FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

NOVEMBER 14, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (REITH, CHASE, GREER, NORTON, SHELFER, STAVANJA, WIDELL)
DIVISION OF LEGAL SERVICES (BROWN, CANZANO, BARONE, PELLEGRINI)

RE: DOCKET NO. 960833-TP - PETITION BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, 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. 960846-TP - PETITION BY MCI TELECOMMUNICATIONS CORPORATION AND MCI METRO ACCESS TRANSMISSION SERVICES, 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. 960916-TP - PETITION BY 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.

AGENDA: November 26, 1996 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960833TP.RCM

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LIST OF ACRONYMS USED IN RECOMMENDATION

ACSI	American Communications Services, Inc., American Communications Services of Jacksonville Inc.
ALEC	Alternative Local Exchange Carrier
AT&T	AT&T Communications of the Southern States, Inc.
BR	Brief of Evidence
BellSouth	BellSouth Telecommunications, Inc.
CCL	Carrier Common Line
EXH	Exhibit
IXC	Interexchange Carrier
LEC	Local Exchange Carrier
LRIC	Long Run Incremental Cost
LTR	Local Transport Restructure
MCI	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
RIC	Residual Interconnection Charge
SLC	Subscriber Line Charge
TR	Transcript
TSLRIC	Total Service Long Run Incremental Cost

EXECUTIVE SUMMARY

Issue A adresses MCI's and AT&T's motions to strike BellSouth's Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief. Staff is recommending that the Commission take official notice of the Eighth Circuit Court of Appeal's Order, but strike the remainder of BellSouth's pleading from the record in this proceeding.

Issue 1(A) addresses items that are considered to be network elements, capabilities, or functions, and if so, is it technically feasible for BellSouth to provide AT&T or MCI with these elements. Staff is recommending that all elements listed are considered to be network elements as defined by § 3(29) of the Act. The following items are technically feasible for BellSouth to provide on an unbundled basis:

A. Network Interface Device
B. Unbundled Loops
C. Loop Distribution
F. Local Switching
G. Operator Systems
H. Multiplexing/Digital Cross-Connect/Channelization
I. Dedicated Transport
J. Common Transport
K. Tandem Switching
L. AIN Capabilities
M. Signaling Link Transport
N. Signal Transfer Points

Issue 1(B) addresses what the price of each network element should be. Staff is recommending that the Commission should set permanent rates based on BellSouth's TSLRIC cost studies. However, the cost studies filed by BellSouth do not cover all of the unbundled network elements requested by AT&T and MCI. Therefore, staff recommends modified Hatfield-based rates or BellSouth tariff rates as interim rates only for those elements for which no other cost information exists in the record until permanent rates can be set. Staff also recommends that BellSouth file a TSLRIC cost study, for those unbundled elements for which BellSouth has not already provided a cost study, within 60 days of the date the order is issued.

Staff recommends the following recurring rates in Table 1 and nonrecurring rates in Table 2 be set. These rates cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs.

Staff also recommends that if AT&T or MCI cannot negotiate a rate, or rates, for AIN capabilities, then BellSouth should file a TSLRIC cost study with this Commission within 30 days from the date of a bona fide request.

Issue 2 addresses AT&T and MCI's request to combine BellSouth's unbundled network elements in any manner they choose including recreating existing BellSouth services. Staff is recommending that the Commission allow AT&T and MCI the ability to combine unbundled network elements in any manner they choose, including recreating existing BellSouth services as provided in Section 251(c)(3) of the Act and the FCC's Order 96-325 at ¶340.

Issue 3 addresses what services provided by BellSouth, if any, should be excluded from resale. Staff is recommending that BellSouth should be required to offer for resale any services it provides at retail to end user customers who are not telecommunications carriers. These services include all grandfathered services (both current and future), promotions that exceed 90 days, volume discounts, contract service arrangements (both current and future), Lifeline and Linkup services, and 911/E911 and N11 services.

Issue 4 addresses the appropriate wholesale rates for BellSouth to charge when AT&T or MCI purchases BellSouth's retail services for resale. Staff is recommending that BellSouth offer retail services at a wholesale discount rate of 21.83% for residential services and 16.81% for business services.

Issue 5 addresses the terms and conditions, including use and user restrictions, if any, that should be applied to resale of BellSouth's services. Staff is recommending that no restrictions should be allowed except for user restrictions in the relevant tariffs and contracts of the service being resold.

Issue 6 addresses whether or not BellSouth should 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. Staff is recommending that BellSouth provide internal notice 45 or more days in advance of the change, BellSouth should provide 45 days notice to its wholesale customers. If BellSouth provides notice less than 45 days in advance of the change, wholesale customers should be noticed concurrently with BellSouth's

internal notification process. BellSouth should not be held liable if it modifies or withdraws a resold service after the notice is provided; however BellSouth should notify the resellers of these changes as soon as possible.

Issue 7 addresses 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. Staff recommends that BellSouth, AT&T and MCI should adhere to the service restoration intervals, direct measures of quality, service assurance warranties, and other quality assurance measures proposed by MCI and AT&T in their proposed agreements. If AT&T's and MCI's proposed agreements do not contain specific performance standards, staff recommends that BellSouth should be required to provide the same quality of service for resale and network elements to AT&T and MCI that it provides to its customers and itself. Staff also recommends that the Commission should not arbitrate provisions for liquidated damages in the AT&T and MCI interconnection agreements with BellSouth.

Issue 8(a) addresses whether or not it is technically feasible or otherwise appropriate for BellSouth to brand operator service and directory service calls that are initiated from a BellSouth resold service. Staff is recommending that BellSouth should provide branding and unbranding for operator service and directory service calls for AT&T and MCI.

Issue 8(b) addresses how BellSouth's employees or agents should interact with AT&T's or MCI's customers with respect to a service provided by BellSouth on behalf of AT&T or MCI, and what type of branding requirements are technically feasible or otherwise appropriate. Staff is recommending that when representing AT&T or MCI, BellSouth personnel should 1) advise customers that they are representing AT&T or MCI; 2) provide customers with AT&T or MCI supplied "leave behind" cards; and, 3) refrain from marketing BellSouth directly or indirectly to AT&T or MCI customers.

Issue 9 addresses whether or not it is 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 when AT&T or MCI resells BellSouth's local exchange service or purchases unbundled local switching. Staff is recommending that the Commission should require BellSouth to provide customized routing using line class codes, on a first-come, first-served basis.

Issue 10 addresses whether or not the provisions of Sections 251 and 252 apply to access to unused transmission media (e.g., dark fiber, copper coaxial, twisted pair), and, if so, what the appropriate rates, terms, and conditions should be. Staff is recommending that Sections 251 and 252 of the Act do not apply to AT&T and MCI's request for access to dark fiber.

Issue 11 addresses whether or not it is appropriate for BellSouth to provide copies of engineering records that include customer specific information with regard to BellSouth poles, ducts, and conduits, and how much capacity, if any, is appropriate for BellSouth to reserve with regard to its poles, ducts and conduits. Staff is recommending that BellSouth should not be required to provide AT&T and MCI copies of its engineering records. BellSouth should allow AT&T and MCI access to its engineering records and drawings as they pertain to poles, ducts, conduit and rights-of-way, owned or controlled by BellSouth. Access should be provided within a reasonable time frame and the appropriate proprietary provisions should apply.

Issue 11 also addresses the issue of how much capacity, if any, is appropriate for BellSouth to reserve with regard to its poles, ducts and conduits. Staff is recommending that BellSouth should allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself.

Issue 12 addresses how BellSouth should treat a PIC change request received from an IXC other than AT&T or MCI for an AT&T or MCI local customer. Staff is recommending that BellSouth should be prohibited from making any PIC change for a customer that receives its local exchange service from a local exchange carrier other than BellSouth. BellSouth should forward the request of the customer to their local exchange carrier and provide the customer a contact number for their local carrier.

Issue 13 addresses whether or not BellSouth should be required to provide real-time and interactive access via electronic interfaces as requested by AT&T and MCI. Issue 13 also addresses whether or not the process requires the development of additional capabilities, in what time frame they should be deployed, what the costs involved are, and how these costs should be recovered. Staff is recommending that BellSouth should be required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

In addition, staff recommends that processes that require the

development of additional capabilities should be developed by BellSouth by January 1, 1997. If BellSouth cannot meet that deadline, BellSouth should file a report with the Commission that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. BellSouth, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. Staff recommends that these electronic interfaces should conform to industry standards where such standards exist or are developed.

As a part of issue 13, staff also recommends that BellSouth should not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the customer service records (CSRs). MCI and AT&T should issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing the CSRs. Staff further recommends that BellSouth should develop a real-time operational interface to deliver CSRs to ALECs, and the interface should only provide the customer information necessary for MCI and AT&T to provision telecommunications services.

Finally, staff recommends that each party should bear its own share of the cost of developing and implementing such systems and processes because these systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs should be recovered from the carrier who is requesting such customized system.

Issue 14(a) addresses whether or not BellSouth should be required to use the CMDS process for local and intraLATA calls in the same manner as used today for interLATA calls. Staff is recommending that CMDS should be expanded to be used for intraLATA collect, third party and calling card calls.

Issue 14(b) addresses what the appropriate rates, terms, and conditions, if any, for rating information services traffic between AT&T or MCI and BellSouth should be. Staff is recommending that AT&T's proposal to have BellSouth rate and bill and collect AT&T's customers' calls to ISPs, should be approved as an interim process with the exception that AT&T should not be paid in connection with any call by its customers to an ISP until it negotiates its own contracts with the appropriate rates, terms and conditions. MCI concurred with AT&T's position on this issue except that MCI appears to wish to bill its own customers. Staff recommends that the Commission's decision apply to MCI as well. Staff also recommends that to the extent that BellSouth incurs additional

costs as a result of handling ISP traffic on behalf of the other carriers, that are not covered under its contract with the ISP, nothing in the Commission's decision should preclude BellSouth from recovering those costs through incremental charges to AT&T and/or MCI.

Issue 15 addresses what billing system and what format should be used to render bills to AT&T or MCI for services and elements purchased from BellSouth. Staff is recommending that the Commission should require BellSouth to provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of the order in this proceeding. BellSouth can continue to use its CRIS billing system, but the output from the CRIS system should be translated into the CABS-format. In the interim, BellSouth should provide bills for resale and unbundled elements to AT&T and MCI using its CRIS and CABS billing systems.

Issue 16 addresses whether or not BellSouth should be required to provide Process and Data Quality Certification for carrier billing, data transfer, and account maintenance. Staff recommends that BellSouth, AT&T and MCI should adhere to quality standards pertaining to process and data quality certification for carrier billing, data transfer, and account maintenance proposed by MCI and AT&T in their proposed interconnection agreements. If AT&T's and MCI's proposed agreements do not contain specific standards, staff recommends that BellSouth should be required to provide the same quality of service for carrier billing, data transfer, and account maintenance to AT&T and MCI that it provides to its customers and itself. Staff also recommends that the Commission should not arbitrate provisions for liquidated damages in the AT&T and MCI interconnection agreements with BellSouth.

Issue 17 addresses whether or not BellSouth should 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. Staff is recommending that AT&T and MCI should contract with the directory publisher for an appearance on the cover of the white page and yellow page directories.

Issue 18 addresses whether or not BellSouth should be required to provide interim number portability solutions besides remote call forwarding, and, if so, what are the costs involved and how should they be recovered. The parties have agreed that BellSouth will provide the following interim number portability solutions.

a. Remote Call Forwarding
b. Direct Inward Dialing
c. Route Index Portability Hub
d. Local Exchange Routing Guide to the NXX Level

Staff is recommending that the Commission should address the cost recovery for interim number portability in Docket No. 950737-TP. Until completion of that proceeding, the Commission, on an interim basis, should require each carrier to pay for its own costs in the provision of the interim number portability solutions listed above. Further, the Commission should require all telecommunications carriers to this proceeding to track its cost of providing the interim number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

Issue 19 addresses whether or not the provisions of Section 251 and 252 apply to the price of exchange access, and, if so, what is the appropriate price for exchange access? Staff is recommending that Sections 251 and 252 of the Act do not address the pricing of exchange, or switched, access. (Switched access is referred to as exchange access in Section 251(c)(2)(A) of the Act.) No changes to switched access rates need to be made in this proceeding.

Issue 20 addresses what the appropriate trunking arrangements between AT&T and BellSouth for local interconnection should be. The parties have reached an agreement. Therefore the Commission should consider this issue moot.

Issue 21 addresses the compensation mechanism for the exchange of local traffic between AT&T and BellSouth. Staff recommends a reciprocal rate of $.00125 per minute for tandem switching and $.002 for end office termination. While staff understands that BellSouth's costs are LRIC, staff believes that these rate levels would be sufficient to cover TSLRIC, in addition to providing some contribution to common costs.

Issue 22 addresses what the appropriate general contractual terms and conditions should be that govern the arbitration agreement (e.g. resolution of disputes, performance requirements, and treatment of confidential information). Staff is recommending

that the Commission should not arbitrate the general contractual terms and conditions that govern the arbitration agreement. The Commission's authority to arbitrate disputed issues under the Act is limited to those items enumerated in Sections 251 and 252 and matters necessary to implement those items. General contractual terms and conditions do not fall within the scope of arbitration.

Issue 23 addresses what cost recovery mechanism for remote call forwarding (RCF) should be used to provide interim local number portability in light of the FCC's recent order. Staff is recommending that the Commission should implement the cost recovery mechanism established in Issue 18.

Issue 24 addresses what intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase BellSouth's unbundled local switching element, and how long any transitional period should last. This issue was affected by the Eighth Circuit's stay of portions of the FCC Order. Staff therefore is recommending that existing Florida law and policy should apply. No additional charges should be assessed for unbundled Local Switching over and above those approved in Issue 1(b) of this recommendation for that element. However, with respect to toll traffic, existing Florida law does not allow ALECs to bypass switched access charges. Therefore, under the Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in DN 950985-TP, the company terminating a toll call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

Issue 25 addresses what the appropriate rates, terms, and conditions for collocation (both physical and virtual) should be. Staff is recommending that for physical collocation, the Commission should approve BellSouth's Telecommunications Handbook for Collocation in the interim until this Commission has set cost based rates for physical collocation.

Staff also recommends that MCI bear the costs of converting from virtual to physical collocation where MCI requests the conversion. The establishment of physical collocation should be completed in three months and two months for virtual collocation. Staff recommends that BellSouth demonstrate to the Commission on a case-by-case basis where these time frames are not sufficient to complete the collocation work.

For virtual collocation, staff recommends the rates, terms, and conditions as set forth in BellSouth's Access tariff filed with this Commission should apply in the interim until this Commission

has set cost based rates.

In addition, staff recommends that the Commission grant MCI the ability to:

1. Interconnect with other collocators that are interconnected with BellSouth in the same central office.

2. Purchase unbundled dedicated transport from BellSouth between the collocation facility and MCI's network.

3. Collocate subscriber loop electronics in a BellSouth central office.

4. Select physical over virtual collocation, where space and/or other considerations permit.

Staff recommends that BellSouth file a TSLRIC cost study for physical and virtual collocation within 60 days of the date the order is issued in this proceeding. The cost study should comply with §51.323 of the FCC's rules and with the expanded interconnection guidelines set out in the FCC's order.

Issue 26 addresses what the appropriate rates, terms, and conditions related to the implementation of dialing parity for local traffic should be. Staff is recommending that BellSouth should be required to provide dialing parity to MCI on local calling (Intra-exchange and flat rate EAS).

Issue 27 addresses what the appropriate arrangements to provide MCI with nondiscriminatory access to white and yellow page directory listings should be. This issue is for informational purposes only. This issue does not require a commission vote.

Issue 28 addresses what terms and conditions should apply to the provision of local interconnection by BellSouth to MCI. This issue is for informational purposes only. This issue does not require a commission vote.

Issue 29 addresses whether or not the agreement should be approved pursuant to the Telecommunications Act of 1996. Staff is recommending that the arbitrated agreement should be submitted by the parties for approval under the standards in Section 252(e)(2)(B). The Commission's determination of the unresolved issues should comply with the standards in Section 252(c) which include the requirements in Section 252(e)(2)(B).

Issue 30 addresses the appropriate post-hearing procedures for

submission and approval of the final arbitrated agreement. Staff recommends that the parties submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after they are submitted.

Issue 31 addresses whether these dockets should be closed. Staff is recommending that these dockets remain open pending BellSouth's filing of additional cost information requested in Issue 1b.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision.

CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), P.L. 104-104, 104th Congress 1995, sets forth provisions regarding the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements arrived through compulsory arbitration. Specifically, Section 252(b)(1) states:

> (1) Arbitration. - During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required. This Section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

By letter dated March 4, 1996, AT&T Communications of the Southern States (AT&T), on behalf of its subsidiaries providing telecommunications services in Florida, requested that BellSouth Telecommunications, Inc. (BellSouth) commence good faith negotiations under Section 251 of the Act. On July 17, 1996, AT&T filed its request for arbitration under the Act. The Initial Order Establishing Procedure, in Docket No. 960833-TP, established the key procedural events and a hearing was set for October 9 - 11, 1996. See Order No. PSC-96-0933-PCO-TP, issued July 17, 1996.

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

August 15, 1996, MCI filed its request for arbitration under the Act.

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

As stated in the orders regarding consolidation, the following guidelines were established to govern these proceedings:

> 1) The parties shall identify two categories of issues: those that are common to the AT&T/BellSouth petition, the MCI/BellSouth petition, and the ACSI/BellSouth petition; and those that are unique to each petition.
>
> 2) All parties shall participate fully in the litigation of the issues that are common to all petitions. The Commission's decision on the common issues shall be binding on all parties.
>
> 3) Only the parties directly involved will participate in the litigation of the issues that are unique to only one of the petitions. The non-affected petitioner shall not present testimony, conduct cross-examination, or file a brief with respect to the issues that affect only another petitioner. The commission's decision on the unique issues shall be binding only on the parties who litigated the issue.

On September 27, 1996, the Order was temporarily stayed. Oral arguments were heard on October 3, 1996, and a stay was granted on October 15, 1996 on Section 252(i) and the pricing portion of the Order. The stay has been upheld by the United States Supreme Court.

On October 9-11, 1996 a hearing was held for the consolidated dockets. On November 7, 1996, ACSI reached an agreement with BellSouth that was subsequently approved at the November 12, 1996 Agenda Conference. ACSI filed a notice of withdrawal of its petition for arbitration on November 12, 1996.

DISCUSSION OF ISSUES

ISSUE A: Should the Commission grant MCI's and AT&T's motions to strike BellSouth's Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief? **(BROWN)**

RECOMMENDATION: Yes. The Commission should take official notice of the 8th Circuit Court of Appeal's Order, but strike the remainder of BellSouth's pleading from the record in this proceeding.

STAFF ANALYSIS: On October 17, 1996, BellSouth filed a pleading entitled "Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief." Therein BellSouth asked the Commission to take official notice of the Eighth Circuit's October 8, 1996 Order. BellSouth then argued the effect of that order on this arbitration proceeding and other pending and future arbitration proceedings. BellSouth requested that the Commission take several specific actions in this case because of the Eighth Circuit's order.

On October 23, 1996 and October 29, 1996, MCI and AT&T filed Responses and Motions to strike BellSouth's pleading, in which they agreed that the Commission should take official notice of the Eighth Circuit's Order, but urged that the remainder of the pleading was procedurally inappropriate and should be stricken. BellSouth responded to the motions to strike on October 30, 1996 and November 5, 1996. BellSouth argued that the motions to strike should not be granted because the parties did not allege any harm and their procedural objections represented a "hypertechnical approach to the rules."

Staff agrees with AT&T and MCI that Commission rules and the prehearing order in this case do not contemplate a post-hearing filing like BellSouth's. Order No. PSC-96-1238-PHO-TP, issued October 7, 1996, the prehearing order in this case, established the appropriate post-hearing procedures to be followed. That Order stated, at page 5;

> Post-hearing procedures
>
> Rule 25-22.056(3), Florida Administrative Code, requires each party to file a post-hearing statement of issues and positions. A summary of

> each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding. Because of the complexity of this case, each part may summarize its position in 50 words per subpart for each issue. The world limitation for post-hearing positions may be cumulative for those issues with subparts.
>
> Rule 25-22.056, Florida Administrative Code, provides that a party's proposed findings of fact and conclusion of law, if any, statement of issues and positions, and brief, shall together total no more than 60 pages, and shall be filed at the same time. I have modified the page limit to 100 pages for good cause shown.

BellSouth did file a post-hearing brief pursuant to the directions of the prehearing order and the Commission's procedural rules. A notice of supplemental authority calling the Commission's attention to the Eighth Circuit stay order is one thing. An additional 14 page brief arguing the issues in the case is quite another. Staff recommends that the Commission should take official recognition of the Eighth Circuit's Order. Staff also recommends that the motions to strike should be granted, and the rest of BellSouth's pleading should be stricken from the record in this proceeding.

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? **(REITH)**

A. Network Interface Device
B. Unbundled Loops
C. Loop Distribution
D. Loop Concentrator/Multiplexer
E. Loop Feeder
F. Local Switching
G. Operator Systems (DA service/911 service)
H. Multiplexing/Digital Cross-Connect/Channelization
I. Dedicated Transport
J. Common Transport
K. Tandem Switching
L. AIN Capabilities
M. Signaling Link Transport
N. Signal Transfer Points
O. Service Control Points/Database

RECOMMENDATION: Yes. All elements listed are considered to be network elements as defined by § 3(29) of the Act. The following items are technically feasible for BellSouth to provide on an unbundled basis:

A. Network Interface Device
B. Unbundled Loops
C. Loop Distribution
F. Local Switching
G. Operator Systems
H. Multiplexing/Digital Cross-Connect/Channelization
I. Dedicated Transport
J. Common Transport
K. Tandem Switching
L. AIN Capabilities
M. Signaling Link Transport
N. Signal Transfer Points

POSITION OF PARTIES

AT&T : Each of the items listed are network elements and are technically feasible for BellSouth to provide on an unbundled basis. However, AT&T seeks only the following unbundled elements at this time: Network Interface Device, Local Loop Facility, Operator Systems, Dedicated and Common Transport, AIN Services and Operations Support Systems. AT&T has withdrawn its request for

subloop unbundling from the instant arbitration request.

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

MCI: Each of the items requested by MCI is a network element, capability or function, and it is technically feasible to unbundle each of the requested elements. Neither the lack of current ordering and tracking systems nor the fact that some network changes would be required to make these elements available on an unbundled basis constitutes technical infeasibility within the meaning of the Act.

STAFF ANALYSIS: Section 251(c)(3) of the Telecommunications Act of 1996 (the Act) obligates incumbent LECs to provide the following:

> UNBUNDLED ACCESS - The duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

In order to apply this section of the Act, two questions need to be answered for each of the items listed above. Are these items considered to be network elements, and if so, is it technically feasible for BellSouth to provide them? The Act and the FCC's Rules provide some guidance for making these determinations by defining network element and technical feasibility.

The Act states that:

> The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (§ 3(29))

The FCC Rules define technical feasibility as:

> Interconnection, access to unbundled elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such a request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts. (§ 51.5)

The FCC determined that certain elements are network elements and are technically feasible to unbundle. The FCC's rules state that the incumbent LEC must provide nondiscriminatory access to the following network elements on an unbundled basis: local loop, network interface device, switching capability, interoffice transmission facilities, signalling networks and call related databases, operations support systems functions, operator services, and directory assistance. (§ 51.319) Staff will include each of these items in the discussion below with the exception of operations support systems, which will be addressed in Issue 13.

A. Network Interface Device

The FCC Rules define the network interface device (NID) as a cross-connect device used to connect loop facilities to inside wiring. (§ 51.319(b)(1)) Incumbent LECs are required to permit requesting telecommunications carriers to connect their own loops to the inside wiring of premises through the incumbent LEC's NID. The FCC states that the requesting telecommunications carrier shall establish this connection through an adjoining NID deployed by such telecommunications carrier. (§ 51.319(b)(2)) However, the FCC recognizes that competitors may benefit by directly connecting to

the incumbent LEC's NID by avoiding the cost of deploying their own NIDs. The FCC left it to the states to determine whether direct connection to the incumbent LEC's NID can be achieved in a technically feasible manner. (FCC 96-325, ¶ 396)

AT&T is requesting the ability to directly connect to BellSouth's NID. Witness Tamplin explains that AT&T would like to use any existing capacity on BellSouth's NID to directly connect its loops. If spare terminals are not available, AT&T would directly connect to the NID after disconnecting and grounding BellSouth's loop. (TR 326-327) Witness Tamplin claims that this solution will mitigate BellSouth's concerns regarding bodily injury and property damage because in all cases BellSouth's loop will still be terminated and protected on the NID. (TR 327)

MCI originally requested the ability to directly connect to BellSouth's NID but has since agreed to a NID-to-NID arrangement, as set forth by the FCC. (Caplan TR 943-944)

BellSouth is opposed to allowing AT&T direct access to its NID. Witness Milner states that AT&T's request would violate the National Electric Code as it pertains to grounding and protection of the loop. Witness Milner asserts that "[r]emoval of BellSouth's loop from an existing NID without retermination of that loop to another similarly bonded and grounded NID would create a potentially hazardous condition and thus a code violation." (TR 2621-2622) BellSouth uses many different types of NIDs in their network, depending on the type of application. (Milner TR 2623) Witness Milner states that this creates difficulties that will need to be handled on a case-by-case basis, such as the type of protection needed, customer down time, testing and maintenance. (TR 2623-2625) Given these concerns, BellSouth believes that the FCC's solution is appropriate provided that AT&T does not disrupt or disable BellSouth's loop and NID. (Milner TR 2699)

AT&T States that they understand the grounding requirements of the NID and that properly trained technicians would ensure that all changes to the NID comport with the National Electric Code. (Tamplin TR 327) BellSouth admits that if AT&T attaches to spare capacity in the NID that BellSouth's loop would remain grounded. However, witness Milner points out that the NID is sized to the application and that spare capacity may not always be available. (TR 2773)

Staff believes that BellSouth should allow AT&T to directly connect to its NID, where spare capacity is available. BellSouth's loop will still be connected to the NID and thus, will be properly grounded and protected. Staff has concerns over the lack of safety

code guidelines concerning NIDs without spare capacity available. Therefore, in instances where spare capacity does not exist, AT&T should adhere to the FCC rules concerning a NID-to-NID arrangement until such time as the appropriate guidelines are developed and incorporated within the National Electric Code.

B. Unbundled Loops

The FCC defines the local loop network element as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office, and the network interface device at the customer premises. (§ 51.319(a), FCC 96-325, ¶ 380) This definition includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals. (FCC 96-325, ¶ 380)

In addition, the FCC concluded that:

> ... incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. IDLC technology allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. (FCC 96-325, ¶ 383)
>
> We find that it is technically feasible to unbundle IDLC-delivered loops. One way to unbundle an individual loop from an IDLC is to use a demultiplexer to separate the unbundled loop(s) prior to connecting the remaining loops to the switch. ... Again, the costs associated with these mechanisms will be recovered from requesting carriers. (FCC 96-325, ¶ 384)

AT&T is requesting access to unbundled loops including those served by integrated and non-integrated digital loop carrier technology. (Tamplin TR 299)

Prior to the release of the FCC's order, BellSouth objected to providing loops served on integrated digital loop carrier technology because of the network modifications needed. (Milner TR 2633-2634) Witness Milner explains that since the release of the

FCC's order, BellSouth agrees that there are appropriate methods for providing such unbundled access to loops. (TR 2703)

Therefore, staff does not believe that any disagreement remains between the parties with respect to access to unbundled loops served on integrated digital loop carrier technology. Staff recommends that BellSouth provide AT&T and MCI with access to unbundled loops including those loops served by integrated and non-integrated digital loop carrier technology.

C. Loop Distribution

AT&T has withdrawn their request for this item; therefore, MCI is the only one requesting that BellSouth provide loop distribution as an unbundled element. (TR 2814)

Loop distribution is the portion of the loop from the customer's NID to the feeder distribution interface (FDI). (Caplan TR 933) The FDI is the connection point between the distribution and feeder plant. Witness Caplan explains that given the various ways of deploying facilities to the customer, MCI is only requesting access to BellSouth loop distribution where there is an FDI. Witness Caplan states that "it's the famous green box" people see located their neighborhoods. (TR 970-971) MCI asserts that this type of access to loop distribution is being performed today in other jurisdiction by companies that do not compete with one another. Witness Caplan explains that there is no need for BellSouth to modify its existing facilities because MCI will bring its own feeder directly to the interface. MCI's feeder can then be connected the same way BellSouth connects it facilities today. Witness Caplan clarifies that MCI is requesting that BellSouth continue to be responsible for any maintenance and installation regarding the feeder distribution interface. (TR 971-973)

BellSouth states that it is not technically feasible to unbundle loop distribution. Witness Milner asserts that operation and support systems cannot handle the administration of loops without feeder facilities. "Ordering, provisioning, maintenance, administration and billing systems will be adversely affected." BellSouth is working with Bell Communications Research, a computer software developer, to determine how changes can be made to accommodate unbundled loop distribution. (TR 2727) Witness Milner adds that manual procedures will be necessary thus adding to the cost. Witness Milner maintains that additional facilities would need to be built, such as replacement of existing cross-connect boxes, and that subloop unbundling will impede BellSouth's ability to install new technology. (TR 2628-2629)

BellSouth believes that the following set of criteria should be followed when determining technical feasibility.

1. The ability to provision, track and maintain the element.

2. The ability to deliver discrete, stand-alone facilities, equipment, or logical functions of the existing or scheduled LEC network.

3. The ability to maintain network integrity without undue risk, including risk of physical hazards to telephone plant or operating personnel, or risk to service degradation or service impairment of any kind.

4. The ability to provide physical or logical operational interfaces between the incumbent LEC and the requesting company. (TR 2617)

Witness Milner asserts that these criteria are intended to explain the FCC's definition of technical feasibility and should be considered also. (TR 2725)

As noted above in the FCC's definition of technical feasibility, a determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such a request does not determine whether satisfying such a request is technically feasible. (§ 51.5)

In addition, the FCC addressed subloop unbundling by stating that:

> As a general matter, we believe that subloop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient. For example, a competitor may seek to minimize its reliance on the LEC's facilities by combining its own feeder plant with the incumbent LEC's distribution plant. ... The record presents evidence primarily of logistical, rather than technical, impediments to subloop unbundling. Several LECs and USTA, for example, assert that incumbent LECs would need to create databases for identifying, provisioning, and billing for subloop elements. Further, incumbent LECs argue that there is insufficient space at

> certain possible subloop interconnection points. We note that these concerns do not represent "technical" considerations under our interpretation of the term "technically feasible. (FCC 96-325, ¶ 390)

Staff notes that the FCC declined to make a determination on subloop unbundling because proponents did not address certain LEC concerns such as access by competitors' personnel to ILEC equipment, which raised network reliability concerns. (FCC 96-325, ¶ 391)

Staff believes MCI's proposal for unbundling loop distribution is technically feasible. MCI's request is limited only to loop distribution facilities cross-connected with feeder facilities. In addition, MCI is requesting that BellSouth perform any maintenance and installation regarding the feeder distribution interface. BellSouth's arguments, in staff's opinion, are nullified by the FCC's rules and order concerning technical feasibility. BellSouth's arguments address identification, provisioning, billing, accounting, facility modification and economic concerns. Therefore, staff recommends that BellSouth unbundle loop distribution at the feeder distribution interface, as requested by MCI.

D. Loop Concentrator/Multiplexer

AT&T has withdrawn their request for this item. (TR 2814) MCI did not request that this item be arbitrated. Therefore, staff considers this issue moot as it pertains to unbundling Loop Concentrator/Multiplexer.

E. Loop Feeder

AT&T has withdrawn its request for this item. (TR 2814) MCI did not request that this item be arbitrated. Therefore, staff considers this issue moot as it pertains to unbundling Loop Concentrator/Multiplexer.

