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April 6, 1998

Mrs. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Dear Mrs. Bayo:

Re: **Docket No. 971140-TP**

You will find enclosed an original and fifteen (15) copies of AT&T's Post-Hearing Brief for filing in the above-referenced docket.

Copies of the foregoing are being served on the parties of record in accordance with the attached certificate of service.

Yours truly,

Tracy Hatch

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CERTIFICATE OF SERVICE
DOCKET NO. 971140-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail or hand delivery to the following parties of record this 6th day of April, 1998:

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ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Motions of AT&T Communications of the Southern States, Inc. and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. to compel BellSouth Telecommunications, Inc. to comply with Order PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc. pursuant to their agreement.	DOCKET NO. 971140-TP April 6, 1998

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.'S POST-HEARING BRIEF

AT&T Communications of the Southern States, Inc. ("AT&T") submits this post-hearing brief to the Florida Public Service Commission ("the Commission") in the above-captioned proceeding. AT&T requests that the Commission order that: BellSouth comply with its Interconnection Agreement with AT&T ("the Agreement"); that BellSouth provide combinations of Unbundled Network Elements ("UNEs") to AT&T at cost-based UNE prices that do not include duplicative charges or charges for unnecessary services; that BellSouth bill AT&T the non-recurring migration charges recommended by AT&T; and that BellSouth provide AT&T with all usage data when AT&T serves customers via network elements.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Interconnection Agreement between AT&T and BellSouth unequivocally requires BellSouth to provide AT&T with combinations of UNEs at cost, even if those combinations could duplicate BellSouth's existing retail service. Nothing found in the Agreement, this Commission's orders, the opinions of the United States Court of Appeals for the Eighth Circuit

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(now on appeal to the Supreme Court), or the Telecommunications Act of 1996 is to the contrary. The UNE prices proposed by AT&T are based on the existing recurring prices for UNEs.

The non-recurring prices for customer migration proposed by AT&T and generated by its cost models for migration are as close as possible to the incremental costs that would be incurred by an efficient provider using forward-looking technologies. More importantly, only through the use of AT&T's proposed costs will Florida consumers benefit from local telephone competition. These proposed prices are based on the exhibits sponsored by AT&T witness Walsh.

In contrast, the prices that BellSouth proposes to charge AT&T for combinations of network elements to provide service to a customer are overstated, inefficient, and reflective of BellSouth's desire to impede competition and protect its monopoly revenues. They bear no relation to the existing recurring prices for network elements that are combined, or for the appropriate non-recurring (one-time) costs incurred by BellSouth to provide the combination of UNEs to customers with existing BellSouth service who want to migrate to service provided by AT&T. In fact, BellSouth's proposed costs are wholly inapposite to the Issue being decided.

This Commission has indicated a concern if the price for a UNE combination, which would permit AT&T to recreate a BellSouth service, would "undercut" BellSouth's resale rate for that service. This Commission is right to be concerned, but its concern should be directed at BellSouth's retail rate for that service, not at the prices established by the Agreement for the UNE combination. The UNE prices are based on the Commission's determination of BellSouth's forward looking costs, and include a reasonable profit. Prices based on forward lookng costs are the economically correct prices that should be found in an efficiently competitive market. If BellSouth's resale price for the UNE combination exceeds the UNE prices for that combination, the inference to be drawn is clear: BellSouth is gouging its retail customers. If competition based on UNE combination prices is permitted, those retail prices would be driven down, to the benefit of Florida's consumers. In any event, the Eighth Circuit has made it clear that UNE

combinations duplicating a retail service are not equivalent to resale and need not be priced at the resale discount. *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 814-15 (8th Cir. 1997) (as amended on reconsideration), *cert. granted*, 118 S. Ct. 879 (1998).

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ISSUE 1: **Does the BellSouth-MCIm interconnection agreement specify how prices will be determined for combinations of unbundled networks**

(a) that do not recreate an existing BellSouth retail communications service?

(b) that do recreate an existing BellSouth retail telecommunications service?

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AT&T's Position: (a) No position.

(b) No position.

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ISSUE 2: **If the answer to either part or both parts of Issue 1 is yes, how is the price(s) determined?**

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AT&T's Position: No position.

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ISSUE 3: **If the answer to either part or both parts of Issue 1 is no, how is the price(s) determined?**

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AT&T's Position: No position.

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ISSUE 4: **Does the BellSouth-AT&T interconnection agreement specify how prices will be determined for combinations of unbundled networks**

(a) that do not recreate an existing BellSouth retail communications service?

(b) that do recreate an existing BellSouth retail telecommunications service?

******

AT&T's Position: (a) Yes. The price of a UNE combination is the aggregate price under the Agreement of the individual UNEs, less any unnecessary or duplicate charges.

(b) Yes. The price of combined UNEs is their aggregate price under the Agreement, less unnecessary or duplicate charges, regardless of whether they recreate a service.

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I. THE INTERCONNECTION AGREEMENT REQUIRES BELLSOUTH TO PROVIDE COMBINED UNES AT THE COST-BASED PRICES SET FORTH IN THE AGREEMENT.

