BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Motions of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., to compel BellSouth Telecommunications, Inc., to Comply with Order No. PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc., pursuant to their agreement.	DOCKET NO. 971140-TP ORDER NO. PSC-98-0810-FOF-TP ISSUED: June 12, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

APPEARANCES:

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FINAL ORDER RESOLVING INTERCONNECTION AGREEMENT DISPUTES, ADDRESSING RETAIL SERVICE COMPOSITION, AND SETTING NON-RECURRING CHARGES

BY THE COMMISSION:

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ACRONYMS AND ABBREVIATIONS

ACAC	Account Customer Advocate Center
Act	47 U.S.C. § 1 et seq., Communications Act of 1934 as amended by the Telecommunications Act 1996
AIN	Advanced Intelligence Network
ALEC	Alternative Local Exchange Carrier
AT&T	AT&T Communications of the Southern States, Inc.
BellSouth	BellSouth Telecommunications, Inc
CGI	Common Gateway Interface
CO	Central Office
CPG	Circuit Provisioning Group
DA	Directory Assistance
DS1	Digital Signal @ 1.544 Mbps/Digital Bipolar Signal One
Eighth Circuit	U.S. Court of Appeals for the Eighth Circuit
ESSX	Electronic Switching System Extension
FCC	Federal Communications Commission
ILEC	Incumbent Local Exchange Carrier
ISDN	Integrated Services Digital Network
IXC	Interexchange Carrier
JFC	Job Function Code

LCSC	Local Carrier Service Center
MCIm	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
NRC	Non-Recurring Charge
NRCM	Non-Recurring Cost Model
OSS	Operational Support System
PAWS	Provisioning Analyst Work Station
POTS	Plain Old Telephone System
RCMAG	Recent Change Memory Administration Group (Recent Change Line Translation Group)
SSIM	Special Services Installation Maintenance

I. BACKGROUND

On June 9, 1997, in Docket No. 960833-TP, AT&T Communications of the Southern States, Inc. (AT&T), filed a Motion to Compel Compliance of BellSouth Telecommunications, Inc. (BellSouth), with certain provisions of Order Nos. PSC-96-1579-FOF-TP, PSC-97-0298-FOF-TP, and PSC-97-0600-FOF-TP, and certain provisions of its interconnection agreement with BellSouth having to do with the provisioning and pricing of combinations of unbundled network elements (UNEs). On June 23, 1997, BellSouth filed a Response and Memorandum in Opposition to AT&T's Motion to Compel Compliance. On October 27, 1997, in Docket No. 960846-TP, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., (MCIm) filed a similar Motion to Compel Compliance. On November 3, 1997, BellSouth filed a Response and Memorandum in Opposition to MCIm's Motion to Compel Compliance.

On August 28, 1997, MCIm filed a Petition to Set Non-Recurring Charges for Combinations of Network Elements, for which this docket was opened. BellSouth filed an Answer and Response on September 17, 1997. By Order No. PSC-97-1303-PCO-TP, issued October 21, 1997, this docket was consolidated with Docket Nos. 960757-TP, 960833-TP and 960846-TP for purposes of hearing.

At our Agenda Conference on December 2, 1997, we directed that the Motions to Compel Compliance be set for hearing. Accordingly in Order No. PSC-98-0090-PCO-TP, issued January 14, 1998, this docket, now embracing the Motions to Compel Compliance, was severed from Docket Nos. 960757-TP, 960833-TP and 960846-TP.

On March 9, 1998, we conducted an evidentiary hearing. Having considered the evidence presented at hearing, the posthearing briefs of the parties, and the recommendations of our staff, our decisions are set forth below with respect to the provisioning and pricing of network element combinations, the standard to be applied to determine whether a combination of network elements constitutes a recreation of an existing BellSouth retail service, the non-recurring charges for certain loop and port combinations, and the furnishing of switched access usage data.

II. DECISIONS

A. Introduction

The parties have placed in issue in this proceeding the meaning of provisions in their interconnection agreements concerning the pricing of network elements purchased in combinations and the furnishing of switched access usage data. The decisions we make below rest on the requirements of Section 251(c) of the Act, regulatory and court decisions implementing and interpreting Section 251(c), and general principles of contract construction.

1. The Act

Section 251(c)(3) of the Act provides in part that "[a]n 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." Telecommunications service is defined in Section 3(a)(51) of the Act as the "offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used." Telecommunications is defined in Section 3(a)(48) as "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." Network element is defined in Section 3(a)(45) as "a facility or equipment used in the provision of a telecommunications service," including "features, functions, and capabilities that are provided by means of such facility or equipment."