F. Local Switching

The FCC determined that incumbent LECs must provide local switching as an unbundled network element. Section 51.319(c)(1)(i) of the FCC rules defines the local switching network element to encompass:

> (A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;
>
> (B) trunk-side facilities which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a trunk card; and
>
> (C) all features, functions, and capabilities of the switch which include, but are not limited to:
>
> > (1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as, the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone: and
> >
> > (2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signalling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

BellSouth states that it will provide local switching as an unbundled network element. (Milner TR 2707) However, it's not clear to what extent BellSouth agrees with the FCC's definition of local switching as an unbundled network element. Witness Milner asserts that BellSouth does not agree with AT&T's inclusion of customized routing as part of unbundled local switching. (TR 2708-2709) Staff addresses customized routing in Issue 9. Nevertheless, staff recommends that BellSouth be required to provide local switching as an unbundled network element, as contemplated by the FCC.

G. Operator Systems

The FCC determined that incumbent LECS must provide access to operator services and directory assistance facilities where

technically feasible. (§ 51.319(g))

In Section 51.5 of the FCC's rules, operator services and directory assistance are defined as follows:

> "Operator services" are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Such services include, but are not limited to, busy line verification, emergency interrupt, and operator-assisted directory assistance services.
>
> "Directory assistance service" includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

The FCC addressed operator service and directory assistance in its order by stating:

> We conclude that incumbent LECs are under the same duty to permit competing carriers nondiscriminatory access to operator services and directory assistance facilities as all LECs are under section 251(b)(3). We further conclude that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with nondiscriminatory access to such facilities and functionalities at any technically feasible point. We believe that these facilities and functionalities are important to facilitate competition in the local exchange market. Further, the 1996 Act imposes upon BOCs, as a condition of entry into in-region interLATA services the duty to provide nondiscriminatory access to directory assistance services and operator call completion services. We therefore conclude that unbundling facilities and functionalities providing operator services and directory assistance is consistent with the intent of Congress. (FCC 96-325, ¶ 534)

AT&T and MCI have requested that BellSouth provide operator services and directory assistance service as unbundled network elements. (Tamplin TR 287; Price TR 802) BellSouth has agreed to provide these elements. (BellSouth BR p.13)

Therefore, staff recommends that BellSouth provide operator services and directory assistance service as unbundled network elements, consistent with the FCC's rules and order.

H. Multiplexing/Digital Cross-Connect/Channelization

MCI is requesting that BellSouth provide digital cross-connect and multiplexing in conjunction with transport facilities or separately so MCI can provide their own transport facilities or use the facilities supplied by other parties. (Caplan 926)

The FCC stated that incumbent LECs must provide requesting carriers with access to digital cross-connect system functionality. The FCC explains that:

> A DCS aggregates and disaggregates high-speed traffic carried between IXCs' POPs and incumbent LECs' switching offices, thereby facilitating the use of cost-efficient, high-speed interoffice facilities. ... We find that the use of DCS functionality could facilitate competitors' deployment of high-speed interoffice facilities between their own networks and LECs' switching offices. Therefore, we require incumbent LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services. (FCC 96-325, ¶ 444)

Staff is unable to locate, in the record, where BellSouth addressed MCI's request. However, MCI notes in their Brief that price is the only issue in dispute. (MCI BR p.9) The FCC definition of technical feasibility requires that:

> An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts. (§ 51.5)

Therefore, staff is recommending that BellSouth provide access to digital cross-connect system functionality consistent with the FCC's rules and order.

I & J. Dedicated Transport and Common Transport

The FCC labels dedicated and common transport as interoffice transmission facilities. The FCC determined that interoffice transmission facilities are to be offered as unbundled network elements. Section 51.319 of the FCC's rules deals with unbundled elements and states that:

> (1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers.

AT&T and MCI have requested that BellSouth provide dedicated and common transport as unbundled network elements. (Tamplin TR 288-289; Caplan TR 922-923) BellSouth states that it will provide dedicated and common transport to AT&T and MCI. (Milner TR 2665-2667)

Therefore, staff recommends that BellSouth provide dedicated and common transport as unbundled network elements, consistent with the FCC's rules and order.

K. Tandem Switching

The FCC determined that incumbent LECs must provide tandem switching as an unbundled element. The FCC's rules define the tandem switching network element as:

> (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;
>
> (ii) the basic switching function of connecting trunks to trunks; and
>
> (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signalling conversion features. (§ 51.319(c)(2))

AT&T and MCI have requested that BellSouth provide tandem switching as an unbundled network element. (Tamplin TR 289; Caplan TR 921) BellSouth states that it will provide tandem switching to AT&T and MCI. (Varner TR 1476)

Therefore, staff recommends that BellSouth provide tandem switching as an unbundled network element, consistent with the FCC's rules and order.

L,M, N & O. AIN Capabilities, Signaling Link Transport, Signal Transfer Points and Service Control Points/Database

Signaling systems assist in routing telephone calls between switches. Most LECs employ signaling networks that are physically separate from their voice networks, and these "out-of-band" signaling networks simultaneously carry signaling messages for multiple calls. In general, most LECs' signaling networks adhere to a Bellcore standard Signaling System 7 (SS7) protocol. (FCC 96-325, ¶ 455)

SS7 networks use signaling links to transmit routing messages between switches, and between switches and call-related databases. A typical SS7 network includes a signaling link, which transmits signaling information in packets, from a local switch to a high capacity packet switch called the signaling transfer point (STP). The STP switches packets onto other links according to the address information contained in the packet. These additional links extend to other switches, databases, and STPs in the LEC's network. A switch routing a call to another switch will initiate a series of signaling messages via signaling links through an STP to establish a call path on the voice network between the switches. (FCC 96-325, ¶ 456)

As stated above, the SS7 network also employs signaling links (via STPs) between switches and call-related databases, such as the Line Information Database (LIDB), Toll Free Calling (i.e., 800, 888 number) database, and Advanced Intelligent Network databases. These links enable a switch to send queries via the SS7 network to call-related databases, which return customer information or instructions for call routing to the switch. (FCC 96-325, ¶ 457)

The Advanced Intelligent Network (AIN) is a network architecture that uses distributed intelligence in centralized databases to control call processing and manage network information, rather than performing those functions at every switch. An AIN-capable switch halts call progress when a resident software "trigger" is activated, and uses the SS7 network to access intelligent databases, known as Service Control Points (SCPs), that contain service software and subscriber information, for instruction on how to route, monitor, or terminate the call. AIN is being used in the deployment of number portability, wireless roaming, and such advanced services as same number service (i.e., 500 number service) and voice recognition dialing. (FCC 96-325, ¶ 459)

AT&T is requesting access to BellSouth's AIN Service Control Points. (Tamplin TR 330) AT&T claims that this is the only issue with respect to Signalling Systems elements that remains. (AT&T BR p.30) Witness Tamplin explains that the FCC determined that this type of access is technically feasible, but may present a need for mediation mechanisms to protect data in the AIN SCPs and protect against excessive traffic. AT&T does not believe mediation is necessary because safeguards are already built into the SS7 network. (TR 330) Witness Tamplin believes that based on the experience with providing 800 portability, the industry is capable of establishing the necessary procedures to ensure that network performance and reliability are not compromised by multiple providers connecting to the SS7 network. (TR 304)

The FCC decision that witness Tamplin is referring to is as follows:

> Although we conclude that access to incumbent AIN SCPs is technically feasible, we agree with BellSouth that such access may present the need for mediation mechanisms to, among other things, protect data in incumbent AIN SCPs and ensure against excessive traffic volumes. In addition, there may be mediation issues a competing carrier will need to address before requesting such access. Accordingly, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the Commission acting pursuant to section 252(e)(5)) must consider whether such mediation mechanisms will be available and will adequately protect against intentional or unintentional misuse of the incumbent's AIN facilities. We encourage incumbent LECs and competitive carriers to participate in industry fora and industry testing to resolve outstanding mediation concerns. Incumbent LECs may establish reasonable certification and testing programs for carriers proposing to access AIN call related databases in a manner similar to those used for SS7 certification. (FCC 96-325, ¶ 488)

BellSouth agrees with the findings of the FCC. (Milner TR 2717-2718) Witness Milner explains that mediation mechanisms are necessary to prevent intentional and unintentional disruption of BellSouth's AIN network by an ALEC. (TR 2669-2672, 2718) AT&T admits that situations could exist where intentional and unintentional problems may occur, but adds that AT&T believes an appropriate level of security already exists in the network. (EXH 9, pp.77-80)

MCI states that it agrees with the FCC's findings and is willing to accept BellSouth's mediated access proposal. (Caplan TR 946; MCI BR p. 9, Footnote 5) Witness Caplan adds that BellSouth has a legitimate concern about whether various applications are compatible with BellSouth's network. (TR 947)

Staff believes that BellSouth should provide access to its SS7 network and AIN as envisioned by the FCC's rules and order. Staff believes that there is sufficient record to warrant BellSouth's request for a mediation device. Therefore, staff recommends that BellSouth should provide access to its SS7 network and AIN as envisioned by the FCC's rules and order. Staff further recommends that BellSouth should be allowed to use mediation mechanisms as necessary.

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

RECOMMENDATION: Staff recommends that the Commission should set permanent rates based on BellSouth's TSLRIC cost studies. However, the cost studies filed by BellSouth do not cover all of the unbundled network elements requested by AT&T and MCI. Therefore, staff recommends modified Hatfield-based rates or BellSouth tariff rates as interim rates only for those elements for which no other cost information exists in the record until permanent rates can be set. Staff also recommends that BellSouth file a TSLRIC cost study, for those unbundled elements for which BellSouth has not already provided a cost study, within 60 days of the date the order is issued.

Staff recommends the following recurring rates in Table 1 and nonrecurring rates in Table 2 be set. These rates cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs.

Table 1: Staff's Recommended Recurring Rates

Network Element	Staff Recommended Recurring Rates
Network Interface Device	*$0.76
Loops	
2-wire analog	$17.00
4-wire analog	$30.00
2-wire ISDN	$40.00
4-wire DS1	$80.00
Loop Distribution	*$7.00

Network Element	Staff Recommended Recurring Rates
End Office Switching:	
Ports	
2-wire analog	$2.00
4-wire analog	*$12.00
2-wire ISDN	$13.00
4-wire DS1	$125.00
Usage	
initial min.	$0.0175
add'l min.	$0.005
Signaling	
Link	$5.00
Termination	$113.00
Usage	
-call setup msg	$0.00001
-TCAP message	$0.00004
Usage surrogate	$64.00
Channelization System	
-DS3 to DS1, per arrangement	$970.00
Common Transport	$0.00004
Dedicated Transport	
per mile	$16.75
per term.	$0.00036
per fac. term.	$59.75
Tandem Switching	$0.00050

Network Element	Staff Recommended Recurring Rates
Operator Systems	
Operator Call Handling	$1.00
Automated Call Handling	$0.10
Busy Line Verif.	$0.80
Emergency Inter.	$1.00
Numbering Service Intercept	
-per query	$0.01
Directory Assistance (DA)	$0.25
DA Database	
-per listing	$0.015
-monthly	$100.00
Direct Access to DA Service	
-monthly	$5000.00
-per query	$0.01
DA Call Completion	$0.03
DA Transport	
-Switched Local Channel	*$133.81
-Switched Dedicated transport DS1 level	
-per mile	*$16.75
-per facility term.	*$59.75
-SW Comm./DA call	$0.0003
-SW Comm./DA call/mile	$0.00001
-Tandem SW/DA call	$0.00055

* Staff recommended interim rates

Table 2 presents staff's recommended nonrecurring charges. Where BellSouth provided nonrecurring cost studies, staff recommends permanent rates which cover BellSouth's costs. Where BellSouth did not provide nonrecurring cost studies, staff recommends that BellSouth provide TSLRIC cost studies within 60 days from the issuance of the order from this recommendation.

Table 2: Staff's Recommended Nonrecurring Charges

Network Element	Staff Recommended Rates
Network Interface Device	No NRC proposed
Unbundled Loop	
2-wire analog	
First	$140.00
Additional	$42.00
4-wire analog	
First	$141.00
Additional	$43.00
2-wire ISDN	
First	$306.00
Additional	$283.00
4-wire DS1	
First	$540.00
Additional	$465.00
Loop Distribution	No NRC proposed
End Office Switching:	
Port	
2-wire analog	
First	$38.00
Additional	$15.00
4-wire analog	
First	*$38.00
Additional	*$15.00
2-wire ISDN	
First	$88.00
Additional	$66.00
4-wire DS1	
First	$112.00
Additional	$91.00
Signaling Link	$400.00
Channelization System -DS3 to DS1, per arrangement	
First	$145.45
Additional	$584.80

Network Element	Staff Recommended Rates
Dedicated Transport per facility termination	*$100.49
Operator Systems Direct Access to DA Service -service establishment charge	$820.00
DA Transport Switched Local Channel -First	*$866.97
-Additional	*$486.83
Switched Dedicated Transport -per facility termination	*$100.49

Staff also recommends that if AT&T or MCI cannot negotiate a rate, or rates, for AIN capabilities, then BellSouth should file a TSLRIC cost study with this Commission within 30 days from the date of a bona fide request.

POSITION OF PARTIES

AT&T: The price of unbundled elements should be based on the forward-looking, long-run economic costs, calculated in accordance with TELRIC principles, that a wholesale-only incumbent LEC would incur to produce the entire range of unbundled network elements. These costs are calculated by the Hatfield Model, and the appropriate prices are set forth in the testimony of Mr. Wood.

BELLSOUTH: 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.

MCI: The price of unbundled elements should be based on the forward-looking, long-run economic costs, calculated in accordance with TELRIC principles, that a wholesale-only LEC would incur to produce the entire range of unbundled network elements. These costs are calculated by the Hatfield Model.

STAFF ANALYSIS:

The FCC's Interconnection Order, FCC 96-325, released August 8,

1996 (the Order), and the FCC's Rules on pricing contained therein, are currently under a partial stay. Because of the stay, staff will discuss this issue based both on our interpretation of the Act and the FCC Order.

Pricing Requirements Pursuant To The Act

The Act, in Section 252(d), contains the pricing standards for unbundled network elements. Section 252(d)(1), Interconnection and Network Element Charges, states:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be-
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit.

Staff interprets this Section of the Act to require the prices for unbundled elements to be based on cost and may include a reasonable profit. Based on the Act, staff believes that the appropriate cost methodology is an approximation of TSLRIC. This policy was adopted by the Commission in Order No. PSC-96-0811-FOF-TP, issued June 24, 1996, in Docket No. 950984-TP.

Staff believes that the Act could be read to allow geographic deaveraging of unbundled elements; however, staff does not interpret the Act to require geographic deaveraging. Staff does not believe that the rates for unbundled elements could be geographically deaveraged in this proceeding because of the lack of sufficient cost evidence. Therefore, if the stay of the FCC Order continues, staff would not recommend that the rates for unbundled elements be geographically deaveraged at this time.

Pricing Pursuant To The FCC's Order

Even though BellSouth submitted TELRIC cost studies (for loops only), BellSouth argues that the unbundled element rates should be based on its TSLRIC cost studies. (TR 2226)

TELRIC, TSLRIC, and LRIC

The FCC, in its Order 96-325, released August 8, 1996, defines TELRIC as:

> the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.
>
> (1) *Efficient network configuration*. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.
>
> (2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.
>
> (3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates. (FCC Rules, 51.505(b))

BellSouth defines long-run incremental costs (LRIC) as costs that include product specific volume sensitive incremental costs. Volume sensitive costs are costs that vary with a change in volume. BellSouth defines total service long-run incremental costs (TSLRIC) as costs that include both the product specific volume sensitive and volume insensitive costs. (Caldwell TR 2163) In exhibit No. 1, witness Caldwell's September 27, 1996 deposition, she stated that there were no volume insensitive costs associated with loops, and therefore considered loop costs to be both LRIC and TSLRIC. (EXH 69, p.45)

AT&T Witness Kaserman states that the relevant cost to which prices should be equated to is TSLRIC. Witness Kaserman explains that TSLRIC:

> ...measures the total incremental cost incurred in the long run that is caused by the addition (or deletion) of a service or element from an existing set of services or elements. Technically, the prices are set equal to the TSLRIC (which is a total dollar amount) divided by the number of units to be sold, so that prices are stated as dollars per unit. (TR 516)

Witness Kaserman further explains why TSLRIC is the theoretically correct basis for pricing unbundled network elements:

> First, TSLRIC is an incremental cost. As a result, socially optimal purchase and entry decisions will be fostered with prices set at this level. Second, TSLRIC is long-run in nature. Because the decision to enter a market is, by definition, a long-run decision, TSLRIC prices will send economically correct signals to potential entrants. Third, TSLRIC is an economic cost. As such, it includes a normal (competitive) profit on the capital that is invested to provide the relevant service or element. And fourth, the concept applies to total service costs, which means that all costs that can be causally attributed to production of the product in question are incorporated in these prices. Thus, TSLRIC prices for interconnection services and unbundled network elements are subsidy-free and economically efficient. Such prices will promote efficient and sustainable competition in local exchange markets. (TR 485-486)

For the purpose of this recommendation, TSLRIC will be defined as the costs to the firm, both volume sensitive and volume insensitive, that will be avoided by discontinuing, or incurred by offering, an entire product or service, holding all other products or services offered by the firm constant. This definition should not be construed as requiring or assuming that the firm would reoptimize its input mix and facilities when a service is added to (or removed from) the existing product mix. That is, TSLRIC, in this recommendation, should not be calculated based upon a "scorched earth" analysis.

Staff believes that theoretically there should not be substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element. In fact, the FCC states that, "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term "total element long run incremental cost" (TELRIC) to describe our version of this methodology." (FCC Order 96-325, Par. 678) However, it should be noted that the methodology the FCC uses to define TELRIC would not necessarily be used by this Commission in determining the TSLRIC costs. For example, the FCC's TELRIC definition uses a scorched node approach, whereas the Commission has used in the state proceedings a TSLRIC approach using efficient technology. The difference between these methodologies is that the scorched node only considers the current location of central offices and not the existing technology or physical architecture deployed by the carrier in either the central office or outside plant. The TSLRIC

based forward-looking approach considers the current architecture and the future replacement technology.

Staff believes that the FCC did make a distinction between TSLRIC and TELRIC for the purposes of setting prices. Neither TSLRIC nor TELRIC costs include forward-looking joint and common costs. Staff does not disagree with the FCC's methodology; in fact, staff recommends TSLRIC prices that include some allocation to joint and common costs.

The FCC states that prices should be based on the TSLRIC of the network element, which will be called the Total Element Long Run Incremental Cost (TELRIC), and will include a reasonable allocation of forward-looking joint and common costs. (FCC Order 96-325, ¶672) In addition, the FCC adopted in its rules, Section 51.505(a), the following language:

> In general. The forward-looking economic cost of an element equals the sum of: (1) the total element long run incremental cost of the element, as described in paragraph (b); and (2) a reasonable allocation of forward-looking common costs, as described in paragraph (c).

AT&T states in its brief that BellSouth contends that the pricing rules adopted by the FCC constitute a taking under the Fifth Amendment of the Constitution. In particular, AT&T states that BellSouth complains that a TELRIC pricing methodology precludes it from recovering all of its costs, especially its embedded costs.

BellSouth did not raise a constitutional taking argument in its brief in this issue. Staff notes that although BellSouth did not raise a takings argument, AT&T's analysis of the takings issue is consistent with previous Commission decisions. (See PSC-96-1148-FOF-TP and PSC-96-0811-FOF-TP; motions for stay and appeals are pending)

Analysis of Cost Studies

The cost information presented by the parties consists of two types of cost studies. AT&T and MCI recommend the Commission use the results of the Hatfield Study. AT&T and MCI claim that the Hatfield Model provides results that are consistent with the FCC's TELRIC pricing standard. (TR 429, 1056, 1339). BellSouth provided LRIC and TSLRIC cost studies for unbundled network elements. BellSouth also provided TELRIC cost studies for unbundled loops

only on October 4, 1996. Staff's initial review of the TELRIC cost studies was limited because BellSouth filed the cost studies just days prior to the hearing. Also, this Commission established a policy in Docket Nos. 950984-TP and 950985-TP of using TSLRIC as a cost basis for setting rates. For these reasons, staff does not believe it is appropriate to set rates, interim or permanent, using the TELRIC studies at this time. This section discusses the criticisms of each cost study.

Hatfield Model Study

The Hatfield Model was developed by Hatfield and Associates, Inc. at the request of AT&T and MCI. The model has been updated several times since its inception. The version used in this proceeding is version 2.2 release 2. The model was designed to estimate the TELRIC costs of the unbundled network elements and to estimate the cost of basic local exchange telephone service. The Hatfield Model is a "scorched node" model, in that it assumes all network facilities would be designed and built, constrained only by the current location of central offices. The developers purport that the model develops forward-looking network investments and costs for unbundled network elements and basic local exchange service. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area. (EXH 31)

The Hatfield Model contains six functional modules which contain the information and methodology used to calculate estimated plant investment and expenses. A primary data source used by the Model is the BCM-PLUS input data file. The BCM-PLUS input data file is used within the Hatfield Model as the first step in developing the investment level associated with the feeder and distribution elements of the local loop. This file contains 1995 estimates of households per Census Block Group (CBG), data regarding the size of each CBG, and other CBG-specific data. The Hatfield Model adjusts the household data, converting it to access lines and accounting for multi-line residences, business, payphone and special access lines. BCM-PLUS was derived from part of the Benchmark Cost Model (the BCM1 version) which was developed by US WEST, NYNEX, MCI and Sprint. (Wood TR 1061-1065) A brief explanation of each module is provided below.

1. Line Converter Module

This module transforms the census data from the BCM-PLUS data input files into a total line count per customer type. This line count is used in the calculation of costs per line.

2. Data Module

The Data Module computes the quantity and length of distribution and feeder cables per CBG.

3. Loop Module

This module estimates cable investments by determining the size and type of cable required to serve each CBG. The module then takes the distribution and feeder lengths calculated in the Data Module and using cable price information, calculates the total loop investment necessary for each CBG.

4. Wire Center Module

The Wire Center Module calculates investments in wire centers, switching, signaling and interoffice transmission facilities. The model also determines switching and interoffice capacity to meet the service demand in the area being studied.

5. Convergence Module

The Convergence Module combines the loop investment calculated in the Loop Module with the results of the Wire Center Module. This module also calculates the cost to install poles and conduits considering terrain and population density conditions. The module produces output containing total investment for all plant categories by density range.

6. Expense Module

The Expense Module uses the output from the Convergence Module to generate monthly costs for unbundled network elements and basic local exchange service. These costs include annual capital carrying costs, operations and maintenance expenses and other per-line expenses incurred to provide local service. (EX 31)

BellSouth raised several criticisms concerning the results generated by the model. Each BellSouth criticism is shown below:

1. The model does not calculate costs based on BellSouth's actual network used to provide service. (Varner TR 1444)

Witness Wood states that the model is not intended to cost

BellSouth's embedded network. (TR 1082) He further testified that the Hatfield model uses least cost forward-looking technology currently available in the market place, which is also known as the scorched node model. The scorched node model builds a theoretically efficient network based on solely on a LEC's existing switch locations. (Wood TR 1089)

2. The model does not use BellSouth or Florida-specific input data. The model incorporates publicly available data from areas throughout the country. (TR 1090-1093).

Under cross-examination, witness Wood explained that tax factors used in the model were derived from federal, state and local taxes as occurred throughout the country (TR 1090), economic depreciation lives determined in a Bell Atlantic Maryland proceeding (TR 1091), and an average drop wire investment amount taken from a 1993 New Hampshire study (TR 1093).

3. The Hatfield Model assumes hypothetical cable routes.

The Hatfield model makes several assumptions that do not reflect the actual placement of the network (other than wire center locations) to customer locations. In his rebuttal testimony dated September 16, 1996, BellSouth witness Emmerson states that the model:

> ...assumes that census block groups (CBGs) are square in shape, are assigned to the wire center closest to the centroid of the CBG, that feeder routes extend to the nearest midpoint of a side of the assumed square perimeter of the CBG (or penetrate 1/4 of the length of a perimeter side into the square CBG). These assumptions do not reflect actual customer locations. (TR 2079).

The result is that the Hatfield Model calculates shorter cable routes per CBG, and therefore, underestimates the cost. (TR 1106-1107). Under cross-examination MCI witness Wood acknowledged that there could be highly irregularly shaped CBGs, such that the cable sizing algorithms in the Hatfield model would generate sufficient distribution facilities to serve all customers in the CBG. However, he asserted that on average over all CBGs, the model produces reasonable results. (TR 1108-1109)

BellSouth witness Emmerson's rebuttal testimony dated September 16, 1996, in Docket No. 960846-TP, contains a list of model

features which he states as being "unrealistic, imprecise, may lead to certain problems and errors, or are simply wrong." (TR 2079). Witness Emmerson's criticisms of the Hatfield Model include:

1. Possible underestimation of BellSouth's Florida service territory by misassignment of CBGs, miscalculation of areas and/or missing CBGs.

2. Assignment of CBGs to the wrong wire centers.

3. Assignment of CBGs to the wrong serving LEC.

4. Problems related to CBGs served by multiple wire centers and/or multiple LECs.

5. Labor and switching cost inputs may be substantially understated.

6. Operating expenses may be understated via cable cost multipliers.

7. Fill rates for feeder and distribution cable appear unrealistically high leading to unrealistically low costs.

8. Fill rates appear to be higher than stated in the models documentation.

9. Implied fill rates for serving area interface (SAI) and multiplexing (MUX) appear unrealistically high.

10. The model appears to be unwieldy and difficult to run.

11. The source for manhole, terminal, splice and servicing area interface and other costs appear to be based on "subject matter" expert judgment without documentation or validation.

12. The identification of subject matter experts (SMEs) utilized by the models is not clear.

13. Where and how SME expertise was utilized is not clear.

14. Switching costs appear substantially understated.

15. What would be expected as major changes in the model do not lead to major changes in the results of the model.

16. The models do not reflect the additional costs of changing

facilities which exist in a growing demand environment.

17. Cost of money and depreciation costs may be unrealistically low.

18. Costs for digital cross connects, SS7 network components and essential network support systems may be excluded or understated.

19. Operator position costs appear understated. (TR 2079-2080)

As noted above, the Hatfield model runs filed in this proceeding were not based on Florida-specific depreciation rates. In a late-filed deposition exhibit requested by staff, MCI produced an alternative model run that reflected the last Commission-authorized depreciation rates for Southern Bell. Using the depreciation rates set by this Commission resulted in an increase of $0.24 in the total cost of a loop. (EXH 36)

Prior to hearing staff performed sensitivity analyses on the Hatfield model, modifying certain assumptions. Two questionable assumptions built into the model had fairly significant impact on the total cost of a loop. First, the Hatfield Model incorporates a default value of .700 for a "Forward-Looking Network Operations Factor." This factor reduces network operations expense amounts initially computed in the model by 30%, assuming that over time an efficient firm would be able to achieve such a reduction relative to historic expense levels. (TR 1112). During cross-examination by staff, MCI witness Wood acknowledged that Network Operations Expenses actually consists of five subaccounts. One of these subaccounts is Power, which relates to expenses associated with electricity required to power the telecommunications network; another subaccount pertains to testing expense. (TR 1115) In response to questioning by staff, witness Wood agreed that the application of the forward-looking network operations factor effectively assumes that an efficient LEC will be able to reduce expenses for power and testing by 30%. (TR 1112, 1115-1116) By nullifying the impact of this factor, the Hatfield model computes total loop costs $0.94 higher than those sponsored by MCI and AT&T. (TR 1116)

Second, staff discovered that the Hatfield Model has built into it a "structure sharing factor." Structures include the costs of trenching, conduit, and telephone poles, which are associated with the installation of buried, underground, and aerial cable, respectively. The model assumes that supporting structures will be "shared" with other firms -- typically, a cable company and an electric utility. In order for the costs of trenching to be

shared, a LEC would need to coordinate its efforts with such other utilities. Witness Wood admitted during cross-examination that he has not aware whether it was a Southern Bell policy to contact other utilities before doing the trenching to bury telephone cable. He also did not know if MCI had such a policy. (TR 1120) The default values for the structure sharing factors in the Hatfield model are set at .33; the effect of applying these .33 values is to exclude 2/3 of the investment in supporting structures initially computed from the final cost outputs. By setting these values to 1.0 (which attributes 100% to the LEC), total loop costs derived by the model increased by $3.37, or 28%. (TR 1120).

The cumulative impact of the above three adjustments results in an increase to the Hatfield estimated total loop costs of $4.55 per line per month. The Hatfield loop cost for all BellSouth loops as submitted by MCI and AT&T is $11.89. By taking these few changes to the Hatfield model described above ($4.55), and adding it to the Hatfield loop cost of $11.89, results in a sum that is greater than BellSouth's TSLRIC loop cost.

Staff does not believe that the Hatfield Model produces estimated costs which are representative of the costs of BellSouth's network in Florida. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area. The Hatfield model is extremely complex and staff's efforts in thoroughly evaluating the model were impeded by the presence of numerous locked cells in the spreadsheets. However, as demonstrated above, our review leads us to conclude that the Hatfield Model understates costs. Accordingly, staff recommends that the Commission not set permanent rates based on Hatfield results. In addition, staff recommends that the Commission not base interim rates for unbundled network elements upon the results of the Hatfield Model, with one exception. The exception is where no other cost information exists in the record to set a rate for a particular network element. Staff recommends that where used, the Hatfield cost for an element should be adjusted upward to reflect a more appropriate cost estimation.

BellSouth's TSLRIC Cost Studies

BellSouth provided LRIC and TSLRIC cost studies for most of the unbundled network elements requested by the parties. BellSouth did not provide cost studies for those elements which it considered to be technically infeasible to provide. (Caldwell TR 2161) BellSouth did not provide cost studies for the following elements:

For recurring rates:

NID
Loop Distribution
4-Wire Analog Port
Directory Assistance Transport elements
- switched local channel
- switched dedicated transport at DS1 level
AIN

For nonrecurring rates:

NID
Loop Distribution
Ports
- 4-wire analog
Dedicated Transport
Directory Assistance Transport
- switched local channel
Switched Dedicated Transport

AT&T witness Ellison noted several criticisms of the BellSouth cost studies in his direct testimony. In early negotiations, BellSouth offered many rates for certain unbundled elements that were taken from existing tariffs. (TR 381-382). Witness Ellison states that tariff rates contain costs which are applicable to retail costs, such as advertising, marketing and customer service related costs. He states further that other elements in the tariff contain mark-ups not consistent with cost-based pricing and would not be appropriate for wholesale purposes. (TR 382).

Although AT&T claims that it has not been successful in obtaining and analyzing studies and back-up material necessary to validate BellSouth's stated costs, witness Ellison does state that he was able to determine that most of BellSouth's LRIC cost studies reflected TSLRIC results. (TR 383-384). MCI witness Wood states that the lack of publicly available information related to a LEC's cost study makes a meaningful review difficult or impossible. (TR 1049).

One source of information used by witness Ellison to review the appropriateness of BellSouth's cost studies were cost studies submitted to the Louisiana Commission earlier this year. Witness Ellison claims that AT&T was able to validate that several individual BellSouth studies were within reasonable limits. (TR 385).

