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October 22, 1996

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

RE: Docket No. 960833-TP; 960846-TP; 960916-TP

Dear Mrs. Bayo:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Brief of the Evidence. Please file these documents in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served on the parties shown on the attached Certificate of Service.

Sincerely,

Nancy B. White (AW)

Nancy B. White

Enclosures

cc: All Parties of Record
A. M. Lombardo
R. G. Beatty
W. J. Ellenberg

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996	Docket No. 960833-TP Docket No. 960846-TP Docket No. 960916-TP Filed: October 22, 1996

BELLSOUTH TELECOMMUNICATIONS, INC.

BRIEF OF THE EVIDENCE

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I. STATEMENT OF THE CASE

On February 8, 1996, the Telecommunications Act of 1996 (the "Act") became law. A key theme of the Act was to favor negotiations between incumbent local exchange carriers and new entrants. However, when parties could not successfully negotiate a satisfactory resolution to their negotiations, they were entitled to ask, between the 135th and 160th day after the initial request for negotiations, the appropriate state commission for arbitration of unresolved issues. 47 U.S.C. § 252(b)(1).

This consolidated arbitration arose after BellSouth Telecommunications, Inc. ("BellSouth") and the three petitioners were unable to reach total agreement on all issues despite the good faith negotiations that had occurred over an extended period of time. While all those arbitrations were requested by the three potential new entrants at separate times, all three were consolidated for hearing.

On August 8, 1996, the Federal Communications Commission ("FCC") released its First Report and Order in Docket No. 96-98 (the "Order") concerning interconnection issues. With regard to the pricing of unbundled loops, the FCC Order established a Florida proxy loop rate for use on an interim basis until such time as Total Element Long Run Incremental Cost ("TELRIC") studies were completed by BellSouth. Moreover, the FCC Order

required pricing of loops for at least three geographically deaveraged zones. The FCC Order also set a proxy rate for local interconnection. BellSouth felt that the FCC's Order contravened the clear intent of Congress in enacting the Act and was a case of regulatory micromanagement by the FCC. BellSouth appealed the FCC Order, as did this Commission.

On October 15, 1996, the United States Court of Appeals for the Eighth Circuit (the "Eighth Circuit") entered its "Order Granting Stay Pending Judicial Review" of portions of the FCC's First Report and Order in Docket No. 96-98. (Attachment 1 hereto is a copy of the Eighth Circuit order). In that Order, the Eighth Circuit:

> grant[ed] the petitioners' motion to stay the FCC's pricing rules and the 'pick and choose' rule contained in its First Report and Order pending a final decision on the merits.
>
> (8) The stay pertains only to §§§ 51.501-51.515 (inclusive), 51.601-51.611 (inclusive), 51.701-51.717 (inclusive), § 51.809 and the proxy range for line ports used in the delivery of basic residential and business exchange services established in the FCC's Order on Reconsideration, dated September 27, 1996.

Order, p. 14. (All page citations are to Attachment 1.)

The basis for the Eighth Circuit's holding was its analysis of the FCC's rules compared to the requirements set forth in the Act. In Section IIA of its Opinion, the Court found that the petitioners (the parties appealing the FCC's Order and seeking a stay, including this Commission) were likely to succeed on the

merits of this appeal. Specifically, the Eighth Circuit held that it was likely that the petitioners would prevail on their arguments that the Act did not give the FCC the jurisdictional authority to mandate to the states rules on pricing. The Court stated:

> Because we believe that the petitioners have demonstrated that they will likely succeed on the merits of their appeals based on their argument that, under the Act, the FCC is without jurisdiction to establish pricing regulations regarding intrastate telephone service, we think that it is unnecessary at this time to address the remaining theories which the petitioners use to challenge the legality of the FCC's pricing rules.

Id. at 9.

Next, the Court engaged in a discussion of whether the petitioners would suffer irreparable harm if a stay were not granted. It found that the FCC's pricing rules, including the "pick and choose" rule, would irreparably injure the states and the incumbent local exchange companies ("ILECs") because the "pricing rules will derail current efforts to negotiate and arbitrate agreements under the Act, and the 'pick and choose' rule will operate to further undercut any agreements that are actually negotiated or arbitrated." Id. at 10.

Furthermore,

> As we explained above, we are persuaded that, absent a stay, the proxy rates would frequently be imposed by the state commissions and would result in many incumbent LECs suffering economic loses beyond those inherent in the transition from a monopolistic market to a competitive one...In this case, the incumbent LECs would not be able to bring a lawsuit to recover

> their undue economic losses if the FCC's rules are eventually overturned, and we believe that the incumbent LECs would be unable to fully recover such loses merely through their participation in the market. Moreover, the petitioners' potential loss of consumer goodwill qualifies as irreparable harm...For the foregoing reasons, we believe that the petitioners have adequately demonstrated that they will be irreparably harmed if a stay of the FCC's pricing rules is not granted.

Id. at 11-12.

Thus, the Eighth Circuit found that the FCC's pricing rules, including the proxy rates, because they do not allow for a consideration of embedded costs and because they require the use of a hypothetical rather than an ILEC's actual network, result in rates that are artificially low and do not allow the ILECs to recover their costs. Id. at 4. As a result, the Court entered its Stay Pending Judicial Review.

The hearing of these arbitrations was held on October 9-11, 1996. AT&T presented the testimony of nine witnesses; MCI presented the testimony of five witnesses; ACSI presented the testimony of three witnesses; and BellSouth presented testimony of nine witnesses. The hearing produced a transcript of 2815 pages and 96 exhibits. After the conclusion of the hearings ACSI and BellSouth negotiated a settlement of the issues remaining between them. Therefore the matter now pending before the Commission only involves AT&T's and MCI's request for arbitration.

This brief is submitted in accordance with the post-hearing procedures of Rule 25-22.056, Florida Administrative Code. The statement of each issue identified in this matter is followed immediately by a summary of position on that issue and a discussion of the basis of that position. Each summary of BellSouth's position is labeled accordingly and marked by an asterisk. In any instance in which BellSouth's position on several issues is similar or identical, the discussion has been combined or cross referenced rather than repeated.

II. STATEMENT OF BASIC POSITION

BellSouth negotiated in good faith with AT&T and MCI for months in an effort to reach a negotiated agreement on the issues the parties had raised. MCI and BellSouth were able to resolve several issues, including, but not limited to, the financial and technical arrangements for local interconnection, directory listings, and 911. As a result, MCI and BellSouth signed a Partial Agreement for several states, including Florida, on May 13, 1996. The Partial Agreement was filed with and approved by this Commission under the provisions of Section 252 of the Telecommunications Act of 1996 (the "Act") on August 13, 1996.[1]

[1] MCI also attempted to arbitrate certain issues already resolved by the Partial Agreement. The Prehearing Officer held that these particular issues (Issues Nos. 20, 21, 22, 27 and 28) were not "open" or "unresolved" issues, under the Act, that MCI could submit to the Commission for arbitration. The full Commission rejected MCI's Motion for Reconsideration of the Prehearing Officer's decision. Thus, Issues 27 and 28 were unique to MCI and therefore were not litigated. In addition, MCI withdrew Issue 29 from consideration.

Although the parties have requested the arbitration of a myriad of issues in their petitions, three major issues stand out: (1) the specific network elements to be unbundled, (2) the pricing of local interconnection and the unbundled elements, and (3) the appropriate resale discount. BellSouth's basic position is that it will unbundle any network element that any new entrant requests that is technically feasible. Based on requests already received, BellSouth has set forth exactly what it can unbundle and what it cannot. With regard to the second matter, BellSouth believes that the local interconnection rate should be set at a rate that mirrors the traffic sensitive elements of the toll switched access rate, i.e. approximately $0.01 per minute. This will facilitate the inevitable transition of all interconnection types to a single rate structure. BellSouth's proposed rate is consistent with the pricing standards of the Act and has been agreed to by other competitors, including MCI, in agreements reached with BellSouth.

BellSouth's proposal for pricing the various unbundled elements is also consistent with the Act, with Florida Statutes, and with previous decisions by this Commission. BellSouth has submitted LRIC/TSLRIC cost studies which show that these rates are cost based, and include a reasonable profit. By contrast, the other parties propose adoption of the results of what is

called the Hatfield Model. It is BellSouth's position in that the Hatfield Model is demonstrably flawed and cannot relied upon.

The third and final issue deals with the resale discount. BellSouth has proposed discount rates based on the Federal Act, not the FCC rules, which is proper and correct. BellSouth matches the costs which will be avoided with the proper revenues, so that resale occurs in a manner which makes BellSouth indifferent as to whether it sells the service to its end users or to a reseller.

BellSouth's positions on the individual issues in this case are reasonable, nondiscriminatory and will lead to local competition in the State of Florida. Moreover, BellSouth's recommendations will allow BellSouth the opportunity to compete in the new marketplace and continue to provide quality telecommunications services at affordable rates to consumers in Florida. Overall, BellSouth's recommendations are in the public interest, comport with the provisions of Sections 251 and 252 of the Act, and form the basis for a full interconnection agreement between BellSouth and MCI and AT&T.

III. POSITIONS ON THE INDIVIDUAL ISSUES

Issue 1(a): Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for BellSouth to provide AT&T or MCI with these elements?

Network Interface Device (AT&T, MCI)

Unbundled Loops (AT&T, MCI, ACSI)
Loop Distribution (AT&T, MCI)
Loop Concentrator/Multiplexer (AT&T)
Loop Feeder (AT&T)
Local Switching (AT&T, MCI)
Operator Systems (DA service/911 service) (AT&T, MCI)
Multiplexing/Digital Cross-Connect/Channelization (AT&T, MCI, ACSI)
Dedicated Transport (AT&T, MCI)
Common Transport (AT&T, MCI)
Tandem Switching (AT&T, MCI)
AIN Capabilities (AT&T, MCI)
Signaling Link Transport (AT&T, MCI)
Signal Transfer Points (AT&T, MCI)
Service Control Points/Database (AT&T, MCI)

**Position: BellSouth will provide the above listed items with exceptions due only to technical feasibility.

Section D of the FCC Rules discusses unbundling of network elements. It specifies that where technically feasible, access to unbundled network elements must be provided at just, reasonable and nondiscriminatory terms. Paragraph 51.319 provides a list of specific network elements that are to be offered on an unbundled basis. Those items are: 1) local loop (without sub-loop unbundling); 2) network interface device; 3) switching capability; 4) interoffice transmission facilities; 5) signaling networks (access to service control points through the unbundled STS) and call-related databases; 6) operation support systems functions; and 7) operator services and directory assistance. BellSouth's assessment is that these seven elements must be provided on an unbundled basis. (Tr. p. 1476). Not included in this list are the sub-loop elements, i.e., loop

distribution, loop concentrator/multiplexers, and loop feeder, and the service control points requested by AT&T and MCI. (Tr. pp. 1476-1477).

Paragraph 51.317 establishes the standards for state Commissions to use in identifying what additional network elements must be made available. It does not appear that AT&T's and MCI's request for unbundled elements which are not specifically included in Paragraph 51.319 meet the criteria specified in Paragraph 51.317 and should, therefore, not be required by this Commission (Tr. p. 1477). Each of MCI's and AT&T's requests which are not covered by the FCC rules are discussed below.

A. Network Interface Device ("NID")

The NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The one function of the NID is to establish the official network demarcation point between a company and its end-user customer. The NID, however, also provides a protective ground connection. (Tr. p. 2620).

In its Order, the FCC concluded that it is technically feasible to unbundle the NID, however, the FCC does not require that the Alternative Local Exchange Company (ALEC) be allowed to terminate its loop directly to BellSouth's NID, requiring a second NID. (Tr. p. 2698). While BellSouth does not agree that

the NID-to-NID connection described in the FCC's Order constitutes a form of unbundling, BellSouth does believe that such a NID-to-NID connection is an appropriate arrangement for an ALEC to connect its loop to the inside wire, providing, of course, that the ALEC, in connection to the inside wire, does not disrupt or disable the BellSouth loop and NID. (Tr. p. 2699). Evidently the NID to NID arrangement is acceptable to MCI, but not AT&T.

BellSouth believes that any other resolution would be inappropriate for a number of reasons. The National Electrical Code requires that loop distribution plant be grounded and bonded via the NID. (Tr. p. 2621). If BellSouth's loop is disconnected from the NID, it must be re-grounded in some other fashion. While some companies may have technicians capable of performing this work, this Commission cannot assure that all can. In order to avoid the creation of unsafe situations which would pose a threat to person and property, the Commission should deny AT&T's request. Second, the NID provides a standard test access point for the BellSouth loop, which would not be available if the BellSouth loop is disconnected. (Tr. p. 2621). Therefore, except for the NID to NID connection, which BellSouth has agreed to provide, the FCC order does not require further unbundling, and doing so would be improper.

B. Unbundled Loops

BellSouth will provide the various types of loops requested by the parties in these dockets. AT&T and MCI requested several types of loops, such as 2-wire and 4-wire analog loops, as well as ISDN. BellSouth has determined that each of these loops can be made available, where facilities exist and will offer them to AT&T and MCI. There should be no disagreement on the type of loops that will be made available. The disputed issue is price.

C. Loop Distribution and Loop Concentrator/Multiplexer

MCI's request for sub-loop unbundling, i.e. the provision of distribution media, is a unique request. Other parties, including AT&T, have not requested such sub-loop capabilities. The FCC Order did not include this as a network element to be unbundled. (Id.). Further, BellSouth cannot unbundle these portions of the local loop for several reasons. First, the operations and support systems cannot handle the administration of loop without feeder facilities. (Tr. p. 2628). Second, without a viable support system, assignment information cannot be effectively maintained, i.e. manual records would be needed. Third, additional facilities would need to be built to provide access to the distribution facilities. (Id.). This could include replacement of existing cross connect boxes which is extremely time consuming and costly. (Tr. p. 2629). Fourth, ordering, provisioning, maintenance, administration and billing

systems would all be adversely affected. Fifth, establishment of a permanent point of interface could constrain BellSouth from using new technology such as "Fiber in The Loop" (FITL) when a replacement for copper is planned. There is no feasible way to make the FITL technology available for hand off to an ALEC on an individual loop basis. (Id.).