The AT&T-BellSouth Interconnection Agreement expressly and unambiguously requires BellSouth to provide AT&T with combinations of UNEs at the cost-based prices set forth in the Agreement, less duplicative or unnecessary costs, even if those combinations would permit AT&T to recreate existing BellSouth retail services. The Agreement as originally negotiated by AT&T and BellSouth required BellSouth to provide AT&T with combinations of UNEs at the Agreement's cost-based UNE prices, and drew no distinction between combinations that would permit AT&T to recreate existing services and those that would not. Moreover, this issue was revisited during the arbitration proceedings, and the Agreement was revised expressly to confirm AT&T's right under the Agreement to purchase combinations of UNEs that would recreate existing BellSouth retail services. (Exhibit 7, Section 1A)

When executed by the parties, Section 1 of the Agreement's General Terms and Conditions specified that the "Agreement sets forth the terms, conditions *and prices* under which BellSouth agrees to provide . . . certain unbundled Network Elements, *or combinations of such Network Elements* ('Combinations') . . . ." (Hearing Ex. 9 (emphases added).) This express acknowledgment by BellSouth that the Agreement establishes prices for combinations of UNEs was not qualified in any way and, therefore, does not exclude combinations of UNEs that might be used by AT&T to recreate existing BellSouth retail services.

Despite its clear agreement to do so, BellSouth subsequently refused to provide AT&T combinations of UNEs at the cost-based prices set forth in the Agreement because BellSouth determined that those combinations would allow AT&T to duplicate an existing BellSouth service. (Eppsteiner Tr. 145-46.) The issue was therefore submitted to arbitration before this Commission, and the result was a ringing confirmation of BellSouth's obligation to provide under the Agreement combinations of UNEs that could be used to recreate existing services. (Id.) The new Section 1A, added to the Agreement as a result of the arbitration proceeding, specifically provides that "AT&T may purchase unbundled network elements for the purpose of combining Network Elements in any manner that is technically feasible, *including recreating existing BellSouth services.*" (Id. (emphasis added).)

Taken together, Sections 1 and 1A unequivocally require BellSouth to provide AT&T with combinations of UNEs at the Agreement's cost-based UNE prices, even where those combinations would permit AT&T to recreate existing BellSouth retail services. As discussed in response to Issue 5, those prices are set forth on Table 1 in Section 36 of Part IV of the Agreement.

Under BellSouth's interpretation of the contract and of "recreated" services, AT&T could be precluded from purchasing *any* combinations at UNE cost-based rates *and* from establishing

competitive prices simply by virtue of filing a tariff.[1] AT&T could only price its services based on the wholesale rates based in turn on BellSouth's tariffs. Those tariffs, however, can be established by BellSouth at price high enough to prevent AT&T from effectively competing for customers. The result would be less competition and higher prices, both of which are to the detriment of Florida's consumers.

BellSouth witness Varner agreed that, under BellSouth's interpretation, it could establish the price at which AT&T could offer telecommunications services simply by filing a tariff for a service provided by any combination of UNEs utilized by AT&T. (Varner Tr. 535-36.) For example, if AT&T were using a combined port and common transport, which does not, at this moment, duplicate a BellSouth service, and BellSouth determined that it wanted AT&T to provide that service to *its* customers at a more expensive resale rate, BellSouth need only file a tariff for that combination and charge AT&T a more expensive resale rate for "duplicating" a BellSouth service. (Varner Tr. 537.) If BellSouth were permitted to do so under the contract, AT&T could never effectively compete against BellSouth. AT&T would be precluded from setting rates it determined to be competitive based on the cost of the facilities needed to provide those services. In effect, if BellSouth's argument were accepted, BellSouth would determine whether and on what terms competitive services would be offered to Florida's consumers. Any attempt at price competition could be squashed simply by filing a tariff. Clearly, allowing BellSouth to exercise sole discretion over competition in Florida is not what was intended by the Telecommunications Act or the Agreement.

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[1] Pursuant to Section 364.052(6), Florida Statutes, if there is one other provider in the market, BellSouth can file a tariff to increase the rate for any nonbasic service up to 20%. Such tariff is presumptively valid and would be effective on 15 days notice. Pursuant to Section 364.052(5), once BellSouth's price caps are removed, the rates for any basic local telecommunications service can be increased on 30 days notice.

As AT&T demonstrates below, the Agreement's mechanism for establishing cost-based UNE prices for UNE combinations is consistent with both the Telecommunications Act of 1996 and the Eighth Circuit's decision. However, this Commission has the authority to enforce the Agreement and its own order even if they include requirements beyond those imposed by the federal Act. The federal Act expressly permits states to impose duties, even though they may go beyond what the Act requires. Indeed, while the federal Act adopts a series of minimum requirements with which BellSouth must comply, the Act explicitly states that those federal requirements are not exclusive.

For example, Section 261(c) of the Act entitled "Additional State Requirements," provides that:

> Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

47 U.S.C.A. § 261(c). Further, the federal Act reiterates this principle in the specific context of state review of interconnection agreements, stating (in a provision entitled "Preservation of Authority") that a State Commission may "establish[] or enforc[e] other requirements of State law in its review of an agreement." *See* 47 U.S.C.A. § 252(e)(3). Section 601(c) of the federal Act likewise states that "[t]his Act and the amendments made by this Act shall not be construed to modify, impair, or supersede . . . State, or local law unless expressly so provided in such Act or amendments" (emphasis added). Moreover, Section 251(d)(3) of the federal Act, entitled "Preservation of State Access Regulations," states that the FCC "may not preclude the enforcement of any regulation, order, or policy of a State commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the

requirements of this section; and (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part." 47 U.S.C.A. § 251(d)(3).