AT&T originally recommended the Commission adopt the rates shown in Exhibit 10 (WE-1), but at the hearing, witness Ellison stated

that AT&T was recommending the rates from the Hatfield Study. (TR 430). Witness Ellison stated that his reasons for recommending the Hatfield results over those in Exhibit 10 were: 1) AT&T had not obtained further cost support documentation from BellSouth and; 2) the FCC's TELRIC pricing requirement would require some minor modifications, and BellSouth had not provided AT&T the data to make those modifications. (TR 429). Although AT&T no longer recommends the Commission adopt the TSLRIC rates in Exhibit 10, staff believes AT&T's suggested adjustments to BellSouth's cost study results, as shown in this exhibit, are worth noting and will be taken into consideration by staff when recommending rates to the Commission. AT&T claims that the costs in Exhibit 10 reflect Florida costs. (TR 399). AT&T was the only company to demonstrate that it examined BellSouth's cost studies. MCI did not provide detailed criticisms based on an examination of BellSouth's TSLRIC cost studies. A summary of witness Ellison's testimony regarding AT&T's examination of BellSouth's cost studies and the problems AT&T found is provided below.

Loops

AT&T asserts that the cost studies provided for 2-wire loops did not reflect least-cost, forward-looking loop technologies. However, BellSouth's supporting documentation did include such information, and AT&T says that it used that information to calculate an appropriate loop cost. AT&T claims that BellSouth included analog conversion costs to loops carried over digital loop carriers. AT&T states that during negotiations BellSouth explained that the use of digital loop carrier systems requiring analog conversion is declining and that only a small percentage of its loops require such conversion. Therefore, the loop costs are overstated. (TR 387).

AT&T disputes the return on equity used in the 2-wire loop studies. AT&T claims the return on equity of up to 18% is too high and that a more reasonable return of 11.5% for monopoly network elements is appropriate. After making adjustments to BellSouth's loop costs, AT&T further adjusted those costs by multiplying the figures by an 85% cost of money factor to produce the 11.5% return on equity. (TR 388-389).

AT&T contends that it has concerns with BellSouth's cost studies for its Basic Rate ISDN (BRI ISDN) loops. First, AT&T asserts that BellSouth provided insufficient documentation on the assumptions used in the cost studies. According to AT&T, during negotiations, BellSouth stated that the studies for the BRI ISDN loops contained the same assumptions as those used in prior studies. The prior studies used metallic loop facilities

for customers within 12,000 feet of the customer's wire center, and digital loop carrier for all other customers. However, the supporting documentation indicates the use of fiber for feeder lines and metallic for distribution lines. (TR 390). AT&T claims this raises concerns about which technology was used in the cost study. In addition, AT&T claims that the BRI ISDN studies are flawed because BellSouth included analog conversion costs and overstated the return on equity. (TR 390).

Local Switching

AT&T states that it was able to determine BellSouth's costs for local voice switching services. However, AT&T asserts it was unable to verify costs for data switching elements because no data was provided to them. (TR 392). AT&T claims the original cost studies provided to AT&T differ from the studies provided to the Commission, and that these latter studies contain additional and unsupported local switching costs for billing, business office, and operator services. (TR 394).

Operator Systems

AT&T believes the cost estimates for operator systems provided by BellSouth appear reasonable. However, AT&T says that insufficient documentation was provided with the studies, and AT&T recommends reducing the costs by a factor of 10% to account for the possibility of inappropriate cost loadings. (TR 394-395).

Common and Dedicated Transport

AT&T found the common transport costs to be reasonable except for the cost of money. AT&T applied an 85% cost of money adjustment factor to arrive at its proposed rate. (TR 395).

AT&T also found the dedicated transport cost estimate to be reasonable but it included certain pricing limitations. These limitations, as stated by AT&T, concern the way BellSouth bundled elements to arrive at service configurations. AT&T believes that the elements should be priced and offered separately. The dedicated rates proposed by AT&T in Exhibit 10 are based on information from the Louisiana study. (TR 396).

AT&T has determined that BellSouth's costs for the following

unbundled network elements are reasonable (TR 396-398):

- Tandem Switching
- Signaling Link Transport*
- Signal Transfer Point (STP)*
- Service Control Point (SCP)

* subject to 85% cost of money adjustment factor

AT&T has not been able to determine a price for those elements shown on Exhibit 10 (WE-2), due to either a lack of adequate cost support or because BellSouth did not make a price proposal for AT&T.

Staff's analysis of BellSouth's TSLRIC Cost Studies

BellSouth provided LRIC and TSLRIC cost studies for the unbundled network elements. (EXH 66). BellSouth witness Caldwell states that the cost studies use incremental costing techniques and do not include shared or common costs. The LRIC studies include volume sensitive direct long run incremental costs, and the TSLRIC studies include both volume sensitive and insensitive costs. (TR 2163).

BellSouth states that the voice grade and ISDN loop studies analyze two technologies: copper and digital loop carrier on fiber. BellSouth argues that copper and digital loop carrier on fiber represent the most efficient method of deploying voice grade (2-wire and 4-wire) and 2-wire ISDN loops now and in the future. (TR 2164) BellSouth witness Caldwell states the most efficient way to provide a loop that is less than 12,000 feet on a going forward basis would be on copper. BellSouth further states that if the total loop length is greater than 12,000 feet, the most efficient technology would be digital loop carrier on fiber. (TR 2219)

Staff has reviewed BellSouth's cost studies and, based on the evidence in this record, believes that the studies are appropriate because they approximate TSLRIC cost studies and reflect BellSouth's efficient forward-looking costs. As explained above, AT&T criticized certain aspects of BellSouth's cost studies. An across-the-board complaint expressed by AT&T was that BellSouth's cost of money assumption was too high. BellSouth's witness Caldwell argues that the company's use of a 13.2% cost of money (16% for equity and 8.9% for debt) is reasonable, based on the return on equity authorized by this Commission under BellSouth's incentive regulation plan adopted prior to passage of price regulation. Under BellSouth's incentive regulation plan, the

Company could earn up to 12.5% return on equity with no sharing of earnings and a maximum of 17.5% with sharing. (TR 2189-2190) Staff believes the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the other assumptions appear reasonable. Staff's recommended rates take into consideration that BellSouth's cost of money assumption may be at the upper range of reasonableness.

Conclusion and Recommendation

Staff recommends that, based on the Act, the Commission should set permanent rates based on BellSouth's TSLRIC cost studies. Staff's recommended rates were set only for those unbundled network elements determined to be technically feasible for BellSouth to provide in issue 1(a) and requested by AT&T and MCI.

Table 3 is a comparison of BellSouth's, AT&T and MCI's recurring rates and staff's recommended recurring rates. Proposed rates were set only for those elements determined to be technically feasible in issue 1(a) and requested by AT&T and MCI. Staff would note that sub-loop unbundling is no longer requested by AT&T or MCI. Therefore, the loop concentrator and loop feeder elements have not been priced. In addition, AT&T and MCI did not identify the specifics of AIN capabilities in their request. Staff was unable to set rates without the specifics of the request. Therefore, staff recommends that if AT&T or MCI cannot negotiate a rate, or rates, for AIN capabilities, then BellSouth should file a TSLRIC cost study with this Commission within 30 days from the date of a bona fide request.

Where BellSouth cost studies were produced, staff is recommending permanent rates. Staff's recommended rates cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs. Where no BellSouth TSLRIC study was provided, staff is recommending interim rates based on the Hatfield Study results or BellSouth's tariff. Staff recommends that BellSouth should file TSLRIC cost studies where staff has set interim rates within 60 days of the issuance of the order.

Table 3: Comparison of Proposed Recurring Rates and Staff's Recommended Recurring Rates

Network Element	Staff Recommended Rates	BellSouth Proposed Rates	AT&T/MCI Proposed Rates
Network Interface Device	$0.76*	No Proposed Rate	$0.56
Unbundled Loop			
2-wire analog	$17.00	$17.00	$11.89
4-wire analog	$30.00	$31.90	
2-wire ISDN	$40.00	$43.00	
4-wire DS1	$80.00	$140.90	
Loop Distribution	$7.00*	No Proposed Rate	$6.43
End Office Switching:			
Port			
2-wire analog	$2.00		$1.02
4-wire analog	*$12.00	$2.00	
2-wire ISDN	$13.00	$10.00	
4-wire DS1	$125.00	$20.00	
Usage		$150.00	
initial min.	$0.0175		$0.0017
add'l min.	$0.005	$0.0275	
		$0.0125	
Signaling			
Link	$5.00	No Proposed Rate	$18.41
Termination	$113.00		
Usage			
-call setup msg	$0.00001		
-TCAP message	$0.00004		
Usage surrogate	$64.00		
Channelization System -DS3 to DS1, per arrangement	$970.00	$970.00	No Proposed Rate
Common Transport	$0.00004	$0.00004	$0.00074

Network Element	Staff Recommended Rates	BellSouth Proposed Rates	AT&T/MCI Proposed Rates
Dedicated Transport			
per mile	$16.75	$16.75	
per term.	$0.00036	$0.00036	$4.24
per fac. term.	$59.75	$59.75	
Tandem Switching	$0.00050	$0.00050	$0.0012
Operator Systems			AT&T and MCI did not propose dis-aggregated rates for operator systems
Operator Call Handling	$1.00	$1.17	
Automated Call Handling	$0.10	$0.15	
Busy Line Verif.	$0.80	$0.95	
Emergency Inter.	$1.00	$1.40	
Numbering Service			
Intercept			
-per query	$0.01	$0.25	
Directory Assistance (DA)	$0.25	$0.25	
DA Database			
-per listing	$0.015	$0.035	
-monthly	$100.00	$150.00	
Direct Access to DA			
Service			
-monthly	$5000.00	$5000.00	
-per query	$0.01	$0.023	
DA Call			
Completion	$0.03	$0.06	
DA Transport			
-Switched Local Channel	*$133.81	$133.81	
-Switched Dedicated			
transport DS1 level			
-per mile	*$16.75	$16.75	
-per facility term.	*$59.75	$59.75	
-SW Comm./DA call	$0.0003	$0.0003	
-SW Comm./DA call/mile	$0.00001	$0.00004	
-Tandem SW/DA call	$0.00055	$.00055	

• Staff recommended interim Rate

In Table 4, staff presents a comparison of BellSouth's proposed nonrecurring rates and staff's recommended nonrecurring rates. Where BellSouth provided nonrecurring cost studies, staff recommends permanent rates which cover BellSouth's costs. Staff believes its recommended rates are sufficient to cover these

nonrecurring costs. Staff believes that BellSouth's proposed nonrecurring rates are, in some instances, excessive. Where BellSouth did not provide nonrecurring cost studies, staff recommends that BellSouth provide TSLRIC cost studies within 60 days from the issuance of the order.

Table 4: Comparison of BellSouth's Proposed Nonrecurring Rates and Staff's Recommended Nonrecurring Rates

Network Element	Staff Recommended Rates	BellSouth Proposed Rates
Network Interface Device	No NRC proposed	No NRC proposed
Unbundled Loop		
2-wire analog		
First	$140.00	$140.00
Additional	$42.00	$ 45.00
4-wire analog		
First	$141.00	$140.00
Additional	$43.00	$ 45.00
2-wire ISDN		
First	$306.00	$360.00
Additional	$283.00	$325.00
4-wire DS1		
First	$540.00	$740.00
Additional	$465.00	$645.00
Loop Distribution	No NRC proposed	No NRC proposed

Network Element	Staff Recommended Rates	BellSouth Proposed Rates
End Office Switching:		
Port		
2-wire analog		$60.00
First	$38.00	$40.00
Additional	$15.00	
4-wire analog		$60.00
First	*$38.00	$40.00
Additional	*$15.00	
2-wire ISDN		$120.00
First	$88.00	$100.00
Additional	$66.00	
4-wire DS1		$190.00
First	$112.00	$170.00
Additional	$91.00	
Signaling Link	$400.00	$510.00
Dedicated Transport per facility termination	*$100.49	$100.49
Operator Systems		
Direct Access to DA Service -service establishment charge	$820.00	$1000.00
DA Transport		
Switched Local Channel		
-First	*$866.97	$866.97
-Additional	*$486.83	$486.83
Switched Dedicated Transport -per facility termination	*$100.49	$100.49

ISSUE 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? **(STAVANJA)**

RECOMMENDATION: Yes. Staff recommends that the Commission allow AT&T and MCI to combine unbundled network elements in any manner they choose, including recreating existing BellSouth services as provided in Section 251(c)(3) of the Act and the FCC's Order 96-325 at ¶ 340.

POSITION OF PARTIES:

AT&T: Yes. Under the Act, AT&T may order unbundled network elements individually or in any combination it chooses. Any combinations will be pre-determined and identified to BellSouth so they can be ordered and provisioned and shall not require the enumeration of each network element with that combination on each provisioning order

BELLSOUTH: 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.

MCI: Yes. The Act requires BellSouth to offer unbundled elements in a manner that allows MCI to recombine such elements to provide telecommunications services. It does not allow limitations on the manner in which the elements are combined, or the services which can be provided through the use of unbundled elements.

STAFF ANALYSIS: Section 251 (c)(3) of the Telecommunications Act of 1996 states that the incumbent local exchange carrier has the duty to:

> ...provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just reasonable, and nondiscriminatory...

This same section in the Act also states:

> An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Staff interprets this section of the Act to permit the rebundling of network elements in any manner AT&T or MCI chooses, including the recreation of an existing BellSouth service.

BellSouth witness Scheye argues that "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). Purchasing an existing retail service at wholesale rates is not the same as recreating the same type of service by combining unbundled elements. The FCC's rules are clear that a requesting telecommunications carrier can provide any telecommunications service that can be offered by means of network elements. Specifically, Section 51.307(c) provides that

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

Also, Section 51.309(a) provides that

> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner that the requesting telecommunications carrier intends.

In addition, Section 51.315(a) states that "an incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carrier to combine such network elements in order to provide a telecommunications service." Finally, Section 51.315(c) specifically provides that upon request,

> an incumbent LEC shall perform the functions necessary to combine unbundled elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
> (1) technically feasible; and
> (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

In ¶333 of the Order, the FCC states:

> Additionally, carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under section 251 (c)(4) of the 1996 Act.

While the service may appear the same to an end-user, the service is clearly different to the carrier, based on how it is provisioned. At the hearing, AT&T witness Gillan explained that ordering a 1FR is not the same as recombining a loop, switch, port and local usage. (TR 150).

The FCC's Order, ¶334, states:

> If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks... It thus faces the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. (Many network elements can be used to provide a number of different services.) A carrier that resells an incumbent LEC's services does not face the same risk. This distinction in the risk borne by carriers entering local markets through resale as opposed to unbundled elements is likely to influence the entry strategies of various potential competitors.

Staff points out that the FCC distinguished the risks involved for carriers purchasing unbundled network elements compared to carriers reselling an incumbents service. Purchasing a retail service at wholesale does not contain the same element of risk as recombining unbundled elements to recreate a service does. Purchasing a retail service at wholesale provides a certain level of mark-up, since the service can then be resold at the retail rate. Recreating a service with unbundled elements does not guarantee any level of return to AT&T or MCI, yet, as stated by AT&T witness Gillan, BellSouth will be fully compensated for the use of those network elements. (TR 154)

BellSouth states that unbundled network elements should only be combined with AT&T's or MCI's own capabilities to create a unique service. However, the FCC believes that limiting access to unbundled network elements only where carriers could provide their own facilities could diminish competition. By limiting access to unbundled network elements, carriers would have an incentive to enter only those local markets that would support the duplication of some or all of the LEC's local network. (FCC 96-325, ¶340)

BellSouth also raises the argument that allowing unbundling and

rebundling would unfairly benefit AT&T and MCI, because they would avoid the joint marketing restriction in Section 271 of the Act.

The restriction in Section 271(e) states that

> Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

BellSouth states that this restriction would apply to prevent AT&T and MCI from jointly marketing their resold services that they purchase from BellSouth on a resold basis with their interLATA services. BellSouth argues that if a service is bought under the unbundled/rebundled fiction, then the joint marketing provision can be avoided.

The FCC rejected this argument in Paragraphs 335 and 336 of its Order. As noted above, the FCC pointed out differences in opportunities and risks involved for a carrier taking unbundled elements rather than carriers offering services for resale. The FCC found that the Act does not prohibit all forms of joint marketing.

> In other words, we see no basis upon which we could conclude that section 271(e)(1) restricts joint marketing of long distance services, and local services provided solely through the use of unbundled network elements, without also concluding that the section restricts the ability of carrier to jointly market long distance services and local services that are provided through a combination of a carrier's own facilities and unbundled network elements. Moreover, we do not believe that we have the discretion to read into the 1996 Act a restriction on competition which is not required by the plain language of any of its sections.

Based on the clear direction of the Act, the FCC's Rules and Order, staff recommends that the Commission allow AT&T and MCI the ability to combine unbundled network elements in any manner they choose, including recreating existing BellSouth services.

ISSUE 3: What services provided by BellSouth, if any, should be excluded from resale? **(SHELFER)**

RECOMMENDATION: BellSouth should be required to offer for resale any services it provides at retail to end user customers who are not telecommunications carriers. These services include all grandfathered services (both current and future), promotions that exceed 90 days, volume discounts, contract service arrangements (both current and future), Lifeline and Linkup services, and 911/E911 and N11 services.

POSITION OF PARTIES

AT&T: The Act and the FCC Order require BellSouth to offer for resale at wholesale rates any telecommunications service that BellSouth provides at retail to non-telecommunications carriers. The Act and the FCC Order do not provide for any exceptions to BellSouth's obligation.

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

MCI: The Act requires BellSouth to offer for resale any telecommunications service that it provides at retail to end user customers who are not telecommunications carriers. Thus no retail services should be excluded from resale. Specifically, grandfathered services, promotions, contract services, volume discounts, and Lifeline and LinkUp services must be made available for resale.

STAFF ANALYSIS: Section 251(c)(4) of the Act requires local exchange companies (LECs) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This is further clarified in the FCC order. (FCC 96-325, ¶ 871) The primary dispute in this issue is over what services are retail services.

BellSouth does not believes that grandfathered services, contract service arrangements, promotions, Linkup and Lifeline services, 911/E911, and N11 services should be resold. AT&T and MCI contend that the Act does not provide for any exceptions. As a result, any telecommunication service offered at retail to end user customers who are not carriers should be resold.

BELLSOUTH'S POSITION

BellSouth argues that certain options or service offerings are not retail services and should be excluded from resale. (Scheye, TR 1615) Witness Scheye states that resale should exclude obsoleted/grandfathered services, contract service arrangements, promotions, LinkUp and Lifeline services, N11 and E911 and 911. (TR 1615-1619, 1689-1691, 1728-1731, 1841) BellSouth argues that under the Act, these services are either not retail services or bear special characteristics that should exclude them from resale. (Brief, p.35)

AT&T AND MCI'S POSITION

AT&T argues that BellSouth can deny AT&T the right to purchase obsoleted/grandfathered services, contract service arrangements, promotions, LinkUp and Lifeline services, N11 and E911 and 911 services only if BellSouth can prove to this Commission that these withheld services are narrowly tailored, reasonable and non-discriminatory. (Sather, TR 597-598, Order at ¶ 939) AT&T states that BellSouth has failed to meet this burden.

AT&T's witness Sather counters BellSouth's statement that resale does not bring the benefits of true competition as compared to alternative networks. (Varner, TR 1542) He argues that history proves differently. Resale was the primary vehicle that was used by new entrants in the long distance market. (Sather, TR 586) MCI's witness Price agrees. He states that an effective local resale market is essential to the development of full facilities-based local competition. Witness Price states that in addition to promoting facilities-based competition, resale of local services provides independent benefits to consumers through retail competition. (Price, TR 773)

MCI's witness Price argues that the FCC addressed in its Order the need for resale competition. Specifically,

> Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further, in some areas and for some new entrants, we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks. In light of the strategic importance of resale to the development of competition, we conclude that it is especially important to promulgate national rules for use by

state commissions in setting wholesale rates... (FCC 96-325, ¶ 907)

AT&T and MCI assert that BellSouth is required, based on the Act, to make available for resale all existing retail services. (Sather, TR 583; Price, TR 774, 779) AT&T's witness Sather contends that by precluding specific services or categories from being resold, BellSouth effectively isolates these services to their existing customers, thereby shielding particular customer classes from competition. As a result, consumers are stripped of their choice to receive such services from a different provider and continue to be subjected to whatever price BellSouth decides to charge. (Sather, TR 586)

The following services are in dispute and will be discussed individually: grandfathered services; contract service arrangements; promotions; LinkUp and Lifeline services; N11 and 911/E911.

Grandfathered and Obsolete Services

In its argument BellSouth's witness Scheye states that grandfathered services are no longer available for sale to, or transfer between, end users, nor should they be transferrable between providers. BellSouth has made available new services to replace the existing services. (Scheye, TR 1689) He contends that to allow grandfathered services to be resold would serve to undermine this basic definition. Once a customer decides to obtain his services through another LEC provider, that customer is no longer a BellSouth customer. (TR 1617, TR 1728) Witness Scheye clarifies, based on the FCC Order, that it appears only newly grandfathered services would be required to be resold. (TR 1876)

AT&T and MCI argue that the Act and the Order require withdrawn services to be resold. AT&T states in its brief that the Act does include withdrawn services within the definition of telecommunications services because BellSouth offers withdrawn services "for a fee directly to the public." (§ 13(46)) MCI contends that the unstayed portions of the FCC Rules require that grandfathered services be available for resale to the same customers who have purchased the service in the past. (§ 51.615) AT&T states that this is further supported by the Order, which states that withdrawn services must be made available at wholesale rates to a requesting carrier. (Sather, TR 598, Order at ¶ 968)

In addition, MCI argues that absent resale BellSouth would be able to offer services to its customers that resale competitors would be unable to match. (Price TR 779-780) Both companies

contend that in some cases these discontinued services will be available for up to six years. (Scheye, TR 1874) MCI argues that because of pricing advantages, many BellSouth customers prefer to remain on these services. (TR pp. 1875-1876)

AT&T's witness Sather states that it is AT&T's intention to provide these services only to customers receiving them from BellSouth at the time they switch to AT&T. AT&T is not seeking to offer these services to customers not currently receiving them. (Sather, TR 1874)

Staff believes that withdrawn services, such as grandfathered service, are subject to resale. The FCC Rules that state:

> When an ILEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the ILEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past. (§51.615)

This is further supported by the Order which states that when an ILEC grandfathers its own customers of a withdrawn service, such grandfathering should also extend to reseller end users. The Order further requires that the ILEC shall offer wholesale rates for such grandfathered services to resellers for the purpose of serving grandfathered customers. (FCC 96-325, ¶ 968)

Contract Service Arrangements

BellSouth presents that contract service arrangements are designed to respond to specific competitive threats on a customer-by-customer basis and contain rates established specifically for each competitive situation. Therefore, contract service arrangements should be excluded from resale. Witness Scheye argues that it is completely illogical for BellSouth to develop a customer-specific proposal containing non-tariffed rates, only to have AT&T or MCI 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. (Scheye, TR 1689, TR 1729)

AT&T's witness Sather contends that CSAs are offerings of tariffed services at customer-specific, non-tariffed rates. In order to be competitive and entice customers to purchase services from it and not a competitor, an ILEC will offer CSAs to customers for a specific time in which designated services can be received at a discounted rate. (Sather, TR 590) AT&T states that the Act

mandates that ILECs offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers..." (§ 251(c)(4)(A))

MCI argues that CSAs are simply a retail service that has been priced pursuant to contract rather than tariff. (Brief, p 28) Witness Price states if BellSouth were permitted to preclude the resale of CSAs, it would be able to use such contracts to provide differential pricing to customers that it knows its competitors could not meet. This would enable BellSouth to avoid its obligation under the Act to make all retail service available for resale. (TR pp. 832-833, 885-886)

The FCC Order specifically states "contract and other customer-specific offerings should not be excluded from resale." (FCC 96-325, ¶ 948) Staff does not believe it is logical to require the ILEC to resell a contract service arrangement that was developed to meet a specific customer's needs. The only way an ALEC could resell this service would be for the ALEC to take the customer away from BellSouth. If that were to occur, then BellSouth would no longer have a contract service arrangement with that end user, and therefore, there would be no contract to resell. However, since the Order requires that contracts not be excluded from resale, staff recommends that BellSouth should be required to offer contract service arrangements for resale.

Promotions

Witness Scheye also argues that promotions are not retail services and should not be resold. He states that in most instances, they are simply limited time waivers of nonrecurring charges. He contends that it would be completely illogical for BellSouth to run promotions to attract customers, only to be required to give AT&T and MCI the same limited time waiver or nonrecurring charges, in addition to the already discounted wholesale monthly recurring rate, so that AT&T and MCI can attract customers. Witness Scheye argues that in effect BellSouth would be subsidizing AT&T and MCI's marketing program. He continues that if AT&T & MCI wish to conduct promotions, its stockholders should have to bear the consequences just as BellSouth's do. Competitive advantage should be earned in the marketplace, not given through an inappropriate resale requirement or discount. (Scheye, TR 1690, TR 1730) If a reseller wishes to promote a particular service, BellSouth contends there is nothing to stop the reseller from offering its own promotion of an already discounted BellSouth resold service or any of its own services. (TR 1617) Witness Scheye states that the FCC Order agrees with BellSouth's position and allows promotions used for 90 days or less and not in a

continuous manner to be restricted from resale. (TR 1690, TR 1730, Order at ¶ 950)

AT&T states that promotional plans are specific pricing arrangements designed to entice customers to purchase particular services and new features. Generally, BellSouth's promotional plans involve waiving a fee, such as a non-recurring charge, or offering the first month of service free of charge. (Sather, TR 591)

AT&T and MCI contend that the unstayed portion of the Order requires that all promotions must be available for resale, except those that are short-term in nature. (FCC 96-325, ¶ 949) Specifically, that the wholesale discount can be applied to the ordinary retail rate (rather than the promotional rate) if the promotion is for less than 90 days and the LEC does not use successive promotions to avoid the wholesale rate obligation. (§ 41.613(a)(2), Order at ¶ 950)

Staff contends that the Order is clear that promotional or discounted offerings should not be excluded from resale. (FCC 96-325, ¶ 948) However, the FCC Rules provide that short-term promotions that will be in effect for no more than 90 days are not subject to the wholesale discount. The rule further states that ILECs cannot use these promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates. (§51.613(a)(2))

LinkUp and Lifeline Services

BellSouth states that 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 and should not be resold. Witness Scheye argues that if AT&T and MCI 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 the subsidy program. (Scheye, TR 1690-1691, 1730) BellSouth contends that the FCC Order recognizes this issue and allows resale restrictions to be placed upon services for which other subscribers would be ineligible. (TR 1730, Order at ¶ 962)

AT&T's witness Sather defines LinkUp and Lifeline as services that include arrangements to help defray the cost of the non-recurring installation fees and to provide reduced monthly service

charges for customers who qualify for financial assistance. (Sather, TR 591) AT&T and MCI state that these services are means-based, subsidized retail residential services to assist low income customers. The recipients of these services are not telecommunications carriers -- they are financially disadvantaged residential customers -- thus establishing BellSouth's statutory duty to resell these services. (Brief, pp. 42, 28)

AT&T disagrees with BellSouth that AT&T should resell basic residential service to eligible customers at appropriate rates, and then apply for and receive certification and funding from the appropriate state agency (Scheye, TR 1730) AT&T contends that this is another regulatory burden that new entrants would have to overcome. (Brief, p.42)

MCI states that it is entirely appropriate to place a limitation that restricts the resale of these services to customers who would be eligible to obtain the service directly from BellSouth. It is inappropriate, however, to prohibit their resale. MCI contends that BellSouth will continue to receive any subsidy funds associated with the offering of these services for resale. (Brief, p 29)

Staff recommends that based on the Order, LinkUp and Lifeline should be resold. The Order states that there is general agreement that residential services should not be resold to non-residential end users and that restrictions prohibiting such cross-class reselling of residential services are reasonable. The Order further states that Section 251(c)(4)(B) allows states to make similar prohibitions on the resale of Lifeline or any other means-tested service offering to end users not eligible to subscribe to such service offerings. (FCC 96-325, ¶ 962) Staff believes it is appropriate to resale means-tested service offerings to only end users who are eligible to receive these services.

N11 including 911/E911

BellSouth's witness Scheye states that 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 believes it should not be required to offer these services for resale. (Scheye, TR 1691, 1730-1731)

AT&T's witness Carroll states that 911 service provides the facilities and equipment required to route emergency calls made in a particular geographic area to the appropriate Public Safety Answering Point. E911 provides more flexibility by using a

database to route calls to the appropriate point. N11 is a service offered to information service providers who, in turn, provide information services to consumers via three digit dialing. (Carroll, TR 711)

AT&T's witness Sather argues that making N11 and 911/E911 available for resale prevents BellSouth from maintaining monopoly control over providing such services. He contends that BellSouth provides these services to customers who are not telecommunications carriers and, therefore, must offer them for resale. In addition, permitting these services to be resold will ensure that consumers can look to other carriers to provide, at a minimum, the same type and quality of services they have received from the ILEC. (Sather, TR 592)

MCI disagrees with BellSouth's witness Scheye that these services are not retail services because they are offered to a limited class of customers -- governmental bodies and information service providers. (Scheye, TR 1730-1731) MCI argues that the Act permits resale of any service offered at retail to subscribers who are telecommunications carriers.

Staff agrees with AT&T and MCI that 911/E911 and N11 services are subject to resale. These services are sold to customers who are not telecommunications providers. Section 251(c)(4) of the Act requires incumbent local exchange companies to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The Act did not define governmental bodies and information providers as carriers.

Staff Conclusion

Staff concludes that pursuant to the Act and the Order, the evidence demonstrates that ILECs are required to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This includes obsoleted/grandfather services, contract service arrangements, promotions, LinkUp and Lifeline services, N11 and E911 and 911 services.

ISSUE 4: What are the appropriate wholesale rates for BellSouth to charge when AT&T or MCI purchases BellSouth's retail services for resale? **(SHELFER)**

RECOMMENDATION: Staff recommends that BellSouth should offer retail services at a wholesale discount rate of 21.83% for residential services and 16.81% for business services.

POSITION OF PARTIES

AT&T: The appropriate wholesale rate for services available for resell is the retail rates of BellSouth offered by BellSouth less 39.99%. This reduction in retail rates shall apply to all services, including both recurring and nonrecurring service charges

BELLSOUTH: 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 a 12.2% discount for business services based on avoided cost studies conducted pursuant to the Act.

MCI: Section 252(d)(3) of the Act requires wholesale rates to be based on the retail rates for the service less costs that are avoided by BellSouth as a result of offering the service on a wholesale basis. The application of this standard produces wholesale rates for BellSouth in Florida that are 25.06% below the current retail rates.

STAFF ANALYSIS: The Act directed state commissions to determine the appropriate methodology for local exchange companies to set wholesale discount rates for retail services. Section 252(d)(3) of the Act requires:

> For the purpose of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

There are three key differences among the parties. First, they differ as to how the phrase "will be avoided" should be construed. AT&T and MCI agree with the FCC's conclusion that the wholesale discount should be calculated on the basis of "costs that reasonably can be avoided when an ILEC provides a service for resale...". (§ 51.609(b)) Under this interpretation the avoided costs are those that an ILEC would no longer incur if it were to cease retail operations and instead provide all of its services

through resellers. BellSouth disagrees with the FCC's, AT&T's and MCI's interpretation of the Act. BellSouth believes that it is unreasonable to assume that it will cease retail operations and function only as a wholesale provider. BellSouth contends this is a misrepresentation of the intent of the Act. BellSouth argues that the Act requires it to consider as avoided costs those costs that actually "will be avoided," not costs that "could be avoided" if they were a wholesale-only provider.