D. Loop Feeder

The Loop Feeder is the network element that provides connectivity between (1) a Feeder Distribution Interface (FDI) associated with Loop Distribution and a termination point appropriate for the media in a central office, or (2) a Loop Concentrator/Multiplexer provided in a remote terminal and a termination point appropriate for the media in a central office. (Tr. p. 2639). Loop feeder facilities are technically feasible and can be purchased from existing tariffed offerings. (Id.).

E. Local Switching/Operator Systems

Local Switching is the network element that provides the functionality required to connect the appropriate originating lines or trunks wired to the Main Distributing Frame (MDF) or to the Digital Cross Connect (DSX) panel to a desired terminating line or trunk. (Tr. p. 2643). The functionality is often referred to as the unbundled network element "switch port". The functionality includes all of the features, functions, and capabilities that the switch is capable of providing for the

given class of service, including features inherent to the switch and switch software. It provides access to capabilities, such as calling features. It also provides access to transport, signaling, Public Safety Systems (911), BellSouth operator services, directory services, repair service and Advanced Intelligent Network (AIN) services. BellSouth will clearly provide local switching as an unbundled network element. (Tr. p. 2644). For a discussion of a related subject, selective routing, see BellSouth's discussion with regard to Issue 9.

BellSouth will offer both operator call completion services and directory services as separate stand-alone capabilities. AT&T or MCI may use BellSouth's operator services and directory services, and have calls routed from the AT&T/MCI switch to the BellSouth operator position. Conversely, AT&T and MCI have both requested the capability of having calls from their end users routed to their own operator service platform. For a discussion of this feature, selective routing, see BellSouth's discussion with regard to Issue 9.

F. Dedicated and Common Transport

Dedicated Transport is an interoffice transmission path between two designated points. Dedicated Transport is used exclusively by a single company for the transmission of its traffic. (Tr. p. 2665). BellSouth will provide to ALECs, via its access tariffs, the same access services (including dedicated

transport) that it now offers its access customers. (Id.). With respect to dedicated and common transport used for selective routing, see BellSouth's discussion in Issue 9. Common Transport is an interoffice transmission path between two designated points. Common Transport is used to carry the traffic of more than a single company for the transmission of their aggregate traffic. It will be provided to ALECs via BellSouth's restructured access tariffs.

G. AIN Capabilities (Signaling Link Transport Signaling Transfer) Points and Service Control Points and Databases

The FCC Order stated that the exchange of signaling information may occur through an STP-to-STP interconnection. (Tr. p. 2717). Further, the FCC concluded that incumbent LECs must provide access to their signaling links and STPs on an unbundled basis. (Id.). In addition, the FCC concluded that the incumbent LEC's AIN facilities must be adequately protected against intentional or unintentional misuse. (Tr. p. 2718). BellSouth agrees with these findings by the FCC. (Tr. pp. 2717-2718).

Issue 1(b): What should be the price of each of the items considered to be network elements, capabilities, or functions?

**Position: Rates for the majority of the items listed in Issue 1(a) are contained in Mr. Scheye's testimony. Rates for the NID-to-NID connection, certain AIN capabilities, and the 2-wire ADSL and 2-and 4-wire HDSL loops must be developed.

A. The Correct Prices are Those Advocated by BellSouth

The price of unbundled network elements according to the Act must be based on cost and may include a reasonable profit. Tariffed prices for existing, unbundled tariffed services meet this requirement and are the appropriate prices for these unbundled elements. (Tr. p. 1777). Tariff prices have already been set and approved by the Commission. These prices meet the pricing standards in the Act and no adjustment is needed. Pricing at rates other than those that currently exist will create opportunities for tariff shopping and arbitrage. (Tr. p. 1778). For new or additional unbundled elements, BellSouth proposes a price which covers costs, provides contribution to recover of shared and common costs, includes a reasonable profit and is not discriminatory. (Tr. p. 1779).

The FCC Order mandated, and most of the other parties embraced, the use of Total Element Long Run Incremental Cost ("TELRIC") studies to determine the rates of unbundled elements. (Id.). Moreover, the FCC Order required geographic deaveraging. (Tr. p. 1778). BellSouth disagreed with both of these positions.

As noted earlier, the Eighth Circuit Order stayed the pricing portion of the FCC's Order. In the Court's discussion of the FCC's TELRIC costing methodology, it referred with approval to the petitioning parties arguments that the TELRIC method is improper because it does not consider embedded costs and it

requires the use of a hypothetical "most technologically efficient" network. The Court also indicated that the same infirmities existed with respect to the FCC's proxy rates. The Court thus found that the ILECs would be irreparably harmed if these portions of the rules were not stayed. Therefore, not only does this Order free the Commission from the FCC's mandate that it use the FCC's TELRIC costing methodology and the FCC's proxy rates, the Order also provides guidance to the Commission as to how to review BellSouth's costs and set rates in a manner that will pass judicial muster. TELRIC as a basis for pricing in the state arena, has all of the same infirmities found to exist by the Eighth Circuit Court of Appeals.

The Eighth Circuit Court of Appeals and BellSouth are clearly correct with regard to pricing. In setting the prices for unbundled network elements, the Commission must take into consideration all of the ILEC's actual costs, including its embedded costs. In so doing, the Commission must consider the actual network deployed by the ILEC, not some hypothetical version. The rates proposed by BellSouth meet these standards and reflect the only sound evidence in the record on pricing.

In addition to the pricing issues, the Commission has been asked to geographically deaverage the prices BellSouth changes for its unbundled network elements. This was previously based on the FCC's pricing rules, which requires, in part, geographic

deaveraging. That portion of the FCC rules has been stayed. Consequently, the Commission should not require geographical deaveraging at this time. To order such deaveraging would give BellSouth's competitors an unfair advantage based on historical value of service and universal service pricing principles, rather than on any legitimate basis. This Commission has priced local service so that subscribers in urban areas pay more for that service than do subscribers in rural areas. This pricing is based on "value of service" (the urban subscribers can call more persons in their local calling area, so they should pay more) as well as on the desirability of subsidizing the higher cost rural service in order to promote universal service. While these principles were well suited earlier in this century, they do not work in a competitive environment. If BellSouth were required to geographically deaverage the rates for its unbundled elements, it would have to offer those elements to its competitors at the lowest rates in those very areas, i.e., urban areas, where BellSouth's end user rates are the highest. This would create an unfair advantage to the ALECs, who would then be able to offer lower prices not because they are more efficient than BellSouth, but because of historical pricing policies.

To avoid this result, BellSouth urges the Commission not to geographically deaverage the rates for unbundled elements until such time as BellSouth is able to rebalance its end user rates.

Once this occurs and all competitors can compete on the same relative basis, BellSouth would have no objection to geographic deaveraging of rates for unbundled elements.

B. The Other Parties' Positions on Pricing Should Be Rejected

It is clear that BellSouth's proposed rates found in Mr. Scheye's testimony are the proper rates. Nevertheless, and notwithstanding the Eighth Circuit's Stay of the FCC's pricing rules, other parties have recommended other prices, principally ones set at cost. This is an improper result and should not be adopted by this Commission.

Specifically, AT&T's witnesses Kaserman, Gillan, and Ellison all supported setting prices equal to cost. (Tr. p. 1; p. 6; pp. 485--486). Each basically asserted that prices should be set at TELRIC, as ordered by the FCC in the now stated portions of its August 8, 1996, order.

The FCC was wrong and so are these witnesses. Under the TELRIC methodology, incumbent LECs' prices for unbundled network elements would recover only the forward-looking costs directly attributable to the specified element, as well as a supposedly reasonable allocation of forward-looking common costs. (Tr. p. 14, p. 2095). In other words, a reasonable contribution must be made toward BellSouth's residual shared and common costs (sometimes called "joint and common costs"). (Tr. p. 2096). However, even if done perfectly, such costs are determined based

on a hypothetical network which doesn't now and never will exist. The prices these witnesses advocate are generated by the Hatfield Model which is demonstrably wrong. Therefore, neither the theory these witnesses advocate, nor the model they support to generate the figures they recommend, are correct. Indeed, no one can seriously argue that the Hatfield Model is believable. A brief review of the testing surrounding the model will demonstrate this point.

The Hatfield Model is a computer model which takes inputs, runs them through a series of algorithms, and produces outputs which supposedly represent the cost of various network elements. (Tr. p. 1083). These are errors in the inputs and errors in the way the model itself works. Basically, the Hatfield model systematically understates the cost of an idealized network that exists only in the imagination of its inventors and advocates.

For instance, the Hatfield Model assumes that in the future, the telephone company will only pay 1/3 of the costs of poles, conduit and trenching. (Tr. p. 1117). However, as the Staff pointed out, the chief proponent of the Hatfield Model had no basis in fact for this conclusion. (Tr. pp. 1119-1120). The significance of this is that although BellSouth may pay $45 a foot for trenching, the Hatfield Model only credits the Company with paying $15. (Tr. p. 1119). Clearly the inputs for the Hatfield Model make no sense.

The operation of the model itself is equally flawed. As was pointed out during Mr. Wood's cross-examination, the calculation of the distribution facilities in the model is based on census block groups. (Tr. p. 1099). As Mr. Wood conceded, the model turns each census block group, no matter what its shape, into a square. (Tr. p. 1100). Specifically, Mr. Wood agreed that the hypothetical census block group illustrated in Exhibit 32, having 25 square miles of area, was treated by the model as if it were a square, 5 miles on a side. (Exhibit 33). The Hatfield Model would therefore allow four distribution cables, each 3.125 miles long. The difficulty, of course, is found in Exhibit 35, which indicated that the hypothetical CBG illustrated in Exhibit 32, was 2.3 miles wide and 10.9 miles long. Since the distribution cables, irrespective of the number (which will vary by density) are all 3.125 miles long, no matter where the serving area interface was located, a radius of only 3.125 miles, or a total distance of 6.25 miles, is all the distance the distribution cable can cover. (Tr. pp. 1106-1107). Since the CBG was 10.9 miles long obviously there is not enough distribution cable. Mr. Wood, valiantly trying to defend the model, suggested BellSouth had drawn the hypothetical CBG to reach this result saying that for outliers it will be less accurate. (Tr. p. 1109). In fact, however, it is wrong in many instances.

One of the easiest ways to see this is to consider another example. Suppose there are four CBGs, of any shape, which adjoin each other and which each have an area of one square mile. The Hatfield Model converts each of them into a square, one mile on a side. Since they are adjoining, the four CBGs form a part of a larger square, two miles on a side. (Each CBG forms one quadrant of the larger square). Exhibit 33, if it were four square miles instead of 25 square miles would illustrate this configuration.

Using the Hatfield Model, and assuming a density of 200 lines per square mile, each CBG would get four distribution cables, each .625 miles long. The length of the cable is determined by multiplying one side of the now-square CBG, by .625. (Tr. p. 1103). Consequently each CBG would get 2.5 miles of distribution cable or 10 miles total for all CBGs.

Now assume that the Census Bureau decides to combine the four CBG's into a single CBG, having a total area of four square miles. Under this assumption, the density of the CBG's doesn't change, the location of the population doesn't change, but surprisingly, the distribution cable allowed by the Hatfield Model does. Specifically, there is now a single CBG, two miles on a side. It is identical in terms of area and population to the four separate CBGs identified earlier. There are still four distribution cables allowed by the Hatfield Model, but now each one is 1.25 miles long. (Two miles times .625). therefore since

there are four cables each 1.25 miles long, the model allows a total of five miles of distribution cable.

Now the problem should be clear. In each example, the area and population was held constant. By the simple device of combining four CBGs having one square mile of area into a single CBG having four square miles, the model cut the distribution cable from ten miles of cable to five miles.

The model simply doesn't work and any prices based on the model have to be rejected.

C. Prices for Specific Unbundled Elements Should Be Established As Follows

BellSouth previously stated that the proper prices for unbundled network elements were found in Mr. Scheye's testimony. In this section of the brief, those prices are detailed.

(1) Loops

The Commission established the recurring rate for the Z-wire voice grade analog loop at $17.00 in Docket No. 950984-TP. Therefore, BellSouth has proposed and offered this $17.00 rate to MCI and AT&T. This rate covers the incremental cost of providing the 2-wire voice grade analog loop, as well as some contribution to shared and common costs. This rate is below the special access rate that has been negotiated and agreed to by such local competitors as Intermedia Communications, Inc., and Teleport Communications Group. (Tr. p. 1820).

BellSouth proposes using the existing tariffed recurring special access rates for the unbundled 4-wire voice grade analog loop. BellSouth filed cost studies for these unbundled loops on May 28, 1996 and filed updated cost studies on August 12, 1996. The proposed rates cover the cost of the loops and provide a minimal amount of contribution to shared and common costs. (Id.) BellSouth does not currently offer a service comparable to the requested unbundled 2-wire ISDN loop. BellSouth provided a cost study for the 2-wire ISDN loop at the same time it provided studies for the 2-wire and 4-wire analog loops. The proposed rate covers the cost of this service and provides some contribution to shared and common costs. (Tr. p. 1821).

These prices cover direct costs as required by Florida Statute 364.051(6)(c). The statute requires that services offered to consumers cover their direct costs. To the extent that such rates must cover costs for services offered to consumers, the same standard should be applied to unbundled network elements which will eventually be sold to consumers. Further, Florida Statute 364.161(1) states that local exchange companies are not required to offer unbundled services, network features, functions or capabilities or unbundled loops at prices that are below cost. (Id.).