2. Federal Communications Commission

In its First Report and Order, FCC 96-325, released August 8, 1996, in CC Docket Nos. 96-98 and 95-185, the FCC rejected the argument of BellSouth and other local exchange carriers (LECs) that carriers should not be allowed to use unbundled elements exclusively to provide services that are available at resale, because to do so would make Section 251(c)(4), and its associated pricing provision, Section 252(d)(3), meaningless. The FCC, stated at ¶331 that:

> We disagree with the premise that no carrier would consider entering local markets under the terms of section 251(c)(4) if it could use recombined network elements solely to offer the same or similar services that incumbents offer for resale. We believe that sections 251(c)(3) and 251(c)(4) present different opportunities, risks, and costs in connection with entry into local telephone markets, and that these differences will influence the entry strategies of potential competitors. We therefore find that it is unnecessary to impose a limitation on the ability of carriers to enter local markets under the terms of section 251(c)(3) in order to ensure that section 251(c)(4) retains functional validity as a means to enter local phone markets.

The FCC noted that, while Section 251(c)(3) entrants will have greater opportunities to differentiate their services to the benefit of consumers than Section 251(c)(4) entrants, they will face greater risks. The FCC postulated that this distinction in risk is likely to influence entry strategies.

3. Florida Public Service Commission

In Order No. PSC-96-1579-FOF-TP, we noted our concern with the FCC's interpretation of Section 251(c)(3). We stated at pages 37-38 that:

> [s]pecifically, we are concerned that the FCC's interpretation could result in the resale rates we set being circumvented if the price of the same service created by combining unbundled elements is lower . . . .
>
> Upon consideration, although we are concerned with the FCC's interpretation of

> Section 251(c)(3) of the Act, we are applying it to this proceeding . . . Therefore, since it appears . . . that the FCC's Rules and Order permit AT&T and MCI to combine unbundled network elements in any manner they choose, including recreating existing BellSouth services, they may do so for now. However, we will notify the FCC about our concerns and revisit this portion of our order should the FCC's interpretation change.

On reconsideration in Order No. PSC-97-0298-FOF-TP at page 7, we reiterated our concern with the notion that recombining network elements to recreate a service could be used to undercut the resale price of the service, but we affirmed our decision, nonetheless, that AT&T and MCIm could combine network elements in any manner they choose. BellSouth advanced the argument that while AT&T and MCIm can combine network elements, when they are combined to recreate an existing BellSouth service, the appropriate pricing standard is found in Section 252(d)(3), and not in Section 252(d)(1). We stated further at pages 7 and 8 that:

> In our original arbitration proceeding in this docket, we were not presented with the specific issue of the pricing of recombined elements when recreating the same service offered for resale . . . .
>
> Furthermore, we set rates only for the specific unbundled elements that the parties requested. Therefore, it is not clear from the record in this proceeding that our decision included rates for all elements necessary to recreate a complete retail service. Thus, it is inappropriate for us to make a determination on this issue at this time.

In Orders Nos. PSC-97-0600-FOF-TP and PSC-97-0602-FOF-TP, approving the arbitrated agreements respectively of AT&T and MCIm with BellSouth, we refused to allow BellSouth to include language in the agreements that would have required the parties to negotiate the price of a retail service recreated by combining UNEs, provided that recombining UNEs would not undercut the resale price of the recreated service. We again expressed our concern with pricing of UNE combinations used to recreate a resold service, but we stated again that the issue of pricing UNE combinations had not been arbitrated.

4. The Eighth Circuit

In Iowa Utilities Bd. v. FCC, 120 F.3d 753 (Iowa Utilities Bd. I), the court rejected the argument that "by allowing a competing carrier to obtain the ability to provide finished telecommunications services entirely through unbundled access at the less expensive cost-based rate, the FCC enables competing carriers to circumvent the more expensive wholesale rates . . . and thereby nullifies the terms of subsection 252(c)(4)." The court ruled that:

> We conclude that the Commission's belief that competing carriers may obtain the ability to provide finished telecommunications services entirely through the unbundled access provisions in subsection 251(c)(3) is consistent with the plain meaning and structure of the Act.

120 F.3d at 815. The court approved the rationale that the costs and risks associated with unbundled access as a method of entering the local telecommunications industry make resale a distinctly attractive option. The court also vacated the FCC's pricing rules.