The second area of disagreement concerns what expense accounts are avoidable and how much will be avoided. The FCC Order identifies six accounts that presumably should be avoided: Product Management (account 6611), Sales (account 6612), Product Advertising (account 6613), Call Completion (account 6621), Number Services (account 6622), and Customer Services (account 6623). In accordance with the FCC, AT&T and MCI have treated these accounts at 90-100% avoided. The FCC Order, however, provides that its criteria are intended to leave state commissions broad latitude in selecting costing methodologies. It further states that the rules for identifying avoided costs by USOA expense accounts are cast as rebuttable presumptions, and the FCC did not adopt as presumptively correct any avoided cost model. (FCC 96-325, ¶909)

The third area of concern is the treatment of certain overhead expenses. The FCC Order allows under its "reasonably avoidable" standard that an avoided cost study must include indirect, or shared costs, as well as direct costs. This is because indirect or shared costs, such as general overheads, support all of the ILECs functions, including marketing, sales, billing and collection, and other avoided retail functions. Therefore, a portion of the indirect costs must be considered "attributable to cost that will be avoided" pursuant to Section 252(d)(3). (FCC 96-325, ¶ 912) AT&T and MCI agree with the guidelines set forth in the Order; however, BellSouth did not include indirect costs in its study with the exception of uncollectibles.

BellSouth has proposed a wholesale discount rate of 19.0% for residential services and 12.2% for business services. AT&T and MCI have proposed that the Commission set one wholesale rate for both residential and business services. AT&T's proposed wholesale discount rate is 38.99% and MCI's is 25.06%.

Analysis of AT&T's Avoided Cost Study

AT&T proposes that the Commission adopt a permanent wholesale discount of 39.99% applicable to all of BellSouth's retail service rates. AT&T contends that its cost study complies with the requirements of the Act, and identifies all retail costs that will

be avoided by BellSouth. (EXH 14; Lerma TR 653)

Witness Lerma states that the Act provides substantial guidance for determining the wholesale rates for services that ILECs must sell to other carriers for resale. He asserts that to determine wholesale rates, the Act identifies three specific categories of costs that are to be excluded from retail rates: marketing, billing, and collection costs. The Act also prescribes the removal from retail rates of any "other cost that will be avoided." AT&T argues that effectively the Act prescribes that all retail-related costs are to be removed from retail rates to establish wholesale rates. (TR 611)

Witness Lerma states that AT&T used its "Avoided Retail Cost Model" (Model) to identify all types of BellSouth costs associated with retail activities occurring in the local service market. (TR 612) The witness contends that the objective of the Model is to measure all retail costs which will be avoided by BellSouth when wholesaling services to AT&T and to express the total of the costs as a percentage of BellSouth's retail rates. (TR 614)

The Model is divided into three phases. Phase I assigns revenues and costs to seven separate categories. Phase II reorganizes revenues and costs for those seven categories into the five traditional lines of business: Miscellaneous, Private Line, Local, Access, and Toll. Phase III analyzes the costs assigned to local service to identify costs that will be avoided, and calculates the appropriate reduction to local services retail rates to produce wholesale local service rates. (TR 614)

AT&T states that it has proposed a single avoided local retail cost percentage because avoided cost data, to the specific local services that BellSouth offers, currently is not available to AT&T or to this Commission for that matter. The missing pieces include a lack of revenue and avoided cost data relating to residential versus business customers. (TR 622)

Witness Lerma contends that AT&T's cost study is a tops-down study based on embedded cost as reflected in BellSouth's publicly available ARMIS report. All of the USOA cost categories that are presumed avoidable in the FCC Order, are considered avoided in the AT&T study. In addition, the witness states that to the extent that costs are included in the study that are not presumed avoidable in the FCC regulation, AT&T provides supporting rationale that demonstrates why these costs should be reflected as avoided costs. AT&T asserts that it properly identifies costs subject to proration between retail and wholesale. (TR 641)

BellSouth argues that AT&T's approach to calculating a wholesale discount factor overstates the calculated discount in at least three broad areas. BellSouth witness Reid contends that the first area of overstatement is caused by the procedure AT&T used to assign amounts for expense/cost to local exchange service. The second area of overstatement according to BellSouth is caused by AT&T's arbitrary identification of avoided retail costs. The third area of overstatement is caused by the limited revenue base (AT&T's revenue base does not include intraLATA toll revenue) which AT&T uses to divide into the avoided costs from its study. (Reid TR 2341)

Witness Reid indicates that AT&T has treated all directory assistance expenses as local and has ignored the fact that current cost assignments and revenue recoveries treat some of this directory assistance expense as access or toll. BellSouth contends that this distorts the resulting relationship between avoided expense and local revenues. (TR 2344)

BellSouth also asserts that costs associated with uncollectibles should not be avoided at 100%. Witness Reid states that this is not a reasonable calculation since AT&T has assigned 95% of BellSouth's total intrastate regulated uncollectible expense to the local category. (TR 2344)

BellSouth disagrees with AT&T that Product Management expenses should be treated as 100% avoidable. Witness Reid contends that this expense includes cost incurred in performing administrative activities related to marketing products and services. This includes competitive analysis, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels. BellSouth argues that the nature of this expense is not volume sensitive; therefore, resale of some quantity of BellSouth's services should not result in avoided product management expenses. BellSouth's witness Reid states that resellers will just be one of the distribution channels considered in the management of the service. (TR 2345-2346)

Witness Reid also states that AT&T is requesting that BellSouth unbundle parts of its retail services for purposes of calculating a wholesale discount. AT&T proposes to treat the costs for certain of these unbundled parts (operator services and certain repair services) as avoidable costs. BellSouth argues that AT&T is attempting to mix the concepts of unbundling and the resale of telecommunications services. BellSouth believes that the unbundling of services should be handled through the unbundling tariffs, not through the wholesale tariffs. BellSouth's witness

Reid argues that the wholesale service price should correspond to the related retail service provided by BellSouth. (TR 2364)

BellSouth argues that all 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. (Brief, p. 43)

BellSouth's witness Reid contends that to the extent AT&T takes over the operator services function from BellSouth by routing local telephone calls to AT&T operators, it is taking over a line of business with its own revenue stream. BellSouth asserts that it is not selling its retail operator service to AT&T at wholesale. Instead, AT&T is taking over a competitive line of business, and AT&T will be receiving revenues from customers to compensate it for its operator services expenses. (TR 2363)

Witness Reid also states that AT&T has treated as avoided a portion of the General & Administrative category. BellSouth believes this is inappropriate since it does not expect to see reductions due to resale. (TR 2346) BellSouth also contends that since AT&T's revenue base was limited to basic local revenues including local vertical services, BellSouth would give AT&T a local discount that includes costs that are actually being recovered through intraLATA toll revenues. (TR 2347)

Staff agrees with BellSouth that costs associated with operator and directory assistance services should not be 100% avoided because AT&T will be providing its own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail services offered to customers be made available for resale. Staff would argue that if AT&T wants to purchase pieces of services, they should buy unbundled elements instead and package these elements in a way that meets its needs.

In addition, staff does not believe it is reasonable to assume that BellSouth will operate as only a wholesale provider when in fact it will still be operating as a retailer. Since AT&T made this assumption, staff does not believe that AT&T's cost study accurately reflects the avoided costs.

Since expenses for residential and business services vary significantly, staff believes that residential and business

services should have different wholesale discounts. For example, the expenses associated with product advertising for business services is substantially higher than that for residential services. Staff believes a separate rate is appropriate yo more accurately reflect the costs associated with the service.

Staff does not believe that AT&T's revenue base for BellSouth contains all the necessary revenues. AT&T has omitted intraLATA toll revenues, which staff believes should be included.

Bases on the reasons stated, staff believes AT&T's cost study should be rejected. Further, staff does not believe that AT&T's cost study is in compliance with the Act since it has removed all retail-related costs. The Act requires that portions attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier should be excluded. The Act does not require all retail costs to be considered avoided.

Analysis of MCI's Avoided Cost Study

MCI has proposed a wholesale discount rate of 25.06%. MCI contends that its approach to calculating BellSouth's avoided costs is conservative and tends to understate the amount of the appropriate discount. Witness Price states that the FCC's Order establishes minimum criteria for the avoided cost methodology based broadly on the MCI study. The witness indicates that the costs in certain USOA accounts are identified as directly avoided while cost in other accounts are treated as indirectly avoided. The avoided indirect costs are calculated by determining the ratio of directly avoided costs to total costs and then applying that proportion to the total indirect costs for the accounts. (Price TR 785)

BellSouth's witness Reid states that MCI's model has two major problems. The first issue is that the MCI model inappropriately treats operator services expenses as 100% avoided. BellSouth argues that operator service expenses (call completion and number services accounts) are not avoidable under a resale environment. Witness Reid states that to the extent that MCI takes over the operator services function from BellSouth by directly routing local telephone calls to its operators, it takes over a line of business with its own revenue stream. BellSouth contends this represents a competitive loss to BellSouth and a competitive gain to MCI. (Reid TR 2409)

BellSouth contends that the second major issue relates to MCI's mishandling of published directory listing expense. Witness Reid argues that this category of expense includes the cost of classified and white page directories published and distributed by

BellSouth's affiliate, BAPCO. BellSouth asserts that this expense is clearly not avoidable because BAPCO will continue, in a resale environment, to publish and distribute these directories, including listings for both BellSouth's customers and other local exchange carriers' customers. (TR 2410)

BellSouth contends that the FCC's criteria overstate the wholesale discount rate through the use of a "reasonably avoidable" concept to identify avoided expenses and by allocating indirect expenses as avoidable amounts. (Reid TR 2405)

Staff would note that MCI's study only included those accounts that the FCC established as presumed avoided. MCI's witness Price also agreed that MCI did not attempt to prove that any other costs accounts are avoided. (Price TR 855) Since MCI assumed, as did AT&T, that BellSouth would operate only as a wholesale provider, staff does not believe that MCI's cost study accurately reflects the appropriate avoided costs. Other than referencing the criteria identified in the FCC Order, MCI has not provided any independent evidence to substantiate the costs it claims will be avoided.

As stated earlier, staff disagrees that costs associated with operator and directory assistance services should not be 100% avoided because resellers may be providing their own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail service offered to customers be made available for resale. Staff would argue that if MCI wants to purchase pieces of services, they should buy unbundled elements instead and package these elements in a way to meet its needs. Since the expenses associated with residential and business services vary significantly, staff believes that residential and business services should have different wholesale discounts. MCI proposed one single discount rate because of data limitations.

Analysis of BellSouth's Avoided Cost Study

BellSouth submits that its wholesale price discounts of 19.0% for residential services and 12.2% for business services should be adopted. Witness Reid states that the discounts are based on the relationship between avoided costs and revenues, and are calculated using 1995 revenues subject to discount. (Reid TR 2332)

The witness further asserts that because characteristics and levels of revenues and costs vary between residential and business customers, BellSouth is recommending two separate discounts. Witness Reid explains that inherent in BellSouth's methodology and

application of the wholesale discounts is the assumption that residential or business customers that choose to go with a reseller will be average revenue customers for that class of service. Witness Reid argues that to the extent a reseller targets higher than average revenue customers, the monetary discount that the reseller will receive will logically exceed the costs that will be avoided by BellSouth. (TR 2333)

Witness Reid states that to determine the costs that will be avoided, BellSouth analyzed the work functions that are currently being performed to provide retail services to the Company's customers. The witness contends that BellSouth has an internal accounting system that identifies the major work functions of the business and tracks the costs associated with various work functions being performed. The information from this system is used in management of the business, as well as for input to the system that assigns cost between regulated and non-regulated operations. BellSouth states that it analyzed each of its work functions for the categories of expense that would be affected by a wholesale situation and identified, using 1995 Florida operating data, the level of expense for each work function that would be avoided with resale. (TR 2335)

Witness Reid asserts that the costs that will be avoided are the direct, volume-sensitive costs included in the expense categories for customer services and billing (account 6623), sales (account 6612), uncollectibles (account 5301), and advertising through bill inserts (account 6623). Witness Reid argues that these costs are volume sensitive amounts that are associated with the provision of regulated residential or business retail services. Further, these avoided costs are associated with work functions that directly relate to interaction between BellSouth and the customer, an interaction that will normally not occur under resale. (TR 2335-2336)

BellSouth contends it will treat call completion (account 6621) and number services (account 6622) as non-avoidable for resale purposes. Witness Reid argues that AT&T and MCI will continue to secure operator services from BellSouth under resale. These expenses are therefore non-avoidable, because the functions will continue to be performed. (TR 2355)

BellSouth also submitted calculations of a wholesale discount for retail services based on the criteria described in the FCC Order. Witness Reid states that BellSouth does not agree with the FCC's criteria regarding the determination of avoided/avoidable costs, and it believes that BellSouth's study complies with the Act. However, in order to provide the Commission with information

relative to the impact of the Order, BellSouth determined that a wholesale discount rate for both business and residential services would be 19.7%. (TR 2351)

Witness Reid also suggests that BellSouth's methodology for calculating wholesale discounts for residence and business services is a reasonable approach that meets the requirements of the Act. (TR 2348)

AT&T argues that BellSouth's original study improperly omits direct categories of cost that will be avoided or that reasonably can be avoided in a wholesale environment, fails to recognize avoided indirect costs, lacks sufficient detail to permit necessary adjustments to cost categories that are included, and fails to explain why it has included less than 100% of those accounts the Act says always are avoided or that the FCC Order says are presumed avoided. (Lerma, TR 647)

AT&T's witness Lerma contends that BellSouth shows little or no avoided costs for product management (account 6611), call completion (account 6621), and number services (account 6622-directory assistance). AT&T argues that these are cost categories that the FCC presumes are avoided, and that BellSouth did not provide convincing rationale or evidence that these costs should remain when wholesale service is provided. (TR 647)

AT&T argues that 100% of costs for sales and customer service costs (accounts 6612 and 6623) should have been avoided. Witness Lerma states that insufficient evidence was provided to support anything less. (TR 648)

Witness Lerma also contends that BellSouth's revised cost study, which reflects the FCC Order, provides inadequate support for the low percentages of avoided costs it assigns to several accounts the FCC presumes are totally avoided. The witness states that BellSouth assigns no avoided costs at all to call completion (account 6621) and number services (account 6622). AT&T states that BellSouth makes no allowance for avoided profit or contribution, although the FCC Order indicates it is appropriate to do so. The witness also argues that BellSouth underestimates the portion of indirect costs that are avoided by employing an improper ratio calculation. AT&T suggests that the proper formula should be directly avoided costs divided by total direct costs. (TR 650)

AT&T asserts that according to BellSouth the Act requires a deduction of only those costs which it will actually avoid in the short term. (Reid TR 2335) AT&T states that BellSouth has applied an incorrect reading of the Act in developing the cost study upon

which it bases its proposed discounts. (EXH 75) AT&T argues that BellSouth's cost methodology has already been rejected by the state commissions of Georgia, Kentucky and Louisiana. AT&T asserts that Georgia found BellSouth's methodology a "narrow, constrained view of the avoided cost approach." (EXH 80). The Kentucky Commission found that BellSouth's approach is "too simplistic and has insufficient detail." (EXH 81). The Louisiana Commission also rejected BellSouth's methodology. (EXH 82)

MCI argues that BellSouth's approach is inconsistent with the Act. Witness Price states that BellSouth seeks to determine costs that will no longer be incurred by BellSouth. MCI agrees that BellSouth will continue to be a retail provider of telecommunications services and that it will incur retailing costs. However, by looking only at the costs that BellSouth will no longer incur, MCI suggests that the resulting discount could overstate the wholesale rates, place BellSouth in an unfair competitive position in the retail market, and deny to end users the benefits that resale competition could otherwise bring. (Price TR 834) MCI asserts that by failing to take into account all of BellSouth's retailing costs in calculating the discount, the resulting wholesale rates will burden BellSouth's wholesale customers with recovery of the portion of BellSouth's retail costs that were ignored in the calculation of the discount. (TR 835)

MCI's witness Price states that BellSouth's analysis ignored retailing costs that BellSouth believed were "non-volume sensitive," retailing cost that BellSouth believed it would continue to incur, costs of functions supporting BellSouth's retailing activities (i.e., indirect costs), and costs associated with call completion and number services functions. (TR 835)

MCI suggests that omitting "non-volume sensitive" costs, such as advertising, would result in BellSouth's retail competitors paying a portion of BellSouth's advertising costs or any other costs considered to be "non-volume sensitive." Witness Price also contends that BellSouth has omitted from retail rates the cost associated with retailing. He states that BellSouth's approach would place BellSouth's retail competitors in the position of having to pay for a portion of BellSouth's retailing costs. (TR 836)

MCI witness Price argues that BellSouth incurs overhead costs which support all other functions, including those that are associated with its retail operations. By ignoring such indirect costs, BellSouth's retail competitors would be forced to pay a portion of BellSouth's overhead costs. The witness contends that this would provide a competitive advantage to BellSouth, because

its competitors will have to recover their own overheads to compete in the retail market, while being required to pay a portion of BellSouth's. (TR 837)

MCI supports AT&T's position that it is incorrect for BellSouth to ignore costs associated with call completion and number services. MCI's witness Price contends that call completion and number services will either be provided by the other provider or the subject of a separate contract. MCI argues that to include those costs in the calculation of the wholesale discount would require BellSouth's retail competitors to pay twice for those functions. (TR 837)

Staff agrees with BellSouth that all 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. Staff also agrees with BellSouth that since it will provide both retail and wholesale services, it is unreasonable to assume that it only performs wholesale functions. Therefore, staff believes AT&T and MCI's basic methodology should be rejected.

Staff also agrees with BellSouth that it is appropriate to set two separate discount rates for residential and business customers. Since the revenues and costs vary between these customer types, separate discount levels would more accurately reflect this relationship. (TR 2333)

Staff acknowledges that AT&T and MCI had concern regarding BellSouth's treatment of the product management, advertising, number services (directory assistance), call completion (operator services), and customer services accounts. However, other than stating that these accounts are presumed to be avoided under the FCC Order, staff would argue that AT&T and MCI did not provide convincing rationale or evidence that these costs should be 100% avoided.

Staff disagrees with AT&T and MCI that call completion and number services accounts should be 100% avoided by BellSouth, even if AT&T and MCI will provide their own operator services. Even in a resale environment, staff believes that BellSouth will continue to perform these functions; therefore, these costs will not be avoided as a result of an ALEC reselling a LEC's retail service. Staff does not believe Section 251(c)(4) of the Act imposes on an ILEC the obligation to disaggregate a retail service into more discrete retail services as requested by AT&T and MCI. The Act only requires that any retail services offered to customers be made available for resale. It does not require these services to be

split. Staff would argue that if AT&T and MCI want to purchase pieces of services, they should buy unbundled elements instead and package these elements in a way to meet their companies needs.

Staff believes BellSouth's study is in compliance with the Act. AT&T and MCI disagree. They contend that BellSouth's use of only the costs which it will actually avoid is incorrect. AT&T and MCI support the FCC's interpretation that it should be costs that reasonably can be avoided. They contend that all costs that are avoidable, whether or not they are actually avoided, should be reflected in the determination of the wholesale discount.

The FCC's Order considers account 6621 (Call Completion) and 6622 (Number Services) as presumptively avoidable; however, the Order also indicates that this is a rebuttable presumption. Staff believes that BellSouth has adequately supported its claim that it will continue to incur these costs. Accordingly, we believe these costs should not be treated as avoidable. While staff believes that BellSouth's treatment of key accounts is appropriate, we believe that certain additional adjustments need to be made. Staff will address these adjustments in its discount recommendation.

Staff's Proposed Wholesale Discount

Staff believes all the cost studies provided in this docket to some degree were flawed. However, staff agrees with BellSouth's cost study in concept. Taking BellSouth's recommended cost study as a starting point, staff believes several adjustments should be made.

First, to arrive at the discount, the total avoided costs must be divided by the revenues for the service subject to discount. In BellSouth's final analysis it failed to include non-recurring, contract service arrangements, and grandfathered services revenues because it did not believe these services should be resold. Staff has included these revenues since we do believe these services are subject to resale. The impact of this adjustment decreases the discount percentage (factor).

Second, for the purpose of accounts 6612 (Sales) and 6623 (Customer Service), BellSouth's analysis only includes expenses directly charged to accounts 6612 and 6623. However, the Company's supporting work papers appear to indicate that certain indirect expenses are also charged to these accounts. Staff modified BellSouth's study to include both kinds of expenses booked to these two accounts. While this adjustment has essentially no impact on residential discount percentages, it increases the business

discount slightly.

Third, because we are setting permanent discounts, we believe that over time certain general overheads should decline. Specifically, staff allocated a portion of the overhead accounts (accounts 6711-6712, 6721-6728) and general support accounts (accounts 6121-6124), based on the ratio of the costs we identified as directly avoided to total expenses. These overheads and general support accounts are identical to those reflected in BellSouth's alternative proposal shown on witness Reid's exhibit WSR-3. However, while uncollectibles (account 5301) were allocated in BellSouth's alternative proposal (and in the analysis sponsored by AT&T and MCI), staff's analysis incorporated the directly identified amounts shown on BellSouth's witness Reid's exhibit WSR-1.

Incorporating these three adjustments, yields the following recommended discount percentages:

Residential	21.83%
Business	16.81%

Staff believes that its proposed wholesale discount rates comply with the intent of the Act to establish rates that exclude those portions of retail costs "that will be avoided" by BellSouth. Staff's determination of avoided costs in this proceeding strikes a balance between the parties' different interpretations of avoided costs. Staff's proposed wholesale discounts are based on BellSouth's actual retail costs that can reasonably be avoided in the provision of wholesale service.

ISSUE 5: What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth's services? **(SHELFER)**

RECOMMENDATION: No restrictions should be allowed except for the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Staff does not believe that BellSouth has sufficiently rebutted the FCC's presumption against resale restrictions for volume discount offerings or against tariff limitations in general, other than the ones specified.

POSITION OF PARTIES

AT&T: The Act and the FCC Order require BellSouth not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. Resale restrictions are presumptively unreasonable and prohibited by the Act.

BELLSOUTH: 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.

MCI: The Act prohibits unreasonable or discriminatory conditions or limitations on resale. No restrictions should be allowed except for user restrictions which require residential service, grandfathered services, and Lifeline and LinkUp services to be sold only to end users who would be eligible to purchase the service directly from BellSouth.

STAFF ANALYSIS: Section 251(c)(4)(A) of the Act states that it is the duty of the incumbent local exchange carrier to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Section 251(c)(4)(B) also states that it is the duty of the incumbent LEC

> 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 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.

Section 51.613 of the FCC's rules states that restrictions may be imposed on cross-class selling and short term promotions. Regarding cross-class selling, Section 51.613(a)(1) provides that:

> A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

The FCC has established that resale restrictions are presumptively unreasonable. Specifically, Paragraph 939 of the Order provides:

> We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include conditions and limitations contained in the incumbent LEC's underlying tariff. . . . Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4). . . .

Thus, the FCC concludes that resale restrictions, including those in the LECs' tariffs, are presumptively unreasonable.

BellSouth's asserts that any use or user restrictions in the relevant tariffs should apply. BellSouth's witness Scheye argues that a retail service is comprised of the stated rates, terms and conditions in the tariff. The rate for a particular offering varies based on the terms and conditions of the service. If the terms and conditions were different, the price would likely be different or the particular retail service might not even be offered. Terms and conditions are an integral part of the service. (Scheye, TR 1620) Witness Scheye states that any use and user restrictions or terms and conditions found in the relevant tariff of the service being resold should apply. (TR 1734)

BellSouth contends that use and user restrictions are basically class of service restrictions, and asserts that the Act specifically permits the Commission to apply such class of service or use and user restrictions. (TR 1620) BellSouth argues that 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 service. BellSouth argues that the Act does not limit the cross-class of service restriction to only flat rate services.

Witness Scheye states that the Act requires the resale of a service, not just the picking and choosing of various pieces. Such terms, conditions and use and user restrictions do not pose any unreasonable or discriminatory condition on AT&T, MCI or any other reseller. Resellers will be able to offer the same service under the same conditions that BellSouth offers the service to its own customers. If AT&T or MCI wish to provide a service with different terms and conditions than BellSouth's offering, or with different or no use or user restrictions, it can do so by leasing unbundled features and combining them with its own capabilities to provide the service. (TR 1621, 1737)

BellSouth cites to the record that 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 600) BellSouth also cites MCI witness Price, acknowledging that "resale of flat rate residential service could be limited to residential customers." (TR 781)

BellSouth asks the Commission to allow it to apply any use or user restrictions or term or condition found in the relevant tariff of the service being resold when it resells that service to wholesale customers. (Brief, p.45)

AT&T and MCI argue that the Act and the FCC Order require BellSouth not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. AT&T also states that resale restrictions are presumptively unreasonable and prohibited by the Act. MCI argues that no restrictions should be allowed except for user restrictions which require residential service, grandfathered services, and Lifeline and LinkUp services to be sold only to end users who would be eligible to purchase the service directly from BellSouth.

AT&T's witness Sather argues that in order for competition to fully develop and for customers to benefit from increased choice, lower prices, and new technology, new entrants must be able to distinguish themselves from BellSouth by repackaging services to offer consumers new services or existing services at different prices. When a new entrant is prohibited from making creative

offerings because the ILEC has imposed restrictions on the resale of specific services, the development of competition will be impeded and customer benefits will be realized more slowly. Witness Sather contends that this anti-competitive result is why the Act requires ILECs not to prohibit and not to impose unreasonable or discriminatory conditions on the resale of telecommunications services. (Sather, TR 592-593)

Witness Sather states that BellSouth's proposed restrictions are unreasonable and discriminatory because they prohibit innovation, which impedes competition. Additionally, they are unreasonable because they require resellers to provide services to their customers in the exact same manner as BellSouth provides these services to its customers. (TR 593)

Witness Sather contends that the use of resale restrictions by ILECS may be more appropriately termed the abuse of resale restrictions. Today resale restrictions permit ILECs to discriminate -- to extract different levels of revenue from different customers who receive similar services. The witness argues that the existence of resale restrictions provides BellSouth the opportunity to stifle the development of competition. The removal of resale restrictions will promote competition. (TR 585)

MCI's witness Price agrees that certain cross-class selling restrictions are appropriate, in particular those which would limit resale of grandfathered service, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Witness Price states that any other use or user restriction, or other limitation, would impede MCI's ability to compete through service resale. (Price, TR 781)

MCI argues that, except for volume discounts for Saver Service, BellSouth has failed to identify any tariff limitations which it believes must be continued. Thus, MCI asserts, BellSouth has failed to show that its proposed restrictions are "narrowly tailored" or otherwise to rebut the presumption that such restrictions are unreasonable.

Regarding Saver Service, BellSouth contends that the pricing of the service might be affected if the service could be used by multiple end users and the usage aggregated. (Scheye, TR 1735) MCI asserts that BellSouth suggests, in effect, that resale of Saver Service be limited to situations in which a reseller's end user meets the volume requirements in BellSouth's tariff. (See Scheye, TR 1735-6) MCI argues that this flies in the face of the FCC Order, which held that:

> 953. With respect to volume discount offerings, however, we conclude that it is presumptively unreasonable for incumbent LECs to require individual reseller end users to comply with incumbent LEC high-volume discount minimum usage requirements, so long as the reseller, in the aggregate, under the relevant tariff, meets the minimal level of demand.

MCI also asserts that BellSouth's position regarding Saver Service is at odds with the practice in the interexchange arena, where many resellers make a business of purchasing a volume-discounted service from AT&T or MCI and reselling it to a collection of end users, none of whom could individually qualify for the volume discount.

The FCC has established that resale restrictions are presumptively unreasonable. Section 51.613 of the FCC's rules state that restrictions may be imposed cross-class selling and short term promotions by state commissions. Staff finds persuasive MCI's argument that certain cross-class selling restrictions are appropriate, in particular those which would limit resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Accordingly, staff recommends that no restrictions should be allowed except for the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Staff does not believe that BellSouth has sufficiently rebutted the FCC's presumption against resale restrictions for volume discount offerings or against tariff limitations in general, other than the ones specified.

ISSUE 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? **(SHELFER)**

RECOMMENDATION: If BellSouth provides internal notice 45 or more days in advance of the change, BellSouth should provide 45 days notice to its wholesale customers. If BellSouth provides notice less than 45 days in advance of the change, wholesale customers should be noticed concurrently with BellSouth's internal notification process. BellSouth should not be held liable if it modifies or withdraws a resold service after the notice is provided; however BellSouth should notify the resellers of these changes as soon as possible. **(SHELFER)**

POSITION OF PARTIES

AT&T: Lack of advance notice of changes to BellSouth's resale services is an operational barrier to fair competition. Without advance notice that would allow a new entrant to implement the necessary administrative changes, BellSouth ensures it will be the first local exchange carrier in the market to offer changed services.

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

MCI: BellSouth should be required to provide notice to its wholesale customers of changes to BellSouth's services at least 45 days prior to the effective date of the change, or concurrent with BellSouth's internal notification process for such changes, whichever is earlier

STAFF ANALYSIS: Neither the Act nor the FCC rules and order explicity require ILECs to provide notice to wholesale customers of changes to ILEC services. Therefore, since the parties could not agree, the Commission will determine the appropriate requirements.

AT&T's witness Shurter states that it has requested BellSouth to advise AT&T of any changes in BellSouth's service offerings by providing 45 days notice prior to the effective date of the change or concurrent with BellSouth's internal notification process, whichever is earlier. (Shurter, TR 189) Witness Shurter contends that receiving advanced notice of changes in service offerings provides for parity. Without reasonable advance notice of changes in a particular service, new entrants like AT&T cannot make the necessary preparations to resell service offerings which BellSouth intends to change by the effective date of its proposed changes.

As a result, BellSouth provides itself with an unfair competitive advantage because BellSouth will always be the first carrier to make the changed service offerings available to Florida consumers. (TR 190)

MCI contends in its brief that unless it receives advance notification 45 days prior to the effective date of the change, it will be unable to notify its customers and customer service personnel of the change in a timely manner. (Brief, p 35)

BellSouth's witness Scheye states that in this rapidly fluctuating competitive environment, it would be impractical to provide advance notice to the extent AT&T has requested. Additionally, 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. 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. (Scheye, TR 1634)

Staff believes notice to AT&T and MCI would be inadequate under BellSouth's plan to provide notice to resellers at the same time it files public notice. Staff recommends that BellSouth should provide 45 days notice to its wholesale customers. If BellSouth provides such notice less than 45 days in advance of the change, wholesale customers should be noticed concurrently with BellSouth's internal notification process.

BellSouth's witness Scheye testified that BellSouth would be willing to accept the 45 days notice request, if the parties would agree not to hold BellSouth liable should for some reason the service not go into effect. (Scheye, TR 1915) In its brief, AT&T states that it has proposed language that would relieve BellSouth of all responsibility if a proposed change is rescinded. If BellSouth were to agree to that language, AT&T asserts the issue will be resolved. (BR 68) Similarly, MCI states in its brief that "[s]o long as MCI is protected against the possibility of BellSouth providing intentional misinformation, it would appear appropriate for the Commission to protect BellSouth from liability for normal changes in business plans which occur after it has provided a reseller with notice of an upcoming retail service change." (BR 35)

Staff believes that the Commission should require the parties to enter into agreements whereby BellSouth will not be held liable if, after announcement of a new or modified service, BellSouth modifies or withdraws that service before it goes into effect as announced. BellSouth, however, should notify the resellers of such changes at the earliest possible time.

ISSUE 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? **(CHASE)**

RECOMMENDATION: Staff recommends that BellSouth, AT&T and MCI should adhere to the service restoration intervals, direct measures of quality, service assurance warranties, and other quality assurance measures proposed by MCI and AT&T in their proposed agreements. If AT&T's and MCI's proposed agreements do not contain specific performance standards, staff recommends that BellSouth should be required to provide the same quality of service for resale and network elements to AT&T and MCI that it provides to its customers and itself. Staff also recommends that the Commission should not arbitrate provisions for liquidated damages in the AT&T and MCI interconnection agreements with BellSouth.

POSITION OF PARTIES

AT&T: The Act requires nondiscriminatory provision of service to new entrants. AT&T requests the establishment of processes and standards, including Direct Measures of Quality ("DMOQs"), and Service Assurance Warranties, to ensure that BellSouth provides services for resale, interconnection, and unbundled network elements which meet their obligations to provide nondiscriminatory levels of service.