(2) Local Switching

FCC Rule 51.319 provides that the local switching unbundled element includes all of the vertical features that the switch in question is capable of providing. Although this section of the Rules has not been stayed by the Eighth Circuit's Order, the manner in which the FCC has sought to price the switching unbundled element has been stayed. BellSouth therefore requests that the Commission reject the FCC's proposal that the local switching element, including all vertical features, be priced at TELRIC. Instead, this Commission should recognize that vertical features are themselves retail services and thus should be priced at the resale pricing standard of retail price less avoided costs. To do otherwise would ignore the Act's requirement that resold services be priced in this matter.

BellSouth has proposed in its price list, various rates for local switching which is comprised of the port plus a usage charge. The Commission approved a rate of $2.00 for the two wire port in Docket No. 950984-TP and that rate is being proposed in this proceeding for this element. The Commission did not approve a usage rate in the MFS docket. BellSouth asked for reconsideration of this issue stating that usage rate was needed to reflect the usage sensitive costs of the port. In its Order No. PSC-96-1024-FOF-TP, the Commission stated that the party (MFS) had requested the unbundled port, but not local switching

and therefore, no usage rate was necessary at this time. BellSouth proposes that local switching includes the port as well as usage and proposes flat rates on a monthly basis for the various ports plus a per minute of use rate to reflect local switching. (Tr. p. 1703). The usage rate is based on the approved tariff rate for the Shared Tenant Service which the Commission has already approved as an appropriate rate for interconnection. (Tr. pp. 1703-1704).

Unbundled switching has been considered a highly competitive service and is currently readily available from alternate suppliers, i.e., MFS and other alternate access vendors. Because of this availability, the Commission in Docket No. 950984-TP ruled that prices for ports provided by GTE and United/Centel should be set at market prices (Order No. PSC-96-0811-FOF-TP), pages 25 & 31). BellSouth provided costs of the various ports on May 28, 1996 and August 12, 1996. The proposed rates for ports and usage cover cost, provide contribution, and are reasonable and nondiscriminatory. (Tr. p. 1704).

(3) Loop Transport

This Commission in Docket No. 950984-TP found it unnecessary for BellSouth to create a new pricing element for loop transport because these facilities are currently available in the tariff. Additionally, the Commission noted that ALECs currently have the option to lease the facilities from BellSouth or to provide

facilities themselves (Order No. PSC-96-0444-FOF-TP). Consistent with that ruling, BellSouth proposes existing tariffed rates for loop transport facilities in this proceeding. (Tr. p. 1705).

(4) Operator Services

In Docket No. 950985-TP, the Commission found that tariffed rates for operator-handled traffic (Busy Line Verification and Busy Line Verification and Interrupt) between BellSouth and interexchange carriers appeared to be reasonable for use between BellSouth and other ALECs. The Company has proposed these tariff rates in its price proposal for these existing services and has proposed additional rates for new unbundled operator functions. (Tr. p. 1705).

(5) Collocation

BellSouth proposes the use of the BellSouth Telecommunications Negotiations Handbook for Collocation which describes the terms, condition and rates for physical collocation. Similar rates, terms and conditions have been negotiated with Teleport and ICI for physical collocation. The rates, terms and conditions for BellSouth's Virtual Expanded Interconnection Service are contained in Section 20 of BellSouth's Access Tariff. (Tr. p. 1706 and Exhibit 76).

(6) Loop Cross-Connect

Typically, an end user's line is connected to a BellSouth central office switch. In a competitive environment, however,

the loop cross-connect will be used to link the unbundled loop, once it enters the central office, with the new entrant's collocated space. BellSouth agrees that a loop cross-connect is a necessary element in order to properly hand-off an unbundled loop to a new entrant. Because this is a new unbundled element, cost studies and associated prices are not yet available. BellSouth intends to produce an appropriate cost study that reflects a share of joint and common costs. A reasonable profit should be added to the resulting cost in order to set an appropriate price. (Tr. pp. 1827-1828).

D. **Other Unbundled Elements**

There may be other unbundled elements parties may wish to request which are not currently priced out in the record. For such matters, the solution reached by ACSI and BellSouth may be the best way to get new entrants into business.

In that agreement ACSI and BellSouth agreed to prices which are subject to a true-up, once final prices for the element can be determined. This allows the competition to being some, while negotiations continue regarding price. BellSouth would have no objection to treating any request by any prospective new entrant in this manner.

This may be particularly appropriate given the flux the various incumbent providers and new entrants find themselves in with the pending appeal of the FCC's order and the subsequent

stay of major portions of that order. Any rate approved now may be subject to review under very different standards in the next six to eight months, which makes the ACSI approach reasonable while protecting all of the parties to the negotiated price.

Issue No. 2: Should AT&T and MCI be allowed to combine BellSouth's unbundled network elements in any manner they choose including recreating existing BellSouth services?

**Position: No. AT&T and MCI should be allowed to combine BellSouth provided elements with their own capabilities to create a unique service. They should not be allowed to rebundle these elements to recreate a retail service that is already available to AT&T/MCI via resale.

Section 251 of the Act clearly identifies two different ways in which interconnectors may utilize the networks of incumbent LECs. One, interconnectors may sell the services of an incumbent LEC after purchasing these services at wholesale rates (Section 252(d)(3). Two, interconnectors may purchase unbundled network elements, which are to be priced according to the standard set forth in Section 252(d)(1).

A common sense reading of the provisions of the Act certainly suggests that the two processes described above are for two different purposes: (1) an entire service may be purchased for resale; or (2) a network element may be purchased alone to

combine it with other elements provided by the ALEC to create its own (at least partially) facilities based service.

The ALEC, however, should not be allowed "to use only BellSouth's unbundled elements to create the same functionalities as BellSouth's existing service." (Tr. 1657). As BellSouth's witness, Mr. Scheye, stated "nowhere in the Act does it anticipate the recreation of an existing service by the simple reassembling of the LEC's unbundled elements. If that is what Congress had in mind, it would have eliminated the resale provision". (Tr. 1657-58). Further, "when the combination of unbundled elements produces the finished service, then the recombination of elements should be purchased as a resold service. To do otherwise is to condone tariff arbitrage without any justification". (Tr. 1658).

AT&T's witness, James A. Tamplin, Jr., nevertheless, advocates precisely this approach. After stating that there should be no restrictions on AT&T's ability to rebundle network elements, Mr. Tamplin gives some examples of why he believes that unlimited recombination should be allowed (Tr. 292-93). Some of these examples appear to contemplate the combination of BellSouth's unbundled elements with AT&T's facilities. At the same time, however, he also contends that "AT&T must have the ability to provide a former BellSouth customer with the same services that a customer received from BellSouth, if the customer

so chooses. The most efficient way to accomplish this may be for AT&T to combine the functionalities of several of BellSouth's unbundled network elements to provide such services". (Tr.292).

Mr. Tamplin, thus, contends that "efficiency" justifies AT&T in simply reselling a BellSouth service while acting as if it has utilized unbundled elements. The fact remains, however, that if AT&T wishes to "efficiently" resell a BellSouth service, then the proper way to do this is via resale, not through the "fiction" of unbundling the elements, then rebundling them.

In his rebuttal testimony, Mr. Scheye detailed five separate and independent reasons why allowing unbundling and rebundling would unfairly benefit AT&T, and clearly contravene the intention of the Act. This would give AT&T: (1) the ability to resell BellSouth's retail services, but avoid the Act's pricing standard for resale (assuming the wholesale discount for resale is not established high enough for AT&T's liking); (2) the ability for AT&T (and MCI and Sprint) to avoid the joint marketing restriction specified in the Act, as well as any use and user restrictions contained in BellSouth's tariffs; (3) the ability to argue for the retention of access charges by AT&T even though the actual service arrangement is "disguised resale"; (4) assuming a wholesale discount acceptable to AT&T, the ability to maximize its market position by targeting the most profitable form of resale to particular customers; and, (5) the ability to

foreclose, to a large extent, facilities-based competition and competitors. (Tr. 1698-99). Moreover, AT&T would be able to do all of this without investing "the first dollar in new facilities or new capabilities". (Tr. 1699).

Further, in the testimony of Messrs. Tamplin and Gillan, one can easily see the extent to which AT&T is willing to push the unbundling/rebundling theory into the realm of pure fantasy. Mr. Tamplin states in his testimony that unbundling and rebundling of a "loop/switching combination will allow the change without requiring any physical change in the existing BellSouth network infrastructure." In other words, AT&T would offer a service of BellSouth to its customer, and the service would be priced as if the elements were unbundled, while at the same time, neither unbundling and rebundling would actually occur.

In Mr. Gillan's testimony he took this approach even further. He first defined unbundling as follows:

> Unbundling refers to the offering of discrete elements of the incumbent's network as generic functionalities, not as finished services. These network elements are 'unbundled', both from each other and from the retail services of the incumbent LEC. (Tr. 76).

Mr. Gillan then goes on, in the context of his "platform" concept, to advocate a manner of purchasing network elements that flies in the face of his own definition of unbundled elements. He states the following:

> The platform configuration is the combined purchase of unbundled switching and an unbundled loop (frequently in combination with transport and signaling) to form a

basic exchange platform to offer local exchange and exchange access services. (Tr. 87).

Thus, Mr. Gillan (again, in violation of his own definition) advocates that AT&T should, by purchasing a "platform", be able to pay the price of unbundled elements when there is no unbundling. This would be achieved by doing nothing more then calling the purchased service a "platform".

Upon cross examination, Mr. Gillan's explanations of what the Act allowed AT&T to do became even less plausible. Mr. Gillan first conceded that through his analysis, AT&T could contact BellSouth to inform it that a BellSouth customer was switching to AT&T for local exchange service, and purchase, on a wholesale basis a residential line that BellSouth had previously provided to that customer. (Tr. 158). AT&T could then contact BellSouth the following day and state that it had decided to serve this same customer with an unbundled/rebundled version of the same 1FR line. In this instance, there would be no physical change whatsoever. Instead, BellSouth would simply charge AT&T the price for all of the elements that make up the service rather than the wholesale rate for the service, and, in Mr. Gillan's view, BellSouth would not be able to charge AT&T for access. (Tr. 158-159).

Thus, Mr. Gillan apparently believes that the Act specifically contemplated, and approved, the type of tariff arbitrage that BellSouth believes this Commission must not allow.

In other words, to Mr. Gillan, "unbundling" is not really an actual process of, to use his words, offering the discrete elements as functionalities. Instead, it is simply a word that is used in order to obtain a different price for a resold service.

The potentially staggering effect of applying Mr. Gillan's theory was illustrated by Mr. Varner and Mr. Scheye. Specifically, Mr. Varner testified that if AT&T is allowed to unbundle and rebundle elements to offer local business service that this would result in an effective discount of 75%. (Tr. 1541). Further, if MCI's pricing methodology were utilized, the discount would be even greater, i.e. 77%. (Tr. 1541). Thus, AT&T would have this Commission believe, not only that the Act intended for the same service to be sold at two different prices, but that the effective resale discount should rise precipitously when the interconnector says the magic words "unbundled elements".

Mr. Scheye stated that a 10% market loss where unbundling was used in place of resale would cause a loss of $100 million. In the resale environment, the ALEC receives a discount of the basis service price. BellSouth continues to receive access revenues from the resold line. If an ALEC creates that same line using an unbundled loop and an unbundled port, the line provides the same service. The ALEC, however, has paid a different price,

the vertical features would effectively be free, and BellSouth would receive the unbundled price, not access revenues. The resulting loss is not due to resold competition; it is due to the pricing policies put in place for unbundled elements. (Tr. pp. 1976-1977).

Finally, Mr. Gillan admitted on cross examination something which no AT&T witness stated in prefiled testimony, that AT&T believes that purchasing a service under the guise of "unbundling and rebundling", would allow it to avoid the joint marketing restriction of Section 271 of the Act. This restriction states that "a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market ... [resold] telephone exchange service"..."with intraLATA services offered by that telecommunications carrier" ... until 36 months have passed after the enactment of the Telecommunications Act, or the respective Bell operating company "is authorized to provide intraLATA services." (Section 271(e)(1)). Obviously, this restriction would apply to prevent both AT&T and MCI from jointly marketing local exchange service that they purchase from BellSouth on a resold basis with their interLATA services.

Again, Mr. Gillan believes that if a service is bought under the unbundled/rebundled fiction, then the joint marketing provision can be avoided. Thus, he would have this Commission

believe that Congress intended for the Federal Act to allow AT&T not only to buy a single service at two wildly different, discounted prices (on the basis of the choice of words used to order the service), but also that if the service is purchased by way of the "unbundled/rebundled" fiction, then AT&T would be able to engage in joint marketing that would otherwise be prohibited. This interpretation of the Act, and of what AT&T may do pursuant to the Act, is as bizarre as it is self serving. It should be summarily rejected by this Commission, and this Commission should, instead, order that unbundled elements may not be rebundled in a way that duplicates an available BellSouth service. Another logical alternative would be to treat this scenario as what it is, a resold service and price it as such.

Issue No. 3: What services provided by BellSouth, if any, should be excluded from resale?

**Position: Certain options or service offerings which are not retail services or have other special characteristics should be excluded from resale.

Mr. Scheye testified in support of BellSouth's proposal to exclude obsoleted/grandfathered services, contract service arrangements, promotions, LinkUp and Lifeline services, and N11 services (including 911 and E911) from resale. (Tr. pp. 1614-1619; 1688-1697; pp. 1727-1735). The justification for excluding each service is as follows:

Obsoleted/Grandfathered Services are no longer available for sale to, or transfer between, end users, nor should they be transferable between providers. The Company has made available new services to replace the existing services. (Tr. p. 1689). Mr. Scheye clarified that, in accordance with the FCC Order, this exclusion would only apply to previously grandfathered services, not services that would be grandfathered in the future. (Tr. p. 1876).

Contract Service Arrangements ("CSAs") are designed to respond to specific competitive threats on a customer-by-customer basis and contain rates established specifically for each competitive situation. As Mr. Scheye noted, it is completely illogical for BellSouth to develop a customer-specific proposal containing non-tariffed rates, only to have AT&T walk in, purchase the proposal from BellSouth at a discount and offer the same proposal to the customer at a slightly lower price than BellSouth had developed. (Tr. p. 1689).