In Order on Petitions for Rehearing, 1997 U.S. App. Lexis 28652, slip opinion, reh'g granted in part, denied in part (Iowa Utilities Bd. II), the court did not disturb its ruling on obtaining finished services through unbundled access. The court ruled that Section 251(c)(3) unambiguously indicates that the requesting carriers themselves, not the incumbent local exchange carrier, will combine unbundled elements to provide telecommunications services. The court stated at ¶2 that:

> Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled (as opposed to a combined) basis. Stated another way, §251(c)(3) does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services. To permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4)

> between access to unbundled elements on the one hand and the purchase at wholesale rates of incumbent's telecommunications retail service on the other.

The court, accordingly, vacated 47 C.F.R. §51.315(b), requiring that an incumbent local exchange carrier (ILEC) not separate currently combined network elements.[1]

Thus, the current state of the law does not require ILECs to provide combined UNEs (or assembled platforms) to requesting carriers, whether presently combined or to be combined by ILECs. While requesting carriers may combine network elements in any manner of their choosing, including the recreation of existing ILEC retail services, Section 251(c)(3) of the Act requires that they purchase, and incumbents provide, network elements on an unbundled basis. Requesting carriers must combine network elements themselves and the incumbents must allow them access to their networks for that purpose. The court has reasoned that Sections 251(c)(3) and 251(c)(4) set forth two competitive entry mechanisms with significantly different costs and risks and it has rejected the argument that providing finished services through Section 251(c)(3) improperly undermines the viability of entry through Section 251(c)(4).

B. MCIm-BellSouth Interconnection Agreement

1. UNE Combinations Pricing

The issue presented is whether the MCIm-BellSouth interconnection agreement provides a pricing standard for combinations of UNEs. As set forth in this part, we conclude that the agreement provides a pricing standard for combinations of network elements that do not recreate an existing BellSouth retail service and we direct the parties to negotiate prices for those combinations that do recreate an existing BellSouth retail service.

[1]The U.S. Supreme Court granted certiorari on January 26, 1998 (Case No. 96-3321, et al).

MCIm

Principal Argument

According to MCIm, its agreement with BellSouth "directly, expressly, and unambiguously" specifies how the prices for combinations of UNEs are determined. The price for UNE combinations is the price of the individual UNEs minus duplicate charges and charges for services not needed. The agreement gives MCIm the right to order UNE combinations and specifically obligates BellSouth to provide such combinations. The agreement prohibits BellSouth from disconnecting elements ordered in combination and prohibits BellSouth from charging any fee for "ripping" elements apart or for connecting elements together.

MCIm witness Parker testifies that the MCIm agreement sets forth an "explicit" pricing standard for UNEs. He testifies further that Section 2.6 of Attachment III of MCIm's agreement is a key provision. Section 2.6 provides that:

> With respect to network elements, charges in Attachment 1 are inclusive and no other charges apply, including but not limited to any other consideration for connecting any network elements with other network elements.

He states that this provision means that "when MCI orders from BellSouth a connected loop and port, BellSouth can charge only for the individual UNE prices set forth in Attachment 1." He states further that this provision was negotiated. Witness Parker observes that this section is immediately preceded by Section 2.4 of Attachment III, which provides that:

> BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit MCIm to provide Telecommunications Services to its subscribers.

Witness Parker further testifies that another key provision in its agreement is Section 8 of Attachment I. That section provides that:

> The recurring and non-recurring prices for Unbundled Network Elements ("UNEs") in Table 1 of this Attachment are appropriate for UNEs on

> an individual, stand-alone basis. When two or more UNEs are combined, these prices may lead to duplicate charges. BellSouth shall provide recurring and non-recurring charges that do not duplicate charges for functions or activities that MCIm does not need when two or more Network Elements are combined in a single order . . . .

Witness Parker also testifies that Section 2.2.15.3 of Attachment VIII of the agreement is pertinent. That section provides that:

> When MCIm orders Network Elements or Combinations that are currently interconnected and functional, Network Elements and Combinations shall remain connected and functional without any disconnection or disruption of functionality. This shall be known as Contiguous Network Interconnection of Network Elements.

He states that this provision means that "when MCI orders combinations of elements that are currently connected to each [other] and serving a customer, BellSouth cannot rip those elements apart." He states further that this section also was negotiated.

Witness Parker concludes that the provisions of MCIm's agreement having to do with pricing UNEs are not ambiguous. Rather, they specifically recognize MCIm's right "to migrate existing BellSouth customers to MCI to be served by UNEs." They further prohibit "BellSouth from ripping apart elements that are currently connected when ordered in combination, and . . . specif[y] how the prices for those combinations are determined." He points out that Attachment 3 determines the provisioning of UNEs and Attachment 1 determines how they are to be priced.

MCIm witness Martinez was a principal negotiator of the agreement. He also testifies that the MCIm agreement provides prices for UNE combinations as the sum of the rates for the stand-alone elements. He further testifies that the agreement provides "a mechanism for removing from that sum duplicate charges and charges for services not needed when the elements are ordered in combination."