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

MCI: BellSouth should be required to provide service quality that is at least equal to what BellSouth provides to itself or its affiliates. In addition, BellSouth should meet a series of specified technical standards and performance measures tailored to the competitive environment.

STAFF ANALYSIS: This issue addresses the service standards for service provided by BellSouth for resale and for network elements provided to AT&T and MCI.

AT&T's Request

AT&T argues that in order to compete with BellSouth, it must be able to offer at least the same quality of service that BellSouth provides its customers. (Shurter TR 188) AT&T states that the Commission should require BellSouth to meet Direct Measures of Quality (DMOQ) and submit monthly management reports to AT&T that

measure BellSouth's performance. (Shurter TR 187) AT&T asserts that using DMOQs will eliminate the need for AT&T or other new entrants to bring complaints to the Commission on the quality of BellSouth's service. (Shurter TR 188)

AT&T argues that DMOQs would provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against entrants by providing inferior service. (Shurter TR 188-89)

AT&T has proposed performance standards throughout its proposed interconnection agreement with BellSouth. (EXH 17, JC-2) For example, Section 10 of Attachment 4 of AT&T's proposed interconnection agreement is titled, "Performance Requirements," and states:

> 10.1 AT&T will specify on each order its Desired Due Date (DDD) for completion of that particular order. Standard intervals do not apply to orders under this Agreement. BellSouth will not complete the order prior to DDD or later than DDD unless authorized by AT&T.
>
> 10.2 Within two (2) business hours after a request from AT&T for an expedited order, BellSouth shall notify AT&T of BellSouth's confirmation to complete, or not complete, the order within the expedited interval. A Business Hour is any hour occurring on a business day between 8 a.m. and 8 p.m. within each respective continental U.S. time zone.
>
> * * *
>
> 10.5 BellSouth shall satisfy the following Direct Measures of Quality: (i) at least 90% of all orders must be completed by DDD; (ii) at least 98% of all orders must be completed by Committed Due Date; and (iii) at least 99% of all orders will be completed without error.

MCI's Request

MCI asserts that in order to compete with BellSouth it must be able to offer at least the same level of quality that BellSouth provides its customers. (Martinez TR 990) MCI asserts that the Commission must specifically reject any ILEC assertions that the only standards of quality to which they should be held are those

standards that are currently in place via Commission service quality rules or state statutes. (Martinez TR 989) MCI states that such standards, some of which may be outdated, were developed to enforce minimum requirements for retail services. MCI argues that the services in question here are either unbundled elements or resold services, and that it is for this purpose that the FCC's standard of "parity" is critical. (TR 990) MCI states that allowing ILECs to provide service to MCI at lower levels of quality will either reduce the quality of MCI's service or force MCI to incur unnecessary costs in order to provide a competitive product. (TR 990)

MCI states that in order to ensure service quality parity between ILECs and ALECs, parity needs to be measured in terms of detailed technical standards, interfaces, and performance measures such as installation intervals and maintenance and repair times. MCI states that these parity issues are better addressed in mediated negotiations or industry forums than in contested hearings, but must now be resolved as part of this arbitration process. MCI argues that BellSouth should be required to meet objective measures of service quality and to provide periodic reports to MCI on the level of service quality. (Martinez TR 990-991) MCI provides examples of appropriate measurements of quality and associated reporting requirements. (EXH 27, Appendix VII, §§2.5, 3.4, 4.3, 4.4, 4.5, 5.4, 6.4)

Attachment VIII of MCI's proposed interconnection agreement contains MCI's measures of quality and associated reporting requirements. (EXH 27, RM-1) For example, Section 2.5 of Attachment VIII to MCI's proposed agreement is titled, "Performance Measurements and Reporting," and states:

> 2.5.1 Cycle Time Measurements
>
> 2.5.1.1 Excepting expedited due date requests, the following order intervals shall constitute the basis for measuring ILEC Service Order performance under this Agreement. MCI may, at its discretion, modify such measurements from time to time:
>
> 2.5.1.2 ILEC shall provide and acknowledge each and every MCI service order within one (1) hour of receipt by ILEC.
>
> 2.5.1.3 ILEC shall process MCI service orders and provide either Firm Order Confirmation (FOC) of a correct service order or notification of a rejected order and the detail of the errors contained within any data element(s) fields contained in such order, within four (4) hours of Local

Service Request (LSR) from MCI. (EXH 27, RW-1)

BellSouth's Response

BellSouth states that it will provide the same quality for services provided to AT&T and MCI that BellSouth provides to its own customers for comparable services. (Scheye TR 1666) BellSouth argues that the Commission currently has service quality rules in place which have complaint and monitoring procedures. (TR 1666) BellSouth argues that it should not implement ALEC-specific measurements but should assist in developing a set of measurements applicable to the ALEC industry. (Scheye TR 1667)

BellSouth proposes the following procedures for MCI and AT&T:

> 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 this Commission. (Scheye TR 1666-1667)

FCC Order

Paragraph 970 of the Order states:

> We conclude that service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale. This requirement includes differences imperceptible to end users because such differences may still provide incumbent LECs with advantages in the marketplace. Additionally, we conclude that incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's subsidiaries, affiliates, or other parties to whom the carrier directly provides the service, such as end users.

Paragraph 313 of the Order states:

Accordingly, we require incumbent LECS to provide access and

> unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves, and allow for an exception to this requirement only where it is technically infeasible to meet. We expect incumbent LECS to fulfill this requirement in nearly all instances where they provision unbundled elements because we believe the technical infeasibility problem will arise rarely.

Section 51.311 of the Rules addresses nondiscriminatory access to unbundled network elements and also discusses service quality:

> (b) Except as provided in paragraph (c) of this section, to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

Liquidated Damages for Failure to Meet Performance Standards

AT&T observes that BellSouth has a disincentive to provide new entrants with quality service and that DMOQs with a meaningful enforcement mechanism will mitigate that disincentive. AT&T argues that BellSouth should be required to be financially responsible in the event it fails to achieve appropriate DMOQs. (Shurter TR 189) AT&T states that BellSouth should pay liquidated damages to AT&T in terms of credits if BellSouth does not meet the standards. (Shurter TR 250) These credits would be for delays in provisioning of service, due dates not met, and also billing. (Shurter TR 250) AT&T asserts that these are important to new entrants in order to insure that the new entrants get the same level of service that BellSouth provides itself. AT&T witness Shurter states, "the credits that we have suggested in our interconnection agreement are suggested here as a financial incentive to insure that substandard service is not provided to new entrants." (TR 251)

Attachment 12 of AT&T's proposed agreement contains the specific credits for failures to meet service quality standards. For example, section 1 of Attachment 12 states:

1. Credits for Failure to Meet DMOQs

AT&T will offset against charges due to BellSouth the amounts specified in this Attachment for delays in the provision of Local Service, Network Elements or Combinations, failures to meet DMOQs required by this Agreement or delays in the provision of Customer Usage Data, or failures to provide such data in accordance with the requirements of this Agreement. Unless otherwise specified, performance against DMOQs will be measured on a monthly basis.

2. Delay Credits for Local Services, Network Elements and Combinations

2.1 Customer Specific Services

If BellSouth does not satisfy a DMOQ standard specified in Section 28.6 of Part 1 (Intervals for the provisioning/installation of Local Service) or Section 9.5 of Attachment 4 (Desired Delivery Date, Committed Delivery Date, and Completion Without Error for the provisioning/installation of Unbundled Elements), BellSouth will be liable to AT&T for liquidated damages for each and every Service Order for customer specific Local Services, Network Elements, and Combinations that have been delayed or not properly completed. Liquidated damages shall consist of: (i) a waiver of any associated provisioning/installation charge; and (ii) a delay credit equal to the associated monthly charge for the Service, Network Element or Combination for each month or partial month of delay. If a single Service Order fails to meet two or more DMOQs, BellSouth will be liable only for the category of liquidated damages that results in the highest amount. (EXH 17, JC-2, Attachment 12, p.1)

MCI did not specifically address the issue of financial penalties except that its proposed interconnection agreement does contain credits and penalties similar to AT&T's for failure to meet performance standards. (EXH 27, RM-1, Attachment X) MCI does argue that adherence to appropriate measurements of quality should be enforced through a system of credits for failures to meet the applicable performance standards. (BR at 36)

BellSouth asserts that the issue of financial penalties and other liquidated damages is not subject to arbitration under Section 251 of the Act, and to the extent that AT&T or MCI attempts to include penalties in its request for arbitration of service standards, the Commission should dismiss that portion of the issue. (Scheye TR 1666-1667) BellSouth states that Florida law and

Commission procedures are adequate to handle a breach of contract situation should it arise. (Scheye TR 1668)

Staff Analysis and Conclusions

The above examples demonstrate the detailed nature of the performance standards and measures that AT&T and MCI are requesting. Staff believes that performance standards, service restoration intervals, and quality assurance between AT&T, MCI and BellSouth are necessary to assure fair competition. Staff believes that the evidence presented by AT&T and MCI, along with the FCC's Order, demonstrates that such performance standards are necessary. BellSouth's arguments against such standards are not compelling. BellSouth actually agrees in principal that standards should exist, but it wants to wait six months before establishing such standards. Staff believes that AT&T and MCI have presented fair standards that BellSouth has not specifically challenged.

Therefore, staff recommends that BellSouth, AT&T and MCI should adhere to the service restoration intervals, direct measures of quality, service assurance warranties, and other quality assurance measures proposed by MCI and AT&T in their proposed agreements. These performance standards are based on similar standards that are contained in the access tariffs today. (Shurter TR 250) If AT&T's and MCI's proposed agreements do not contain specific performance standards, staff recommends that BellSouth should be required to provide the same quality of service for resale and network elements to AT&T and MCI that it provides to its customers and itself.

Staff believes that BellSouth's position regarding liquidated damages is correct. 251(b) of the Act imposes certain duties upon local exchange companies regarding resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. Section 251(c) imposes additional requirements on LECs regarding the duty to negotiate interconnection, unbundled access, and resale. If a party requests negotiations under the Act, the parties may reach an agreement without regard to the standards set forth in Sections 251(b) and (c). 47 USC § 252(a)(1). The negotiated agreement is submitted to the Commission under Section 252(e) and is approved if it is not discriminatory and not against the public interest. 47 USC § 252(e)(2)(A).

If the parties do not reach agreement, one party may petition the Commission to arbitrate unresolved issues between them. 47 USC § 252(b)(1). The Commission arbitrates the agreement pursuant to Sections 251 and 252, and approves the agreement if it meets the standards of 47 USC § 252(e)(2)(B).

Staff believes that the Commission should limit its consideration to the items enumerated in Sections 251 and 252, and matters necessary to implement those items. A liquidated damages provision does not meet that standard.

A liquidated damages provision in a contract allows the parties to determine, in advance, the appropriate level of damages in the event of a breach of contract. Parties typically include such provisions in their contracts in order to lessen the cost of litigating disputes that may arise in the future. The Act does not require parties to include in their agreements a method to resolve disputes. Instead, the Act includes provisions to deal with disputes. For example, Section 252(e)(6) allows the parties to petition the FCC if the state commission fails to act. Further, if the state commission takes action, an aggrieved party may bring an action in Federal district court to determine whether the state commission's action complies with Sections 251 and 252. Staff believes that if Congress wanted to require enforcement provisions in agreements, it would have specifically said so.

Staff does not believe it would be appropriate for the Commission to arbitrate a liquidated damages provision under state law. If we were to impose a liquidated damages provision, we would be, in effect, awarding damages to one party for a breach of contract. We lack the authority to award money damages. Southern Bell Telephone and Telegraph Company v. Mobile America Corporation, 291 So.2d 199, 202 (Fla. 1974). If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties. Moreover, it is axiomatic that parties to a contract may stipulate in advance to an amount to be paid or retained as liquidated damages in the event of a breach. Poinsettia Dairy Products v. Wessel Co., 166 So. 306 (1936); Southern Menhaden Co. v. How, 70 So. 1000 (1916).

Therefore, staff recommends that the Commission find that it is without authority to arbitrate provisions for liquidated damages in the AT&T and MCI interconnection contracts with BellSouth.

ISSUE 8A: 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? **(REITH)**

RECOMMENDATION: Yes. BellSouth should provide branding and unbranding for operator service and directory service calls for AT&T and MCI.

POSITION OF PARTIES

AT&T: Yes. Unless it's technically infeasible, BellSouth must brand Operator Services and Directory Assistance as requested by AT&T. AT&T believes it is technically feasible to brand operator services and directory assistance calls. In the alternative, AT&T requests that BellSouth unbrand its services

BELLSOUTH: 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.

MCI: Yes. Such branding is technically feasible, and is necessary to enable a reseller to establish its own identity in the market

STAFF ANALYSIS: This issue addresses whether or not BellSouth should rebrand or unbrand operator services and directory assistance calls initiated from a BellSouth resold service. Section 51.613(c) of the FCC's rules deals with branding of resold services and states that:

> Branding. Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.
>
> (1) An incumbent LEC may impose such a restriction only 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.
>
> (2) For the purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a

> manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information.

Witness Scheye asserts that BellSouth cannot offer branding on resold services because BellSouth is not able to distinguish between calls from lines AT&T is reselling, from other local resellers or from BellSouth. Witness Milner adds that without customized routing, BellSouth cannot provide the type of branding that AT&T has requested. (TR 2734) BellSouth maintains that customized routing is not technically feasible because the routing functions within the switch are a finite resource and would only be available to a limited number of carriers. (Milner TR 2735-2736; TR 2653) Witness Scheye suggests that "AT&T could easily provide access and branding for its own operator or repair services to create the discrete recognition of the AT&T brand by providing its customers with another designated number to call." (TR 1624)

With respect to customized routing, the FCC determined the following:

> We conclude that customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. (FCC 96-325, ¶ 418)

In Issue 9 staff is recommending that BellSouth be required to provide customized routing.

In addition, the FCC states that brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize consumer confusion. Incumbent LECs are advantaged when the reseller's end users are advised that the service is being provided by the reseller's primary competitor. (FCC 96-325, ¶ 971) MCI echoes this sentiment and adds that customers may conclude that they where "slammed" if they're greeted with the name of their old telephone company when making an operator service or directory assistance call. (Price TR 783)

AT&T asserts that BellSouth's operators should be required to

answer incoming calls with the new entrant's name. Witness Shurter explains that the incumbent LEC is acting on behalf of the new entrant and is being paid for the service; therefore, calls should be branded. (TR 218)

Staff believes that BellSouth should provide branding or unbranding for AT&T and MCI customers of BellSouth's resold service. Staff does not believe that BellSouth has adequately proved that it cannot brand or unbrand its operator service or directory assistance service. Therefore, staff is recommending that BellSouth be required to provide branding and unbranding for operator service and directory service calls for AT&T and MCI.

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? **(REITH)**

RECOMMENDATION: When representing AT&T or MCI, BellSouth personnel should 1) advise customers that they are representing AT&T or MCI; 2) provide customers with AT&T or MCI supplied "leave behind" cards; and, 3) refrain from marketing BellSouth directly or indirectly to AT&T or MCI customers.

POSITION OF PARTIES

AT&T: AT&T requires that services made available to AT&T be branded as AT&T to ensure AT&T customers who come into contact with BellSouth personnel and agents are not confused, and also in order to permit AT&T to provide its customers with services at parity with BellSouth.

BELLSOUTH: 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.

MCI: When interacting with customers with respect to a service provided by BellSouth on behalf of MCI, it is both feasible and appropriate for BellSouth employees to identify themselves as providing service on behalf of MCI and to use written materials provided by MCI which identify MCI as the provider of service.

STAFF ANALYSIS: AT&T and MCI are requesting that BellSouth personnel should 1) advise customers that they are representing AT&T or MCI; 2) provide customers with AT&T or MCI supplied "leave behind" cards; and, 3) refrain from marketing BellSouth directly or indirectly to AT&T or MCI customers. BellSouth has agreed to the first and third condition but has not agreed to provide customers with AT&T or MCI supplied "leave behind" cards. (Shurter TR 185; Price TR 826; Scheye TR 1629, 1747)

BellSouth asserts that they will not leave behind material provided by AT&T and MCI. Witness Scheye suggests that instead BellSouth will leave behind generic cards where the technician will write in the name of the particular carrier. (TR 1862) Witness Scheye admits that when BellSouth visits a BellSouth customer for repair purposes that BellSouth will leave behind a BellSouth specific document. (TR 1862-1863)

Witness Shurter states that this issue is one of branding parity. (TR 246) AT&T states that generic materials, with the AT&T name handwritten in, do not meet AT&T's standards for quality and professionalism. (Carroll TR 721) However, BellSouth will use materials carrying the BellSouth brand. (Shurter TR 185) AT&T and MCI believe that it's reasonable for BellSouth to use AT&T and MCI supplied materials. (Shurter TR 247; Price TR 827)

BellSouth states that its concern is basically administrative. Witness Scheye explains that he does not know how many resellers might operate in a given area. Witness Scheye maintains that asking their technicians to carry a supply of uniquely produced cards for every carrier and asking them to leave behind the correct one, is beyond what BellSouth believes the technicians should be worried about. (TR 1919)

Staff believes that BellSouth should be required to distribute AT&T and MCI supplied "leave behind cards" to AT&T and MCI customers. Staff recognizes that BellSouth's proposal of using generic cards for ALEC customers and BellSouth specific cards for BellSouth customers is not, in our opinion, parity. In addition, staff is not convinced by BellSouth's argument that requiring BellSouth technicians to use ALEC specific leave behind cards is any more burdensome than BellSouth's proposal to have the technician write in the correct ALEC name on a generic card. Therefore, staff recommends that when representing AT&T or MCI, BellSouth personnel should 1) advise customers that they are representing AT&T or MCI; 2) provide customers with AT&T or MCI supplied "leave behind" cards; and, 3) refrain from marketing BellSouth directly or indirectly to AT&T or MCI customers.

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? **(REITH)**

RECOMMENDATION: Yes. When AT&T or MCI resells BellSouth's local exchange service or purchases unbundled local switching, it is 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, and to route 611 repair calls to a repair center other than BellSouth's. The Commission should require BellSouth to provide customized routing using line class codes, on a first-come, first-served basis.

POSITION OF PARTIES

AT&T: Yes. BellSouth should be required to route Operator Services, Directory Assistance and Repair calls from AT&T local customers to AT&T's platforms. Such customized routing is technically feasible.

BELLSOUTH: 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.

MCI: Yes. Such routing is technically feasible using either line attributes or AIN capabilities. Such routing is required so that customers of MCI will enjoy dialing parity with customers of BellSouth and to avoid creating a barrier to entry.

STAFF ANALYSIS: Section 251(b)(3) obligates all local exchange providers to provide the following:

> DIALING PARITY. - The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

The FCC interprets "nondiscriminatory access to operator services " to mean that a telephone service customer, regardless of the identity of his or her local service provider, must be able to

connect to a local operator by dialing "0" or "0 plus" the desired telephone number. (FCC 96-333, ¶ 114)

The FCC interprets "nondiscriminatory access to directory assistance services" to mean that customers of all telecommunications service providers should be able to access each LEC's directory assistance services without regard to the requesting customer's local service provider. (FCC 96-333, ¶ 133) In addition, permitting nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible. (FCC 96-333, ¶ 151)

AT&T and MCI are requesting that their customers' operator service, directory assistance and repair calls be routed to AT&T and MCI respectively, using the same dialing arrangements that BellSouth provides for its customers. (Tamplin TR 323; Caplan TR 920-921) AT&T and MCI assert that this can be accomplished through customized routing. (Tamplin TR 323; Caplan TR 949) The FCC addressed customized routing by determining that:

> We conclude that customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. (FCC 96-325, ¶ 418)

AT&T and MCI state that one way of providing customized routing is through the use of line attributes or line class codes. (Tamplin EXH 9, p. 14; Caplan TR 951-952) Witness Tamplin explains that both are used as a routing mechanism within the switch; the type of switch dictates which nomenclature is used. (EXH 9, p. 14) For the purposes of this recommendation, staff will use the term line class codes.

BellSouth states that with the exception of the 1AESS and 2BESS, their switches are capable of customized routing using line class codes. However, BellSouth maintains that customized routing is not technically feasible because line class codes are a finite resource and would only be available to a limited number of carriers. (Milner TR 2735-2736; TR 2653) Witness Milner's position is based on a BellSouth analysis that assumed each new entrant would use the same number of line class codes as BellSouth. (TR 2736) Witness Milner states that BellSouth uses between 300 to 350 line class

codes in their DMS-100 switches. (TR 2737) In addition, BellSouth states that the Industry Carriers Compatibility Forum (ICCF) is working on a national solution for customized routing. Witness Milner points out that AT&T and BellSouth are co-chairing the work group addressing customized routing. (TR 2728) Witness Milner recommends that the Commission deny AT&T and MCI's request until the ICCF can recommend a permanent solution. (TR 2728)

AT&T claims that it will not use the same number of line class codes that BellSouth uses in their switches. (Tamplin TR 301) Witness Tamplin asserts that AT&T is requesting between 80 to 100 line class codes be made available per switch. (EXH 9, pp.69, 89)

MCI states that it would probably request on average 10 to 12 line class codes per switch with a worst case scenario of 75. (Caplan TR 959) Witness Caplan points out that the DMS-100, 5ESS, and Siemens EWSD have 1,024, 4,096 and 4,096 line class codes, respectively. (TR 952-953) Witness Caplan adds that NorTel has committed to two expansions: the first one to 2,048 Line class codes and the second one to 4,096. However, he was not sure of the timing of the expansions. (TR 953)

The FCC recognized that customized routing may not be capable in all switches deployed by the incumbent LEC. The FCC pointed to evidence that the 1AESS may have problems accommodating customized routing requests from competitive carriers (FCC 96-325, ¶ 418) Therefore, the FCC concluded the following:

> We recognize that the ability of an incumbent LEC to provide customized routing to a requesting carrier will depend on the capability of the particular switch in question. Thus, our requirement that incumbent LECs provide customized routing as part of the "functionality" of the local switching element applies, by definition, only to those switches that are capable of performing customized routing. An incumbent LEC must prove to the state commission that customized routing in a particular switch is not technically feasible. (FCC 96-325, ¶ 418)

Staff believes that customized routing is technically feasible for BellSouth to provide to AT&T and MCI. Staff recommends that the Commission require BellSouth to provide customized routing using line class codes. Staff recognizes that line class codes are a finite resource and recommends that customized routing be provided on a first-come, first-served basis.

ISSUE 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? **(REITH)**

RECOMMENDATION: No. Sections 251 and 252 of the Act do not apply to AT&T and MCI's request for access to dark fiber.

POSITION OF PARTIES

AT&T: Yes. Unused transmission media is a network element consistent with the definition of network elements found in the FCC's Order. It is technically feasible to unbundle and it should be unbundled as it is not proprietary and its unavailability would introduce unnecessary additional costs to new entrants.

BELLSOUTH: 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.

MCI: Yes. From an engineering perspective, dark fiber is simply another level in the transmission hierarchy and is a network element which must be unbundled upon request. Like any other unbundled element, the price for dark fiber should be based on its forward looking economic cost in accordance with TELRIC principles.

STAFF ANALYSIS: This issue deals with AT&T and MCI's request to purchase dark fiber as an unbundled network element. Staff defines dark fiber as being fiber optic cabling facilities that have not been outfitted with the electronic equipment necessary to transmit signals through the fiber.

The Act provides for requesting telecommunications carriers to have nondiscriminatory access to network elements on an unbundled basis. (§ 251(c)(3)) The Act states that a network element shall be defined as the following:

> The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (§ 3(29))

AT&T asserts that dark fiber is a network element because it's

"a facility or equipment used in the provision of telecommunications service." Witness Tamplin maintains that because it's not currently in use does not change its purpose, which is, to provide telecommunications service. (TR 331)

BellSouth believes that Sections 251 and 252 of the Act do not apply because dark fiber is neither an unbundled network element nor a retail service. (Varner TR 1480) Witness Varner states that in order for dark fiber to be a retail service it must be available as a tariffed service offering, which it is not. Witness Varner asserts that to be an unbundled network element, dark fiber must contain a functionality inherent in BellSouth's network, which it does not. (TR 1480)

Witness Tamplin believes that access to BellSouth's dark fiber will allow AT&T to create competitive facilities. AT&T asserts that BellSouth's failure to provide dark fiber already in place will "increase the financial and administrative cost of the telecommunications services AT&T seeks to offer." (TR 331) Witness Caplan echoes these concerns and adds that without the ability to purchase dark fiber, MCI's only choices will be to install their own facilities or purchase transport services from BellSouth. (TR 924)

The FCC declined to make a recommendation on whether dark fiber qualifies as a network element under the Act. The FCC stated that there was not sufficient information in the record on which to decide this issue. (FCC 96-325, ¶ 450)

Staff does not believe that dark fiber should be classified as a network element, as defined by the Act. Staff agrees that dark fiber is not used in the provision of a telecommunications service. Staff believes that neither the unbundled access provisions in Section 251 nor the associated arbitration and pricing provisions in Section 252 of the Act apply. Therefore, staff recommends that Sections 251 and 252 of the Act do not apply to AT&T and MCI's request for access to dark fiber.

ISSUE 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, if any, is appropriate for BellSouth to reserve with regard to its poles, ducts and conduits? **(REITH)**

RECOMMENDATION: BellSouth should not be required to provide AT&T and MCI copies of its engineering records. BellSouth should allow AT&T and MCI access to its engineering records and drawings as they pertain to poles, ducts, conduit and rights-of-way, owned or controlled by BellSouth. Access should be provided within a reasonable time frame and the appropriate proprietary provisions should apply.

BellSouth should allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself.

POSITION OF PARTIES

AT&T: BellSouth must provide access to appropriate engineering documents upon request for access to right-of-way, with appropriate redaction of proprietary information. Additionally, AT&T requires access to third party rights-of-way owned or controlled by BellSouth. If any reservation is permitted a one year reservation period should apply to all parties.

BELLSOUTH: 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.

MCI: BellSouth should provide access to engineering records for its poles, ducts and conduits. Any CPNI in such records can be protected by confidentiality provisions. BellSouth should not reserve capacity in its poles, ducts and conduits, but should make any unused capacity available on a nondiscriminatory basis to all carriers, including itself.

STAFF ANALYSIS: Section 251(b)(4) of the Act, deals with access to rights-of-way by requiring that all local exchange carriers have the following duty:

> (4) ACCESS TO RIGHTS-OF-WAY. - The duty to afford access to poles, ducts, conduits, and rights-of way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

Staff notes that Section 224 is titled REGULATION OF POLE AT&TACHMENTS and deals with the regulation of poles, ducts, conduit and rights-of-way.

Access to Engineering Records

MCI and AT&T are asking that BellSouth provide copies of its engineering records with dealing with poles, ducts and conduits. (Price TR 818; Tamplin TR 305) Witness Price asserts that to obtain nondiscriminatory access to poles, ducts, conduit and rights-of-way in a timely manner requires that BellSouth provide information on location and availability of access to such facilities. This information should be provided within 20 business days of a request. (TR 818) Witness Tamplin states that the FCC order sets forth an expectation that BellSouth will make its engineering records available for inspection and copying, subject to reasonable protection of proprietary information, upon a legitimate request for access to its facilities or property. (TR 318) Specifically, witness Tamplin is referring to the following:

> A complaint will not be dismissed if a petitioner is unable to obtain a utility's written response, or if a petitioner is denied any other relevant information by the utility needed to establish a prima facie case. Thus, we expect a utility that receives a legitimate inquiry regarding access to its facilities or property to make its maps, plats, and other relevant data available for inspection and copying by the requesting party, subject to reasonable conditions to protect proprietary information. This provision eliminates the need for costly discovery in pursuing a claim of improper denial of access, allowing attaching parties, including small entities with limited resources, to seek redress of such denials. (FCC 96-325, ¶ 1223)

Staff believes that witness Tamplin's interpretation of the FCC's order is broader than its intended purpose. Staff believes that the FCC is only providing for an expedited and less expensive process for handling complaints. In fact, paragraph 1223 is written in the context of dispute resolution.

BellSouth maintains that the Act does not require them to provide copies of engineering records to its competitors. However, witness Milner states that BellSouth will provide structure occupancy information within a reasonable time frame. In addition, BellSouth agrees to allow AT&T personnel, or agents, to examine engineering records or drawings that BellSouth determines would be necessary to complete a job. (TR 2685)

Staff is not convinced by AT&T and MCI's arguments that BellSouth should be required to provide AT&T and MCI with copies of its engineering records or drawings. Neither the Act nor the Order and Rules provides express instruction or guidance. However, for planning purposes, staff believes that BellSouth should allow AT&T and MCI access to its engineering records and drawings as they pertain to poles, ducts, conduit and rights-of-way, owned or controlled by BellSouth. Staff believes that access should be provided within a reasonable time frame and that the appropriate proprietary provisions should apply.

Reservation of Capacity

BellSouth states that it is entitled to reserve five years worth of capacity with regards to poles, ducts and conduit. Witness Milner explains that BellSouth's planning and construction is forecast for five years for budgeting, growth and construction program planning. Witness Milner asserts that a five year planning window is an industry standard that pre-dates the 1984 Divestiture. (TR 2682-2683) BellSouth proposes to provide AT&T and MCI with "equal and non-discriminatory access" to poles, duct, conduit (excluding maintenance spares), entrance facilities and rights-of-way under BellSouth control. Witness Milner maintains that access will only be provided to those facilities outside BellSouth's five year forecast. (TR 2682)

AT&T states that the FCC Order prohibits BellSouth from favoring itself and discriminating against AT&T by reserving capacity at the expanse of AT&T's current needs. (Tamplin TR 318) Specifically, witness Tamplin is referring to the following passage:

> Section 224(f)(1) requires nondiscriminatory treatment of all providers of such services and does not contain an exception for the benefit of such a provider on account of its ownership or control of the facility or right-of-way. Congress seemed to perceive such ownership and control as a threat to the development of competition in these areas, thus leading to the enactment of the provision in question. Allowing the pole or conduit owner to favor itself or its affiliate with respect to the provision of telecommunications or video services would nullify, to a great extent, the nondiscrimination that Congress required. Permitting an incumbent LEC, for example, to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the incumbent LEC over the current needs of the new LEC. Section 224(f)(1) prohibits such discrimination among

telecommunications carriers. (FCC 96-325, ¶ 1170)

Section 224(f)(1) of the Act states that:

> A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.

BellSouth takes exception to the FCC's order by stating that it can only lead to one of two unacceptable conclusions. (BR 548-59) First, no reservations are made by either BellSouth or the ALECs. Space would be allocated on a first-come, first-served basis in which no one would be able to plan for network growth. Second, reservations would have to be accepted by any party for whatever time frame is desired. If the reserving party were not required to pay for the space used plus the space reserved, the result would inefficient use if the network. (Milner TR 2719-2720) Witness Milner states that BellSouth does not have a proposal on reserving capacity because " [t]he choices, if the FCC's order stands, are so inefficient that it is difficult to accept either one." (TR 2720)

Staff believes that BellSouth may reserve capacity in order to meet future needs, but to the extent that it does, it must permit AT&T and MCI to do the same. Furthermore, BellSouth may not reserve space for local exchange service to an extent that would favor BellSouth's future needs over the present needs of AT&T or MCI. Thus, given the FCC's order, and their interpretation of the Act, staff recommends that the Commission require BellSouth to allow AT&T and MCI to reserve capacity under the same time frames, terms and conditions it affords itself. Access must be competitively neutral. Staff must be clear that this recommendation is a direct result of the FCC's order. Staff has concerns with the incumbent LEC's ability to provide wholesale and retail services without being able to reserve capacity in excess of that provided to the ALEC.

ISSUE 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? **(GREER)**

RECOMMENDATION: BellSouth should be prohibited from making any PIC change for a customer that receives its local exchange service from a local exchange carrier other than BellSouth. BellSouth should forward the request of the customer to their local exchange carrier and provide the customer a contact number for their local carrier.