Promotions are not retail services. In most instances, they are simply limited time waivers of

nonrecurring charges. It would be completely illogical for BellSouth to run promotions to attract customers, only to be required to give AT&T/MCI the same limited time waiver for nonrecurring charges, in addition to the already discounted wholesale monthly recurring rate, so that they can attract customers. In effect, BellSouth would be subsidizing its competitors marketing programs. If an ALEC wishes to conduct promotions, its stockholders should have to bear the consequences just as BellSouth's will. Competitive advantage should be earned in the marketplace, not given through an inappropriate resale requirement or discount. (Tr. p. 1690).

LinkUp and Lifeline are subsidy programs designed to assist low income residential customers by providing a monthly credit on recurring charges and a discount on nonrecurring charges for basic telephone service. If AT&T or any other competitor wishes to provide similar programs through resale, they should be required to purchase BellSouth's standard basic residence service, resell it at an appropriate rate, and apply for and receive certification from the appropriate agency to

receive whatever funds may be available to assist in funding its subsidy program. (Tr. pp. 1690-91).

N11 services, including 911 and E911, are not retail services provided to end users. BellSouth provides N11 services to other companies or government entities who in turn provide the actual service to end user customers. Thus, BellSouth should not be required to offer these services for resale. (Tr. p. 1691).

Under the Act, the above described services are either not retail services or bear special characteristics that should exclude them from resale. BellSouth asks the Commission to allow it to exclude from resale these specific services for the reasons stated above.

Issue No. 4: What are the appropriate wholesale rates for BellSouth to charge when AT&T or MCI purchases BellSouth's retail services for resale?

**Position: The Act requires that rates for resold services shall be based on retail rates minus the costs that will be avoided due to resale. BellSouth proposes a 19.0% discount for residential services and 12.2% discount for business services based on avoided cost studies conducted pursuant to the Act.

Through clear and express language in Section 252(d)(3) of the Act, Congress set forth an avoided cost standard for

determining the wholesale discount to be applied when an ALEC purchases BellSouth's retail services for resale. Section 252(d)(3) states:

> [A] State commission shall determine wholesale rates on the basis of retail rates charged to subscribers...., excluding the portion attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

In spite of this clear and unambiguous standard, the FCC incorrectly concluded that the wholesale discount should be calculated on the basis of "costs that reasonably can be avoided when an incumbent LEC provides a service for resale..." FCC Rules, § 51.609(b). The FCC also improperly concluded that "avoided costs are those that an incumbent LEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers." FCC Order at ¶ 911. Although BellSouth has consistently maintained that the FCC had turned the wholesale pricing standard on its head, BellSouth submitted, through the testimony of Mr. Walter Reid, both a wholesale discount calculated in compliance with the Act and one which followed the FCC's methodology. (Tr. pp. 2320-2423).

As this Commission is aware, on October 15, 1996, the Eighth Circuit Court of Appeals stayed the effectiveness of various sections of the FCC's rules, including the rules that contained the standards for calculating the wholesale discount. Now that the portions of the Order and Rules concerning the wholesale

discount have been stayed, the Commission can and should apply the "avoided cost" standard as contained in the Act. BellSouth was the only party to the arbitration that provided a wholesale discount calculation that followed the Act. Thus, BellSouth submits that its wholesale price discounts of 19.0% for residential services and 12.2% for business services should be adopted. Mr. Reid's wholesale price discount methodology is summarized below.

The resale discount is based on the relationship between avoided costs and revenues and is calculated by dividing the costs that will be avoided by the amount of revenue subject to being discounted. Because characteristics and levels of revenues and costs vary between residential and business customers, BellSouth proposed two separate discounts, one for residential services and one for business services. Mr. Reid also explained that "[i]nherent in the Companies' methodology and application of the wholesale discounts is the assumption that residence or business customers that choose to go with the reseller will be average revenue customers for that class of service." (Tr. p. 2333). To the extent that resellers target higher than average revenue customers (i.e. high revenue customers) within the residence and business categories, which is a very likely scenario, then BellSouth's calculated wholesale discounts will

generate an even greater monetary discount for those resellers than the costs that will be avoided by BellSouth.[2] (Tr. p 2333).

To determine the costs that will be avoided, BellSouth analyzed the specific work functions that are currently being performed to provide retail services to the Company's customers. BellSouth determined avoided costs by examining all major USOA Part 32 expense categories[3] to determine which categories will be impacted by resale. BellSouth analyzed each of its work functions for the categories of expense that would be impacted by a wholesale situation and identified, using 1995 Florida operating data, the level of expense for each work function that will be avoided with resale. (Tr. p. 2335) The costs that will be avoided are the direct, volume-sensitive costs included in the expense categories for customer services and billing (account 6623), sale (account 6612), advertising through bill inserts (account 6623), and uncollectibles (account 5301). These volume-sensitive costs are associated with the provision of regulated residential or business retail services. (Tr. pp. 2335-2336). Further, the avoided costs are associated with work functions that directly relate to interaction between BellSouth and the

[2] In other words, if this scenario occurs, then the discount proposed by BellSouth will be overstated to the benefit of resellers utilizing this marketing approach. This is a drawback BellSouth accepts in order to facilitate resale.

[3] FCC Rules and Regulations Part 32, Uniform System of Accounts.

customer, an interaction which will normally not occur under resale. For example, it is assumed that BellSouth will not mail a bill to customers of local service resellers and, therefore, the costs of postage, paper, printing, labor, etc., associated with the customer billing work functions are identified as avoided costs for that customer. (Tr. pp. 2335-2336). Using this methodology, BellSouth calculated a wholesale discount rate of 12.2% for residential services and 9.4% for business services. (Tr. p. 2332).

BellSouth's study is the only calculation that has been filed in this proceeding that relies on the Act's "avoided" cost standard and that calculates a wholesale discount based on the undisputed fact that BellSouth will continue to operate in a wholesale and retail environment. BellSouth will continue to offer retail products and services to end users, while making these same products and services available to resellers at a wholesale discount. All the other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that BellSouth will operate, in a hypothetical world, only as a wholesale provider of services. Since it is undisputed that BellSouth will provide both retail and wholesale services, the studies based on that methodology should be disregarded. Further, Mr. Reid's testimony pin-pointed several flaws in the wholesale discount studies

performed by AT&T and MCI. (Tr. pp. 2339-2348; 2359-2377; 2405-2415).

BellSouth's wholesale discount rate, which was completed in accordance with the standard set forth in the Act, will provide a balanced approach to stimulate resale competition and encourage the development of facilities based competition. BellSouth requests that the Commission adopt BellSouth's calculation of a 19.0% discount for residential services and 12.2% discount for business services.

Issue No. 5: What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth's services?

**POSITION: Any use or user restrictions in the relevant tariff of the service being resold should apply. Use and user restrictions are integral components of the retail service that is being resold and do not impose unreasonable or discriminatory conditions on the resale of these services.

Mr. Scheye articulated BellSouth's position on this issue. (Tr. pp. 1619-1622; 1688; 1695-97; pp. 1734-37; 1841-1842). The Act specifically permits the Commission to apply reasonable and non-discriminatory use and user restrictions on the resale of BellSouth's retail services. Section 251(c)(4)(B) of the Act states that the LEC is "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the

resale of such telecommunications service, except that a State commission may, consistent with the regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

The most predominant use and user restriction in place today is for basic residence and business service such that residence service cannot be purchased at the lower residence rate and used for business purposes. If cross-class selling restrictions were eliminated, an ALEC could undermine the rate structure and rate levels for business services by purchasing basic residence service and reselling it as basic business service. A significant level of support for universal service is provided by business service. Most, if not all, of that support would flow to AT&T/MCI and other ALEC shareholders. (Tr. pp. 1735-1737).

AT&T witness Sather affirmed during the summation of his testimony that AT&T does not advocate an elimination of the cross-selling restriction: "[W]e agree that services that are purchased wholesale, residential services should not be available for--resold to business customers." (Tr. p. 600). MCI witness Price acknowledged that "resale of flat rate residential service could be limited to residential customers." (Tr. p. 781).

However, as Mr. Scheye testified, the FCC Order (Paragraph 962) explicitly provides that the Act permits states to prohibit resellers from reselling residential services to customers ineligible to subscribe to such services from the incumbent LEC. (Tr. pp. 1801-1802). Thus, the Act does not limit this cross class of service restriction to only flat rate services. Allowing MCI to purchase a residential measured/message line with a wholesale discount so it could resell it to its preferred business customers would have a deleterious effect on the pricing practices established by this Commission to achieve social objectives. (Tr. pp. 1801-1802).

BellSouth asks the Commission to allow it to apply any use or user restriction or term or condition found in the relevant tariff of the service being resold when it resells that service to wholesale customers.

Issue No. 6: Should BellSouth be required to provide notice to its wholesale customers of changes to BellSouth's services? If so, in what manner and in what time frame?

**Position: BellSouth will provide such notice in the same manner and time frame that BellSouth provides these services to others, including end users.

AT&T and MCI want BellSouth to provide notice 45 days in advance of the introduction of new services and changes in prices. (Tr. pp. 1633; pp. 1914-1915). In this rapidly

fluctuating competitive environment, it would be impractical to provide advance notice to the extent AT&T and MCI have requested. Additionally, as Mr. Scheye testified, such notice in advance might subject BellSouth to complaints or other obligations should plans for new service introductions or price changes not occur as originally noticed. (Tr. pp. 1915-1916). BellSouth plans to notify all resellers of these changes at the same time BellSouth files public notice of the changes. Further, based on BellSouth's understanding, the type of parity that AT&T is requesting of BellSouth is not provided by AT&T to resellers of its services. (Tr. pp. 1633-1634).

BellSouth asks the Commission to rule that BellSouth be allowed to provide notice of changes to its services to wholesale customers in the same manner and timeframe that BellSouth provides notice to its retail customers.

Issue No. 7: What are the appropriate metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to AT&T or MCI by BellSouth?

**Position: BellSouth will provide the same quality for services provided to AT&T and MCI that BellSouth provides to its own customers for comparable services.

Similarly, BellSouth will provide the same quality of service, installation and repair intervals and maintenance

procedures for retail services resold to AT&T, MCI and other local carriers that it provides to its own end users. The Commission currently has service quality rules in place with monitoring and complaint procedures. These procedures are the appropriate means to address most service quality concerns. (Tr. p. 1666).

BellSouth's approach has been to reach agreement with ALECs on the basic elements of interconnection with a commitment to develop mutually agreeable measurements. The following is BellSouth's proposal to AT&T and MCI:

> The parties agree that within 180 days of the approval of this Agreement, they will develop mutually agreeable specific quality measurements concerning ordering, installation and repair items included in this agreement, including but not limited to interconnection facilities, 911/E911 access, provision of requested unbundled elements and access to databases. The parties will also develop mutually agreeable incentives for maintaining compliance with the quality measurements. If the parties cannot reach agreement on the requirements of this section, either party may seek mediation or relief from the Commission.

(Tr. pp. 1666-1667).

BellSouth believes this is a reasonable approach that allows ALECs to enter the local market immediately as well as permitting all the parties to gain some experience as they determine what measurements are appropriate. The goal of any measurements should be to assure that the ALEC is receiving from BellSouth a level of service comparable to the service BellSouth provides to itself or its end users. BellSouth should not implement ALEC-

specific measurements but should assist in developing a set of measurements applicable to the ALEC industry. (Tr. p. 1667).

BellSouth submits that the issue of financial penalties and other liquidated damages are not subject to arbitration under Section 251 of the Act. To the extent that AT&T attempts to include penalties in its request for arbitration of service standards, the Commission should dismiss that portion of the issue. (Tr. pp. 1667-1668). Florida law and Commission procedures are adequate to handle a breach of contract situation should it arise. (Tr. p. 1668).

BellSouth asks the Commission to find that its proposal as recited above balances the needs of all the parties and represents a fair and reasonable resolution of this issue.

Issue 8(a): When AT&T or MCI resells BellSouth's services, is it technically feasible or otherwise appropriate for BellSouth to brand operator services and directory services calls that are initiated from those resold services?

**Position: BellSouth cannot offer such branding because BellSouth will not be able to distinguish calls of AT&T or MCI resold customers from calls of other resellers or its own end users. To the extent the parties seek selective routing, such is not technically feasible for all ALECs.

Paragraph 877 of the FCC Order states, "section 251(c)(4) does not impose on incumbent LECs the obligation to disaggregate

a retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale." Paragraph 51.613(c) of the Rules then states, inconsistently, that the failure by an incumbent LEC to comply with reseller unbranding or rebranding requests is a restriction on resale. The paragraph does go on, however, to state than an incumbent LEC may impose such a restriction if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests. (Tr. p. 1464).

MCI and AT&T request that BellSouth brand with MCI's or AT&T's name when an AT&T or MCI customer uses BellSouth resold service and dials a BellSouth operator, directory assistance or repair center. Beyond the technical problems, BellSouth's retail local exchange service includes access to BellSouth's operator, repair and directory assistance services through these specific dialing arrangement, e.g., 0, 411, and 611. Resale of this service by the very meaning of resale includes these same functionalities. BellSouth cannot offer branding for AT&T or other resellers when providing resold local exchange service because BellSouth will not be able to distinguish calls from the lines AT&T or MCI is reselling from customers of other local resellers, or from BellSouth. Some describe this as "discrete

signaling," however, it is essentially selective routing. (Tr. p. 2663). However, AT&T and MCI could easily provide access and branding for its own operator or repair service to create the discrete recognition of the AT&T and MCI brands by providing its customers with another designated number to call. (Tr. p. 1624 and p. 2664). This will be discussed in more detail in response to Issue 9.