Witness Martinez also testifies that the phrase "charges in Attachment I are inclusive and no other charges apply" in Section 2.6 of Attachment III means that:

> In essence, again going back to ordering that which already exists to be in place, and that is the combination loop and port. There are no charges to take them apart or put them together because they already exist; that the charges are themselves the charges as reflected in Attachment I.

Witness Martinez testifies that BellSouth voluntarily agreed to Section 2.2.2 of Attachment VIII, Section 2.2.15.3 of Attachment VIII, and Section 2.6 of Attachment III. He contends that these provisions "go to the heart of this case." They establish:

> what rate should MCIm pay when it migrates an existing BellSouth customer to a loop/port combination. They provide that MCIm can migrate existing BellSouth customers to UNEs, as opposed to resale ... When MCIm does so, BellSouth cannot disconnect the currently connected network elements . . . Finally, when MCIm migrates the customer to UNEs, the charges for the network elements set forth in Attachment I apply. Those charges are inclusive and no other charges, including a glue charge, shall apply . . . .

He states that "BellSouth voluntarily agreed that we could migrate customers to UNEs, they agreed that they would not disconnect the currently connected elements, and they agreed not to charge a glue charge." He maintains that this provision existed from the very beginning of the negotiations and that BellSouth's negotiators were "totally aware of what the meaning was of that paragraph."

According to MCIm, BellSouth did not agree to these provisions subject to the adoption of other language that it proposed be included in Section 8 of Attachment I, language that we disallowed in Order No. PSC-97-0602-FOF-TP, issued May 27, 1997. That language would have required the parties to negotiate the price of a retail service that is recreated by combining UNEs. MCIm notes that BellSouth filed a draft agreement on January 30, 1997, following Order No. PSC-96-1579-FOF-TP, with voluntarily negotiated provisions shown in regular typeface and disputed provisions shown

in bold. In that draft, Section 2.2.2 of Attachment VIII, Section 2.2.15.3 of Attachment VIII, and Section 2.6 of Attachment III were in regular typeface and they were not subject to or conditioned by any other provisions. MCIm further notes that it was following Order No. PSC-97-0298-FOF-TP, on April 2, 1997, that BellSouth filed its proposed language that UNE combinations could not undercut resale, several months after Section 2.2.2 of Attachment VIII, Section 2.2.15.3 of Attachment VIII, and Section 2.6 of Attachment III had been negotiated.

MCIm's principal argument is that the price for UNE combinations under its agreement, whether they recreate a BellSouth retail service or not, is the sum of the stand-alone prices of the network elements which make up the combination. It relies on Section 2.6 of Attachment III and Section 1 of Attachment III for this assertion. MCIm argues further that its agreement further recognizes that a UNE combination price may include duplicate charges and charges for services that are not needed when the elements are combined. It concludes, therefore, that it is entitled to request, and BellSouth is obligated to provide, prices for combinations which do not include duplicate charges or charges for services not needed when the elements are combined. It asserts that the appropriate method for determining prices for UNE combinations is to remove from the stand-alone UNE prices in Table 1 of Attachment I all duplicate charges and all charges for services that are not needed when the elements are ordered combined on the same order.

Alternative Argument

In the alternative, MCIm argues that, even though the plain language of its agreement with BellSouth specifies how prices will be determined for network element combinations, if we determine otherwise, then we should find that pricing for network element combinations should be based on forward-looking costs, as required by Section 252(d) of the Act. MCIm also argues that service through network elements and service through resale are different in terms of potential innovation, risk and competitive opportunity.

MCIm asserts that in interpreting Section 251(c)(3) of the Act, the Eighth Circuit, in Iowa Utilities Board I, 120 F.3d at 814-15, affirmed MCIm's right to provide service using network element combinations obtained from BellSouth at cost-based rates, as follows:

> Initially, we believe that the plain language of subsection 251(c)(3) indicates that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network. Nothing in this subsection requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements.

MCIm rejects BellSouth witness Varner's contention that, while under the agreement BellSouth will provision UNE combinations that recreate existing BellSouth retail services, the price to MCIm will be the retail price of the service less the applicable wholesale discount. MCIm asserts that the pricing standard in the Act is not conditioned on the use it makes of UNEs.

MCIm/AT&T witness Gillan testifies that there are a number of important differences between the lease of network facilities, particularly those that provide multiple services, and the resale of a single service defined by the ILEC. He explains that with network elements an ALEC steps fully into the role of a local telephone company, compensating the ILEC and taking on the task of pricing a full range of services to recover its costs and make a profit; whereas with service-resale, the ALEC functions effectively as the incumbent's marketing agent, the ILEC having determined what services will be offered and what prices will be charged in its retail tariff.