POSITION OF PARTIES

AT&T: AT&T should be the contact point for PIC change requests by AT&T local customers. BellSouth should reject any PIC change request from another carrier and notify the carrier to submit the request to AT&T. This practice complies with the standards adopted by the National Order and Billing Forum Committee.

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

MCI: BellSouth should not accept a PIC change directly from an IXC for an MCI local customer; such requests should be made by the IXC through MCI.

STAFF ANALYSIS: The Act, as well as the FCC's orders, do not specifically address this issue. However, staff believes the intent of the Act, the FCC's First Report and Order (96-325), and its Second Report and Order (96-333) stresses the need for parity between the incumbent LECs and new entrants.

Although AT&T and MCI raised this as a disputed issue, neither party provided sufficient support for their position. The only support, besides their brief, for this issue was by AT&T's witness Shurter in which he identified it in a list of other parity issues. (TR 204, 205) The parties believe BellSouth should not accept a PIC change directly from an IXC other than AT&T or MCI for an AT&T or MCI local customer. (MCI Brief p. 44; AT&T Brief p. 84)

BellSouth's witness Scheye states that the existing tariffed processes, procedures, and charges provide the framework for changes of intraLATA or interLATA presubscription for customers of record of ALECs operating as resellers. Witness Scheye indicates that when AT&T is a reseller of BellSouth's local service for the provision of local service to its end user customers, AT&T becomes BellSouth's customer of record for that line. For these situations, BellSouth will accept PIC changes from AT&T as the

customer of record or from other IXCs. (TR 1636) All applicable charges associated with intraLATA and/or interLATA PIC changes would apply. (TR 1636)

Witness Scheye identifies various reasons for refusing to reject all PIC changes initiated by other IXCs for AT&T's resale customers. First, BellSouth believes AT&T is asking for other than normal treatment which would raise the issue of parity among the IXCs. Second, BellSouth believes implementation of AT&T's proposal would appear to hinder a customer's ability to choose their preferred interexchange carrier. Third, BellSouth believes 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 35, 36)

BellSouth proposes to continue to handle the PIC changes as it does today, without regard to the provider of local exchange service to the end user. Staff does not believe the manner in which BellSouth proposes to handle PIC changes takes into consideration the move toward a competitive local exchange market. Staff believes the process being proposed by AT&T and MCI will provide parity in the handling of PIC change requests and represents a more appropriate procedure than have a local exchange company that has no relationship with an end user affecting their overall service provided by another local exchange company. If AT&T and MCI's proposal is accepted, all PIC changes (including AT&T and MCI long distance companies) will be required to be sent to the provider of local exchange service, just as it is today.

BellSouth seems to believe that a proposal of this type would hinder the ability of an end user to select their preferred interexchange company. However, staff does not believe there is any evidence in the record that would support BellSouth's claim. In addition, staff believes the essence of a competitive environment is the ability of an end user to change carriers if they are dissatisfied with the service being provided. Staff sees no reason why this would not apply in a local competitive market.

As for BellSouth's claim that it would be required to refuse properly processed PIC change requests from its other IXC customers, staff believes the process BellSouth is referring to is inappropriate in a competitive local exchange market. Allowing BellSouth to process these PIC changes when it has no relationship with the customer, would essentially be allowing BellSouth to affect the service being provided by AT&T and MCI local exchange companies. If the table was turned, staff does not believe BellSouth would want AT&T or MCI changing the service it provides its customer without some prior approval of the change. Staff

believes these types of actions would be inappropriate and cause a concern as to the parity between BellSouth and the parties to this arbitration proceeding.

Based on the discussion above, staff believes the Commission should prohibit BellSouth from processing any PIC change request for a customer that receives its local exchange service from a local exchange carrier other than BellSouth. BellSouth should direct the request of the customer to their local exchange carrier and provide the customer a contact number for their local carrier.

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? **(CHASE)**

RECOMMENDATION: Yes. BellSouth should be required to provide real-time and interactive access via electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

Processes that require the development of additional capabilities should be developed by BellSouth by January 1, 1997. If BellSouth cannot meet that deadline, BellSouth should file a report with the Commission that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. BellSouth, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. Staff recommends that these electronic interfaces should conform to industry standards where such standards exist or are developed.

Staff also recommends that BellSouth should not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the customer service records (CSRs). MCI and AT&T should issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing the CSRs. Staff further recommends that BellSouth should develop a real-time operational interface to deliver CSRs to ALECs, and the interface should only provide the customer information necessary for MCI and AT&T to provision telecommunications services.

Each party should bear its own share of the cost of developing and implementing such systems and processes because these systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs should be recovered

from the carrier who is requesting such customized system.

POSITION OF PARTIES

AT&T: Yes. The Act requires BellSouth to provide AT&T with nondiscriminatory access to requested systems and functions by January 1, 1997. With all five of the above functions, AT&T must have real-time and interactive access to BellSouth's systems in order to achieve parity with what BellSouth provides its customers. All parties should share the costs.

BELLSOUTH: 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.

MCI: Yes. Real-time, interactive access via electronic interfaces is required in order for MCI to be able to provide the same quality of service to its customers as is currently provided by BellSouth. The FCC Rules require such interfaces to be deployed by January 1, 1997. If the Commission determines that it is impossible to deploy the required interfaces by January 1, 1997, interim arrangements should be implemented by that date and permanent arrangements should be implemented as soon thereafter as possible. Each party should bear its own costs of implementing the necessary interfaces.

STAFF ANALYSIS: This issue addresses the operational support systems that are necessary for AT&T, MCI and BellSouth to process orders, report service trouble, provision service, and to maintain accounts with one another.

The Act

Section 3(45) of the Telecommunication Act of 1996 defines "network element" as, "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." Staff believes that this definition would include all of the operational support systems and interfaces. The FCC agrees with this interpretation in its Order and rules.

Section 251(c)(3) states that each incumbent local exchange

carrier has "the duty to provide, to any requesting telecommunications carrier for the provision of telecommunications services, nondiscriminatory access to network elements on an unbundled basis . . . on rates terms and conditions that are . . . nondiscriminatory . . .." Section 251(c)(4) states that each incumbent local exchange carrier has "[t]he duty . . . to offer for resale . . . any telecommunications service that the carrier provides at retail . . . and . . . not to impose . . . discriminatory conditions or limitations on, the resale of such telecommunication service . . . .."

FCC Order

The FCC Order addresses this issue in paragraph 516. It states:

> We conclude that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3), as discussed below. Congress included in the definition of "network element" the terms "databases" and "information sufficient for billing and collection or used in the transmission, routing, *or other provision* of a telecommunications service." We believe that the inclusion of these terms in the definition of "network element" is a recognition that the massive operations support systems employed by incumbent LECs, and the information such systems maintain and update to administer telecommunications networks and services, represent a significant potential barrier to entry. It is these systems that determine, in large part, the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. Thus, we agree with Ameritech that "[o]perational interfaces are essential to promote viable competitive entry."

Paragraph 523 also discusses the operational support systems:

> We thus conclude that an incumbent LEC must provide nondiscriminatory access to their operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself.

In Paragraph 517, the FCC states that "we conclude that . . . operations support systems are subject to the nondiscriminatory access duty imposed by Section 251(c)(3), and the duty imposed by Section 251(c)(4) to provide resale services under just, reasonable, and nondiscriminatory terms and conditions." Further,

in Paragraph 518, the FCC states that "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing."

Section 51.313(c) of the FCC's Rules states, "an incumbent LEC must provide a carrier purchasing access to unbundled network elements with pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems."

Section 51.319(f) of the FCC's Rules states:

> (1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.
>
> (2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997.

ALEC Requests

AT&T requests that the Commission require BellSouth to provide AT&T, by a certain date, with electronic real-time interactive operational interfaces for unbundled network elements. AT&T states that BellSouth should provide the interface for all five of the following functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing. AT&T states that these electronic interfaces must be provided by BellSouth in order to achieve parity. (Shurter TR 195-196)

AT&T states that the operations support systems functions identified in the FCC's Order correspond exactly to the functions requested by AT&T except for data transfer and local account maintenance. (Shurter TR 196)

MCI states that in order to provide service that is equal in quality to that provided by BellSouth, it is essential that MCI have real-time interactive access to the various operations support systems. (Martinez TR 985) MCI states that in order to comply with the Act and the FCC Order, the Commission should direct BellSouth to file a schedule detailing its plans for developing real-time, interactive electronic interfaces, and that if BellSouth

cannot meet the January 1, 1997 deadline then it should file a report to the Commission outlining when it will be able to comply.

MCI states that BellSouth proposes to use electronic data interchange (EDI) on an interim basis for pre-ordering and the other interfaces required to support local service, but this method of data interchange is neither real-time nor interactive. (Martinez TR 1011) MCI states that BellSouth has no incentive to develop these interfaces on its own. (Martinez TR 1014) MCI states that it is requesting a plan to move forward with interim steps as needed which will lead to the implementation of real-time interactive interfaces at a date certain. (Martinez TR 1016)

Resale

There are actually two issues involving operational interfaces: operational interfaces with respect to resale services and operational interfaces with respect to unbundled network elements. (Shurter TR 222) It appears that BellSouth and AT&T have agreed to the operational interfaces with resale services. Although MCI and BellSouth have not reached any interim agreements, MCI did state that there are not any significant differences in the positions of AT&T and MCI on electronic operational interfaces. (Martinez TR 1035) AT&T witness Shurter stated during cross-examination that AT&T and BellSouth are in agreement, "in contract language," on the specifics of the electronic interface platform structure and a certain schedule by which the operational interfaces for total service resale would be available. AT&T states that this agreement would allow AT&T to meet its requirement for this interface to be available as interactive and to support total service resale by March 1, 1997. (Shurter TR 224)

Unbundled Network Elements

The remaining issue is how to address the operational interfaces for unbundled network elements. AT&T states that the agreed upon electronic interactive interfaces for total service resale should be extended to support unbundled network elements, both in the purchase of unbundled elements as a single item, and also in the multiple combinations of elements on a single order. (Shurter TR 225) AT&T asserts that since AT&T and BellSouth have not agreed on the definition of unbundled elements and how these elements can be combined, the negotiations on the electronic interfaces have not happened. (TR 225)

AT&T witness Shurter was asked the question, "what exactly are you asking the Commission to do with regard to operational interfaces for unbundled network elements?" He responded by

stating:

> We are asking the Commission to be specific in their order and to, in their order, order that the work that we have put in place and the agreements I believe we've made on total service resale be ordered by this Commission, and that the order also call for an extension of that platform be made so it supports unbundled network elements as single units purchased and also in combination. And that can best be done, we believe, by the example we've seen with the Georgia Commission where they said provide us a plan by such and such date and a date certain by when that plan would be implemented. (TR 240)

BellSouth's Response

BellSouth states that it has made available, or has under development, appropriate interfaces for each function. Ordering interfaces should be consistent with industry standards. (Calhoun TR 2482-2483) BellSouth states that the interfaces and enhancements not already developed will be available by April 1997, if not sooner. (Calhoun TR 2541-2542)

BellSouth states that it has developed operational interfaces, processes and procedures for both resellers and facilities-based competitors. (Calhoun TR 2483) BellSouth also states that these operational systems are in compliance with the requirement of the FCC Order that electronic access be provided to all operational support functionalities. (Calhoun TR 2564)

BellSouth states that it has agreed with AT&T on the specific interfaces required for resale. (Calhoun TR 2591) BellSouth also asserts that these same functions can be used for interconnection and unbundled network elements. (Calhoun TR 2591) BellSouth states that MCI has requested substantially the same thing as AT&T. (Calhoun TR 2596)

Staff will discuss the operational interfaces for each function separately.

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. (Calhoun TR 2514)

BellSouth states that four capabilities are available for pre-

service ordering at this time:

(1) real-time access via an electronic interface to information that identifies the serving central office for a particular street address, and that validates the address for service order purposes;

(2) access through a data transmission line to a data file containing service and feature availability for each serving central office. Together with (1) above, the ALEC can use this information to advise its customer of the feature and service availability with its customer on the line, without consulting BellSouth;

(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; and

(4) access to installation intervals through interval guidelines developed by BellSouth. This information can be used by the ALEC to quote a due date to its customer without consulting BellSouth. (Calhoun TR 2516-2517)

BellSouth states that it began the development of Phase Two pre-ordering operational interfaces in May of 1996. BellSouth states that 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. (Calhoun TR 2517-2518)

BellSouth states that implementation of Phase two is scheduled for completion by April 1, 1997. BellSouth estimates the cost of Phase Two as $5 to $6 million. (Calhoun TR 2519-2520)

AT&T states that BellSouth's proposed electronic interfaces for these functions might satisfy AT&T's requirements if they were implemented as described in BellSouth witness Calhoun's testimony.

However, AT&T states that BellSouth's description of the interfaces are conceptual and not very detailed. (Shurter TR 209)

MCI states that pre-ordering and ordering processes involve the exchange of information between LECs about current or proposed customer products and services, or unbundled network elements, or some combination. MCI asserts that intercompany procedures must be developed to support the pre-ordering. (Martinez TR 992)

Staff agrees that access to pre-ordering information is necessary. Operational interfaces which are real-time and interactive should be developed to support pre-ordering.

Access to Customer Service Records

MCI and AT&T have also requested that BellSouth provide current customer service records (CSRs) as a part of the pre-ordering. (Shurter TR 179 and Martinez 1027) BellSouth argues that AT&T and MCI do not need this information to compete effectively. BellSouth states that it will provide such data only if the customer specifically authorizes the release of his/her records to MCI or AT&T. BellSouth states that it will also provide the CSRs after the customer has actually switched to the ALEC. (Calhoun TR 2535-2536)

MCI states that the inability to check a customer's account data, with the customer's permission, will adversely affect MCI's ability to provide competitive services to its customers. MCI states that to verify orders and avoid rejection by BellSouth, MCI must have accurate information about the details of the customer's account, and such information must be available in a timely manner. (Martinez TR 1012) MCI asserts that without on-line real-time access to this information, it would not be able to know what services a customer has prior to a migration. MCI argues that this will jeopardize the customer's quality of service by increasing the likelihood of loss of feature functionality upon migration. (Martinez TR 1012)

MCI states that it recognizes the customer privacy implications of access to BellSouth's customer service records in the pre-ordering situation. MCI states that it will provide a blanket letter of authorization to BellSouth which represents that MCI will access such information only with the customer's permission. MCI also asserts that it would support the development of a system which prohibits "roaming" through customer records. (Martinez TR 1029-1033)

MCI asserts that while both Section 222(c)(1) of the Act and

Section 364.24(2), Florida Statutes, require the customer's approval or authorization before customer information is disclosed, neither the federal or state law requires that authorization be in writing. BellSouth disagrees and states that if BellSouth were to do what MCI is requesting, it would be in violation of this section of the Florida Statutes. (Calhoun TR 2534)

Section 364.24(2), Florida Statutes, states:

> Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or otherwise allowed by law. Any person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Nothing herein precludes disclosure of customers' names, addresses, or telephone numbers to the extent they are otherwise publicly available.

AT&T also requests access to the CSRs through interfaces that would allow an AT&T customer service representative, while on the line with the customer, to determine which features and services are desired by, and available to the customer. (Shurter TR 179)

BellSouth states that it is highly unlikely that customers will expect a new competitor already to have access to all the details of their existing service. BellSouth asserts that it is more likely that the customers would consider such access an invasion of their privacy. (Calhoun TR 2535) BellSouth states further that BellSouth's pre-ordering interface will provide necessary information on what services are available to a customer, and that it is up to MCI or AT&T to determine which services and features are desired by the customer. (TR 2535)

The FCC's Order discusses the issue of access to customer proprietary network information at paragraph 492:

> We also conclude that access to call-related databases as discussed above, and access to the service management system discussed below, must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. Section 222, which was effective upon adoption, sets out requirements for privacy of customer information. Section 222(a) provides that all telecommunications carriers have a duty to protect the confidentiality of proprietary information of other carriers, including resellers, equipment manufacturers, and customers.

> Section 222(b) requires that telecommunications carriers that use proprietary information obtained from another telecommunications carrier in providing any telecommunications service "shall use that information only for such purpose, and shall not use such information for its own marketing purposes." Sections 222(c) and (d) provide protection for, and limitations on the use of, and access to, customer proprietary network information (CPNI).

The FCC has also initiated a proceeding to clarify the obligations of carriers with regard to section 222(c) and (d). (See Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 96-221, released May 17, 1996.) However, the FCC has not issued a final order regarding this docket and most likely will not until mid-1997.

Staff believes that Section 222 of the Act and Section 364.24(2), Florida Statutes protect customer proprietary network information. Staff believes that requiring the ALECs to obtain prior written authorization from the customers before being permitted CSR access would be very unworkable. Both §222(c)(1) and 364.24(2) impose on all carriers the obligation to use customer account information responsibly - in this case, only for provisioning telecommunications services. Staff believes that the ILECs need not be the guardians of the customer's privacy because the ALECs have that duty as well. Staff agrees with MCI's method of issuing a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing the CSRs. In addition, staff believes that BellSouth, MCI and AT&T should develop an interface which discourages "roaming" through customer information. Access should only be for the information necessary to provision telecommunications service.

Therefore, staff recommends that BellSouth should not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to CSRs. MCI and AT&T should issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing the CSRs. Staff further recommends that BellSouth should develop a real-time operational interface to deliver CSRs to ALECs, and the interface should only provide the customer information necessary for MCI and AT&T to provision telecommunications services.

Service Trouble Reporting

BellSouth states that it has offered the same electronic interface for trouble reporting that is now available for IXCs for access services. (Calhoun TR 2521) BellSouth states that the service trouble reporting 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 administrative functions. In response to trouble reported via the gateway, BellSouth will test and initiate repair to the service. (Calhoun TR 2521-2522)

BellSouth states that this electronic interface can be used for monitoring troubles with the unbundled loops and interconnection trunking, and is based on national standards. (Calhoun TR 2580) BellSouth further states that it is currently developing an enhancement to the interface that will provide ALECs with access to the same interactive testing capabilities BellSouth uses to screen trouble reports. BellSouth states that this enhancement is scheduled for completion in March 1997 and estimates that it will cost $3.5 million. (Calhoun TR 2523)

MCI states that the lack of real-time, interactive electronic interfaces will adversely affect the timeliness of repairs. (Martinez TR 1010) MCI states that it will have to place telephone calls to BellSouth to report customer trouble. (TR 1010-1011) AT&T states that trouble reporting and maintenance and repair are the means by which a carrier arranges for responses to service requests from customers. AT&T asserts that electronic interfaces would minimize the impact on consumers of service disruptions by allowing AT&T's customers to schedule a repair appointment in the same conversation in which they report a service problem. (Shurter TR 180)

Staff agrees with the parties that a real-time interactive operational interface for trouble reporting is necessary. Staff recommends that BellSouth should be required to provide such an interface.

Service Order Processing

BellSouth proposes that facilities-based ALECs will order interconnection trunking and most unbundled elements through the Interexchange Carrier Service Center (ICSC). (Calhoun TR 2484) BellSouth states that this center will accept orders 24 hours per day, seven days a week, but will process these orders during normal

hours of operation. (Calhoun TR 2574) BellSouth has produced a handbook for use by facilities-based ALECs to explain the ordering process for these services. (EXH 88)

Orders for interconnection trunking and unbundled elements 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. (EXH 88) This system is called Exchange Access Control and Tracking (EXACT) and was put into place in 1984 to provide mechanized order communications between BellSouth and IXCs. BellSouth states that EXACT operates in accordance with industry standards developed by the Ordering and Billing Forum (OBF). (Calhoun TR 2571) BellSouth asserts that the OBF has endorsed the ASR method for processing local interconnection trunking orders. (Calhoun TR 2571)

BellSouth created a new center as the point of contact for ordering and billing matters for the ordering for resold services and certain unbundled elements. The new center is called the Local Carrier Service Center (LCSC). (Calhoun TR 2487) BellSouth states that this center will accept orders 24 hours per day, 7 days per week, but will process those orders during normal business hours. (Calhoun TR 2574) BellSouth has also created a handbook for use by the resellers to describe the ordering process for resold services. (EXH 88) BellSouth states that the LCSC also will handle orders for certain unbundled elements not supported via the ASR process, such as listings for facilities-based ALECs, interim number portability, and unbundled ports. (Calhoun TR 2487)

BellSouth states that the Ordering and Provisioning Committee of OBF has recommended standards for resale order communications based on an arrangement know as Electronic Data Interchange (EDI). (Calhoun TR 2503; TR 2508) BellSouth states that the EDI interface will allow the reseller to submit a Local Service Request (LSR) electronically. In addition, BellSouth states that by December 31, 1996, it will have mechanized the order generation process on BellSouth's side of the EDI interface for several types of orders, including switch as is, new connects for residence and single line business and disconnects. (Calhoun TR 2509) BellSouth states initial cost estimates for the EDI are between $300,000 and $500,000, but the costs have not been finalized. (Calhoun TR 2512) BellSouth asserts that as detailed OBF standards are adopted throughout 1997 and 1998, some associated costs may occur in order to ensure that the interface complies with the final standards. (Calhoun TR 2512)

BellSouth states that AT&T has requested the ability to use the EDI ordering interface also for ordering unbundled network elements in combination. (Shurter TR 222) However, BellSouth stated that it was not aware that AT&T was requesting this until the week before the hearing. (TR 236) BellSouth states that no additional ordering interface is necessary to accomplish the ordering of combinations of unbundled elements. (Calhoun TR 2591) Upon cross-examination at the hearing, it did not appear that AT&T was asking for a different ordering interface for this function, 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 the ordering of unbundled elements in combination. (Shurter TR 239-240)

AT&T states the service order processing and provisioning is the means by which a carrier initiates an order and establishes service. AT&T states that electronic interfaces would provide AT&T and its customers quick and accurate performance of a number of services, including, but not limited to, the provisioning of service within BellSouth's network, installation at the customer's premises, updating of directory listings, and updating of the customer information for the 911 data base. (Shurter TR 180) MCI states if it is forced to utilize ordering procedures and interfaces that are inferior to that which the ILEC provides itself, then MCI will not be able to provide its customers an equivalent service. (Martinez TR 992) MCI also states that a mechanism is needed to enable MCI to transfer customers from ILECs quickly and easily. MCI states that BellSouth should allow a "transfer-as-is" to accomplish this. (Martinez TR 994)

Staff believes that electronic interfaces for ordering processes are important for the ALEC and for the end-user customer. It appears that BellSouth is currently developing electronic interfaces for this process. Therefore, staff recommends that BellSouth should continue to develop the electronic interfaces for order processes. Staff will discuss the timeframes and reporting of implementation later in this issue.

Provisioning

BellSouth has developed procedures to convert existing loops, wherever possible, to an unbundled loop without complete reprovisioning. (Calhoun TR 2575) BellSouth states that the ALEC will notify BellSouth to issue a disconnect order to free the loop, and a new connect order for the unbundled loop. BellSouth then would schedule a technician to do the physical disconnection and cross connection of the loop to the ALEC's loop transport facilities. These activities will have to be coordinated with the

ALEC. (Calhoun TR 2575-2576) For these reasons, BellSouth states that it cannot guarantee that provisioning for the conversions of unbundled loops will occur in precisely the same time interval as provided on a bundled service. (Calhoun TR 2576)

BellSouth proposes to establish intervals for unbundled loops on a Customer Desired Due Date (CDDD) basis. Under the CDDD process, BellSouth would provide service on the requested due date, or if the request could not be met, on the earliest available installation date thereafter. BellSouth states that it will give ALEC orders the same priority it gives its own end-user customers. (Calhoun TR 2577)

MCI states that provisioning involves the exchange of information between LECs in which one execute a request for a set of products and services or unbundled network elements from another with attendant acknowledgements and status reports. MCI asserts that service parity requires that when MCI initiates an order, it is processed through the same provisioning and installation systems as orders initiated by the ILEC. (Martinez TR 995) MCI states to ensure that the provisioning and installation intervals are the same, the Commission should require the ILEC to report regularly the intervals for ALECs and itself. (TR 995) AT&T does not directly addresses this issue.

Staff believes that BellSouth should be required to have the same intervals for provisioning and installation for ALECs as it does itself whenever possible. However, the standards for such intervals is fully discussed in issue 7.

Customer Usage Data Transfer

Customer Usage Data Transfer 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. It also allows ALECs to establish toll limits, detect fraudulent calling, or analyze its customer usage patterns. (Calhoun TR 2524) BellSouth states that it already has the capacity available to electronically provide customer usage detail to ALECs. (TR 2524)

AT&T states that customer usage data transfer is the means by which the customer's usage data is collected and transmitted by a carrier for billing purposes. AT&T asserts that electronic interfaces would enable AT&T customers to receive timely and accurate bills. (Shurter TR 180) MCI does not specifically address this issue.

Staff believes that the exchange of this information is vital for ALECs to be able to effectively compete. It appears that BellSouth already has this capability, and that AT&T and MCI do not dispute it. However, staff believes that BellSouth should develop an electronic interface for customer usage data transfer as soon as possible.

Local Account Maintenance

BellSouth states that AT&T defines local account maintenance, in its petition, as the means by which BellSouth can update information regarding a particular customer, such as a change in the customer's features or services. (Calhoun TR 2525) BellSouth states that changes to a customer's features or services will be initiated by AT&T and thus will be handled via the normal service order flows and processes. However, BellSouth states that there are exceptions to this when an end user customer switches from one ALEC to another and that service is a resold service of BellSouth. BellSouth states that AT&T has requested electronic notification of these changes on a daily basis, which BellSouth has agreed to provide. (Calhoun TR 2525-2526)

BellSouth states that another exception is that AT&T has requested the capability, as the local exchange carrier, to initiate PIC changes on resold lines via a local service request. BellSouth states that it has agreed to accept these orders, and is currently evaluating the date elements necessary to include them in an EDI ordering interface. (Calhoun TR 2526)

AT&T states that local account maintenance is the means by which a carrier can update information regarding a particular customer, such as a change in the customer's long distance carrier. AT&T asserts that electronic interfaces would allow AT&T customers to have their accounts updated promptly and accurately. (Shurter TR 180) MCI did not address this issue specifically.

Staff believes that electronic interfaces for local account maintenance should be developed by BellSouth. Such interfaces should be developed as soon as possible.

Cost Recovery

MCI states that each party should bear its own costs of implementing the necessary interfaces. MCI states that it has a tremendous cost to bear with respect to putting those systems in place. (Martinez TR 1035) AT&T states that the costs associated with implementing electronic interfaces should be shared equitable among all parties who benefit from those interfaces, including

BellSouth. (AT&T BRF, p.82) AT&T did not addresses this issue specifically in its testimony.

BellSouth states that AT&T ignored the costs associated with the development of such interfaces. BellSouth asserts that it will incur significant costs to meet AT&T request for electronic interfaces. BellSouth states that once these costs are finalized, the Company will propose a cost recovery mechanism designed to recover all the costs related to the provisioning of electronic interfaces. (Scheye TR 1718)

The costs of implementing these electronic interfaces have not been completely identified. BellSouth provided some cost estimates and some initial costs of developing such systems. Staff believes that these operations support systems are necessary for competition in the local market to be successful. Staff also believes that both the new entrants and the incumbent local exchange companies will benefit from having efficient operational support systems. Therefore, staff believes that all parties should be responsible for the costs to develop and implement such systems. This is the stance the FCC has recently taken with cost recovery for number portability. However, where a carrier negotiates for the development of a system or process which is exclusively for this carrier, staff does not believe all carriers should be responsible for the recovery of such costs.

Therefore, staff recommends that each party should bear its own cost of developing and implementing such systems and processes because these systems will benefit all carriers. However, if a system or process is developed exclusively for a certain carrier, those costs should be recovered from the carrier who is requesting such customized system.

Staff Conclusion and Recommendation

It appears that BellSouth has agreed to provide most of the real-time interactive operational interfaces that AT&T and MCI are requesting. The Section 51.319(f)(2) and the Order, Paragraph 525, are clear that these functions must be provided by the incumbent LECs by January 1, 1997. However, BellSouth has testified that some of the interfaces cannot be modified or developed to be real-time and interactive until around April of 1997. Staff believes that the operational support systems are a necessary part of enabling ALECs to compete in the local market. BellSouth appears to be attempting to comply with the FCC's Order and Rules. However, staff recommends that to be sure that these operational interfaces are completed, BellSouth should be ordered by this Commission to provide real-time and interactive access via

electronic interfaces to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer, and local account maintenance.

In addition, staff recommends that processes that require the development of additional capabilities should be developed by BellSouth by January 1, 1997. If BellSouth cannot meet that deadline, BellSouth should file a report with the Commission that outlines why it cannot meet the deadline, its plans for developing the real-time interactive electronic interface, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. BellSouth, AT&T and MCI should also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. Staff recommends that these electronic interfaces should conform to industry standards where such standards exist or are developed.

Staff also recommends that BellSouth should not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the customer service records (CSRs). MCI and AT&T should issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing the CSRs. Staff further recommends that BellSouth should develop a real-time operational interface to deliver CSRs to ALECs, and the interface should only provide the customer information necessary for MCI and AT&T to provision telecommunications services.

Each party should bear its own share of the cost of developing and implementing such systems and processes because these systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, those costs should be recovered from the carrier who is requesting such customized system.

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? **(NORTON)**

RECOMMENDATION: Yes, CMDS should be expanded to be used for intraLATA collect, third party and calling card calls.

POSITION OF PARTIES

AT&T: Yes. The use of the Centralized Message Distribution System ("CMDS") for intraLATA collect, third party and calling card calls would provide a uniform system that simplifies the billing process. The telecommunications industry currently uses the CMDS process to determine applicable rates and appropriate compensation for such calls.

BELLSOUTH: 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.

MCI: Yes, such a process is necessary to provide a uniform system that will prevent potential billing disputes

STAFF ANALYSIS: AT&T and MCI have requested that BellSouth utilize its Centralized Message Distribution (CMDS) system for processing local and intraLATA collect, third-party and calling card calls, in the same way that similar interLATA calls are processed today. Under the CMDS process, the "originating" local service provider's rates are applied to collect, third-party and calling card calls. (Shurter TR 214) According to AT&T, the CMDS process has served to prevent disputes over which carrier's rates should apply, and it has simplified the billing procedure for interLATA calls. (TR 214) Witness Shurter also states that although the industry has not yet generally adopted CMDS for intraLATA calls, there is a need for a uniform system, and he believes that CMDS will ultimately be used. (TR 214) AT&T and MCI therefore request that intraLATA collect, third-party and calling card calls be priced in accordance with CMDS.

BellSouth argues that no "regional" system currently exists, and that it has no obligation to develop a system to meet parties' desire for uniformity. (Scheye TR 1786) BellSouth also states, however, that it can and will provide the capabilities that MCI and AT&T are requesting, but because the current systems are state specific, they will not be uniform. In his testimony, witness Scheye acknowledged that BellSouth has been "examining the feasibility of systems modification ... which could create national uniformity." (TR 1786)

Staff does not believe there is a substantive conflict here. Based on the testimony, staff believes that BellSouth has stated that it can and will provide CMDS for intraLATA collect, third-party and calling card calls, but that the way in which this is done may vary from state to state, at least for the present. Neither AT&T nor MCI appear to oppose this. AT&T's and MCI's testimony have focused on the application of CMDS to intraLATA calls, whereas BellSouth has merely stated that it cannot do it "uniformly" across all nine states, at least not yet. BellSouth's biggest stated objection is being ordered to do it by the Commission.

Staff would note that Para. 202 of the FCC Order states that it would frustrate the purposes of Sections 251(c)(2) and (3) if incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers. Staff agrees with AT&T and MCI that the fact that a uniform system does not currently exist is not a legitimate argument against adopting CMDS for intraLATA application.