Issue 8(b): When BellSouth's employees or agents interact with AT&T's or MCI's customers with respect to a service provided by BellSouth on behalf of AT&T or MCI, what type of branding requirements are technically feasible or otherwise appropriate?

**Position: BellSouth service technicians will advise customers that they are providing service on behalf of the specific ALEC. They will provide generic access cards with the appropriate provider's name.

AT&T and MCI propose that when BellSouth personnel communicate with AT&T and MCI customers on behalf of AT&T and MCI, BellSouth should 1) advise customers they are representing AT&T or MCI; 2) provide customer information materials supplied by AT&T or MCI; and, 3) refrain from marketing BellSouth directly or indirectly to customers. (Tr. p. 1629). BellSouth has agreed to the first and third of these requests.

With regard to "customer information materials," BellSouth's service technicians should not be required to assist AT&T and MCI

in their marketing effort by distributing promotional materials to these customers. Further, AT&T's and MCI's request is not required by the Act. The most common type of "customer information material" employed by BellSouth's service technicians is known as a "No Access" Card. This pre-printed card is used to advise a customer who is not at home when the service technician arrives that the customer must make additional arrangements for a return visit. BellSouth has developed a generic, professionally printed no-access card that will be used on behalf of all ALECs. (Tr. p. 1630).

Attempting to use ALEC-specific cards has many difficulties. For example, each technician's vehicle would have to be stocked with cards for a multiplicity of ALECs. In addition, the technician is required to write in certain customer-specific information on each card. Without uniform cards, the technicians would be required to recall the different preferences of each and every ALEC, increasing both training difficulties as well as the potential for error. Finally, with multiple cards there would be a much greater potential that the technician could select the wrong provider's card. A generic card used on behalf of all ALECs alleviates all these concerns. (Id.) In addition, a generic procedure eliminates the possibility of competitive "one upmanship," i.e., each carrier wanting its "leave behind"

information to be bigger and better than the next one. (Tr. pp. 1630-1631).

Issue 9: When AT&T or MCI resells BellSouth's local exchange service or purchases unbundled local switching, is it technically feasible or otherwise appropriate to route 0+ and 0- calls to an operator other than BellSouth's, to route 411 and 555-1212 directory assistance calls to an operator other than BellSouth's, or to route 611 repair calls to a repair center other than BellSouth's?

**Position: No. Selective routing to multiple provider platforms using the same dialed digits is not technically feasible for all ALECs. BellSouth can route calls to an ALEC's requested service if the ALEC provides the appropriate unique dialing arrangements.

AT&T and MCI have requested that the local switching capability and operator systems be made available as unbundled network elements and as separate elements of total service resale. What these parties define as "local switching" and "operator systems" are more appropriately referred to as "selective routing." (Tr. pp. 2645 and 2664). Essentially, the parties want BellSouth to provide selective routing arrangements that will enable an end-user (for which an ALEC acquires service from BellSouth at wholesale and resells at retail) to reach an ALEC operator platform just as a BellSouth customer can reach a

BellSouth operator service or repair service platform today (i.e., through dialing 0, 411 or 611). The parties have defined two other unbundled network elements (dedicated transport and common transport) as requiring the selective routing capability. BellSouth will offer all capabilities (operator and directory services, dedicated transport and common transport) on an unbundled basis, however, when an ALEC utilizes BellSouth's local switching it is not technically feasible to selectively route to non-BellSouth transport. Further, BellSouth believes it is not appropriate to provide such selective routing when requested as a modification to a resold local exchange service. (Tr. p. 2665).

First of all, the selective routing functionality does not exist. (Tr. p. 2646). The ability to selectively route calls to termination points specified by resellers (differing from BellSouth designated points) would be a new capability. BellSouth made inquiries of two switching equipment manufacturers (Lucent Technologies and Nortel) regarding the current capabilities of their flagship switching products. These companies responded that the capability is not available. (Exhibit 91).

Second, an insurmountable complication arises because the parties desire that their customers dial the same telephone numbers to reach their operator services or repair service (0-, 411 and 611) and have the telephone switching network somehow

determine whose customer is dialing the call. (Tr. p. 2647). BellSouth analyzed the technical feasibility of four alternatives (use of Line Class Codes ("LCC"), switching system translations, AIN capabilities, and switch-based capabilities) for the capability of providing selective routing of AT&T customers to AT&T operator service platforms. None of the four alternatives accommodates the selective routing that AT&T has requested and only two will be discussed. (Id.).

In order to route the same dialed digits to multiple destinations, the switch must be able to determine the desired routing. (Tr. p. 2648). Routing to a different reseller's location based on the same dialed digits would require BellSouth to duplicate every resold class of service in a given end office for every reseller. Correspondingly, these new classes of service would each require a unique LCC to be assigned. (Tr. p. 2648).

There are, however, a finite number of LCC codes available. (Id.). This is acknowledged by both AT&T and MCI. (Tr. p. 255 and p. 952). Once this finite number is reached, no further ALECs can be accommodated. (Tr. p. 2653 and p. 1595). This is also acknowledged by both MCI and AT&T. (Tr. pp. 258-259 and p. 963). Thus, the selective routing of 0-, 411, and 611 calls can be accomplished only with significant, severe limitations on the total number of ALECs that could be accommodated, the service

variations these ALECs could offer and the ability of BellSouth to provide new services. Solutions for selective routing of 411 and 611 service code calls is not viable since the routing of these calls is relatively fixed by the software design of the system. (Tr. p. 1595).

BellSouth does not currently have an AIN capability that will provide the selective routing that AT&T has requested. Further study is required to determine if a new AIN capability could provide such a functionality in the BellSouth switches that are AIN equipped (that is, 5ESS and DMS-100 offices that are equipped for AIN Release 0.1). BellSouth asserts that the use of existing AIN capabilities to effect the selective routing that AT&T and MCI have requested is not technically feasible at this time. (Tr. p. 2658).

It should be noted that BellSouth is seeking a solution to the problem of selective routing through the Industry Carriers Compatibility Forum. (Tr. p. 2728). BellSouth urges this Commission to deny the request of MCI and AT&T and allow work to proceed on an industry wide level.

Issue No. 10: Do the provisions of Sections 251 and 252 apply to access to unused transmission media (e.g., dark fiber, copper coaxial, twisted pair)? If so, what are the appropriate rates, terms, and conditions?

**Position: No. Unused transmission media is neither an unbundled network element nor a retail telecommunications service to be resold. Therefore, Sections 251 and 252 do not apply to unused transmission media.

Although this issue addresses the unbundling and sale of all unused transmission media (e.g. dark fiber, coaxial cable, twisted pair), neither AT&T nor MCI appear to have any interest in purchasing unused material other than dark fiber (which is also known as dry fiber) (Tr. 1480). However, dark fiber, like all other types of unused media is, by definition, unused, i.e., it is not a functioning part of the network. Given this, the argument of MCI & AT&T that it is a network element and should be subject to unbundling is nonsensical. This point was made succinctly by Mr. Varner, who testified on behalf of BellSouth (in response to AT&T) as follows:

> Dry fiber is neither an unbundled network element, nor is it a retail telecommunications service to be resold. If it is not a network element and it is not a retail service, there is no other standard under the Act for its provision.
> To be a retail service it must be currently available as a tariffed (or comparable) service offering. Dry fiber is not. To be an unbundled network element, it must contain some functionalities inherent in BellSouth's network. Dry fiber is no more a network element than the four walls surrounding a switch are an unbundled element.'

(Tr. 1480)

The fact remains that there is a substantial difference between being a network element and being unused transmission

media that could be made a part of the network.[4] Dark fiber is, by definition, fiber that is not currently being used as part of the network. Neither AT&T nor MCI should be able to force BellSouth to sell this unused material as if it were a functioning network element.

Issue No. 11: Is it appropriate for BellSouth to provide copies of engineering records that include customer specific information with regard to BellSouth poles, ducts, and conduits? How much capacity is appropriate, if any, for BellSouth to reserve with regard to its poles, ducts, and conduits?

**Position: No. BellSouth has agreed to provide structure occupancy information to ALECs and will allow designated ALEC personnel to examine engineering records pertaining to such requests. It is reasonable for BellSouth to reserve five years of capacity in a given facility in advance.

Mr. Keith Milner provided BellSouth's position on these issues. (Tr. pp. 2682-2685; 2718-2721). With respect to reservation of capacity, BellSouth contends that it is entitled to reserve in advance five-year's worth of capacity for itself. (Id.). AT&T and MCI have asked that BellSouth reduce its allocation to one-year's requirement. This is inappropriate and unreasonable for the following reasons. First, BellSouth's

[4] It is noteworthy that dark fiber was not even a part of AT&T's original request for the unbundling of network elements. Instead, AT&T categorized it as an ancillary function. (Tr. 331-32).

planning and construction program is forecast for five (5) years for budgeting, growth forecasting and construction program planning. In negotiations, AT&T admitted that it uses the same five-year standard with annual updates. Foregoing BellSouth's five-year planning cycle will have adverse budget and growth impacts. (Tr. p. 2683).

Second, AT&T and MCI have requested access to any available structure space, including BellSouth's maintenance spares not used within twelve months. A spare cell is reserved for emergency restoration situations and testing new cable, among other reasons. Extensive delays in service restoration will be experienced if the maintenance spare is forfeited. (Tr. pp. 2683-2684). BellSouth has no way of guaranteeing the maintenance needs for its emergency cell for only twelve months after a competitor's request for occupancy. AT&T admitted during negotiations that it, too, retains a maintenance spare in its structures for its emergency needs and would not be willing to allow it to be used by other utilities.

Third, the Act does not require BellSouth to reserve space for ALECs in these facilities for future ALEC needs. (Tr. p. 2684). The FCC Order apparently concluded that an incumbent LEC may not reserve space in its conduit or on its poles for its own use different than it would allow an ALEC to reserve space. (Tr. p. 2719). If the FCC Order on this issue withstands appeal,

BellSouth will face the conundrum of either allocating conduit and pole space on a first come, first served basis or allowing parties to reserve capacity no matter the timeframe. (Tr. p. 2720). BellSouth cannot efficiently and effectively provide service under either scenario for the reasons stated by Mr. Milner.

With respect to the provisioning of engineering records, BellSouth has agreed to provide the parties with structure occupancy information regarding conduits, poles, and other right-of-way requested by them within a reasonable time frame. BellSouth will allow designated ALEC personnel, or agents acting on behalf of an ALEC, to examine engineering records or drawings pertaining to such requests that BellSouth determines would be reasonably necessary to complete the job. (Tr. p. 2685). In negotiations, AT&T has said it has been satisfied with BellSouth's coordination and cooperation on structure access situations. Additionally, in negotiations AT&T said that it would not be willing to give BellSouth copies of its plats in a reverse situation. Plats and detailed engineering records are considered proprietary information and the FCC Order accords BellSouth reasonable protection of its proprietary information contained in records provided to AT&T and MCI. (Tr. p. 2720).

BellSouth asks the Commission to find that BellSouth's positions on the issues of reservation of capacity and

provisioning of engineering records are reasonable and accommodate the needs of all the parties.

Issue No. 12: How should BellSouth treat a PIC change request received from an IXC other than AT&T or MCI for an AT&T or MCI local customer?

**Position: BellSouth plans to handle all PIC requests under the same guidelines and framework currently used to handle PIC requests for IXCs.

Both MCI and AT&T have taken the position that when an IXC other than AT&T or MCI contacts BellSouth to make a PIC change for one of their local exchange service customers, then BellSouth must refuse to process the PIC change. Not surprisingly, both AT&T and MCI believe that BellSouth, rather than processing the PIC change in the normal manner, should refer the PIC to them.

BellSouth's witness, Robert Scheye, after stating in some detail the normal procedure that BellSouth utilizes to process PIC changes, states in somewhat different language BellSouth's objection to giving AT&T (or for that matter, any carrier) special treatment. "[I]mplementation of AT&T's proposal would appear to hinder a customer's ability to choose their preferred interexchange carrier. Resale has always had the intended purpose of helping competition, not hindering it." (Tr. 1635). Moreover, "complying with AT&T's request would place BellSouth in

the position of refusing properly processed PIC change requests from its other IXC customers." (Tr. 1635).

Instead, BellSouth plans to process PIC changes for all customers of local resold services in precisely the same manner, regardless of whether their carrier is AT&T, MCI, or any of the number of other IXCs that are entitled to equal treatment.

Issue 13: Should BellSouth be required to provide real-time and interactive access via electronic interfaces as requested by AT&T and MCI to perform the following:

Pre-Service Ordering
Service Trouble Reporting
Service Order Processing and Provisioning
Customer Usage Data Transfer
Local Account Maintenance

If the process requires the development of additional capabilities, in what time frame should they be deployed? What are the *costs* involved and how should these costs be recovered?

**Position: BellSouth has made available, or has under development, appropriate interfaces for each function. Ordering interfaces should be consistent with industry standards. Interfaces or enhancements not already developed will be available by April, 1997, if not sooner. BellSouth should recover the costs of these interfaces, however, costs are not finalized.

Paragraph 51.313(c) of the Rules states that as a just, reasonable and nondiscriminatory term and condition for the

provision of unbundled network elements, "[a]n incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems."

The FCC also concluded in its Order that providing nondiscriminatory access to operations support systems functions is technically feasible and that all incumbent LECs that currently do not comply with this requirement must do so as expeditiously as possible, but in any event no later than January 1, 1997. (Tr. p. 1462). BellSouth believes that the FCC's requirement to provide electronic access to all operational support functionality by January 1, 1997 is unrealistic. BellSouth has provided a realistic, firm schedule based on the actual work to be done. (Tr. p. 1463).