The FCC in its First Report and Order made clear that its rules "are the minimum requirements upon which the states may build." Those rules "will permit states to go beyond the national rules . . . and impose or enforce additional pro-competitive interconnection requirements, as long as such requirements are otherwise consistent with the federal Act and the Commission's regulations." First Report and Order, 11 FCC Red 15499 (1996).

Imposing or enforcing more demanding and pro-competitive requirements on BellSouth than those imposed by the federal Act will hasten accomplishment of the Act's central objective: the introduction of competition into local exchange markets and erosion of "the monopolistic nature of the local telephone service industry." *Iowa Utilities Board*, 120 F.3d at 791. Therefore, this Commission is well within its rights to enforce the arbitration decision, even if it holds BellSouth to a higher standard than the Eighth Circuit found in the Act.

As the Michigan Commission explained when confronted by a similar issue:

> This Commission finds that *Iowa Utilities Bd.*, . . . does not require modifying the arbitration panels' determination. Pursuant to Section 252(e)(3) of the federal Act, 47 U.S.C. § 252(e)(3), Congress preserved the states' authority to establish and enforce additional requirements in arbitration proceedings. . . . Additional state-imposed conditions and requirements are only preempted when inconsistent with standards expressed in Section 251. 47 U.S.C. 261(c).

Order Adopting Arbitration Decision, Michigan Pub. Serv. Comm'n Case No. U-11551 at 5 (Jan. 28, 1998). Likewise, the Texas Commission found that Southwestern Bell Telephone Company was obligated by its commitment to provide combinations of unbundled network elements, despite the Eighth Circuit's decision regarding combinations, and refused to amend the arbitration award. Amendment and Clarification of Arbitration Award, Pub. Util. Comm'n of

Texas, Docket Nos. 16189, *et al.* (Nov. 1997). Accordingly, if this Commission can require BellSouth to provide combined network elements (as required under the terms of the Agreement), then this Commission also has the authority to require BellSouth to provide those elements at cost-based UNE prices both because the Agreement so requires and because doing so will promote competition and erode BellSouth's historical monopolistic control over the local exchange market.

BellSouth simply cannot avoid the fact that its Florida contract with AT&T obligates BellSouth to provide combinations of elements to AT&T at cost-based UNE prices or the fact that the Commission can and should require BellSouth to provide combinations of network elements at cost-based UNE prices.

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ISSUE 5: **If the answer to either part or both parts of Issue 4 is yes, how is the price(s) determined?**

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AT&T's Position: The price for a combination of UNEs is the sum of the cost-based UNE prices for the individual elements set forth in the Agreement and established by this Commission, less any duplicative or unnecessary charges.

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II. THE AGREEMENT SPECIFIES THAT THE PRICE OF A COMBINATION OF UNES IS THE TOTAL OF THE COST-BASED UNE PRICES, LESS ANY DUPLICATIVE OR UNNECESSARY CHARGES.

The Agreement makes no distinction between the pricing of combined UNEs and of uncombined UNEs, except to provide that the prices of combined UNEs shall not include duplicate charges or charges for functions or activities that AT&T does not need when the UNEs are combined. Moreover, it makes no distinction between the pricing of UNE combinations that would permit AT&T to recreate an existing service and those that would not. Thus, under the

Agreement, the appropriate charge for any combination of UNEs is the aggregate charge for the individual elements, less any duplicative or unnecessary charges.

Section 36 of Part IV of the Agreement addresses the pricing of UNEs. It provides that the "[t]he prices that AT&T shall pay to BellSouth for Unbundled Network Elements are set forth in Table 1." (Hearing Ex. 9.) In turn, Table 1 sets forth the applicable recurring and non-recurring charges for each individual UNE. For an individual UNE not used in combination with other UNEs, this table establishes the applicable charge. For combinations of network elements, the price is the sum of the individual element prices less any duplicative or unnecessary charges.

There is no indication in Section 36 of Part IV of the Agreement, or in Table 1, that the UNE prices set forth in Table 1 are not to be used in determining the proper charge for UNEs that are included in a UNE combination. The Agreement, however, does require one adjustment to the Table 1 prices for a UNE that is to be used in combination with other UNEs. Section 36.1 unambiguously provides that the charge set forth in Table 1 must be reduced to eliminate any duplicative or unnecessary charges. Section 36.1 states: "Any BellSouth non-recurring and recurring charges shall not include duplicate charges or charges for functions or activities AT&T does not need when two or more Network Elements are combined in a single order." (Id.; Hearing Ex. 9.)

This Section 36.1 language, which was added to the Agreement as a result of this Commission's arbitration ruling, (Eppsteiner Tr. 157-58; *see* Order No. PSC 97-0298-FOF-TP (Reconsideration Order)), draws no distinction between combinations that would permit AT&T to recreate existing Bell South retail services and those that would not. Under Sections 36 and 36.1 of the Agreement, therefore, the appropriate charge for a combination of UNEs is the aggregate cost of the individual elements, less any duplicative or unnecessary costs, without regard to whether that combination would permit AT&T to recreate an existing BellSouth retail service.

Without any support in the language of the Agreement itself, BellSouth would prefer to charge higher resale prices for combined UNEs. However, this reading cannot be reconciled with the plain language of the Agreement, the history of the Agreement's formation, or the interpretation by the Kentucky Public Service Commission of a similar agreement.