Staff recommends that AT&T's and MCI's proposal that the CMDS process be utilized for intraLATA collect, third-party and calling card calls, be adopted. We understand that this Commission can only require that this be done for Florida. However, we believe that if other state commissions in the BellSouth region order BellSouth to utilize the CMDS process on applicable intraLATA calls, BellSouth will quickly figure out a way to establish a uniform process across the states for its own convenience, if not for that of the requesting carriers.

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? **(NORTON)**

RECOMMENDATION: AT&T's proposal to have BellSouth rate and bill and collect AT&T's customers' calls to ISPs, should be approved as an interim process with the exception that AT&T should not be paid in connection with any call by its customers to an ISP until it negotiates its own contracts with the appropriate rates, terms and conditions. MCI concurred with AT&T's position on this issue except that MCI appears to wish to bill its own customers. Staff recommends that the Commission's decision apply to MCI as well.

To the extent that BellSouth incurs additional costs as a result of handling ISP traffic on behalf of the other carriers, that are not covered under its contract with the ISP, nothing in the Commission's decision should preclude BellSouth from recovering those costs through incremental charges to AT&T and/or MCI.

POSITION OF PARTIES

AT&T: Calls to Information Service providers must be provided to AT&T in a rated format so that AT&T may bill the customer. Until such time as AT&T develops the appropriate billing capability for Information Service Provider calls, AT&T requests BellSouth to continue billing the end user.

BELLSOUTH: 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.

MCI: Calls to information service providers must be provided to MCI in a rated format so that MCI may bill the customer.

STAFF ANALYSIS: AT&T and MCI have proposed a specific treatment for the handling (rating and billing) of end user calls to Information Services Providers (ISPs). N11 and 976-XXXX are typical numbers associated with information services. End users might dial, for example, 311 to reach a sports report from an ISP. The LEC will bill the end user a prearranged charge for that call, and remit the amount to the ISP less a specified fee for billing and collection. The end user charge and the billing and collection fee are specified in a contract between the ISP and the LEC.

In this proceeding, AT&T has proposed an arrangement to be used if one of its customers calls an ISP which has a contract with BellSouth but not with AT&T. AT&T proposes that it send the call detail to BellSouth, which will rate the calls according to the contract it has agreed to with the ISP, and bill and collect on behalf of AT&T as well, until AT&T is in a position to do so itself. (Carroll TR 755)

AT&T witness Carroll stated that AT&T has requested these arrangements on a transitional basis. At hearing, he said that the company would be able to take over billing by March of next year. (TR 755) In AT&T's brief, that deadline was extended to June. (AT&T Brief, p. 89) Witness Carroll believes that this is a reasonable and nondiscriminatory position, and that it would help the marketplace transition "in a way that is convenient without confusion." (TR 756) He stated at hearing that AT&T would compensate BellSouth for any incremental cost incurred in the billing process. (Carroll TR 757) He also stated that AT&T expected to be paid by the ISP, but did not explain what type of expense it would incur, nor did he propose a rate in this proceeding. (TR 756-757)

BellSouth opposes this proposal, suggesting that AT&T be required to negotiate its own contracts with ISPs now. BellSouth offers tariffed access to information services, such as N11 or 976, such that the end user can dial a code or a number to be connected to the ISP's network. BellSouth may also provide billing and collection for the ISP. BellSouth will record the call, bill the end user the tariffed charges, and remit the revenues to the ISP less a billing and collections fee. All this is done pursuant to a contract entered into between BellSouth and the ISP. BellSouth would prefer that AT&T set up its own arrangements with ISPs, and rate and bill its own customers' ISP calls. (TR 756)

Staff agrees with AT&T that from an end user's perspective, a seamless network is preferable. As we move into a more competitive market, with multiple providers serving one local area, this Commission should promote cooperation among these providers to provide the services that end users want with minimal delays and blockages.

Based on the above, staff recommends that AT&T's proposal should be approved as an interim process, with the exception that AT&T should not be paid in connection with any call by its customer to an ISP until it negotiates its own contract with that ISP, containing the appropriate rates, terms and conditions. In this proceeding, AT&T has requested that BellSouth perform <u>all</u> the required functions under BellSouth's own contract with the ISP,

i.e., rating, billing, collecting, and remitting to the ISP. It appears to staff that BellSouth would be handling this call as if AT&T's customer were its own, and therefore we believe BellSouth will be compensated as such under its own contract with the ISP. It may not be necessary that AT&T pay any additional charge for BellSouth's rating the call or billing the customer if BellSouth's contract with the ISP would cover that. To the extent that BellSouth does incur additional costs as a result of handling ISP traffic on AT&T's behalf, which are not covered under its contract with the ISP, nothing in the Commission's decision should preclude BellSouth from recovering those costs through incremental charges to AT&T.

MCI concurred with AT&T's position on this issue except that MCI appears to wish to bill its own customers. Also MCI did not indicate whether it viewed this as a temporary arrangement or not. MCI did not specifically address this issue in its testimony. Staff recommends that the Commission's decision with respect to AT&T apply to MCI as well. Nothing in the Commission's decision should preclude BellSouth from recovering any costs associated with rating the call detail for MCI.

ISSUE 15: What billing system and what format should be used to render bills to AT&T or MCI for services and elements purchased from BellSouth? **(CHASE)**

RECOMMENDATION: Staff recommends that the Commission should require BellSouth to provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of the order in this proceeding. BellSouth can continue to use its CRIS billing system, but the output from the CRIS system should be translated into the CABS-format. In the interim, BellSouth should provide bills for resale and unbundled elements to AT&T and MCI using its CRIS and CABS billing systems.

POSITION OF PARTIES

AT&T: AT&T requires BellSouth to render Local/IntraLATA bills by utilizing the existing billing systems (CABS) in the standard format (SABR). This is the system that is currently in place for Special and Switched billing and is the standard being sought nationally.

BELLSOUTH: 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.

MCI: BellSouth should provide CABS formatted billing for resold services in accordance with the specifications adopted by the industry Ordering and Billing Forum in August, 1996. MCI is concerned with the format of the bill, not with the system used by BellSouth to produce the bill.

STAFF ANALYSIS: This issues address what billing system and what format BellSouth should use to render bills to AT&T and MCI for services and elements purchased from BellSouth.

AT&T requests that the Commission require BellSouth to provide information for billing and usage recording through an electronic interface compatible with BellSouth's Carrier Access Billing System (CABS). AT&T states that the CABS billing system is the most effective and efficient method of conducting business in the local and intraLATA markets. (Shurter TR 214) CABS is designed to render bills from BellSouth to AT&T and other carriers for access services.

AT&T also states that CABS represents the industry standard billing system that is used by all interexchange carriers. (TR 215; 242) AT&T states that BellSouth should provide a single

billing system, as BellSouth currently enjoys, for rendering bills to its customers, which is based upon the familiar CABS. (TR 215) AT&T requests that the Commission should require BellSouth to provide CABS billing within one year after execution of an agreement or when billing standards are adopted, whichever is sooner.

MCI states that for ILEC/ALEC billing, a CABS or CABS-like billing system should be used for charges related to interconnection, unbundled elements, and resale. While MCI acknowledges that CABS may require some modifications to be able to bill these elements, but it is a system that is familiar to both the ILECs and the ALECs and has been the foundation for intercompany billing since access charges began. MCI also states that a CABS-like system would be cost effective because a standardized format would be used for all carriers, rather than a format unique to each LEC. (Martinez TR 997)

MCI states that the Ordering and Billing Forum (OBF) has established a CABS data format which provides a uniform, nationwide format for the provision of billing information for access services. (Martinez TR 1002) In addition, MCI states that in August 1996 the OBF approved specifications for CABS-formatted billing for unbundled network elements and resold services. (TR 1002) MCI states that BellSouth proposes to use the Customer Records Information System (CRIS) for resold services. MCI states that CRIS is a proprietary system and that, if adopted, would create a significant barrier to entry for MCI and other ALECs if they are required to adopt multiple bill formats. (TR 1003)

MCI states that it recognizes that BellSouth may still use its CRIS billing system to collect the relevant billing information. MCI argues that BellSouth should be required to translate the output from the CRIS system into a CABS-format before forwarding it to MCI. (Martinez TR 1002-1003) MCI points out that another RBOC, NYNEX, plans to produce bills for resold services in CABS format effective October 1, 1996. MCI states that NYNEX will take output from its CRIS system and reformat it to the CABS billing data format for resold services. MCI also states that Pacific Bell is using the CABS data format today for some services and is moving towards full implementation of the CABS format for resold services. (TR 1004)

BellSouth states that neither the Act nor the FCC's Order addresses this issue. (Calhoun TR 2526) BellSouth is requesting that the Commission support CRIS billing and the CRIS format for resold services. (Calhoun TR 2593) BellSouth states that it currently uses two billing systems in connection with its services:

CABS and CRIS. BellSouth states that AT&T has agreed to use CRIS billing for resold services in the interim but MCI has not. (TR 2526) However, staff notes that AT&T sees the CRIS system as an interim solution, rather than a permanent solution for billing of resold services.

BellSouth states that contrary to MCI's claim that the OBF required CABS, they did not agree on a mechanized CABS format for resale billing. BellSouth states that OBF did agree on the minimum items of information that should appear on a resale bill, but it did not specify a billing system or format. (TR 2592)

BellSouth argues that the CRIS system should be used for billing resold retail services because CRIS contains the necessary infrastructure to provide the line level-detail resellers, need while the CABS system, which is generally geared towards access services, does not. (Calhoun TR 2526-25-27) AT&T disagrees with BellSouth that CRIS is superior to CABS because it gives more detailed customer information. AT&T states that customer detail is not needed for billing and is available through usage data that is received outside the billing context. (Shurter TR 242-243)

MCI argues that there are a number of requirements for billing resold services contained in the CABS format that are not provided in CRIS billing. First, there is not an adjustments section on the CRIS bill that can be utilized to correct for a misbilling. MCI asserts that this is important so that as disputes are resolved, it can track their resolution. Second, the CRIS system only lists the products and services to which the customer subscribes on the initial customer bill. MCI states that this information is critical for MCI to insure it is paying only for services it purchases. MCI asserts that features and functions must be broken out on a monthly basis. Third, the CRIS format fails to have jurisdictional indicators (intrastate versus interstate) or to provide total minutes of use. (Martinez TR 1004-1005)

AT&T asserts that BellSouth is simply trying to keep doing business the way it currently does business instead of responding to the market place and help establish fair competition. AT&T states that BellSouth's position in the OBF was that it would ignore any industry standard except CRIS. (EXH 88, OBF Issue ID, p. 18)

Staff believes that the billing between BellSouth and AT&T and MCI should transition to CABS-formatted billing for resold services. It does not appear that MCI and AT&T necessarily want BellSouth to use the CABS system; they want their bills in a CABS-like format. Staff believes that requiring BellSouth to provide

CABS formatted bills is appropriate because it will allow the ALECs to receive their bills in a familiar format for both resold and unbundled elements. Staff also is convinced that BellSouth will be able to translate its CRIS output into CABS format as evidenced by NYNEX and Pacific Bell. However, staff also believes that the billing formats should be consistent with industry guidelines to the extent they exist or are developed.

Therefore, staff recommends that the Commission should require BellSouth to provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of the order in this proceeding. AT&T had requested one year or whenever billing standards are adopted, whichever is sooner. Staff believes that 120 days is sufficient time for BellSouth to transition to CABS-formatted billing. BellSouth can continue to use its CRIS billing system, but the output from the CRIS system should be translated into the CABS-format. In the interim, BellSouth should provide bills for resale and unbundled elements to AT&T and MCI using both its CRIS and CABS billing systems.

ISSUE 16: Should BellSouth be required to provide Process and Data Quality Certification for carrier billing, data transfer, and account maintenance? **(CHASE)**

RECOMMENDATION: Staff recommends that BellSouth, AT&T and MCI should adhere to quality standards pertaining to process and data quality certification for carrier billing, data transfer, and account maintenance proposed by MCI and AT&T in their proposed interconnection agreements. If AT&T's and MCI's proposed agreements do not contain specific standards, staff recommends that BellSouth should be required to provide the same quality of service for carrier billing, data transfer, and account maintenance to AT&T and MCI that it provides to its customers and itself. Staff also recommends that the Commission should not arbitrate provisions for liquidated damages in the AT&T and MCI interconnection agreements with BellSouth.

POSITION OF PARTIES

AT&T: Yes. AT&T requires BellSouth to meet the Direct Measures of Quality ("DMOQs") for connectivity billing. Such standards are currently used in the provision of Special and Switched billing. AT&T requires such performance measurement standards to ensure meaningful control over billing quality.

BELLSOUTH: 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.

MCI: Yes.

STAFF ANALYSIS: This issue is very similar to issue 7 in that it addresses performance standards and quality measurements. However, this issue expands the application of these performance standards to quality of billing, data transfer and account maintenance. In fact, MCI makes its post-hearing arguments for both of these issues under issue 7. AT&T and BellSouth also presented almost the same arguments as in issue 7 in their post-hearing briefs for this issue.

The basic arguments presented by MCI and AT&T about performance standards and measurements as they pertain to quality standards for carrier billing, data transfer, and account maintenance are the same as addressed in issue 7. The same sections of the FCC's Order and Rules would also apply to this issue. In this analysis, staff will provide examples of language that specifically addresses quality standards for carrier billing, data transfer, and account maintenance from AT&T's and MCI's proposed interconnection

agreements.

AT&T generally argues that in order to compete with BellSouth, it must be able to offer at least the same quality of service that BellSouth provides its customers. (Shurter TR 188) AT&T states that the Commission should require BellSouth to meet Direct Measures of Quality (DMOQ) for connectivity billing and information exchange. (Shurter TR 187) AT&T asserts that using DMOQs will eliminate the need for AT&T or other new entrants from bringing complaints to the Commission on the quality of BellSouth's service. (Shurter TR 188) AT&T argues that DMOQs would promote competition and provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against entrants by providing inferior service. (Shurter TR 188-89)

Further, AT&T argues that DMOQs would protect AT&T's reputation as a quality provider. (Shurter TR 189) Finally, AT&T asserts that BellSouth should be required to agree to contract terms that hold BellSouth financially responsible in the event it fails to achieve appropriate DMOQs for connectivity billing. (TR 189-190)

MCI asserts that in order to compete with BellSouth it must be able to offer at least the same level of quality that BellSouth provides its customers. (Martinez TR 990) MCI asserts that the Commission must specifically reject any ILEC assertions that the only standards of quality to which they should be held are those standards that are currently in place via Commission service quality rules or state statues. (Martinez TR 989)

BellSouth makes the same arguments in this issue as they did under issue 7 that standards should be set six months after a signed agreement. (Scheye TR 1666-1667) BellSouth states that it will provide the same quality for services provided to AT&T and MCI that BellSouth provides to its own customers for comparable services. (Scheye TR 1666)

Further, BellSouth argues that, although AT&T demands that BellSouth be forced to pay liquidated damages if it does not meet, in any instance, the quality standards, liquidated damages are not contemplated by the Act. BellSouth cites Lefemine v. Baron, 573 So.2d 326 (Fla. 1991), for the proposition that a liquidated damages clause is only sustainable if it specifically reflects the parties intention to choose this form of damages. Also, BellSouth cites Crosby Forrest Products v. Byers, 623 So.2d 565 (Fla. 5th DCA 1993), and states that the liquidated damages provisions that AT&T proposes do not make a reasonable determination of damages in advance and are, therefore, in reality, penalties and unenforceable.

Examples of AT&T's Specific Requests

AT&T has proposed performance standards in its proposed interconnection agreement with BellSouth dealing with process and data quality certification for carrier billing, data transfer, and account maintenance. (EXH 17, JC-2) For example, attachment 7 of AT&T's proposed interconnection agreement contains the detailed specifications for the provision of customer usage data. Section 5 of Attachment 7 is titled, "Recorded Usage Data Reporting Requirements," and states:

> 5.1 BellSouth shall segregate and organize the Recorded Usage Data in accordance with AT&T's instructions.
>
> 5.2 BellSouth shall provide segregated Recorded Usage Data to multiple AT&T biller locations as designated by AT&T.
>
> 5.3 BellSouth, at no cost to AT&T, shall transmit Data Requirements formatted Recorded Usage Data to AT&T via CONNECT:Direct as designated by AT&T. (EXH 17, JC-2, Attachment 7, p. 2)

Examples of MCI's Specific Requests

Attachment VIII of MCI's proposed interconnection agreement contains MCI's measures of quality standards for information exchange and interfaces. (EXH 27, RM-1) For example, Section 4.2.2.1 of Attachment VIII to MCI's proposed agreement states:

> 4.2.2.1 Returned Long Distance Messages and Invoices
>
> 4.2.2.1.1 ILEC shall return message records or invoices to MCI for messages or invoices which cannot be billed to an ILEC end user because ILEC no longer serves the end user for the associated messages or invoices as a result of the end user for the associated messages or invoices as a result of the end user telephone number being served by another LEC/CLEC.
>
> 4.2.2.1.2 Message records or invoices shall be returned as part of the established unbillable process. Returned messages or invoices shall be in industry-standard EMR format using the OBF-agreed return code 50, unless otherwise negotiated with MCI.

Staff Conclusion and Recommendation

The above examples demonstrate the detail of the performance standards and quality measures that AT&T and MCI are requesting. Staff believes that performance standards and measures for process and data quality certification for carrier billing, data transfer, and account maintenance between AT&T, MCI and BellSouth are necessary to assure fair competition. These standards are similar to standards in the tariffs today. Just as discussed in issue 7, staff believes that the evidence presented by AT&T and MCI, along with the FCC's Order, demonstrates that such performance standards are necessary. BellSouth's arguments against such standards are not compelling. BellSouth actually agrees in principal that standards should exist, but it wants to wait six months before establishing such standards. Staff believes that AT&T and MCI have presented fair standards that BellSouth has not specifically challenged.

Therefore, staff recommends that BellSouth, AT&T and MCI should adhere to quality standards pertaining to process and data quality certification for carrier billing, data transfer, and account maintenance proposed by MCI and AT&T in their proposed interconnection agreements. If AT&T's and MCI's proposed agreements do not contain specific standards, staff recommends that BellSouth should be required to provide the same quality of service for carrier billing, data transfer, and account maintenance to AT&T and MCI that it provides to its customers and itself.

Staff has addressed the question of the arbitratability of liquidated damages provisions in Issue 7. As in Issue 7, staff recommends that the Commission should not arbitrate provisions for liquidated damages for performance failures in carrier billing, data transfer, and account maintenance in the AT&T and MCI interconnection agreements with BellSouth.

ISSUE 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? **(REITH)**

RECOMMENDATION: No. AT&T and MCI should contract with the directory publisher for an appearance on the cover of the white page and yellow page directories.

POSITION OF PARTIES

AT&T: Yes. To provide AT&T with non-discriminatory access to its Directory Listings as required by the Act, AT&T's name and logo must appear on the directories in the same size and format as provided BellSouth, and under the same terms and conditions as BellSouth Advertising & Directory Publishing Corporation provides BellSouth.

BELLSOUTH: 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.

MCI: Yes. To the extent that the Commission's ability to enforce this requirement directly against BAPCO is questioned by BellSouth or BAPCO, the Commission should order BellSouth to require -- as a condition of BellSouth providing its customer listing information to BAPCO -- that BAPCO allow MCI to have such an appearance on the directory cover.

STAFF ANALYSIS: BellSouth asserts that the issue of placing a logo on a directory cover is not subject to arbitration under Section 251 of the Act. Witness Scheye states that the Act requires the inclusion of subscriber listings in the white page directories, which BellSouth has agreed to do. (TR 1675 - 1676) Witness Scheye explains that BellSouth's directories are published by a separate affiliate called BellSouth Advertising and Publishing Corporation (BAPCO) and any Commission decision would affect the interests of BAPCO which is not a party to these proceedings. Witness Scheye asserts that where directory publishing is concerned, AT&T and MCI should be negotiating with BAPCO, not BellSouth. (TR 1676)

BellSouth further argues that Section 251(b)(3) charges it with a duty, in respect to dialing parity, only to provide competitive LECS with nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing. (BR 81) BellSouth notes the FCC stated that "[a]s a minimum standard, we find the term 'directory listing' as used in section 251(b)(3) is synonymous with the definition of 'subscriber list information' in

Section 222(f)(3)." (FCC 96-333, ¶ 137) BellSouth further notes that the FCC concluded that "there is no need for this Commission to state that the term 'directory assistance and directory listings' includes the White Pages, Yellow Pages, 'customer guides,' and informational pages." (FCC 96-333, ¶ 137)

In addition, BellSouth argues in Section 271(c)(2)(B)(viii), the Act requires it to provide to other telecommunications carriers access and interconnection that includes "[w]hite pages directory listings for customers of the other carriers' telephone exchange service," in order to enter the interLATA market. BellSouth notes that Section 271(c)(2) does not include logo appearances on directory covers among the "special interconnection requirements."

AT&T states that the Act requires BellSouth to provide parity and precludes BellSouth from imposing unreasonable and discriminatory conditions on AT&T. Witness Shurter maintains that BellSouth puts its logo on the cover of white and yellow page directories; therefore, to achieve parity, AT&T requested that BellSouth include AT&T's logo on the directories. (TR 201) Witness Shurter states that "BellSouth agreed to include AT&T's logo only if AT&T agreed to excessive rates, and restrictive and anticompetitive terms and conditions." (TR 186) Witness Shurter further testified that "[t]he FCC Order addresses branding in the context of operator services and directory assistance services, but does not address directly the branding and unbranding of other customer services." (TR 200) In addition witness Shurter states that the Order "mandates that BellSouth provide AT&T products that are at least equal in quality to that which BellSouth provides itself." (TR 200) Specifically, witness Shurter cites to §§ 51.305(a), 51.311(b) of the FCC's rules, and FCC Order 96-325, ¶¶ 224, 313, and 970. (TR 200)

MCI suggested that directories could be delivered to the ALEC instead of its subscribers, and the ALEC could place its own covers on the directories. (Price TR 811) MCI argues that "the Commission should order BellSouth to require -- as a condition of BellSouth providing its customer listing information to BAPCO -- that BAPCO allow MCI to have such an appearance on the directory cover." (BR 53)

Staff notes that the FCC did not expressly address allowing ALECs to have an appearance on the cover of white and yellow page directories. Section 222(f)(3) of the Act defines "subscriber list information" as any information:

> (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and
>
> (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Thus, staff believes that neither Section 251(b)(3), requiring nondiscriminatory access to directory listings, nor Section 271(c)(2) is authority for a requirement that BellSouth include the logos of the competitive LECs on its directory covers.

Staff believes on the basis of the Act, the Order, and the Second Order that neither the obligation of BellSouth to provide interconnection with its network, unbundled access to network elements, nor to offer telecommunications services for resale to the competitive LECs embraces an obligation to provide a logo appearance on its directory covers. Section 251(c)(2) states that the incumbent LECs "have the duty to provide interconnection with the local exchange carrier's network ... for the transmission of telephone exchange service and exchange access." Telephone exchange service is defined at Section 3(47) and exchange access at Section 3(16). Neither definition contemplates directory publishing.

Section 251(c)(3) states that the incumbent LECs "have the duty to provide nondiscriminatory access to network elements on an unbundled basis." In Section 3(29), network element is defined to mean "a facility or equipment used in the provision of telecommunications services, and includes "features, functions, and capabilities" provided by such facilities or equipment, such as "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of telecommunications service. See also, § 51.319, C.F.R. Neither the Act nor the rules contemplate directory services as a network element.

Section 251(c)(4) states that the incumbent LECs "have the duty

to offer for resale ... any telecommunications service" provided at retail. Section 3(46) defines telecommunications services to mean "the offering of telecommunications for a fee directly to the public." Section 3(43) defines telecommunications to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Neither the Act nor the rules contemplate directory service as a telecommunications service to be offered for resale.

AT&T's position relies on a generalized parity argument. AT&T in fact acknowledges that the Order does not expressly address branding of customer services other than operator service and directory assistance service. Its reliance on §§ 51.305(a) and 51.311(b), of the FCC rules, relating to interconnection and access to unbundled network elements respectively, is misplaced for reasons already stated. Paragraphs 224, 313, and 970 of the Order are parity statements concerning interconnection, unbundling and resale. AT&T's reliance on them is also misplaced for the same reasons. Finally, staff finds no support for MCI's quid pro quo reasoning.

Staff believes that the argument cannot be sustained in the absence of any express language in either the Act or the rules that the incumbent LECs provide logo appearances on their directory covers, or of any language in which such a requirement can be fairly implied. Staff believes that the appropriate entity for AT&T and MCI to be negotiating with for an appearance on directory covers is BAPCO. Staff is not persuaded by AT&T's position that nondiscriminatory access to directory listings is a parity issue that should be interpreted to included AT&T's logo on the directory cover. Staff agrees with the FCC's determination that the term "directory listings" is synonymous with "subscriber list information." In addition, this issue does not appear to be about BAPCO refusing to include AT&T's logo on the directory cover, but under what rates, terms and conditions. Indeed, AT&T's negotiations for a directory cover logo appearance with BellSouth stalled because of rates, terms and conditions. Therefore, staff recommends that it be left for AT&T and MCI to negotiate with the directory publisher for an appearance on the cover of the white page and yellow page directories.

Finally, BellSouth raises First and Fifth Amendment arguments in support of its position that the issue of customized directory covers is not subject to arbitration in this proceeding. Staff believes the Commission can reach a proper disposition of this issue without the necessity to consider constitutional argument.

ISSUE 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? **(GREER)**

RECOMMENDATION: The parties have agreed that BellSouth will provide the following interim number portability solutions:

a. Remote Call Forwarding
b. Direct Inward Dialing
c. Route Index Portability Hub
d. Local Exchange Routing Guide to the NXX Level

Staff believes the Commission should address the cost recovery for interim number portability in Docket No. 950737-TP. Until completion of that proceeding, the Commission, on an interim basis, should require each carrier to pay for its own costs in the provision of the interim number portability solutions listed above. Further, the Commission should require each telecommunications carrier to this proceeding to track its cost of providing the interim number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

POSITION OF PARTIES

AT&T: Interim Number Portability should be provided by Remote Call Forwarding, Route Indexing, or Local Exchange Routing Guide reassignment. AT&T shall specify the desired method on a per number basis and BellSouth shall provide such method to the extent technically feasible. Carriers should bear costs on a competitively neutral basis.

BELLSOUTH: 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.

MCI: This is an AT&T-only issue.

STAFF ANALYSIS: Section 251(b)(2) of the Act requires all local exchange companies to provide to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission. The Act defines the term "number portability" to mean the ability of users of telecommunications services to retain, at the same location, existing telecommunications number without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. (§3 (30) of the Act)

On July 2, 1996 in the FCC's First Report and Order on Telephone Number Portability, the FCC interpreted the requirements of Act to require local exchange companies to offer currently available methods of number portability, such as RCF and DID. The Commission has labeled these methods of providing number portability as "temporary" number portability methods. In addition, the FCC required the LECs to offer number portability through RCF, DID, and other comparable methods because they are the only methods that currently are technically feasible. (FCC 96-833, ¶ 110)

There was some discussion by the parties on which options where technically feasible. However, staff believes this is no longer an dispute since the parties have essentially agreed to the options listed below.

AT&T requests the Commission to require BellSouth to provide the following interim number portability solutions listed below.

a. remote call forwarding (RCF)
b. direct inward dialing (DID)
c. route index portability hub
d. local exchange routing guide reassignment at the NXX level (LERG) (EXH 17, AT&T BR 8, p. 2-3)

BellSouth has agreed to provide all of the temporary number portability options identified above. (TR 2795-2796) However, BellSouth indicates that it expects the alternative local exchange companies to reciprocate these capabilities. (TR 2796) AT&T argues that the FCC order does not require new entrants to provide interim number portability. (BR p. 93) However, staff would point out that the language of the Act as well as the order on number portability does require all local exchange companies, including alternative local exchange companies, to provide number portability. (§251(b)(2) of the Act; FCC 96-833, ¶ 110) Therefore, staff believes the alternative local exchange companies must provide the same temporary number portability methods as they request the incumbent local exchange companies to provide.

The remaining issue to be discussed is the cost recovery mechanism to be used for the temporary number portability mechanism identified above. The Act requires that all carriers bear the costs of establishing number portability. (§251 (e)(2) of the Act) Although the FCC order agrees for the most part with this blanket approach to cost recovery, the order does allow the states to exempt some carriers from the recovery of these costs. (FCC 96-286, ¶ 130)

The FCC established the following criteria to determine an

appropriate cost recovery mechanism. First, the recovery mechanism should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. The FCC interprets this to mean that the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer. The second criteria for an acceptable cost recovery mechanism is that it should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments. (FCC 96-286, ¶ 132 and 135)

The FCC order identifies various methods of cost recovery that meet the two criteria listed above. The first option is to allocate number portability costs based on a carrier's number of active telephone numbers relative to the total number of active telephone numbers in a service area. A second option would be to allocate the cost of currently available measures between all telecommunications carriers and incumbent LECs based on each carrier's gross telecommunications revenues net of charges to other carriers. A third competitively neutral cost recovery mechanism would be to assess a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers. Staff believes all three of these options would produce essentially the same result as it relates to the distribution of costs between carriers. The final option that the FCC believes would meet its criteria is to require each carrier to pay for its own costs of currently available number portability measures. (FCC 96-286, ¶ 136)

The Commission's existing policy on cost recovery of temporary number portability requires only the new entrants to pay for temporary number portability solutions. The FCC's order clearly prohibits this type of cost recovery mechanism. Since the costs are required to be recovered from all carriers, the Commission's current policy is inconsistent with the FCC requirements. The Commission will be utilizing Docket No. 950737-TP to address this cost recovery issue as it relates to the provision of temporary number portability. The parties recognize that all carriers are not represented in this proceeding, and the handling of the cost recovery issue may best be resolved in the Commission's generic investigation. (AT&T Tamplin TR 362, BR p. 90) However, we believe the Commission should establish an interim cost recovery mechanism until the proceeding in Docket No. 950737-TP is complete. Since the parties have not provided any cost information associated with most of the temporary number portability methods, and the Commission must implement a cost recovery mechanism that is consistent with the FCC order, staff believes the Commission should require each carrier to pay for its own costs in the provision of

the temporary number portability solutions listed above for the interim. Further, the Commission should require all telecommunications carriers to this proceeding to track its cost of providing the temporary number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

SUMMARY

Staff believes all parties to this proceeding should provide the temporary number portability solutions identified above. Until the proceeding in Docket No. 950737-TP is completed, the Commission should require each carrier to pay for its own costs in the provision of the temporary number portability solutions listed above. Further, the Commission should require each telecommunications carrier to this proceeding to track its cost of providing the temporary number portability solutions with sufficient detail to verify the costs in order to consider recovery of these costs in Docket No. 950737-TP.

ISSUE 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? **(NORTON)**

RECOMMENDATION: No. Sections 251 and 252 of the Act do not address the pricing of exchange, or switched, access. (Switched access is referred to as exchange access in Section 251(c)(2)(A) of the Act.) No changes to switched access rates need to be made in this proceeding.

POSITION OF PARTIES

AT&T: Section 252(d)(1) expressly applies pricing standards to interconnection with facilities and equipment described in Section 251(c)(2)(A). Exchange access and switched access charges must be priced according to Section 251(d)(1). The price is the same as for unbundled elements that are used to transport and terminate long distance service.

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

MCI: This is an AT&T-only issue.