Gloria Calhoun, Manager of BellSouth's Strategic Management Unit, testified that BellSouth has developed operational interfaces, processes and procedures for both resellers and facilities-based competitors. (Tr. p. 2483). These operational systems are in compliance with the requirement of the FCC Order that electronic access be provided to all operational support functionality. (Tr. p. 2564). BellSouth's emphasis has been on the development of industry standards, which is consistent with the FCC Order. (Id.). Moreover, BellSouth and AT&T have agreed

on the specific interfaces required for resale. (Tr. p. 2591). These interfaces, however, also cover the functions necessary for interconnection and unbundled network elements. (Id.). MCI has requested substantially the same thing as AT&T. (Tr. p. 2596). BellSouth will address this issue by specific function and will identify the differences between AT&T and MCI where appropriate.

A. PRE-SERVICE ORDERING

Pre-ordering information allows a reseller to determine the availability of features and services, assign a telephone number, advise the customer of a due date, and validate a street address for service order purposes. (Tr. p. 2514). Four capabilities are available at the current time: (1) real time access via an electronic interface to information that identifies the serving central office for a particular street address, and that validated the address for service order purposes. (Tr. p. 2516); (2) access through a data transmission line to a data file containing service and feature availability for each serving central office. (Tr. pp. 2516-2517); (3) access through a computer diskette file to a pool of telephone numbers reserved for the ALEC in each central office requested by the ALEC. (Tr. p. 2517); and, (4) access to installation intervals through interval guidelines developed by BellSouth. (Id.).

BellSouth began Phase two's developmental effort in May of 1996. Phase two will provide the following: (1) real-time access

to the information that identifies the serving central office for a particular street address, validates the address for service order purposes, and provides the availability of facilities at a particular location; (2) real-time access for information on service and feature availability; (3) real-time access to telephone number reservation information; and, (4) real-time access to the information BellSouth uses to calculate due dates. (Tr. p. 2518).

Implementation of Phase two is scheduled for completion by April 1, 1997. (Tr. p. 2519). The cost of this project is estimated to be $5 million to $6 million. (Tr. p. 2520).

MCI and AT&T have requested that pre-ordering information include current customer service records (CSRs). (Tr. p. 179 and p. 1027). BellSouth does not agree that pre-ordering information includes existing customer service records. This is due to privacy concerns and state law. (Tr. pp. 2533-2534). MCI and AT&T do not need this information in order to compete effectively. (Tr. p. 2535). If the customer specifically authorizes the release of his/her records to MCI or AT&T, then BellSouth will provide such data. (Tr. p. 2536). Otherwise, BellSouth will provide a customer's records only after the customer has actually switched to the ALEC. (Id.).

B. SERVICE TROUBLE REPORTING

BellSouth has offered ALECs the same electronic interface for trouble reporting that is now available to IXCs for access services. (Tr. p. 2521). This interface allows the ALEC to enter a trouble report, obtain the same appointment interval that would be given to a BellSouth end user customer, subsequently add information to the report itself, check for trouble completion, cancel the trouble report if necessary and perform other trouble administration functions. (Tr. pp. 2521-2522). In response to troubles reported via the gateway, BellSouth will test and initiate repair to the service. (Tr. p. 2522). This electronic interface can be used for monitoring troubles with unbundled loops and interconnection trunking. (Tr. p. 2580). This interface is based on national standards. In addition, BellSouth has under development an enhancement that will provide ALECs with access to the same interactive testing capabilities BellSouth uses to screen trouble reports. (Id.). This enhancement is scheduled for completion in March of 1997. Current estimates are that this interface will cost BellSouth approximately $3.5 million. (Tr. p. 2523).

C. SERVICE ORDER PROCESSING AND PROVISIONING

(1) Ordering for Unbundled Network Elements and Interconnection

Facilities-based ALECs will order interconnection trunking and most unbundled elements through the Interexchange Carrier

Service Center (ICSC). (Tr. p. 2484). This center will accept orders 24 hours per day, 7 days per week, but will process these orders during normal hours of operation. (Tr. p. 2574). BellSouth has produced a handbook for use by facilities-based ALECs to explain the ordering process for these services. (Exhibit 88). These orders are received and processed through the same mechanized ordering system used today by IXCs to submit Access Service Requests (ASRs) for access services. Using this process facilitates the request of most ALECs for firm order confirmations and design layout records. (Id.). This system, called EXACT (Exchange Access Control and Tracking), was put into place in 1984 to provide mechanized order communications between BellSouth and IXCs, and operates in accordance with national industry standards. (Tr. p. 2571). Those standards were developed by the telecommunications industry's standard-setting body, the Ordering and Billing Forum (OBF). The OBF has endorsed the ASR method for processing local interconnection trunking orders. (Id.).

(2). Ordering for Resold Services and Certain Unbundled Elements

BellSouth created a new center, the Local Carrier Service Center (LCSC), as the point of contact for ordering and billing matters for all resellers operating in the BellSouth region. (Tr. p. 2487). This center will accept orders 24 hours per day, 7 days per week, but will process those orders during normal

hours of operation. (Tr. p. 2574). BellSouth also has created a handbook for use by resellers to describe the ordering process for resold services. (Exhibit 88). The LCSC also handles orders for certain unbundled elements not supported via the ASR process, such as listings for facilities-based ALECs, interim number portability, and unbundled ports. (Tr. p. 2487).

The Ordering and Provisioning Committee of OBF recommended standards for resale order communications. The recommended standard is based on an arrangement known as Electronic Data Interchange, or EDI. (Tr. p. 2503).

While EDI is not a real-time interface, it can be made to function on near real-time. This depends on the choice of transport method between the parties' computer systems, and the software applications in those systems. EDI has been adopted as the industry standard for resale ordering. EDI provides an electronic order communications process for resale. (Tr. p. 2508).

The cost of establishing the initial EDI links for single line residence, single line business, PBX and vertical service orders initially was estimated to be in the rage of $300,000 to $500,000. These costs will increase as additional capacity is added and additional testing is undertaken to support other ALECs. In addition, these amounts do not include ongoing support costs. BellSouth also has agreed to expand the scope of the EDI

implementation to include complex order types. The costs of this additional work have not yet been finalized. Finally, as detailed OBF standards are adopted throughout 1997 and 1998, BellSouth anticipates that some network and associated expenditure may be required to ensure its interface complies with the final standards. (Tr. p. 2512).

(3) Provisioning

BellSouth has developed procedures to convert existing loops wherever possible to an unbundled loop without complete reprovisioning. (Tr. p. 2575). The ALEC will notify BellSouth to issue a disconnect order to free the loop, and a new connect order for the unbundled loop. BellSouth will need to schedule a BellSouth technician to do the physical disconnection and cross connection of the loop to the ALEC's loop transport facilities, in addition to coordinating and scheduling such cross connection with MCI or other respective ALEC. (Tr. p. 2576).

For these reasons, BellSouth cannot guarantee that provisioning for conversions of unbundled loops will occur in precisely the same time interval as provided for a bundled service, because the provisioning of an unbundled loop requires additional procedures, as well as coordination with the ALEC, that are not applicable to bundled services. (Id.). It is, however, BellSouth's intent to establish intervals for unbundled

loops on a "Customer Desired Due Date" (CDDD) basis. (Tr. p. 2577).

Under the CDDD process, BellSouth will provide service on the requested due date or, if the requested date cannot be met, on the earliest available installation date thereafter. Every effort will be made to meet an end user's, or an ALEC's, requested due date if one is provided. The due date is impacted by work load, features and services requested and equipment availability. These items can only be determined when the order is processed. It is BellSouth's intention to give ALECs' orders for unbundled elements when converting existing service or provisioning new loops the same priority it gives its end user orders, and to establish similar intervals for similar services in similar circumstances. (Id.).

(4) Ordering Combinations

As shown herein, there are ordering interfaces more suitable for ordering resale and elements that are end-user oriented and there are ordering interfaces more suitable for ordering network to network elements. (Tr. pp. 2597-2598). AT&T indicated that it desired to use the EDI ordering interface for ordering all unbundled network elements, both individually and in various combinations. (Tr. p. 222). Interestingly enough, however, AT&T did not make this desire known to BellSouth until the week of the

hearing. (Tr. p. 236). That was when AT&T provided its requirements to BellSouth. (Id.).

Upon cross-examination, it appeared that AT&T was not seeking a different ordering interface for unbundled network elements than that proposed by BellSouth, but rather that the Commission order the parties to put together a plan to accomplish an extension of the EDI so that it can support unbundled elements. (Tr. pp. 239-240). BellSouth believes that no additional ordering interfaces are necessary. (Tr. p. 2591).

D. CUSTOMER USAGE DATA TRANSFER

BellSouth already has the capacity available to electronically provide customer usage detail to ALECs. This option provides detail for billable usage such as directory assistance or toll calls associated with a resold line or a ported telephone number. The usage option allows the ALEC to bill end users at their discretion, rather than on BellSouth's billing cycles. This option also allows an ALEC to establish toll limits, detect fraudulent calling, or analyze its customer usage patterns. (Tr. p. 2524). BellSouth's initial development cost for this interface was approximately $125,000. This does not include the cost of the AT&T modification, nor the ongoing costs for producing the usage files themselves. (Id.).

E. LOCAL ACCOUNT MAINTENANCE

AT&T's petition defines local account maintenance as the means by which BellSouth can update information regarding a particular customer, such as a change in the customer's features or services. However, changes to a customer's features or services normally will be initiated by AT&T, and thus will be handled via the normal service order flow through the processes described throughout this testimony. There will, however, be some exceptions with this request. However, these exceptions certainly do not warrant the cost and effort of establishing yet another interface. (Tr. p. 2525). The first exception occurs when an end user customer switches from one ALEC to another (i.e., from AT&T to another ALEC), and that end user's service involves, for example, a resold BellSouth service. AT&T has requested electronic notification of this change on a daily basis, which BellSouth has agreed to provide. (Id.). The second exception is that AT&T also has requested the capability, as the local exchange carrier, to initiate PIC (presubscribed interexchange carrier) changes on resold lines via a local service request. BellSouth has agreed to accept these orders, and is currently evaluating the data elements necessary to include them in the EDI ordering interface discussed previously. (Tr. p. 2526).

Issue 14(a): Should BellSouth be required to use the CMDS process for local and intraLATA calls in the same manner as used today for interLATA calls?

**Position: No. CMDS does not perform this type of function and no uniform system for rating of calls for LECs, independent companies and other providers exists for all nine BellSouth states.

BellSouth believes that this issue addresses AT&T's and MCI's request for a uniform regional system for the processing of intraLATA collect and third number type calls in addition to information services calls. The regional system AT&T and MCI envision would be uniform across states, call types and incumbent LECs. Although such a system may simplify matters for AT&T and MCI in processing these types of calls, such a uniform system for rating of calls for LECs, Independent Companies and other providers does not currently exist. (Tr. p. 1484).

BellSouth has no obligation to develop and implement a new system simply to meet the parties' desire for uniformity. There are no such obligations under the Act or under the FCC Order. (Tr. p. 1485 and p. 1786). Indeed, in AT&T's view of "parity," the same level of non-uniformity that exists for BellSouth should be acceptable to AT&T. (Tr. p. 1786). BellSouth will work with the parties on this request, however, BellSouth believes the

Commission should not require BellSouth to develop and implement such a system.

Issue 14(b): What are the appropriate rates, terms, and conditions, if any, for rating information services traffic between AT&T or MCI and BellSouth?

**POSITION: BellSouth recommends that the Commission forego a decision on this issue since it is not appropriate for an arbitration proceeding. In the alternative, BellSouth recommends that the Commission require MCI and AT&T to negotiate their own contracts with information services providers in order to offer billing service to their end user customers.

BellSouth does not believe that the issue of information services traffic as proposed by MCI and AT&T is subject to arbitration under Section 251 of the Act, and BellSouth requests that the Commission not arbitrate this issue. Moreover, the FCC Order, in all its detail on other issues, is silent on this issue. Although AT&T and MCI may attempt to portray this issue as a request for an unbundled network element as defined under the Act, the billing aspect of the definition of network element has no application with regard to information service providers. There is no cite showing that the Act requires BellSouth to fulfill this request. Consequently, BellSouth does not believe any rates, terms, or condition should be established. In the alternative, BellSouth recommends that the Commission require MCI

and AT&T to negotiate their own contracts with information service providers in order to offer billing service to its end user customers.

Even though the Commission did not directly address this issue in its March 29, 1996 Order in Docket No. 950985 regarding BellSouth, the Commission did address this issue in Order No. PSC-96-0841-FDC-TP Docket No. 950985 regarding requirements for United/Centel. In its decision on page 39 of that Order, the Commission stated "We agreed with United/Centel that the ISP should assume the responsibility for making suitable arrangements with the appropriate LEC or ALEC for the provisioning of service and the billing of charges for those calls to pay-per-call numbers that originate outside the LEC's or ALEC's territory." BellSouth agrees with the Commission and requests that the Commission require MCI and AT&T to negotiate directly with the information service providers for provision of such services to the end users of AT&T and MCI.

Issue 15: What billing system and what format should be used to render bills to AT&T or MCI for services and elements purchases from BellSouth?

**Position: BellSouth will employ those billing systems that can produce accurate and timely bills. To accomplish this, BellSouth will use both its Customer Record Information System and its Carrier Access Billing Systems.

BellSouth uses two billing systems in connection with its services: CABS, (Carrier Access Billing System) and CRIS, (Customer Records Information System.) AT&T has agreed to accept CRIS billing for resold services; MCI has not. MCI wants resale bills in CABS format. Neither the Act nor the FCC Order addresses this issue. (Tr. p. 2526).

To BellSouth's knowledge, there currently is no industry standard requiring such billing, nor is one imminent (Id.) Contrary to MCI's claims, the industry's Ordering and Billing Forum (OBF) did not agree on a mechanized CABS format for resale billing. OBF did agree on the minimum items of information that should appear on a resale bill, but the OBF did not specify a billing system, nor a billing format. The OBF documentation, specifically states that a CABS preference statement was not included. (Tr. p. 2592).