First, as noted above, Sections 1, 36, and 36.1 of the Agreement each provide that the cost-based UNE prices established in the Agreement will apply to a combination of UNEs, without regard to whether that combination would permit AT&T to recreate an existing BellSouth retail service. Indeed, if UNE combinations were to be priced at a resale price -- as BellSouth contends -- there would be no need for the Section 36.1 provision eliminating duplicative or unnecessary charges when combined elements are provided. (Hendrix Tr. 668-69.) In other words, BellSouth's interpretation renders this section entirely meaningless -- an interpretation greatly disfavored in the law. This interpretation also renders meaningless BellSouth's obligation pursuant to Order No. PSC-97-0298-FOF-TP to eliminate duplicative and unnecessary charges from combinations of network elements.

Second, the Agreement's history makes clear that the wholesale discount applies only to resold services, and does not apply to services provided through UNE combinations. For example, although BellSouth attempted to include language in the Agreement's pricing section providing that resale pricing shall apply to UNE combinations, this Commission has agreed with AT&T that such language is inappropriate. BellSouth initially refused to sign the Agreement unless the following language was included: "Recombining UNEs shall not be used to undercut the resale price of services recreated." (Eppsteiner Tr. 150.) The Commission rejected BellSouth's language. (Id.) Indeed, prior to the execution of the final Agreement, BellSouth advanced its argument three times before this Commission and it was rejected on each occasion. (Id. at 156; *see* Order No. PSC-96-1579-FOF-TP; Order No. PSC-97-0298-FOF-TP; and Order No. PSC-97-0600-FOF-TP.) Thus, the price for combined UNEs is expressly governed by Part IV, Section 36 of the Agreement, even where a combination would permit AT&T to recreate an

existing BellSouth retail service, and BellSouth can cite to no provision that suggests the contrary.

Third, BellSouth's claim that the AT&T-BellSouth Agreement does not provide prices for UNE combinations because of the absence of any precise language is incorrect and disingenuous. In Kentucky, BellSouth proposed to charge AT&T resale prices for combined network elements just as BellSouth intends to do here. (Hendrix Tr. 669.) The Kentucky Commission ruled that combined network elements are to be priced at the sum of the element prices even where those combinations would permit AT&T to recreate an existing service. (Hendrix Tr. 669-70; Exhibit 30, p.22) The Kentucky interconnection agreement was drafted and approved by the Kentucky Commission to reflect the Commission's ruling. The Kentucky interconnection agreement differs from the Florida Agreement in only one material respect: the Kentucky agreement *does not contain the language found in Section 36.1 of the Florida Agreement.* (Hendrix Tr. 663–65, 669.)

BellSouth and AT&T, as well as the Kentucky Commission, construe the Kentucky Agreement as requiring combinations of UNEs to be priced at UNE prices even in the absence of an express provision requiring that the charges for combined UNEs be reduced to eliminate duplicative or unnecessary charges. (Hendrix Tr. 669-670.) If BellSouth cannot charge resale prices in the absence of Section 36.1, it clearly cannot do so here, where Section 36.1 clearly contemplates that the charge for a combination of UNEs will be the aggregate cost of the individual elements, less any duplicative or unnecessary costs.

In Kentucky, a BellSouth state in which the AT&T-BellSouth Agreement is virtually identical to the AT&T-BellSouth Florida Agreement, the Commission ruled that UNE combinations, including those that duplicate existing retail services, should be priced at the sum of the network element prices. BellSouth concedes that the Kentucky Agreement requires combinations of UNEs to be priced at the sum of the element prices. Construing the Florida

Agreement to reach diametrically opposed results defies any logic. Thus, under the Florida Agreement the price for a combination of UNEs should be the sum of the individual element prices, less any unnecessary or duplicative charges, without regard to whether the combination would permit AT&T to recreate an existing BellSouth retail service.

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ISSUE 6: **If the answer to either part or both parts of Issue 4 is no, how is the price(s) determined?**

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AT&T's Position: The answer to both parts of Issue 4 is "yes"; therefore, this issue is not applicable. Even if the Agreement did not establish prices for UNE combinations, the Telecommunications Act requires that those prices be forward-looking and cost-based.

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III. BELLSOUTH MUST PROVIDE COMBINATIONS AT COST-BASED UNE PRICES REGARDLESS OF WHETHER THEY RECREATE SERVICE.

As discussed in AT&T's responses to Issues 4 and 5, the Agreement requires BellSouth to provide combined UNEs at the prices set forth therein regardless of whether the combination recreates an existing BellSouth service. Therefore, this Issue is inapplicable. Even if the Commission were to determine otherwise, the appropriate price for a UNE combination must still be a forward-looking, cost-based UNE prices, rather than a discounted resale price.

BellSouth argues that providing service through combined network elements is functionally equivalent to resale, and therefore should be priced as such. However, it made that argument before the Eighth Circuit *and lost*. The Eighth Circuit held that combinations of network elements are not equivalent to resale and that competing carriers may obtain the ability to provide finished telecommunications services entirely through the use of UNEs purchased at cost-based prices. *Iowa Utilities Board,* 120 F.3d at 814-15. The Eighth Circuit's decision forecloses any possible argument that combination of network elements used to provide services to customers can be priced as though it were resale.

