., the request yields an abnormal result), the operator shall confirm whether the number has been ported and shall direct the request to the appropriate operator.

BST's Rationale: BellSouth is attempting to determine whether MCI's request is technically feasible.

Staff Recommended Language: Staff recommends the Commission approve BST's proposed language for inclusion in the agreement.

Staff Analysis: Staff agrees with BST that this issue was not addressed in the arbitration proceeding. Despite this, MCI and BST have proposed the same language for inclusion in the agreement. Therefore, staff recommends the Commission approve the parties' language for inclusion in the agreement.

6.1.4.1.1 Directory Assistance and Listings Service Requests

MCI's proposed language:

6.1.4.1.1 BST shall accept orders via electronic interface in accordance with OBF Directory Service Request standards (TCIF EDI Technical Mapping) within - nine (9) months of final standard adoption. In the interim, BST shall create a standard format and order process by which MCI can place an order via electronic exchange no later than January 1, 1997.

MCI's Rationale: The Commission specifically ordered BST to work through the OBF to develop long-term electronic interface solutions. MCI's provision is consistent with the Order and with the FCC's requirement that ILECs provide electronic interfaces by January 1, 1997.

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BST's Proposed Language:

BST shall accept orders via electronic interface in accordance with approved TCIF EDI technical mapping standards within nine (9) months of published release of that approved standard. In the interim, BellSouth shall create a standard format for electronic exchange by which MCIIm can place directory listing orders for resold single line residence and resold simple business, six lines or less, by April 1, 1997. BellSouth shall provide electronic exchange for directory listing orders associated with interim number portability, unbundled loops, and unbundled ports no later than April 1, 1997.

BST's Rationale: BellSouth's language reflects its intent to provide on-line access as expeditiously as practicable. The dates reflected in BellSouth's proposal are realistic and are consistent with the testimony of BellSouth witnesses.

Staff Recommended Language: Staff recommends the Commission approve BST's proposed language for inclusion in the agreement.

Staff Analysis: Staff believes the issue was addressed in the arbitration proceeding via the issue associated with electronic interfaces. BST has proposed language for inclusion in the agreement and believes their language is consistent with their testimony. Although staff believes MCIIm's language is more consistent with the Commission's order, the proposed date is unrealistic since the date has already passed. Therefore, staff recommends the Commission approve BST's language for inclusion in the agreement.

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Attachment X - Credits for Performance Standards Failures

BellSouth objects to the entire Attachment 10 being included in the Agreement. Therefore, the following summarizes MCI's proposed provisions included in Attachment 10.

MCI's Proposed Language - summarized

If BST fails to meet established performance standards, MCI will be damaged. In this case, MCI should be eligible for credits. Attachment 10 specifies each type of credit to be applied in the case of failure. For example, if BST fails to meet a due date, the credit is termed a "Delay Credit." If BST does not meet a performance standard, the credit is termed a "Performance Failure Credit." Attachment 10 also specifies what the credit amount will be. In addition, a provision is included that enables MCI to seek injunctive relief, and requires BST (i) to cause the service ordered by MCI to meet the Performance Standards specified by this Agreement, (ii) install or provision service ordered by MCI within the Due Dates specific in this Agreement and (iii) to provide Subscriber Usage Data in accordance with this Agreement.

MCI's Rationale: Laws that provide no penalty for non-compliance seldom achieve their goals. If BST is allowed into the long distance market, it will have little incentive to honor its obligations under this contract in the absence of some easily enforceable compliance incentive, such as the credits proposed below.

BST disagrees in the entirety with MCI's proposed performance measures and credits, but as yet has not developed a counter proposal to the MCI language. MCI, drawing on MCI's unique experience in breaking up a monopoly telecommunications market, and from its experience as a customer of BST's access services, knows that a contract that does not have compliance incentives will not allow new entrants to provide real competition to ILECs as envisioned by the Telecommunications Act of 1996.

In each case of a standard, as defined in Attachment VIII, not being met, MCI and its affected subscribers will not have received the services purchased from BST within the agreed upon parameters for delivering those services. Should failures occur frequently, MCI will suffer the additional disadvantage of not being able to accurately advise subscribers or its own personnel as to when BST services will be performed and completed. MCI's system of credits makes BST's compliance with these standards, which are essential to achieving parity, a rational economic choice.

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Credits immediately and directly compensate MCIIm for its direct damages resulting from the decreased value of services received, marketing opportunities missed, etc. They are not liquidated damages, as repetitive or targeted failures by BST could have negative consequences for MCIIm's operations and reputation far exceeding the amount of compensation provided. BST has yet to make a firm proposal for credits and performance standards, and it has not yet provided specifics on intervals that MCIIm can expect to provide to its customers. For competition to be on a level playing field MCIIm must have clearly defined time frames for when services will be delivered, standards for how they will be delivered, and a compliance incentive/noncompliance compensation mechanism that is more efficient and practical than litigating every contract breach.