STAFF ANALYSIS: This issue applies to AT&T only. AT&T has argued in its brief that both exchange access and switched access charges must be priced according to Section 251(d)(1) at economic cost. (AT&T Brief, p. 94-95) If AT&T were correct, this would mean that the rates that BellSouth charges for switched access would fall under the same pricing requirements as the rates for the transport and termination of local interconnection traffic. AT&T did not specifically address this issue in its testimony in this docket. In its brief, AT&T cited to witness Gillan's argument that efficient competition requires that both "local" access and "long distance" access be priced at cost as support for its position. (Gillan TR 80-83)

BellSouth witness Scheye opposed AT&T's position, arguing that if Congress had intended "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 1648) Witness Scheye also argues that the Act states clearly that incumbent LECs must continue to meet their obligation to provide access to IXCs consistent with regulatory requirements. Finally, witness Scheye points out that with so much specificity on access issues, surely Congress would have spelled it out if it

intended that access rates be negotiated. (TR 1649)

Staff agrees with BellSouth on this issue. The Act does not require that switched access be negotiated or priced under Sections 251 and 252. Staff believes that no action is required in this proceeding with respect to switched access prices. Staff would also note that AT&T may have unintentionally cited to the wrong portion of the statute in its brief. AT&T cites to Section 251(d)(1) as requiring that "exchange access and switched access charges" must be priced at economic cost. That subsection, however, requires that the FCC have regulations in place within six months of enactment of the Act, and has nothing to do with pricing. In fact, Section 251 does not address pricing at all. Staff believes that AT&T meant to cite to Section 252(d)(1), which does address pricing standards. That language refers back to section 251(c)(2)(A) which sets up the requirement that the LEC provide interconnection for the routing of exchange service and exchange access. AT&T argues that this language means that "exchange access and switched access" must be priced at cost. Staff disagrees that this is the meaning of this section of the Act.

Staff believes, however, that to the extent transport and termination rates for local interconnection are priced at economic cost, it will be very difficult for LECs to sustain the existing price differential for switched access. The incentives to use local interconnection to terminate toll traffic will be great. The LECs will incur substantial expense to monitor local and toll traffic in order to determine the appropriate charges. It is precisely this problem that has led the FCC to initiate access reform proceedings. This Commission will be involved in both state and federal proceedings addressing switched access reform and universal service in the near future.

In summary, AT&T has phrased this issue in terms of whether Sections 251 and 252 of the Act apply to the pricing of switched access. Staff recommends that they do not. We do agree, however, that the issue of switched access pricing is real and urgent, and will be addressed in the very near future.

ISSUE 20: What are the appropriate trunking arrangements between AT&T and BellSouth for local interconnection? **(REITH)**

RECOMMENDATION: The parties have reached an agreement. Therefore the Commission should consider this issue moot.

POSITION OF PARTIES

AT&T: Two way trunking is necessary for efficient interconnection and reflects the interconnection capability available to BellSouth.

BELLSOUTH: 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.

MCI: This issue was stricken by the Prehearing Officer as it relates to MCI. It is therefore an AT&T-only issue.

STAFF ANALYSIS AT&T and BellSouth have reached an agreement with respect to this issue. At the hearing AT&T announced that it was withdrawing this issue from the arbitration proceeding. (TR 2814)

Staff believes this issue is no longer ripe for a decision within this docket. Therefore, staff recommends that the Commission consider this issue moot.

ISSUE 21: What should be the compensation mechanism for the exchange of local traffic between AT&T and BellSouth? **(SHELFER)**

RECOMMENDATION: Staff recommends a reciprocal rate of $.00125 per minute for tandem switching and $.002 for end office termination. While staff understands that BellSouth's costs are LRIC, staff believes that these rate levels would be sufficient to cover TSLRIC, in addition to providing some contribution to common costs.

POSITION OF PARTIES

AT&T: The Commission should order that interconnection be priced at TELRIC and that BellSouth be ordered to develop TELRIC studies as promptly as possible. Until such studies are completed, this Commission should require a bill and keep arrangement for interconnection

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

MCI: This issue was stricken by the Prehearing Officer as it relates to MCI. It is therefore an AT&T-only issue.

STAFF ANALYSIS: Section 251(b)(5) of the Act requires the ILECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The portions of the FCC Order addressing transport and termination were stayed.

BellSouth's Position

BellSouth contends that the local interconnection rate should be based on intrastate switched access rates to the extent possible. Witness Scheye states that BellSouth has negotiated interconnection rates based on these charges exclusive of the residual interconnection charge (RIC) and carrier common line (CCL) charge with a 105% cap applied on usage. He argues that the Act does not authorize a commission to mandate that a party accept bill and keep as the method of interconnection, eliminating the right to recover its costs. (Scheye, TR 1642)

Witness Scheye asserts that the components of local interconnection and toll access are functionally equivalent, and therefore, the rate structure should be similar. He states that this issue seems to be accepted by AT&T and BellSouth. Basing the local interconnection rate on the switched access rate will facilitate the transition of all interconnection types into a single interconnection rate. BellSouth contends that as technology

changes, competition increases, and interconnection types (e.g., local, toll, independent, cellular/wireless) become more integrated, making such a transition imperative. (TR 1643)

The witness suggests that since BellSouth has reached agreements with other parties that include a local interconnection rate based on the current switched access rate minus any non-traffic sensitive rate elements, the resulting negotiated reciprocal compensation rate of $.01 is appropriate. (TR 1643)

BellSouth argues that 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 cost 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 cost on the basis of a reasonable approximation of the additional cost of terminating such calls." (§ 252(d)(2)(A))

Witness Scheye contends that BellSouth's average local interconnection rate of $.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. BellSouth argues that 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 1644)

BellSouth also states that 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 the two networks. (§ 51.713(b)) The rules authorize state commissions to presume that the traffic exchanged between two networks is roughly balanced. (§ 51.713(c)) The rules also require that the rates be symmetrical. (§ 51.711) BellSouth states that these provisions are a part of the pricing rules stayed by the Eighth Circuit Order.

AT&T'S Position

AT&T's position is that the Commission should order that interconnection be priced at TELRIC and that BellSouth be ordered to develop TELRIC cost studies as promptly as possible. AT&T also proposes that the Commission adopt bill-and-keep as an interim mutual compensation mechanism for intercompany traffic termination, or in the alternative, establish mutual compensation using network element costs outlined in Witness Ellison's testimony, or pursuant to the Hatfield Model. (Ellison, TR 423)

AT&T contends that under the Act each LEC has the duty to "establish reciprocal arrangements for the transport and termination of telecommunications." (§ 251(b)(5)) The Act requires that the pricing for transport and termination provide for the recovery by each carrier of "cost associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." (§ 252(d)(2)(A)) The Act specifically identifies "bill-and-keep" arrangements as acceptable to the extent that each carrier recovers the cost of transport and termination. (§ 252(d)(2)(B)(i))

AT&T states that the FCC Order provided that transport and termination should be priced at TELRIC. The Order also provided that a proxy default range of 0.2-0.4 cents per minute could be used where a particular state commission does not have complete TELRIC studies before it. Finally, the FCC Order provided that states may impose bill-and-keep arrangements if traffic is roughly balanced between the carriers and neither carrier has rebutted the presumption of symmetrical rates. (FCC 96-325, ¶ 1113)

AT&T witness Ellison argues that because BellSouth has not provided adequate cost studies, AT&T proposes interim use of a bill-and-keep system for transport and termination of traffic, as provided for by the Act. The witness also contends that BellSouth's tariffed access rates are inappropriate for interconnection because the rates do not reflect economic costs. Therefore, under the Act, they are improper. (Ellison, TR 401)

AT&T states that should this Commission not wish to set the interim prices for transport and termination within the proxy range set by the Order, AT&T recommends that this Commission implement an interim bill-and-keep arrangement as permitted by the Act, and as previously established by this Commission (and termed "mutual traffic exchange"). (See Docket No. 950985-TL)

Staff Analysis

BellSouth proposes that rates for local interconnection should be based on intrastate switched access charges, minus the Residual Interconnection Charge (RIC) and the Carrier Common Line (CCL). The Commission rejected this philosophy in a previous docket. The Commission rejected BellSouth's proposal of full switched access rates, excluding the Residual Interconnection Charge and Carrier Common Line charges. The Commission's rejected this because it could create a price squeeze, create unnecessary barriers to competition, and inappropriately included contribution towards universal service obligations. (See Docket No. 950985-TP, Order No. PSC-96-0668-FOF-TP) (Staff points out that BellSouth has filed an appeal and a motion for stay of the decision).

BellSouth and AT&T debate whether this Commission has the authority to require the companies to compensate each other for the exchange of local traffic by bill-and-keep (mutual traffic exchange). AT&T's requests that the Commission order bill-and-keep on an interim basis until TELRIC cost studies are filed.

Section 252(d)(2)(A) provides the general rule that governs state commission approval of reciprocal compensation arrangements. Specifically, this section states:

> (A) IN GENERAL. - For purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -
>
> (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 reasonable approximation of additional costs of terminating such calls.

Section 252(d)(2)(A) applies regardless of whether the arrangements have been established by the parties through a voluntary agreement under Section 252(a) or through action by a state commission under Section 252(b).

Section 252(d)(2)(B) provides:

(B) RULES OF CONSTRUCTION. - This paragraph shall not be construed -

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)

Staff believes that, while Section 252(d)(2)(B)(i) does not require a state commission to adopt mutual traffic exchange, it clearly authorizes it to do so. The Act expressly recognizes that the offsetting of reciprocal obligations, whether through bill-and-keep or mutual traffic exchange, is a permissible method of cost recovery. Nothing in the Act states that the rules of construction apply only to voluntarily negotiated compensation mechanisms, and that we would have less latitude than the parties would have to establish an appropriate compensation policy. This Commission is within its authority to order mutual traffic exchange on either a temporary or a permanent basis.

BellSouth did not file specific cost studies addressing this issue in this proceeding. However, BellSouth's LRIC cost study filed in 950985-TP is part of the record as Exhibit 70. Although requiring bill-and-keep may be an interim option until BellSouth files appropriate cost studies, staff believes that the LRIC cost study is sufficient to establish rates for tandem switching and end office termination.

Witness Caldwell defines long-run incremental costs (LRIC) as costs that include product specific volume sensitive incremental costs. (TR 2163) Volume sensitive costs are costs that vary with a change in volume. BellSouth defines total service long-run incremental costs (TSLRIC) as costs that include both the product specific volume sensitive and volume insensitive costs. (TR 2163) Strictly speaking, very few costs are completely insensitive to volume. When the demand increment is defined as the total service, there is often no appreciable difference between LRIC and TSLRIC.

Staff has developed separate rates for tandem and end office switching, because the ALECs may use one or both switches to terminate a call. Staff believes this is appropriate since a call

terminated at an access tandem may require additional switching and transport than a call terminated at an end office. The tandem rate only includes the costs to terminate at the tandem; therefore, if an ALEC terminates a call through both a tandem and end office switch, BellSouth will charge both a tandem and end office rate.

Staff believes a reciprocal rate of $.001 per minute for tandem switching and $.002 for end office termination is appropriate. While staff understands that BellSouth's local transport cost studies are LRIC costs, staff believes that the proposed rates would be sufficient to cover the greater of TSLRIC or LRIC in addition to providing some contribution to common costs.

Therefore, staff recommends that reciprocal rates should be set as proposed for tandem and end office switching, since there is sufficient evidence in the record upon which to establish rates.

ISSUE 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)? **(CHASE)**

RECOMMENDATION: Staff recommends that the Commission should not arbitrate the general contractual terms and conditions that govern the arbitration agreement. The Commission's authority to arbitrate disputed issues under the Act is limited to those items enumerated in Sections 251 and 252 and matters necessary to implement those items. General contractual terms and conditions do not fall within the scope of arbitration.

POSITION OF PARTIES

AT&T: The Act requires BellSouth to provide interconnection, unbundled network elements and wholesale services at terms and conditions that are just, reasonable and non-discriminatory. The terms and conditions proposed by AT&T, with regard to these and other issues in its proposed interconnection agreement, are appropriate and should be adopted.

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

MCI: This issue was stricken by the Prehearing Officer as it relates to MCI. It is therefore an AT&T-only issue.

STAFF ANALYSIS: This issue addresses the general contractual language that the final arbitrated agreement between BellSouth and AT&T and BellSouth and MCI should contain. AT&T proposes that the Commission use the language contained in its proposed interconnection agreement. (AT&T BR p.140) MCI proposes that the Commission should use the language contained in its proposed interconnection agreement. (MCI BR p. 54) BellSouth, on the other hand, states that these terms and conditions are not subject to arbitration. (BellSouth BR p.90)

Performance requirements were addressed in issue 7 and issue 16. Staff believes that general contractual provisions regarding dispute resolution and treatment of confidential information should not be ordered by the Commission. Dispute resolution should be subject to the Commission's normal complaint procedures, or a negotiated procedure should be worked out by the parties. Staff believes that the same should be true for the treatment of confidential information. Today, parties are expected to work out problems of confidentiality between themselves by signing nondisclosure agreements.

Therefore, staff recommends that the Commission should not arbitrate the general contractual terms and conditions that govern the arbitration agreement. Generally, such terms and conditions are expected to be negotiated by the parties. The Commission's authority to arbitrate disputed issues under the Act is limited to those items enumerated in Sections 251 and 252 and matters necessary to implement those items. General contractual terms and conditions do not fall within the scope of arbitration.

ISSUE 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? **(GREER)**

RECOMMENDATION: The Commission should implement the cost recovery mechanism established in Issue 18.

POSITION OF PARTIES

AT&T: No Position

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

MCI: There should be no explicit monthly recurring charge for remote call forwarding used to provide interim local number portability. BellSouth and MCI should each bear their own cost of implementing the interim number portability mechanism.

STAFF ANALYSIS: Staff has addressed the cost recovery issue on temporary number portability in Issue 18. As indicated in that issue the cost recovery of remote call forwarding should be the same as the other temporary number portability methods.

ISSUE 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? **(NORTON)**

RECOMMENDATION: This issue was affected by the Eighth Circuit's stay of portions of the FCC Order. Staff therefore recommends that existing Florida law and policy should apply because they are not inconsistent with the Act. No additional charges should be assessed for unbundled Local Switching over and above those approved in Issue 1(b) of this recommendation for that element. However, with respect to toll traffic, existing Florida law does not allow ALECs to bypass switched access charges. Therefore, under the Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in DN 950985-TP, the company terminating a toll call should receive terminating switched access from the originating company unless the originating company can prove that the call is local.

POSITION OF PARTIES

AT&T: No Position

BELLSOUTH: 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.

MCI: The price for unbundled local switching should be based on its forward looking economic cost in accordance with TELRIC principles. The price should not include any additional charge for intrastate switched access minutes that traverse BellSouth's switch.

STAFF ANALYSIS: This issue applies to MCI only. This issue arose from the requirements in the FCC Order to the effect that carriers who utilize unbundled local switching will, for a finite period, also be required to pay the Carrier Common Line charge plus 75% of the RIC. The FCC instituted this charge in the belief that LECs would experience a substantial revenue impact when carriers are able to purchase and use the unbundled local switching element to switch all their traffic, both local and toll. This is allowed under the Order, and would presumably occur because the local switching rate in the switched access tariff would be so much higher than the unbundled local switching rate. By adding on the "support" for a period of time, the FCC sought to mitigate the potential revenue impact on the LECs.

The Eighth Circuit, however, stayed that provision (51.515) of the FCC rules. Therefore, assessment of the CCL and 75% of the RIC is not mandated by the Order at this time. Staff recommends that existing Florida law should apply. Florida law, unlike the FCC Order, does not allow carriers to deliver toll traffic through local interconnection facilities without paying the appropriate access charges. (See Section 364.16(3)(a), Florida Statutes) Thus, BellSouth and MCI will have to be sure that local and toll traffic are separately identified, and that the appropriate charges be assessed on each.

Staff recommends that no additional charges should be assessed for unbundled Local Switching over and above those approved in Issue 1(b) of this recommendation as it applies to local interconnection traffic. However, with respect to toll traffic, existing Florida law does not allow carriers to bypass switched access charges. Therefore, under this Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in DN 950985-TP, the company terminating a toll call should receive terminating switched access from the originating company unless the originating company can prove that the call is local. Staff believes this is authorized under Section 261(b) of the Act which provides that state laws and regulations are not to be superseded by the Act if they are not inconsistent with the requirements of the Act. With the stay upheld by the Supreme Court, staff believes that the existing Florida law can and must apply.

ISSUE 25: What are the appropriate rates, terms, and conditions for collocation (both physical and virtual)? **(STAVANJA)**

RECOMMENDATION: For physical collocation, the Commission should approve BellSouth's Telecommunications Handbook for Collocation in the interim until this Commission has set cost based rates for physical collocation.

Staff also recommends that MCI bear the costs of converting from virtual to physical collocation where MCI requests the conversion. The establishment of physical collocation should be completed in three months and the establishment of virtual collocation should be completed in two months. Staff recommends that BellSouth demonstrate to the Commission on a case-by-case basis where these time frames are not sufficient to complete the collocation work.

For virtual collocation, staff recommends that the rates, terms, and conditions as set forth in BellSouth's Access tariff filed with this Commission should apply in the interim until this Commission has set cost based rates.

In addition, staff recommends that the Commission grant MCI the ability to:

1. Interconnect with other collocators that are interconnected with BellSouth in the same central office.

2. Purchase unbundled dedicated transport from BellSouth between the collocation facility and MCI's network.

3. Collocate subscriber loop electronics in a BellSouth central office.

4. Select physical over virtual collocation, where space and/or other considerations permit.

Staff recommends that BellSouth file a TSLRIC cost study for physical and virtual collocation within 60 days of the date the order is issued in this proceeding. The cost study should comply with §51.323 of the FCC's rules and with the expanded interconnection guidelines set out in the FCC's order.

POSITION OF PARTIES:

AT&T: No Position

BELLSOUTH: The appropriate rates, terms, and conditions for physical collocation are contained in BellSouth's Handbook for

Physical Collocation. The rates, terms, and conditions for virtual collocation are contained in BellSouth's Access Services tariffs.

MCI: MCI should be able to collocate subscriber loop electronics, such as DLC; to interconnect with other collocators; to interconnect to unbundled dedicated transport obtained from BellSouth; and to collocate via either physical or virtual facilities. Rates for collocation should be based on forward-looking economic cost in accordance with TELRIC principles.

STAFF ANALYSIS: Section 251(c)(6) of The Telecommunications Act of 1996 states that incumbent LECs have:

> The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the Sate commission that physical collocation is not practical for technical reasons or because of space limitations.

The FCC's rules on pricing, §51.501 through §51.515, have been stayed. BellSouth has not provided TSLRIC or TELRIC cost studies for physical and virtual collocation. However, BellSouth did provide proposed rates for physical collocation and recommended that current tariffed rates be used for virtual collocation. Staff has no information on the methodology used for the proposed physical collocation rates. Therefore, staff recommends that BellSouth file a TSLRIC cost study for physical and virtual collocation within 60 days of the date the order is issued. The cost study should comply with §51.323 of the FCC's rules which provide the appropriate standards for collocation, and with the expanded interconnection guidelines set out in the FCC's Order.

In addition, staff recommends that the Commission grant MCI the ability to:

1. Interconnect with other collocators that are interconnected with BellSouth in the same central office.

2. Purchase unbundled dedicated transport from BellSouth between the collocation facility and MCI's network.

3. Collocate subscriber loop electronics in a BellSouth central office.

4. Collocate via physical or virtual facilities.

In the discussion of the FCC's Order on collocation, the FCC concluded that it should adopt the existing expanded interconnection requirements, with some modifications. (FCC 96-325, ¶ 565). The FCC discussed the necessity of the above modifications in the Order at ¶¶ 594, 590, 580 and 565 respectively. The four items listed are included in §51.323 of the FCC's rules.

Of concern to MCI is the time frame for establishing collocation. MCI witness Caplan recommends three months for physical and two months for virtual collocation as the maximum time frames. (TR 938) BellSouth witness Scheye testified that time frames for establishing physical collocation will vary based on office type. This is due to any rearrangement of equipment necessary in a particular office. Witness Scheye also stated that the length of time necessary to complete the work depends on whether MCI requests a cage be built to protect their equipment. Witness Scheye estimated that the entire construction process could take from 60 days to six months in an extreme case. (TR 1967-1968).

Witness Scheye also stated that the establishment of virtual collocation is fairly immediate and that two months is probably reasonable. However, he claims that BellSouth has little experience in establishing physical collocation and cannot agree to completing an average collocation configuration in three months. (TR 1968-1969).

Staff believes the maximum time frames for the establishment of physical collocation at three months and virtual at two months are reasonable for non-extraordinary conditions. In the interest of promoting competition, staff recommends that if there is any circumstance where MCI and BellSouth cannot agree to the required time frame necessary for a particular collocation request, BellSouth should demonstrate to the Commission why additional time is necessary.

ISSUE 26: What are the appropriate rates, terms, and conditions related to the implementation of dialing parity for local traffic? **(WIDELL)**

RECOMMENDATION: BellSouth should be required to provide dialing parity to MCI on local calling (intra-exchange and flat rate EAS).

POSITION OF PARTIES

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

MCI: MCI customers must be permitted to dial the same number of digits to make a local telephone call as are dialed by a BellSouth customer, and call processing times for MCI calls within BellSouth's network must be equivalent to those experienced by BellSouth. Any incremental costs directly relating to the provision of dialing parity should be collected on a competitively neutral basis.

STAFF ANALYSIS: This issue concerns the provision of dialing parity on local calls by BellSouth to MCI customers when MCI resells BellSouth's local service or purchases unbundled local switching. In both cases, the MCI customer is served by a BellSouth switch just like a BellSouth customer and dialing parity is automatic. The only difference is that a BellSouth customer is billed the retail rate for the service; while for a MCI customer BellSouth bills MCI the wholesale rate and MCI bills its customer the MCI retail rate. There is no difference in how a call is handled; only in how it is billed.

Section 251(b)(3) of the Telecommunications Act of 1996 (Act) establishes the following dialing parity requirements for all local exchange companies:

> Each telecommunications carrier has the duty to provide dialing parity to competing providers of telephone exchange service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers,operator services, directory assistance, and directory listing, with no unreasonable dialing delays.

In addition Section 3 of the Act defines dialing parity as follows:

> The term 'dialing parity' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that

> customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications services providers(including such local exchange carrier).

The FCC's Second Report and Order finds that "each LEC must insure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider." (FCC 96-333, ¶ 29)

MCI maintains that their customers must be permitted to dial the same number of digits to make a local telephone call as are dialed by a BellSouth customer, and that call processing times for MCI calls within BellSouth's network must be equivalent to those experienced by BellSouth. (Price TR 801) BellSouth does not contend that local telephone calls, intra-exchange and flat rate EAS calls, would be handled differently for MCI and BellSouth customers. Staff believes this will be true since a local call to a telephone number is going to the same location whether the number is dialed by a MCI customer or a BellSouth customer. As long as the dialed digits route the call to the same location, local dialing parity is inherent in the network.

MCI also requests that 0-, 411 and 611 calls be routed to MCI operators when dialed by a MCI subscriber. Staff believes that dialing parity on these calls will be achieved with the approval of Issue 9.

Based on the discussion above, staff believes dialing parity is already inherent in the network. Staff does not believe there are any additional costs associated with local dialing parity. Therefore, it is unnecessary for the Commission to establish any additional requirements or cost recovery mechanisms.

ISSUE 27 : What are the appropriate arrangements to provide MCI with nondiscriminatory access to white and yellow page directory listings? **(REITH)**

RECOMMENDATION: This issue is for informational purposes only. This issue does not require a commission vote.

POSITION OF PARTIES:

AT&T: No Position

BELLSOUTH: No Position

MCI: This issue was withdrawn by MCI

STAFF ANALYSIS: This issue was withdrawn by MCI at the October 3, 1996 Prehearing Conference. Staff is providing this issue for informational purposes only. This issue does not require a commission vote.

ISSUE 28 : What terms and conditions should apply to the provision of local interconnection by BellSouth to MCI? **(REITH)**

RECOMMENDATION: This issue is for informational purposes only. This issue does not require a commission vote.

POSITION OF PARTIES:

AT&T: No Position

BELLSOUTH: No Position

MCI: This issue was stricken by the Prehearing Officer

STAFF ANALYSIS: This issue was striken by the prehearing officer at the October 3, 1996 Prehearing Conference. Staff is providing this issue for informational purposes only. This issue does not require a commission vote.

ISSUE 29: Should the agreement be approved pursuant to the Telecommunications Act of 1996? **(CANZANO)**

RECOMMENDATION: Yes, the arbitrated agreements should be submitted by the parties for approval under the standards in Section 252(e)(2)(B). The Commission's determination of the unresolved issues should comply with the standards in Section 252(c) which include the requirements in Section 252(e)(2)(B).

POSITION OF PARTIES

AT&T: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e)

BELLSOUTH: 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).

MCI: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e).

STAFF ANALYSIS:

Section 252 sets forth the procedures for negotiation, arbitration and approval of agreements. Specifically, Sections 252(a)(1)and 252(a)(2) regard the procedures for agreements arrived at through negotiation and Section 252(b) regards the procedure for agreements arrived at through compulsory arbitration.

Under Section 252(e)(1), any agreement adopted by negotiation or arbitration shall be submitted for approval by this Commission. This Commission may only reject the agreements for specific reasons. Specifically, Section 252(e)(2) states that this Commission may only reject

> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -
>
> > (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> >
> > (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Thus, the Act establishes different standards for approval depending on whether the agreement is arrived at through negotiation or arbitration.

BellSouth takes the position that the resolution of any negotiated issues should be approved under the standards in Section 252(e)(2)(A) and arbitrated issues under 252(e)(2)(B). Specifically, BellSouth applies the different standards to the issues rather than to the agreement itself.

MCI, however, expects that this proceeding will result in the submission of an arbitrated agreement, which should then be approved or rejected applying the standards contained in Section 252(e)(2)(B).

AT&T states that the agreement should be filed under Section 252(e) of the Act. However, AT&T does not specify whether the agreement should be approved pursuant to Section 252(e)(2)(A) or Section 252(e)(2)(B).

The Act contemplates different mechanisms under which the parties can submit agreements. Under Section 252(a)(1), the parties may negotiate and enter into a binding agreement which shall be submitted to the State for approval. Under Section 252(b), the parties may petition the State commission to arbitrate any open issues. Section 252(b) contemplates that there will be resolved issues as well as unresolved issues. In fact, this section requires the petitioner to provide all relevant documentation concerning "any other issue discussed and resolved by the parties."

Although BellSouth asserts that the standards in subsections 252(e)(2)(A) and (B) apply not only to complete agreements but also to "any portion thereof" adopted through negotiation or arbitration, staff contends that that phrase allows the Commission to reject a portion of a submitted agreement rather than rejecting the entire agreement itself. In addition, BellSouth's interpretation is inconsistent with the schedule for state action in Section 252(e)(4). That section states that if the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by

negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. Under BellSouth's interpretation, the negotiated provisions would have to be approved within 90 days and the arbitrated provisions within 30 days.

Because these will be agreements resulting from arbitration pursuant to Section 252(b), the agreements should be approved under the standards in Section 252(e)(2)(B). The arbitrated agreements should consist of the Commission's decision regarding the unresolved issues in this recommendation as well as issues resolved by the parties. The Commission's determination of the unresolved issues should comply with the standards in Section 252(c) which include the requirements in Section 252(e)(2)(B).

ISSUE 30: What are the appropriate post-hearing procedures for submission and approval of the final arbitrated agreement? **(CANZANO)**

RECOMMENDATION: Staff recommends that the parties submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after they are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision.

POSITION OF PARTIES

AT&T: The deadline for filing an agreement should be 14 days from the date of the Order. If no agreement is reached, the parties should propose agreements within 20 days after the Order. The Commission should then adopt on each issue the contractual language that complies with the Order.

BELLSOUTH: 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.

MCI: The parties should be directed to negotiate a comprehensive agreement that incorporates the Commission's decisions on the issues decided in this proceeding within 14 days of the Commission's vote. In the event the parties are unable to conclude an agreement within that timeframe, each party should submit its proposed agreement within 20 days of the vote. The Commission should then adopt the proposal, or the portions of the competing proposals, which best incorporates its decisions into a comprehensive agreement.

STAFF ANALYSIS: Staff submitted this issue in order to recommend a post-arbitration procedure by which the parties shall submit a written agreement for approval that memorializes and implements the Commission's arbitration decision.

In Order No. PSC-96-1107-PCO-TP, the Prehearing Officer ruled

that the Commission will act on the major issues identified by the parties to this proceeding, but will not resolve all of the subsidiary issues to produce a final arbitrated agreement. The Prehearing Officer proposed a post-decision procedure under which the parties would be given 30 days to submit a comprehensive arbitrated agreement that incorporates the Commission's decisions on the major issues. If the parties are unable to reach an agreement, the Prehearing Officer proposed that each party would submit its own version of a proposed agreement and that the Commission would choose and approve the agreement the best comports with its decision.

BellSouth states that 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 will provide a basis for AT&T and MCI to enter the market. BellSouth states that if, however, a comprehensive agreement is necessary, the Commission should determine how long the parties will have to negotiate.

BellSouth proposes that the parties submit agreements incorporating the Commission's decision within 60 days after the Order is issued. BellSouth requests 60 days to address the fine points of many technical and operational issues, even if these issues are covered in a general sense. Given the "hundreds" of issues that AT&T believes exist and the numerous open issues between MCI and BellSouth, BellSouth believes it is not reasonable to believe that all of these issues can be resolved in 14 days. BellSouth argues that 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.

BellSouth contends that the Prehearing Officer's suggestion is not supported by the authority granted to this Commission in Section 252. Specifically, BellSouth argues that there is nothing in Section 252 that suggests that this Commission can select a contract unilaterally submitted by one party when there is, in fact, no agreement. BellSouth proposes that if the parties are unable to reach an agreement, then the differences should be mediated. Failing this, 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.

AT&T proposes that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order reflecting

the Commission's decisions on the issues in this proceeding. If no agreement is reached, AT&T proposes that the parties should file their respective proposed contractual language for each issue that remains unresolved within 20 days after the issuance of the Order. The Commission should then adopt on an issue-by-issue basis the proposed contractual language that best reflects the Commission's determinations in its Order.

MCI's proposal is very similar to AT&T's except that if the parties are unable to reach an agreement in 14 days, each party would submit its own version of a proposed agreement in 20 days. MCI adds that the Commission should retain the flexibility to accept the entire proposed agreement submitted by either party or to accept, on an issue-by-issue basis, parts of the proposed agreements offered by either party. MCI points out that this is consistent with the discretion that the FCC would vest in its arbitrators to use either "entire package" final offer arbitration or "issue-by-issue" final offer arbitration in cases where the FCC has assumed jurisdiction over an arbitration. 47 C.F.R. 51.807(d)

Staff recommends that the appropriate reading of the Act gives the Commission the role under the provisions of Sections 252(b),(c),(d) and (e) both to arbitrate the unresolved issues and approve the "agreement" that results. Section 252(e)(1) states that any agreement adopted by negotiation or arbitration must be approved by the state commission. Section 252(e)(2)(B) sets out the grounds for rejection of an agreement adopted by arbitration. Finally, Section 252(e)(4)provides that the state commission must act to approve or reject the agreement adopted by arbitration within 30 days of its submission by the parties or it shall be deemed approved. The Act gives state commissions considerable flexibility to fashion arbitration procedures that will be compatible with the commissions' processes and accomplish the policy purposes of the Act.

Accordingly, staff recommends that the parties submit a written agreement memorializing and implementing the Commission's decision within 30 days of issuance of the Commission's arbitration order. Staff should take a recommendation to agenda so that the Commission can review the submitted agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after they are submitted.

If the parties cannot agree to the language of the agreement, each party should submit its version of the agreement within 30 days after issuance of the Commission's arbitration order, and the Commission should decide on the language that best incorporates the substance of the Commission's arbitration decision.

ISSUE 31: Should these dockets be closed?

RECOMMENDATION: No. In Issue 1b staff has requested BellSouth to file additional cost information. In addition, there are outstanding requests for confidentiality of information which has been entered into the record.