Moreover, under section 252(d)(1) of the Telecommunications Act of 1996, the price for unbundled elements must be cost-based, *not* based on a discounted wholesale rate. Accordingly, there is no legal reason for pricing elements at resale prices just because BellSouth argues that

AT&T can use them in combination to provide telecommunications services. In fact, accepting BellSouth's argument would be contrary to the Act and to the Eighth Circuit's decision. Moreover, as AT&T explains in response to Issue 7, utilizing combined unbundled network elements is *not* the functional equivalent of providing telecommunications service through resale. Therefore, combinations should not be priced as if they were resold services.

Prices for UNE combinations should be established at cost-based prices for another important reason. BellSouth's proposal to charge resale prices for UNE combinations would impede competition, to the detriment of Florida's consumers. As BellSouth witness Varner conceded, the issue for BellSouth is price. That is not to say that BellSouth wants to charge the actual price; rather, it wants to charge the most expensive price. (Varner Tr. 540.) When asked if BellSouth would be concerned about the combinations issue if the cost-based rate for a combination exceeded its resale price, Mr. Varner answered: "No, not really." (Varner Tr. 540.) Mr. Varner reveals the real rationale for BellSouth's insistence on resale prices for UNE combinations: Those prices would be *more expensive* for AT&T, and would therefore hobble the development of price-based competition in Florida's telecommunications market.

A second reason for BellSouth to propose resale pricing is to prevent AT&T from joint marketing and thereby protect BellSouth's incumbent market position. Under BellSouth's proposal, AT&T could provide local service by purchasing combinations as resale, but that service could not be joint marketed with AT&T's long-distance service. (Varner Tr. 542.) To joint market, AT&T would have to purchase stand-alone UNEs and then combine them with each other *and* with AT&T facilities necessary to provide telecommunications service. (Varner 541.) Doing so, of course, would be more expensive than purchasing combinations from BellSouth, and therefore increase costs to AT&T and to its potential consumers. BellSouth offered AT&T only one alternative to this anticompetitive choice: "quit objecting to us [BellSouth] getting in the long distance business, so we can get in." (Id. at 541.)

BellSouth's current eligibility to enter the interLATA long distance market is not an appropriate basis for establishing prices for combinations for providing local service. Enforcing the terms of the Agreement, complying with the Act's mandate, and promoting competition in the local access market should be. These are the bases for AT&T's proposed prices for combinations of network elements.

Under BellSouth's approach, new entrants are entitled to combine UNEs, but those combinations will be treated as resale for pricing purposes if, in BellSouth's view, they would permit AT&T to recreate a BellSouth retail service. That approach renders meaningless the nondiscriminatory access requirement contained in the Act and affirmed by the Eighth Circuit. (Gillan Tr. 265.) BellSouth should be required to allow new entrants to use network elements in the same way that BellSouth does. Only then will the Act's purpose be advanced, competition promoted, and consumers benefited.

Upon rejecting BellSouth's resale pricing proposal, this Commission should not embrace BellSouth's equally anticompetitive policy of allowing competitors to pay UNE cost-based prices only if the UNEs are physically disconnected and then combined at collocated facilities. Requiring physical separation of the loop and switch in order to permit AT&T to provide service would be costly, disruptive, and unnecessary. (Falcone Tr. 309.) Just the process of establishing a collocation facility, which itself includes multiple steps, joint planning with BellSouth, and reliance on outside vendors, would take months and cost hundreds of thousands of dollars. (Falcone Tr. 314-15.) For example, in Georgia, one new entrant had to pay several hundred thousand dollars and wait several months just to establish three collocation facilities. (Falcone Tr. 323.) Forcing AT&T to incur unnecessary and excessive costs would effectively foreclose competition, especially since BellSouth would not need to incur any of these costs. (Falcone Tr. 318.)

Even under the best circumstances, disconnecting and reconnecting elements at collocated facilities would preclude AT&T from effectively competing. First, the customers would be deprived of service -- possibly for extended periods of time -- while the elements are disconnected and reconnected. (Id. at 318.) In fact, some service disruptions have lasted three to four hours. (Falcone Tr. 321.) Second, requiring AT&T to collocate combined UNEs would prevent AT&T from serving any potential customers any time soon. (Id. at 318, 321.) Third, collocation facilities would enable AT&T to provide service for only limited numbers of customers, and some would be unable to receive any at all. (Id. 318.) In fact the number of customers that AT&T would be able to service under BellSouth's forced collocation plan would be a fraction of those available to BellSouth. (Id. at 322-23.) Forcing AT&T to bear the burdens of unnecessary expense, disruption, and limitations -- all of which BellSouth can avoid -- is anathema to the antidiscrimination provisions of the Telecommunications Act.

There are, however, efficient alternatives to collocation, albeit none as efficient as purchasing combined UNEs at cost-based rates. The next best approach would be to utilize BellSouth's own "recent change" procedure, an electronic mechanism for disconnecting and reconnecting service, (Falcone Tr. 332-33.). Nothing in the Eighth Circuit's opinion requires the physical disconnection and reconnection of combined UNEs. All that needs to be done is what BellSouth already does when an existing customer vacates a location and a new customer moves in. When this happens, BellSouth does not physically unplug the facilities providing service to the premises. Rather, BellSouth electronically disconnects the loop by discontinuing dial-tone service. (Id. at 333.) The entire process can be and is accomplished with a few keystrokes by a service representative. (Id. at 333-34.) Moreover, that process is the one BellSouth utilizes when a local exchange customer changes long distance carriers, and it is the same process that BellSouth could (and presumably will) rely on to provide its local customers with long distance service when BellSouth enters the long distance market. (Id. at 335.)