BST's Rationale: This Commission has ruled that it cannot impose a penalty or liquidated damages provisions of the type sought by MCIIm. Specifically, the Commission stated as follows:

We conclude that we should limit our consideration in this arbitration proceeding to the items enumerated in Sections 251 and 252 of the Act, and matters necessary to implement those items. A liquidated damages provision does not meet that standard. The Act does not require parties to include in their agreements any particular method to resolve disputes. Further, it is not appropriate for us to arbitrate a liquidated damages provision under state law. If we did, we would be, in effect, awarding damages to one party for a breach of contract. We lack the authority to award money damages. If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties. (Order No. PSC-96-1579-FOF-TP, pp.74-75)

Staff Recommended Language: Staff believes the language in Order No. PSC-96-1579-FOF-TP, pp.74-75 is clear. The Commission has found that it is not appropriate that it arbitrate liquidated damages. Therefore, staff recommends the Commission deny the inclusion of MCIIm's Attachment X in the arbitration agreement. If the parties reach agreement on a compensation arrangement for missed performance standards, the agreement should be filed for approval pursuant to Section 252.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: No, this docket should remain open until the parties have filed their signed arbitration agreement, and the Commission has completed its review of BST's cost studies that were required to be filed pursuant to the order in this proceeding.

Attachment	Section	Title
Part A	1.1 (except for reference to Attachment X)	General Terms and Conditions - Scope of the Agreement
Part A	1.2 (except for 2nd and 3rd paragraph)	Scope of the Agreement
Part A	2	Regulatory Approval
Part A	3	Term of Agreement
Part A	4	Charges and Payment
Part A	5	Assignment and Subcontract
Part A	6	Compliance with Laws
Part A	7	Governing Law
Part A	8	Relationship of Parties
Part A	9	No Third Party Beneficiaries
Part A	10	Intellectual Property Rights and Indemnification
Part A	13	Continuing Obligations
Part A	14	Notices
Part A	15.1, 15.3	Remedies
Part A	16	Waivers
Part A	17	Survival
Part A	18	Force Majeure
Part A	20.1	Termination
Part A	21	Confidentiality and Publicity
Part A	23	Dispute Resolution Procedures
Part A	24	Bona Fide Request Process for Further Unbundling

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Attachment	Section	Title
Part A	25.1-25.6	Branding
Part A	26	Taxes
Part A	27	Responsibility for Environmental Contamination
Part A	28	Amendments and Modifications
Part A	29	Severability
Part A	30	Headings Not Controlling
Part A	31	Entire Agreement
Part A	32	Counterparts
Part A	33	Successors and Assigns
2	1-4	Local Resale
3	1-12, 14-17	Network Elements
3	13.4.2.24, 13.4.3-13.8.9	Service Control Points/Databases
4	1-2.1, 2.3, 3-8	Interconnection
5	1-4	Collocation
6	1.1.1-1.1.27 1.1.29-1.1.30	Rights of Way (ROW), Conduits and Pole Attachments - Definitions
6	1.2.1-1.2.5 1.2.7-1.2.9.4 1.2.10	Scope
6	1.3.1-1.3.6.6 1.3.6.8-1.3.9.2 1.3.10-1.3.13	Requirements and Specifications
6	1.4.1-1.4.3	Additional Legal Requirements
6	1.5.1-1.5.2.1 1.5.3-1.5.6	Facilities & Licenses
6	1.6.1-1.6.2.3 1.6.4	Processing of Applications
6	1.7	Issuance of Licenses

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Attachment	Section	Title
6	1.8	Construction of MCIIm Facilities
6	1.9	Use and Routine Maintenance of MCIIm's Facilities
6	1.10	Modification and Replacement of MCIIm's Facilities
6	1.11	Rearrangement of Facilities at the Request of Another
6	1.12	Emergency Repairs and Pole Replacements
6	1.13	Inspect. by BST of MCIIm Facility
6	1.14	Notice of Noncompliance
6	1.15	Unauthorized Occupancy or Utilization of BST's Facilities
6	1.16	Removal of MCIIm's Facilities
6	1.17	Fees, Charges, and Billing
6	1.18	Advance Payment and Imputation
6	1.19	Assurance of Payment
7	1-4	Number Portability
8	1	Business Process Requirements - General Business Requirements
8	2.1.1-2.1.5.2 2.1.5.5-2.1.8	Ordering and Provisioning - General Business Requirements
8	2.2	Service Order Process Requirements
8	2.3.25, 2.3.27- 2.3.3	Systems Interfaces and Information Exchanges
8	2.4	Standards
8	3.1-3.3	Connectivity Billing and Recording

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Attachment	Section	Title
8	4.1-4.4	Provision of Subscriber Usage Data
8	5.1-5.3	Maintenance
8	6.1-6.1.3.3.3.2 6.1.3.3.3.4- 6.1.3.14 6.1.3.16-6.1.4.1 6.1.4.1.2-6.1.6	Miscellaneous Services & Functions - General Requirements
8	6.2-6.2.2.7	Systems Interfaces and Exchanges
9	1, 2, 4	Security Requirements

Attachment	Section	Title
Part A	1.1 (except for reference to Attachment X)	General Terms and Conditions - Scope of the Agreement
Part A	1.2 (except for 2nd and 3rd paragraph)	Scope of the Agreement
Part A	11	Limitation of Liability and Indemnification
Part A	12	Limitation of Liability
Part A	15.2	Remedies
Part A	19	Non-Discriminatory Treatment
Part A	20.2	Termination
Part A	22	Audits and Examinations
Part A	25.7	Branding
4	2.2	Compensation Mechanisms
6	1.2.6	BST's Rights to Convey Property
6	1.3.6.7	Requirement & Specifications
6	1.3.9.3 1.3.9.4	Compliance with Environmental Laws
6	1.5.2.2	Determination of Availability
6	1.6.3	Processing of Applications
8	6.1.3.3.3.3	Miscellaneous Services & Functions
9	3	Revenue Protection