The billing for the retail services available for resale, as well as the unbundled port offering, currently is done via CRIS (Tr. p. 2526). The CRIS billing system contains the necessary infrastructure to provide the line level-detail resellers need while the CABS billing system, which is geared toward access services, does not. (Tr. pp. 2526-2527).
BellSouth has not agreed to CABS billing for resale for a very simple reason, (Tr. p. 2592). BellSouth's CABS system cannot bill for local exchange services, but the CRIS billing system is

designed to do exactly that. (Tr. pp. 2592-2593). This may be why AT&T found it could work with CRIS billing. (Tr. p. 2593). BellSouth requests that this Commission support CRIS billing and CRIS format for resold services for MCI.

Issue No. 16: Should BellSouth be required to provide Process and Data Quality Certification for carrier billing, data transfer, and account maintenance?

**Position: BellSouth will provide the same quality of services provided to AT&T and MCI that it provides to its own customers and to other carriers.

Mr. Scheye specifically testified that "BellSouth will provide the same quality of service, installation and repair intervals and maintenance procedures for retail services resold to AT&T and other local carriers that it provides to its own end users". (Tr. 1666). AT&T's witness, Ronald Shurter, contended that as a matter of parity, the services provided by BellSouth to AT&T should be of the same quality as those BellSouth provides to itself. (Tr. 187). In other words, BellSouth and AT&T essentially agree on the appropriate service standard. The difference appears to be how to measure quality, and what to do if quality standards are not met.

Mr. Scheye stated on behalf of BellSouth that, "the Commission currently has service quality rules in place with monitoring and complaint procedures. These procedures are the

appropriate means to address most service quality concerns." (Tr. 1666). Mr. Scheye went on to state that "BellSouth has always recognized that measurements of quality would be required for services it provides to other local exchange service providers just as measurements of quality are required for services it provides to its customers." The question is, "what quality measurements should be reported to AT&T". (Tr. 1666).

BellSouth has proposed to AT&T a process whereby parties would agree to develop, within 180 days of the approval of any interconnection agreement, specific quality measurements for "ordering, installation and repair items that are included in the agreement." (Tr. 1666). The specific language proposed by BellSouth also provided that "if the parties cannot reach an agreement on the requirements of this section, either party may seek mediation or relief from the Commission". (Tr. 1667). Thus, BellSouth has not only pledged to offer the same quality of service to AT&T as it offers to its own customers, it has also agreed to jointly develop monitoring processes and to submit disputes to this Commission.

AT&T has demanded that BellSouth be forced to pay liquidated damages if it does not meet, in any instance, the quality standards. Liquidated damages, however, are not contemplated by the Act, and are not properly the subject of arbitration. Moreover, a liquidated damages clause is only sustainable under

Florida law if it specifically reflects the parties intention to choose this form of damages. Lefemine v. Baron, 573 So. 2d 326 (Fla. 1991). Thus, even if liquidated damages were an appropriate subject for arbitration under the Act (which it is not), a liquidated damages clause cannot be forced upon a party, either through arbitration or otherwise. Instead, liquidated damages are only sustainable if the parties voluntarily agree to such a provision.

Moreover, Florida Courts have routinely held that a liquidated damages clause that sets an arbitrary amount of damages - rather than truly attempting to make a reasonable determination of damages in advance - is nothing more than an unenforceable attempt to impose a penalty for a breach of the contract. See, e.g. Crosby Forrest Products v. Byers, 623 So. 2d 565 (Fla. 5th DCA 1993). There is nothing in AT&T's testimony, or in the proposed agreement of AT&T, to support the notion that the liquidated damages proposed by AT&T function as a surrogate for actual damages. To the contrary, Mr. Shurter appeared to advocate in his testimony liquidated damages primarily as a way to penalize BellSouth for any perceived breach of the quality standards without having to complain to the Commission. (Tr. 1881).

Even if AT&T were requesting that liquidated damages be set in an appropriate matter, this function is not one that can be

performed by this Commission. The Courts of this State have unequivocally held that the Florida "Public Service Commission is not authorized to award money damages ...". Winter Springs v. Florida Power Corp., 402 So. 2d 1225, 1228; citing, Southern Bell v. Noble America Corp., Inc. Com 291 So. 2d 199 (Fla. 1974).

Therefore, AT&T's request for liquidated damages must be rejected. If AT&T is requesting that the Commission assess damages in the manner necessary for a legally sustainable liquidated damages clause, then it is requesting that the Commission exceed its legal authority. If AT&T is, as BellSouth believes, requesting the imposition of a penalty, then this penalty cannot be sustained under Florida Law, even when disguised as liquidated damages.

Issue No. 17: Should BellSouth be required to allow AT&T and MCI to have an appearance (e.g. logo or name) on the cover of the white and yellow page directories?

**Position: No. The issue of customized directory covers is not subject to arbitration under Section 251 of the Act. Moreover, the appropriate contracting party is BellSouth Advertising & Publishing Corporation ("BAPCO"), not BellSouth Telecommunications, Inc.[5]

[5] On September 11, BAPCO filed a Notice with the Commission followed by a supplemental authority filing on October 2 concerning this issue. Notwithstanding the Prehearing Officer's decision concerning BAPCO's role in this arbitration, BellSouth adopts the arguments raised by BAPCO therein.

The demand of AT&T and MCI to have an appearance, either in the form of a logo or name, on the cover of the white and yellow page directories is not a proper subject of this arbitration for two distinct reasons. First, this demand is not included in the requirements of Section 251, or otherwise in the Act. Second, the proper entity with whom AT&T and MCI should negotiate this request is BAPCO, not BellSouth.

Section 251 sets forth specifically a list of the obligations of incumbent local exchange carriers in sub-sections(b) and (c). None of these provisions relates to this issue. Section 251(b)(3) describes duties with respect to "dialing parity". That duty is to permit competing providers "to have nondiscriminatory access to ... directory listing ... ." 47 U.S.C. § 251(b)(3). In its Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96-98 (In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996) (rel. august 8, 1996) (FCC 96-333), the FCC determined that the meaning of this provision is that the competing provider will have from the local exchange carrier nondiscriminatory access to subscriber list information. See Second Report and Order, generally §§ 130-145, specifically ¶¶ 130, 133, 135 and 137. The FCC expressly declined to find that access to directory listing pursuant to Section 251(3) means

access to White Pages, "customer guides" and informational pages. See Second Report and Order, ¶¶ 132, 137.

Section 271 of the Act provides that for a Bell operating company to meet the requirements necessary to enter into the intraLATA market, it must offer access to "[w]hite pages directory listings for customers of the other carrier's telephone exchange service." (Section 271(c)(2)(B)(viii)). There is no mention of logos on the covers of the directories. Thus, both AT&T and MCI have requested this Commission to order through the process of arbitration an arrangement that is not contemplated by the Act.

Moreover, the publisher of the directories is BAPCO, not BellSouth. Thus, these parties are not only seeking an arrangement that is not contemplated by Section 251, they are seeking it from the wrong party. AT&T simply ignores this distinction. MCI would appear to acknowledge (at least in the statement of its position in the Prehearing Order) that BAPCO is the appropriate party. However, after negotiating and executing an agreement with BAPCO, MCI and AT&T both now ask the Commission to use BellSouth to force BAPCO to do as it wishes.

The Pre-Hearing Officer was disinclined to take this unauthorized approach. Specifically, the Prehearing Order states the following:

> BAPCO sought clarification of the procedural orders in Dockets Nos. 960833-TP and 960846-TP and confirmation that BAPCO is not to be bound by the Commission's

> rulings in these proceedings concerning directory publishing matters, i.e., Issue 17.
> As Prehearing Officer, I find that BAPCO's concerns are adequately addressed by the procedural orders in these dockets, which state that only the party requesting interconnection and the incumbent local exchange company shall be parties to the arbitration proceeding, and bound, therefore, by the agreement to result. See, Order No. PSC-96-0933-PCO-TP at 2.

(Prehearing Order, p. 62).

Therefore, it appears that the Prehearing Order, (and the ruling incorporated therein), all but lays to rest the request of AT&T and MCI that the Commission force this issue upon BAPCO. As stated previously, this is not a proper subject for arbitration with BellSouth. Even if it were, on the basis of the Prehearing Order, BAPCO is not bound by the Commission's decision. If AT&T or MCI seek an agreement with BAPCO, it must be pursued outside of this proceeding.

If this Commission granted the requests of AT&T and MCI, such action would violate the Fifth Amendment of the Constitution by taking BAPCO's property without just compensation.[6] The right to identify one's products through a trademark is a property right established and protected by law. See Hanover Star Millin

[6] The requirements of the Fifth Amendment's Takings Clause is made applicable to the States through the Fourteenth Amendment's Due Process Clause. See Chicago B. & Q. R. Co. v. Chicago, 166 U.S. 266, 41 L. Ed. 979, 17 S. Ct. 581 (1897). Commission Directory Cover Action may also violate BAPCO's rights under the First Amendment by interfering with BAPCO's right of free speech through its rightful use of BellSouth Corporation's logo. See, e.g., Pacific Gas & Electric Company v. Public Utilities Commission of California, 475 U.S. 1, 89 L.Ed.2d 1, 106 S.Ct. 903 (1986); Central Hudson Gas & Electric Corporation v. Public Service Commission of New York, 447 U.S. 557, 65 L.Ed.2d 341, 100 S.Ct. 2343 (1980); Speer v. Miller, 15 F.3d 1007 (11th Cir. 1994); Abramson v. Gonzalez, 949 F.2d 1567 (11th Cir. 1992). Indeed, even if Commission Directory Cover Action would be lawful, such a requirement would be completely impractical in light of the large number of local carriers expected to be authorized by this Commission.

Co. v. Metcalf, 240 US. 403 (1916). Moreover, such action would also violate § 43(a) of the Federal Trademark Act of 1946, as amended, which also prohibits "reverse passing off." Commission action would allow AT&T to misappropriate and profit from BAPCO's directory. See e.g., Waldman Publishing Corporation v. Landoll, Inc., 43 F.3d 775, 781 (2nd Cir. 1994) (the court addressed reverse passing off in the context of written works and found that the Lanham Act may be used to prevent the misappropriation of credit properly belonging to the original creator); Web Printing Controls Co. v. Oxy-Dry Corp., 906 F.2d 1202 (7th Cir. 1990) (Lanham Act violation shown where defendant misbranded plaintiff's product). In addition, such action would unjustly enrich AT&T, AT&T has chosen not to publish directories. Instead it has chosen to rely on directories published by BAPCO, at BAPCO's own expense, to fulfill its obligation to provide listing information to its customers.

ISSUE NO. 18: Should BellSouth be required to provide interim number portability solutions besides remote call forwarding? If so, what are the costs involved and how should they be recovered?

POSITION: In addition to remote call forwarding (RCF), BellSouth will also provide Direct Inward Dialing (DID) capability at rates that have been negotiated with other parties and filed with this Commission.

Issue No 19: Do the provisions of Section 251 and 252 apply to the price of exchange access? If so, what is the appropriate price for exchange access?

**Position: No. These provisions do not apply to require exchange access service to be priced as if it were simply an aggregation of unbundled elements.

AT&T appears to be arguing that access services must be priced at the same level as the unbundled elements that are utilized to provide these services. AT&T's somewhat tortured logic is as follows: Section 251(c)(2)(A) lists as one of the obligations of an incumbent local exchange carrier the duty to provide interconnection "for the transmission and routing of telephone service and exchange access". Section 252(d)(1) sets forth in general the pricing methodology to be utilized to determine the rate for unbundled network elements. Thus, AT&T wrongheadly concludes that if it purchases access service from BellSouth, it is entitled to pay no more than the aggregate cost of the elements used to provide this service, i.e., as if it were purchasing unbundled elements.

AT&T's position, although not clearly articulated, appears to be simply a variation on AT&T's "unbundling and rebundling" argument discussed previously in Issue 2. In other words, AT&T is again arguing that it should be able to buy a service at the price that would apply to the total of its unbundled elements.

This argument should be rejected for the reasons set forth previously in response to Issue 2.

ISSUE NO. 20: What are the appropriate trunking arrangements between AT&T or MCI and BellSouth for local interconnection?

**POSITION: BellSouth submits that each interconnecting party should have the right to determine the most efficient trunking arrangements for its network. AT&T and BellSouth have resolved this issue, and AT&T has withdrawn the issue from the proceeding.

Issue 21: What should be the compensation mechanism for the exchange of local traffic between AT&T and BellSouth?

**Position: Rates for local interconnection should be based on intrastate switched access charges, minus the Residual Interconnection Charge and the Carrier Common Line Charge.

The rate for the transport and termination of traffic should be set with recognition of the intrastate switched access rate. BellSouth has negotiated interconnection rates based on these charges exclusive of the residual interconnection charges (RIC) and carrier common line (CCL) charge with 105% cap applied on usage. (Tr. p. 1757). AT&T seeks to have this Commission impose bill-and-keep (mutual traffic exchange) or in the alternative, a rate based on TSLRIC. (Tr. pp. 1641-1642).

Bill-and-keep violates Section 364.162, Florida Statutes which requires a charge for local interconnection. Moreover, bill-and-keep also violates Section 364.162(4) which requires that the charge for local interconnection must cover the cost of local interconnection. In addition, bill-and-keep violates the Taking Clauses of the United States and Florida Constitutions. Finally, mandatory bill-and-keep is prohibited by the Act.

The Act provides that:

> [A] State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless - (i) such terms provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

47 U.S.C. §252(d)(2).

The Act goes on to explain that it is not intended to preclude the "mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)... ." 45 U.S.C. §252(d)(2)(B)(i).

The FCC Order interpreted this language to allow state commissions to impose bill-and-keep arrangements on the parties to an arbitration where the traffic was anticipated to be roughly in balance between two networks. FCC Rules, Section 51.713(b).

Moreover, the FCC's rules authorize state commissions to presume that the traffic exchanged between two networks is roughly balanced. FCC Rules, Section 51.713(c). These provisions are a part of the pricing rules stayed by the Eighth Circuit Order. This Commission should reject the FCC's erroneous construction of the Act and should set mutual and reciprocal rates for the transport and termination of local traffic based on all relevant costs.