If BellSouth has an inexpensive, efficient, and nondisruptive mechanism for changing its customers' local and long distance service, the nondiscrimination provisions of the Act mandate that competing carriers not be burdened by a more expensive, less efficient, disruptive, and anticompetitive procedure for proving service using combined UNEs. Accordingly, any proposal by BellSouth that would be expensive, inefficient, and disruptive -- such as requiring physical disconnection of loops and switches and collocation -- must be rejected.

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ISSUE 7: **What standard should be used to identify what combinations of unbundled network elements recreate existing BellSouth retail telecommunications services?**

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AT&T's Position: Recreation of BellSouth's service by a new entrant is not practically possible and, in any event, is irrelevant to the appropriate prices to be charged for UNE combinations.

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IV. PROVIDING SERVICES THROUGH UNES PURCHASED IN COMBINATION DIFFERS SUBSTANTIALLY FROM RESALE.

As explained above, under the terms of the Agreement, the issue of whether combinations of unbundled elements recreate an existing BellSouth telecommunications service is irrelevant to the proper pricing of those combined elements. As demonstrated above with respect to Issue 1, the parties' Agreement allows AT&T to purchase UNEs at cost *even if* they could recreate existing service. Even if the Agreement did not render the issue moot, there is no standard to be applied because, as a practical matter, a new entrant cannot recreate BellSouth's existing service.

First, telecommunications services are more than the combination of network elements. Combining network facilities such as a loop and a port in the same manner as BellSouth does not equate with recreating BellSouth's service. These elements only fit together one way. (Gillan Tr. 300.) Retail services such as marketing and customer support are essential to the customers, and

are more important to them, than the technical means by which those services are provided. (Gillan Tr. 250.) This fact is demonstrated conclusively by the way that BellSouth prices its retail services. The prices charged by BellSouth do not vary depending on what network elements are being utilized by a customer, but by the "soft" services being provided. For example, BellSouth charges different prices for business and retail local exchange service, switched access and local interconnection service, and its expanded calling service even though there is no significant difference in the network. (Gillan Tr. 251-52.) Similarly, even though two local exchange carriers may use the same network components, the telecommunications service being provided may differ dramatically (Id.) The difference there is driven by the identity of the providers, not by the facilities they utilize. AT&T can no more recreate BellSouth's local service than BellSouth can recreate AT&T's long-distance service.

Moreover, a new entrant that provides service through a UNE combination should not receive the same pricing treatment as a new entrant who provides service through resale because the UNE-based service entails more potential innovation, more risk, and more competitive opportunity for the competing local exchange carrier. Resale-service offers no significant benefits to Florida consumers, but providing service through combinations of network elements may bring substantial benefits to the very consumers the Act was intended to benefit. For example, by leasing network elements, a new entrant can fulfill the role of a local telephone company. (Gillan Tr. 269.) With that role come the economic constraints and freedoms assumed by any other carrier. (Id.) Specifically, the new entrant bears the economic responsibility for pricing a full range of services that can be provided over those network facilities, including local exchange, intraLATA toll, and exchange access. Necessarily, the new entrant bears the burden of recovering its own costs and still making a profit while trying to provide a competitive alternative to for Florida's consumers. (Id.)

In contrast, a new entrant engaged in service-resale in effect establishes itself as the incumbent's marketing agent. (Id.) As such, it does little more than bill under its own name for

telephone services made available at the discretion of the incumbent -- not the retailer. The incumbent -- not the agent -- decides what services will be provides and what base prices will be charged. (Id.) Thus, the new entrant is in no position to offer a truly competitive local service.

Additionally, as essentially a marketing agent, the reseller assumes little economic risk -- only that associated with offering what is already being provided albeit under a different label. The incumbent bears all the responsibility -- and therefore the risk -- of determining what services to offer and at what price. (Gillan Tr. 252-52.) The reseller's costs merely move in lock step with the incumbent's based on the decisions that it makes. (Id.) There is no risk/reward analysis for the reseller. Rather, it becomes a collector of a duty imposed on the wholesale provision of the incumbent's services.

Even if the combination of elements were considered an appropriate measure of whether "service" has been recreated, the combination of a loop and a port alone cannot provide that service. (Walsh Tr. 217.) BellSouth has identified no retail service that can be provided with only a loop and a port. In addition to a loop and a port, providing basic local service requires the following additional facilities: a transport to the operator platform, an operator platform, a transport to a directory assistance platform, a directory assistance platform, a transport to a 911 platform, a signaling link transport, a signaling transfer point, a service control point, a common transport, a tandem switch, and perhaps dedicated transport. (Walsh Tr. 223; Falcone Tr. 363.) Thus, contrary to what BellSouth suggests, AT&T is not recreating BellSouth's service (or, more correctly stated, the ability to provide that service) simply by purchasing a combined loop and port.

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ISSUE 8: **What is the appropriate non-recurring charge for each of the following combinations of network elements for migration of an existing BellSouth customer:**

(a) 2-wire analog loop and port;

(b) 2-wire ISDN loop and port;

(c) 4-wire analog loop and port; and

(d) 4-wire DS1 and port?

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AT&T's Position: The appropriate prices for the above items are set forth in the testimony of John Lynott as adopted and supported by the testimony of Richard Walsh. The appropriate cost for each of the combinations is $0.21.

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V. THE COMMISSION SHOULD ESTABLISH PRICES BASED ON THE FORWARD-LOOKING TECHNOLOGY RELIED ON BY AT&T'S MODEL.