Witness Gillan testifies that there is much less risk in a service resale environment than in a network element environment because in the former the potential margin is defined by the wholesale discount and it remains fixed as customers purchase more or less service. With network elements, in some cases, much of the ALEC's costs is incurred as a flat-rate per month, with its potential revenues a function of usage, while in others, the ALEC's costs are based on usage, with its revenues fixed. An ALEC purchasing network elements incurs the substantial fixed cost of local service, with the hope that additional services and features will provide additional revenues. It is the uncertainty in this, he claims, that creates the risk, as well as the opportunity, that does not exist with service-resale.

Witness Gillan testifies further that a network element-based carrier's capacity to innovate exceeds that of a service reseller. He argues that service resale limits the entrant to reoffering finished services created by the incumbent LEC. He argues further that even where the entrant superficially appears to have an ability to modify an incumbent LEC service, for instance, by including an optional feature as a standard element, there is little practical flexibility because the entrant's cost structure is defined by the incumbent LEC's retail price. He concludes that with no economic flexibility, there is little the entrant can do to introduce new pricing arrangements or feature mixes.

He argues, in contrast, that with network elements, services can be designed for new customer classes, basic services can include features and functions that BellSouth only makes available as expensive options, or network elements can be used by the entrant to craft its own promotions and special packages. In addition, he argues that by purchasing network elements, entrants can better prepare for a day when alternative networks offer the opportunity to obtain network capacity, i.e., elements, from other vendors.

He observes that the ability to innovate using network elements will increase in the future. He explains that the introduction of Advanced Intelligent Network (AIN) capability will transform the local switch from a service-definition node to a more generic role. He further explains that in the future, service-defining capabilities will be housed in remote software databases which provide call processing instructions to the switch. He ventures that the innovation possible in this environment is limitless, but only if the network facilities that interact with these databases can be efficiently obtained and combined to provide service.

Witness Gillan criticizes the conclusion BellSouth witness Varner draws from his hypothetical comparisons of the costs under service resale and unbundled access. Witness Varner's comparisons for business, PBX and residential customers all show significantly lower costs for unbundled access, which witness Varner describes as "windfalls" for the ALECs. Witness Gillan testifies that these differences are unstable in competitive markets and they will in due time inure to the benefit of customers.

Witness Gillan observes that the retail service recreation argument that BellSouth advances here, and that was accepted in a number of states in BellSouth's region, was rejected in Texas,

Illinois, Wisconsin, Michigan, Iowa, Oregon and California. He acknowledges that the Georgia Commission affirmed its decision after the Eighth Circuit ruled, while noting that all the decisions in BellSouth's region came down before the Eighth Circuit ruled.

Witness Gillan concludes that:

> There should be no issue that the entrant will use network elements to provide services and use those network elements in the same way that BellSouth or any other local telephone company would use them. They only go together one way. What makes these plans different is that one establishes the entrant as the complete and legitimate phone company in every dimension, and the other establishes the entrant simply as a marketer for BellSouth services.

BellSouth

Principal Argument

According to BellSouth, its interconnection agreement with MCIm specifies prices only for individual network elements; it does not specify how combinations of network elements should be priced. BellSouth maintains that in order to conclude that its agreement with MCIm specifies the prices for combinations of network elements, we must find either that we decided the prices in the arbitration or that BellSouth voluntarily agreed to such prices. BellSouth asserts that neither finding makes any sense or is supported by the evidence.

BellSouth witness Hendrix was the company's lead negotiator. He testifies that, while in Order No. PSC-96-1579-FOF-TP we allowed MCIm to combine UNEs in any manner of their choosing, at pages 37 and 38, we declined to rule on the pricing of recombined elements. He further testifies that in our Order No. PSC-97-0298-FOF-TP on reconsideration we stated that we were not presented with the specific issue of the pricing of recombined elements recreating service resale and that it was not clear to us that our decision included rates for all the elements necessary to recreate a complete retail service.

Witness Hendrix testifies further that, because there was no direction from us on UNE combinations pricing, BellSouth proposed language for inclusion in its agreement with MCIm in Section 8 of Attachment I that addressed that question. The language BellSouth proposed was as follows:

> Negotiations between the parties should address the price of a retail service that is recreated by combining UNEs. Recombining UNEs shall not be used to undercut the resale price of the service recreated.