In its Rules, the FCC also created a presumption that reciprocal compensation be symmetrical based on the costs of the larger of the two interconnecting companies unless the smaller of the two companies, or a carrier other than an incumbent LEC proves that its costs were higher. FCC Rules, Section 51.711. Obviously, it would be sheer coincidence if this rate actually reflected the cost incurred by the smaller company. Since this rule is a part of the pricing rules which have been stayed, this Commission is now free to, and should, determine each company's actual costs in setting rates for the exchange of local traffic in any arbitration which it is called upon to decide.

Along this same line, the FCC Rules create a presumption that all calls handed to a competing ALEC are switched through a tandem even if they are not and require that the ALEC be compensated accordingly. FCC Rules §51.711(a)(3). In other words, the FCC's view of symmetry means that an ALEC would be

entitled to receive the incumbent's transport and termination charge, including tandem switching, interoffice transport, and end office termination, even if the ALEC performed no tandem switching function. This Commission should ensure that ALECs recover only their actual costs if terminating calls, i.e., that they be permitted to recover for tandem switching or when traffic is actually routed through their tandem.

BellSouth believes the local interconnection rate should be based on the intrastate switched access rate to the extent possible. (Tr. p. 1759). The components of local interconnection and toll access are functionally equivalent, and therefore, the rate structure should be similar. Basing the local interconnection rate on the switched access rate will facilitate the transition of all interconnection types into a single interconnection rate. As technology changes, competition increases, and interconnection types (e.g., local, toll, independent, cellular/wireless) become more integrated; such a transition is imperative. (Tr. p. 1760).

BellSouth has reached agreements with other carriers that include a local interconnection rate based on the current switched access rate minus any non-traffic sensitive rate elements. In Florida, the resulting negotiated reciprocal compensation rate averages approximately $0.01 per minute. This rate meets the pricing standards of the Act. The terms and

conditions for reciprocal compensation are considered just and reasonable when:

> "(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and, (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." Section 252(d)(2)(A).

BellSouth's average local interconnection rate of $0.01 per minute meets that standard in that it allows for the recovery of BellSouth's costs and is reasonable. The reasonableness of BellSouth's rate is further demonstrated by the agreements that BellSouth has reached with other facilities-based carriers. Companies such as Time Warner, Intermedia Communications Inc., and others have found BellSouth's rates to be reasonable, allowing them a fair opportunity to compete for local exchange customers. If the rates these companies agreed to were not reasonable, they would not have signed an agreement, but would have filed for arbitration of the local interconnection rate. (Tr. p. 1761).

Issue No. 22: What are the appropriate general contractual terms and conditions that should govern the arbitration agreement (e.g. resolution of disputes, performance requirements, and treatment of confidential information)?

**Position: This issue is not subject to arbitration under Section 251 of the Act.

AT&T contends that this Commission should approve the general contractual terms and conditions incorporated in its proposed agreement for matters such as the resolution of disputes, performance requirements and the treatment of confidential information. AT&T readily admits, however, that these matters are not addressed specifically by the Act. Instead, AT&T attempts to base this request, like many others, on nothing more than the general concept of "parity". (Tr. 204). Nothing in the Act, however, suggests that one party can force upon another contractual terms regarding dispute resolution or confidentiality that would apply to govern an arbitration agreement. Certainly the parties are free to negotiate these items when they attempt to reach an agreement on the basis of the Order that the Commission will enter in this case. It makes no sense, however, to dictate now the terms of, for example, how to resolve disputes over an agreement that will only be negotiated after the Commission enters its Order on the substantive issues in this proceeding. The Commission should simply decline to rule on this request.

ISSUE NO. 23: What should be the cost recovery mechanism for remote call forwarding (RCF) used to provide interim local number portability in light of the FCC's recent order?

**POSITION: This issue should be decided in the generic proceeding already underway in Docket No. 950737.

Issue No. 24: What intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase BellSouth's unbundled local switching element? How long should any transitional period last?

**Position: This issue arises from the FCC's Order in Docket No. 96-98 and should not be addressed in an arbitration proceeding between two parties.

This issue is not subject to arbitration because it does not arise from Section 251 of the Act. The rationale for BellSouth's position was stated in the testimony of Mr. Scheye as follows:

> The Act explicitly addresses resale, unbundling and local transport and termination services and the associated pricing standards that the Commission should use for arbitration. If the intent of Congress was to change the pricing or structure for Switched Access, it would have explicitly identified these requirements in the Act. No such requirements are included in the Act.

(Tr. 1767).

As Mr. Scheye also observed, this entire issue arises from the FCC Order entered August 8, 1996, and was not in any way the subject of the negotiations between BellSouth and MCI that began months earlier. (Tr. 1767).

Nevertheless, MCI has requested that this Commission rule on the need for intrastate access charges that (under the provisions of the FCC Order) would apply only on a transitional basis to carriers who purchase unbundled local switching. Again, this issue does not arise from the Act and is not a proper subject for

arbitration. Moreover, even if it were appropriate to be dealt with in any proceeding, it cannot be dealt with in an arbitration because the need (or lack of need) of this charge should be determined by universal service requirements. The issue of whether universal service requires the assessment of the access charge can only be adequately dealt with in the context of a generic proceeding.

Finally, even if MCI's request were well taken to begin with, the FCC Order upon which MCI relies exclusively was stayed by the United States Court of Appeals for the Eighth Circuit. The stay specifically applies to this section of the FCC rules. Therefore, as set forth in BellSouth's Notice, if this Commission deals with the access issue, it should only do so to affirm the continued application of these charges.[7] The Commission should certainly decline to take any contrary action on the basis of an FCC Order that has now been stayed.

ISSUE NO. 25: What are the appropriate rates, terms, and conditions for collocation (both physical and virtual)?

**POSITION: The appropriate rates, terms, and conditions for physical collocation are contained in BellSouth's Handbook for Physical Collocation. The rates, terms, and conditions for

[7] "In light of the important role that the revenues generated by access charges have played and continue to play in the support of universal service, this Commission should now affirm that access charges continue to apply when an ALEC purchases unbundled switching and uses it for either intrastate or interstate toll traffic." (Notice, pps. 14-15).

virtual collocation are contained in BellSouth's Access Services tariffs.

Issue No. 26: What are the appropriate rates, terms, and conditions related to the implementation of dialing parity for local traffic?

**Position: This is not an appropriate issue for arbitration under Section 251 of the Act, but should be resolved in a generic proceeding.

As Mr. Scheye stated in his direct testimony; "Clearly, if the issues of cost recovery for dialing parity ... [are] ... to be resolved, this Commission will require input from parties other than BellSouth and MCI. As such, this issue should be dismissed for the purposes of this proceeding and raised, if necessary, in a proceeding open to all effected or interested parties." (Tr. 1793).

In his Rebuttal Testimony, Mr. Price agrees that cost recovery cannot be appropriately addressed in the context of this arbitration, and that the Commission should "reserve the right to scrutinize such costs and determine the appropriate means of recovering those costs at [a future] ... time." (Tr. 827). He contends, however, that issues unrelated to costs, such as dialing parity for operator services, directory assistance and repair calls, must be dealt with in this arbitration.

BellSouth submits that, to the contrary, it is not practical to address in the context of this arbitration proceeding general guidelines as to "parity", while declining to address the actual issue in this docket, i.e., "the appropriate price, terms and conditions" relating to the implementation of dialing parity. MCI would have this Commission defer the stated issue, which both parties agree should be dealt with generically, but utilize the rubric of dialing parity to make some general pronouncements that do not involve the rates for dialing parity. BellSouth, again, submits that the Commission should decline to do so. The better course of action is to deal (to the extent necessary) with dialing parity issues in a generic proceeding in which cost issues will also be addressed, and in which all interested parties may participate.

Issue No. 29: Should the agreement be approved pursuant to the Telecommunications Act of 1996?

**Position: The resolution of any negotiated issues should be approved under the standards of Section 252(e)(2)(A). The resolution of the arbitrated issues should be approved under the standards of Section 252(e)(2)(B).

Section 252(e)(1) states that "any interconnection agreement adopted by negotiation or arbitration shall be submitted for

approval to the State commission." Upon submission, the Commission shall either approve or reject the agreement, "with written findings as to any of the deficiencies." (Id.) Under Section 252(e)(2), the standard of review differs depending upon whether the agreement is negotiated or arbitrated.

Specifically, an agreement that is reached through negotiation can only be rejected if the Commission finds that (1) it discriminates against a telecommunications carrier that is not a party to the agreement (Section 252(e)(2)(A)(i)); or (2) the implementation of the agreement violates "the public interest, convenience, and necessity." (Section 252(e)(2)(A)(ii)). On the other hand, an agreement that is the product of an arbitration can be rejected if it (1) does not meet the requirements of Section 251 (including any prescribed regulations) or the pricing standards set forth in Section 252(d). Also, the respective standards of sub-sections A & B apply not only to complete agreements but also to "any portion thereof" adopted through, respectively, negotiation or arbitration. In other words, the differing standards apply to partial agreements as well.

Issue No. 30: What are the appropriate post-hearing procedures for submission and approval of the final arbitrated agreement?

**Position: Parties should submit agreements incorporating the Commission's decision within 60 days after the Order is

issued. The Act does not allow parties to submit individual agreements from which the Commission may choose if there is no agreement. Instead, a neutral independent third party should mediate any unresolved disputes.

Section 252 provides three methods by which interconnection agreements can be created: (1) voluntary negotiations (Section 252(a)(1));(2) mediation, which may be requested of a State commission at any point in a negotiation (Section 252(a)(2)); and (3) compulsory arbitration (Section 252(b)(1)). In the instant case, AT&T identified a number of unresolved issues and requested that the Commission arbitrate them. At the same time, AT&T elected not to include in this proceeding any of the "several hundred sub-issues that the parties have been negotiating under the Act", even though AT&T believes that some of these issues remain unresolved. (Order No. PSC-96-1107-PCO-TP, Order Regarding Motions and Denying Issue for Arbitration, issued August 29, 1996, p. 3). MCI also submitted certain issues for arbitration, and requested that others be dealt with by virtue of a process that is not contemplated under the Act, which MCI labeled "Mediation Plus". The Commission denied this request by MCI. Nevertheless, even though there are unresolved and unarbitrated issues with AT&T and MCI, BellSouth still hopes to reach an agreement with both after the conclusion of this proceeding. If so, then this agreement should be reviewed by the Commission as

described above in response to Issue 29. If the parties are not able to reach an agreement, however, the process would become considerably more complicated.

The first step is to determine whether the parties must negotiate a comprehensive agreement once this Commission has resolved the unresolved issues identified in this proceeding. The Order in and of itself will provide a basis for AT&T and MCI to enter the market. However, if a comprehensive agreement is necessary the Commission should determine how long the parties will have to attempt to negotiate a comprehensive agreement after the Order is issued.

In their prehearing statements, both AT&T and MCI proposed a 14 day negotiation period. BellSouth, however, believes that a 60 day period would be more appropriate.
One would hope that applying the Commission's Order would prove to be a relatively straight-forward matter, but, realistically speaking, there will likely be a need to address the fine points of many technical and operational issues, even if these issues are covered in a general sense by the Order. Moreover, given the existence of the "hundreds" of issues that AT&T believes exist and the numerous open issues between MCI and BellSouth, it is simply not reasonable to believe that all of these issues can be resolved in a timeframe of 14 days.

The remaining, and perhaps most difficult question, concerns what to do if no agreement is reached. BellSouth respectfully submits that the Prehearing Officer's suggestion that the Commission pick the agreement that it believes is closest to the Commission's Order is not supported by the authority granted to this Commission in Section 252. As set forth above, the options for arriving at an agreement are negotiate, mediate, and arbitrate. The Commission has the power to approve or reject an agreement that has been reached between two parties. There is nothing in Section 252, however, to suggest that the Commission can select a contract unilaterally submitted by one party when there is, in fact, no agreement. Accordingly, BellSouth submits that if the parties are unable to reach an agreement, then the best course of authorized action would be to attempt to mediate any remaining differences. Failing this, there would seem to be only two remaining courses of action available. To the extent the parties cannot agree on a particular issue that has been the subject of arbitration, then one would assume that one of the parties (or both) simply do not understand what the Commission has ordered. In this circumstance, a motion for clarification would be appropriate. Although the Commission cannot command the parties to enter into any given agreement, it can certainly clarify any perceived ambiguity in its Order so that the parties can understand clearly the type of agreement that comports with

the arbitration Order, that would be approved, and that, ultimately, the parties would be expected to reach.

A different situation exists, however, if the parties are unable to resolve some issue that has not been submitted for arbitration. Although, hopefully, this will not occur, one cannot ignore the possibility since both AT&T and MCI have elected not to arbitrate a substantial number of unresolved issues. These issues cannot be unilaterally submitted for approval under these circumstances. To approve a proposed agreement on issues that have not been resolved through one of the three methods set forth in the Act would constitute a blatant disregard for the provisions of the Act. Instead, the appropriate procedure, regrettably, would be to arbitrate any issue that could not be resolved and that had not been previously arbitrated.

In summary, if the parties are able to reach an agreement within the timeframe provided (which should be 60 days), then this Commission must review it for approval under the appropriate portion of Section 252(e) (i.e., apply the appropriate standard to both the arbitrated and non-arbitrated portions). If the parties cannot reach an agreement, then mediation would be the next best option. Failing a successful mediation, the parties should seek clarification on any issue that has been the subject of arbitration, but on which there is still no agreement. Any

items that cannot be agreed upon and which have not been arbitrated, must be submitted for arbitration.

IV. CONCLUSION

BellSouth requests that the Commission find that BellSouth has been reasonable in its negotiations and requests that the Commission adopt its positions on the issues in this proceeding.

Respectfully submitted this 22nd day of October, 1996.

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