AT&T relies on the Non-Recurring Cost Model that was previously filed with this Commission in Docket No. 960833-TP and again in the instant proceeding. This NRC Model appropriately reflects the costs associated with migration of the identified loop/port combinations. (Walsh Tr. 195.) Migration -- moving to AT&T a BellSouth customer's existing service as reflected in the underlying network elements provided by BellSouth -- requires little more than some processing time, which is a recovered as a recurring rate. (Walsh Tr. 196.) The vast majority of this processing can occur electronically and at relatively low cost. (Walsh Tr. 196.) As explained by AT&T witness Richard Walsh and supported by the exhibits sponsored by him, the appropriate non-recurring charge for each of the combinations of network elements for migration to an existing BellSouth customer is $0.21.

AT&T's non-recurring cost model reflects the efficient processes that can be used to migrate an existing customer's service to a new entrant. Under AT&T's model, each step in the

migration process occurs electronically -- without the need for the inefficient and more costly manual intervention that BellSouth proposed. Moreover, this process applies equally to each of the loop and port combinations at issue: the 2-wire analog loop and port, the 2-wire ISDN/BRI loop and port, the 4-wire analog loop and port, and the 4-wire DS1 and port. (Lynott Tr. 196, 200.)

As summarized by AT&T witness Richard Walsh, the steps required are a follows. A migrating customer places an order with AT&T. Once that happens, AT&T sends electronically a single request to BellSouth for the unbundled network elements required to provide service to the migrating customer. (Walsh Tr. 218.) Upon receipt by BellSouth's gateway, BellSouth's system can electronically process the request using its existing operations support system without the need for any manual intervention. (Id.) BellSouth's system, through the use of electronic instructions, adds the necessary unbundled networks to AT&T's system, activates the requested switch features for the AT&T customer, deactivates the existing BellSouth service, and stops billing the migrating customer. (Id.) At no point along the way is human intervention required, so all the processing costs can be recovered through recurring rates. (Id.)

AT&T recognizes that even an efficient method will experience some "fallout" in the ordering process. When this occurs, some manual intervention would be required to complete the process, and that intervention can be recovered as a non-recurring cost. AT&T and BellSouth diverge substantially, however, on the amount of fallout that one might expect. BellSouth's proposed costs are based on outdated and inefficient processes. Using forward-looking technology, the expected fall-out rate should be about 2%. (Id. at 211.) That translates into about $0.21 per order. (Id. at 213.) That twenty-one cents is *the only* non-recurring cost that should be imposed as a non-recurring cost for customer migration.

In contrast, BellSouth takes two positions that are completely inapposite to the issue. First, BellSouth, consistent with its view that migration simply duplicates existing service,

argues that the appropriate price must be resale-based. According to BellSouth witness Alphonso Varner, migration occurs when AT&T or MCI takes "the existing service that the customer has, the existing retail service that they have, and just [has] it priced as unbundled network elements." (Varner Tr. 493.) Providing service to the migrating customer through the use of UNEs, therefore, is no different than providing service as resale. (Id.) That definition of migration is simply at odds with the Act and the Eighth Circuit's opinion that a competing carrier has the right to provide service -- and even to recreate existing service -- through UNEs and not just through resale.

Second, BellSouth sponsors a cost study and non-recurring prices based on the activities required to fulfill a competing carrier's request to provide multiple network elements. As such, these prices are wholly inapplicable to migration of an existing customer -- a conclusion shared by the staff-sponsored audit.

The staff sponsored an audit that reviewed this very issue and found that BellSouth's cost study was completely inapposite. In fact, as the auditors found, BellSouth's cost study does not even address migration at all. (Deposition of Ruth Young, March 3, 1998, Tr. 43.) Not surprisingly, in reviewing BellSouth's proposed costs, the auditors discovered that BellSouth did not even consider whether job functions -- which were included as non-recurring costs -- would not even be needed if the loop and port were not physically separated, *i.e.*, for migration. (Id. at 45.) Consequently, the audit concluded as follows:

> The DDC-1 schedules filed by BellSouth do not represent the migration of an existing BellSouth customer for the four scenarios in Issue 8. BellSouth's definition of migration is resale. It appears that the DDC-1 schedules assume the loop and port have to be separated to be provided to the Alternative Local Exchange Carrier.

(Hearing Ex. 26, exhibit RKY-1 at page 3.) That assumption on BellSouth's part renders its cost studies irrelevant to the issue being decided.

Among other deficiencies, BellSouth consistently overstates the non-recurring costs needed for migration. For example, the non-recurring charges that BellSouth proposes invariably reflect the costs of physical disconnection and reconnection -- regardless of whether the facilities would ever be actually disconnected. (Walsh Tr. 201; Landry Tr. 707-09.) BellSouth thus inflates its prices to include the wasteful cost of sabotaging its own network and inefficiently disconnecting elements, which competitors must then immediately reconnect, again inefficiently, at yet additional cost.

Similarly, BellSouth's proposal would impose an additional cost associated with dispatch activity even when AT&T requests merely that records be updated to reflect the migration. (Walsh Tr. 201.) In addition, BellSouth would require competitors to collocate equipment in every BellSouth central office from which they intend to serve customers through the use of unbundled network elements, thus imposing a tremendous cost. The cost just to collocate space in a central office would be exorbitant. (Falcone Tr. 323.)