He notes that, in Order No. PSC-97-0602-FOF-TP at page 5, we rejected the language BellSouth proposed, and stated again that, while we were concerned about the pricing for UNEs duplicating service resale, that issue was not presented for arbitration.

Witness Hendrix maintains that, contrary to MCIm's view, Section 2.6 of Attachment III does not set prices for combinations. He explains that:

> This language was agreed to in conjunction with the pricing language BellSouth tried to incorporate into the agreement, but which was rejected by the Commission. BellSouth has consistently maintained its position that unbundled network elements combined to recreate an existing retail service offering is considered resale. BellSouth would never have voluntarily agreed to a provision in the agreement that would undercut its position on combinations.

He also rejects MCIm's contention that Section 8 of Attachment I provides the pricing standard for UNE combinations. He observes that this section only requires BellSouth and MCIm to work together to develop recurring and non-recurring charges that do not duplicate charges for functions or activities that MCIm does not need when two or more UNEs are combined in a single order.

Witness Hendrix in addition testifies that when MCIm purchases a loop and port combination from BellSouth, it is recreating a BellSouth retail offering. He maintains that the appropriate price in this case is not provided in the agreement as the sum of the prices for the loop and for the port; rather, it is the retail rate less the Commission-approved wholesale discount.

In rejecting an interpretation of Section 2.6 of Attachment III that would specify the pricing standard for UNE combinations, witness Hendrix explains that:

> The first answer being, Attachment I . . . will address individual UNE elements. Nowhere in that attachment will you find the language "combinations."

> The reason the language is worded as is, and I remember this language being included, we at one point had tried to make references to the tariffs just to ensure we had all bases covered. MCI did not want references to the tariff. They said Attachment I is an all inclusive attachment and anything that we're wanting to add later we would be able to come in and amend the agreement and amend Attachment I to actually include those rates.
>
> * * *
>
> So when it says "all inclusive," it does not mean . . . that these are the only rates that you would charge for putting UNEs together in the way the carriers would want to actually do that.

Further, he testifies that Section 2.6 is very clear when read with knowledge of the language that BellSouth proposed to be included in Section 8 of Attachment I, which we disallowed. BellSouth considered the disallowed language to be consistent with our orders and it was left with a problem when we disallowed it. Nevertheless, BellSouth, under the prospect of a penalty if a signed agreement were not timely submitted for approval, decided to await a favorable ruling from the Eighth Circuit that, once final and nonappealable, would enable it to negotiate revised language.

Witness Hendrix testifies that the phrase "no other charges apply" in Section 2.6 means that the rates contained in Attachment I are the rates that would apply for each individual UNE. He summarizes his testimony on this point by agreeing with the suggestion that if MCIm orders an unbundled loop and an unbundled port and combines them itself, the prices in Attachment I apply, but that if MCIm orders a loop and port already combined, while BellSouth must, under the agreement, provide the combination, it would do so at the resale price.

BellSouth argues that MCIm's contention that BellSouth agreed to a combinations pricing standard blatantly ignores BellSouth's consistent position on the pricing of recombined elements, the circumstances surrounding execution of the interconnection agreement, and the language of the agreement itself. BellSouth witness Varner testifies that BellSouth has fought ALEC proposals to purchase UNE combinations that replicate retail services at cost-based rates in every state arbitration proceeding, in Section 271 proceedings, and at the FCC.

Finally, BellSouth argues that language identical to the language in Section 2.6 of Attachment III is in its interconnection agreements with MCIm in every other state in its region, and yet, with the exception of Kentucky, MCIm must pay the resale price when it purchases UNEs that when combined recreate an existing BellSouth service.

BellSouth's basic argument is that its agreement with MCIm simply does not provide a pricing standard for combinations of network elements of any kind.

Alternative Argument

Rejecting MCIm's position that the parties' interconnection agreement provides a single mechanism for pricing network element combinations, BellSouth witness Varner argues that while existing contractual provisions remain in effect obligating BellSouth to provide MCIm with combinations of elements, combinations that recreate an existing BellSouth retail service should be priced at the retail price of that service minus the wholesale discount. Any other result would undercut the resale provisions and the joint marketing restrictions in the Act. Witness Varner testifies that the agreement with MCIm does not contain a pricing standard for UNE combinations of any kind; rather, prices for UNE combinations that do not recreate an existing BellSouth retail service should be negotiated by the parties and should be market-based to reflect the increased risk associated with the use of UNEs.

BellSouth argues that Congress, recognizing that the emergence of facilities-based competition in local markets would take some time, provided two other means in the Act by which ALECs could enter local markets more quickly. Under service resale, ALECs are allowed to purchase existing retail services, including basic telephone service that serves most customers, from the incumbent telephone company at what is commonly described as a wholesale rate. Under unbundled access, ILECs are required to sell ALECs access to discrete pieces of the ILECs' existing networks, with ALECs' gaining the ability to create new telephone services that would be competitive with the ILECs' services.