Far from being legitimate, actual costs, these charges serve only as a barrier to competition that will inevitably harm Florida's consumers. Under BellSouth's proposal, therefore, Florida consumers and the new entrants lose, because these inefficiencies in disconnection and reconnection cause service outages, impede transmission quality, and boost the consumer's price *with no added value*. The monopolist, BellSouth, wins, because it pushes prices charged to its competitors above economic cost *and* earns profit on an entirely useless and wasteful endeavor.

Florida consumers deserve the most efficient, most modern, lowest cost telephone service available. The more efficient method for accomplishing customer migration is the process that BellSouth already uses: the "recent change" process. (Gillan Tr. 261.) Under this approach, the loop and switch are separated by electronic messages that instruct the switch to first block the existing connection and then recombine them. This disconnection is just as effective as having a

technician physically break the connection. The difference is that the approach assumed in BellSouth's cost study is less efficient, is more costly, and is therefore discriminatory. If BellSouth's more expensive, inefficient, methods serve as the basis for determining costs, the result will be less competition, and the consumers will suffer as a result.

This Commission should reject BellSouth's proposed prices and adopt AT&T's proposed prices for migration of combinations of unbundled elements. Should the Commission determine not to accept AT&T's proposes prices, then the Commission should adopt the prices sponsored by MCI.

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ISSUE 9: **Does the BellSouth-MCIm Interconnection Agreement require BellSouth to record and provide MCIm with the switched access usage data necessary to bill interexchange carriers when MCIm provides service using unbundled local switching purchased from BellSouth either on a stand-alone basis or in combination with other unbundled network elements?**

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AT&T's Position: No position.

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ISSUE 10: **Does the BellSouth-AT&T Interconnection Agreement require BellSouth to record and provide AT&T with detail usage data for switched access service, local exchange service and long distance service necessary for AT&T to bill customers when AT&T provides service using unbundled network elements either alone or in combination?**

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AT&T's Position: The Agreement requires BellSouth to provide data needed by AT&T to bill its customers appropriately.

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VI. BELLSOUTH MUST PROVIDE USAGE DATA FOR BOTH INTERSTATE AND INTRASTATE SWITCHED ACCESS SERVICE, LOCAL EXCHANGE SERVICE, AND LONG DISTANCE SERVICE NECESSARY FOR AT&T TO BILL ITS CUSTOMERS.

Attachment 7 of the Agreement requires BellSouth to "provide *all* usage originating from AT&T Customers using BellSouth provided Elements or Local Services" and that such data will be for AT&T customers only. Attachment 7, Sections 3.1 & 3.2 (emphasis added.). That is, BellSouth must provide data for both interstate and intrastate switched access service, local exchange service, and long distance service necessary for AT&T to bill its customers. BellSouth's argument that it need provide only "appropriate" data, which BellSouth defines for its own purposes as excluding intrastate switched access data, is nothing more than another attempt to evade the express terms of the Agreement in order to impede competition. Less competition means fewer choices and higher prices for Florida's consumers -- the antithesis of the purpose of the Telecommunications Act.

BellSouth's proposal to retain intrastate access contravenes the Telecommunications Act and the FCC's rules. A primary purpose of the Act is to enable a competing carrier to provide whatever services it desires. This purpose is supported by FCC rules that are irreconcilable with BellSouth's position. For example, the FCC rules implementing section 251 of the Act, which requires BellSouth to provide AT&T with nondiscriminatory access to network elements, states the following:

> An incumbent ILEC shall provide a requesting telecommunications carrier access to any unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting carrier to provide *any* telecommunications service that can be offered by means of that network element.

47 C.F.R. § 51.307(c) (emphasis added.) The rule requires access for "any" service -- not "any appropriate service as determined by BellSouth."

Section 51.309(a) is equally unambiguous, as is subsection (b). The first prohibits BellSouth from imposing "limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a telecommunications carrier to offer a telecommunications service in the manner the requesting carrier intends." 47 C.F.R. § 51.309(a). Subsection (b) permits AT&T to use network elements "to provide exchange access service to itself in order to provide interexchange services to subscribers." Id. at 51.309(b). Neither rule exempts intrastate access as BellSouth argument presupposes.

Moreover, the FCC has specifically determined that new entrants have the right to become the access-provider for their customers. In its initial decision defining network elements, the FCC concluded:

> We confirm our tentative conclusion . . . that section 251(c)(3) permits interexchange carriers and all other requesting carriers, to purchase unbundled elements for the purpose of offering exchange services, or for the purpose of providing exchange access services to themselves in order to provide interexchange services to consumers.

(Gillan Tr. 280, citing FCC ruling.) The FCC subsequently extended this principle by ruling that "a carrier that purchases the unbundled local switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local access service, for that end user." (Id. at 281.) That ruling truly foreclose BellSouth's argument that intrastate access can be treated differently from other features.

CONCLUSION

Accordingly, AT&T requests that this Commission order BellSouth to provide unbundled network elements, either individually or in combination, billed at the prices set forth in the Part IV, Table 1 of Agreement, minus any duplicative and unnecessary charges. Further, AT&T requests that this Commission order BellSouth to bill AT&T the non-recurring migration charges

recommended by AT&T witness Dick Walsh. Finally, AT&T requests that this Commission order BellSouth to provide all usage data to AT&T, including all data for interstate and intrastate switched access service, local exchange service and long distance service.

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Respectfully submitted,

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