BellSouth argues further that Congress created two, totally different pricing theories for these two types of market entry. For service resale, Section 252(d)(3) of the Act requires that existing retail services be priced to resellers at "retail rates charged to subscribers" less those "costs that will be avoided" by

the ILEC as a result of selling to the reseller. BellSouth explains that this is what is often called a "top down" pricing structure, which begins with the retail price of a good or service and subtracts cost components to arrive at a wholesale price. For unbundled network elements, Section 252(d)(1) of the Act requires ILECs to sell elements to ALECs at prices based on the cost of the individual element, plus a reasonable profit. BellSouth explains that this is known as a "bottom up" pricing structure, which begins with incremental cost and then fixes the final price by building up the incremental or direct cost by shared and common costs and reasonable profit.

BellSouth contends that the careful distinction Congress crafted between resale and unbundled network elements would be obliterated if MCIm and AT&T were permitted to purchase at cost-based rates combinations of network elements that replicate an existing retail service. Witness Varner testifies that:

> It is expected that the typical request by MCI or AT&T would be for BellSouth to provide a combination of UNEs (as a preassembled combination, or on a switch as is basis) without the physical work of combining the elements. This exemplifies the situation over which the Commission has expressed concern. In essence, MCI or AT&T would order a BellSouth retail service simply by placing the order as a series of UNEs. This situation is, quite frankly, the one most likely to exist and is the one MCI and AT&T have actually demanded. This migration of a customer's service or switch "as is" is simply resale, since MCI and AT&T are not purchasing UNEs, but are, in fact, purchasing a finished retail service. In such cases, BellSouth will bill the retail service rate minus the applicable wholesale discount.

BellSouth claims that the ALEC activity that witness Varner describes here amounts to "gaming the system."

Witness Varner also argues that what MCIm proposes is "sham unbundling" and he illustrates the effect that would have on BellSouth's revenues. He discusses a business customer with two lines and hunting and a single vertical feature on each. The customer's monthly charge is $70.68. If MCIm wins that customer

on the basis of service resale, it would pay BellSouth a monthly charge of $62.36, after applying the wholesale discount rate of 16.81 per cent. BellSouth would continue to receive access charges. If MCIm were to provide service to that same customer by means of combined UNEs purchased at cost-based prices, it would pay BellSouth a monthly charge of $32.77, an effective retail discount of 53.66 per cent. BellSouth no longer would receive access charges. The service would be no different and involve the same capabilities and functions, he contends. This, he asserts, would render Section 252(d)(3) of the Act meaningless.

Witness Varner argues that under MCIm's view of the agreement, MCIm would order the functional equivalent of a BellSouth retail service simply by changing the words used when the service is ordered. Moreover, he contends that it should surprise no one that substantial margins exist in business vertical services and access charges. These margins exist as a matter of public policy, he argues, in order to support affordable residential rates. If ALECs skim the business customers under these circumstances through what he calls "sham unbundling," he asserts that residential customers will be harmed, especially high cost customers.

Witness Varner also argues that "switch as is" permits MCIm to wrongly bypass the joint marketing restriction of Section 271(e)(1) of the Act. This restriction would prohibit MCIm from jointly marketing telephone exchange service provisioned pursuant to Section 251(c)(4) of the Act (service resale) with its interLATA services until certain conditions obtain, but not services provisioned pursuant to Section 251(c)(3) (unbundled access).

Witness Varner observes that we expressed concerns in Order No. PSC-96-1579-FOF-TP both with "sham unbundling" and circumvention of the joint marketing restriction.

Witness Varner rejects witness Gillan's assertions that unbundled access and service resale represent different business opportunities. In either, he asserts, what the ALEC can add to the service, what the ALEC can do with the service, the ALEC's ability to innovate and to serve the customer are the same. He argues that the only difference in business opportunity is that the ALEC pays less for the resold service, avoids the payment of access charges and gets around the joint marketing restriction.

Finally, BellSouth points out that state commissions in Georgia, Mississippi, Alabama, Louisiana, North Carolina, South Carolina and Tennessee all have held that the pricing standard of

Section 252(d)(3) applies when unbundled network elements are combined in a way so as to recreate an existing BellSouth retail service. BellSouth acknowledges that each of these decisions was reached before the Eighth Circuit upheld the FCC's determination that services provided by means of unbundled access and by means of resale were not the same.

BellSouth's alternative position is that the parties must negotiate market-based prices for combinations that do not recreate an existing BellSouth retail service and that the price for network element combinations that do recreate an existing BellSouth retail service should be the retail price for the service less the appropriate wholesale discount.

Conclusion

Provisioning

Attachment III, Network Elements, of the MCIm-BellSouth interconnection agreement provides at Section 2.4 that:

> BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit MCIm to provide Telecommunications Services to its subscribers.

Attachment VIII, Business Process Requirements, Section 2, Ordering and Provisioning, provides at Section 2.2.15.1, Specific Unbundling Requirements, that:

> MCIm may order and BellSouth shall provision unbundled Network Elements either individually or in any combination on a single order. Network Elements ordered as combined shall be provisioned as combined by BellSouth unless MCIm specifies that the Network Elements ordered in combination be provisioned separately.

Also, Section 2.2.15.3 of Attachment VIII provides that:

> When MCIm orders Network Elements or Combinations that are currently interconnected and functional, Network Elements and Combinations shall remain connected and functional without any disconnection or disruption of functionality.

We noted above that in Iowa Utilities Bd. II, supra, the court ruled on rehearing that incumbents are only required to provide network elements on an unbundled basis. Nevertheless, MCIm witness Parker testifies that BellSouth is required to provide UNE combinations to MCIm pursuant to Section 2.4 of Attachment III and Sections 2.2.15.1 and 2.2.15.3 of Attachment VIII of the agreement. BellSouth witness Varner acknowledges that an incumbent is free to combine network elements in any manner of its choosing. Moreover, BellSouth witnesses Varner and Hendrix acknowledge that, according to the terms of BellSouth's agreement with MCIm, BellSouth is obligated to accept and provision UNE combination orders. BellSouth's bundling obligation in its agreement with MCIm is a negotiated one. Witness Varner testifies, however, that BellSouth voluntarily undertook the bundling obligation only because 47 C.F.R. §51.315(a), since vacated, was then in effect. Thus, we find upon consideration that BellSouth has undertaken a contractual obligation to provide network elements in combinations to MCIm. BellSouth is required under the agreement to provide network elements as defined in 47 C.F.R. §51.319 to MCIm individually or combined, whether already combined at the time ordered or not. That obligation is not affected by the Eighth Circuit's nonfinal ruling on rehearing, as witness Varner recognizes.

Pricing

BellSouth witness Hendrix testifies that although BellSouth must provide network elements in combination to MCIm, its agreement with MCIm does not specify how prices will be determined for UNE combinations that recreate an existing BellSouth retail service. We agree. While Section 2.6 of Attachment III of the agreement provides that "[w]ith respect to Network Elements and services in existence as of the Effective Date of this Agreement, charges in Attachment I are inclusive and no other charges apply, including but not limited to any other consideration for connecting any Network Element(s) with other Network Element(s)," we find that this language extends only to elements purchased singly or to combinations of network elements that do not recreate an existing BellSouth retail service. We believe this language is clear and unambiguous but only to this extent. Thus, we construe it as a limited expression of the parties' intent at the time of forming the agreement that prices for network element combinations that do not recreate existing BellSouth retail services shall be determined as the sum of the prices of the component elements. Because this language is plain and unambiguous, it is our task only to determine what intent the language expresses, not to divine another intent that might have been in the minds of MCIm's negotiators. See James

v. Gulf Insur. Co., 66 So.2d 62 (Fla. 1953); Acceleration Nat'l Service Corp. v. Brickell Financial Services Motor Club, Inc., 541 So.2d 738 (Fla. 3d DCA 1989), rev. den., 548 So.2d 662 (Fla.1989).

We reach this conclusion mindful that the matter of the pricing standard to be applied when unbundled network elements are combined or recombined to recreate an existing BellSouth retail service has been vigorously disputed by these parties from the very beginning. For that reason, we cannot interpret the language in the MCIm-BellSouth agreement to represent a meeting of the minds between the parties with respect to pricing network element combinations that recreate retail services.

We continue to find it troublesome that a service provisioned through unbundled access would have all the attributes of service resale but not be priced based on the Act's resale price standard. Yet, we recognize that in the context of provisioning basic local telecommunications services, entry costs based on unbundled access are likely to be higher than the comparable costs based on resale.

We find that the signed agreement contains no explicit language that can be fairly construed to preserve BellSouth's concern about the pricing of recreated retail services. It is clear to us, however, that the parties were far from agreement on this during the arbitration and no persuasive evidence is before us now that would suggest that they subsequently reached an agreement in favor of MCIm's position.

Based on the evidence in the record, we find that the MCIm-BellSouth interconnection agreement specifies how prices will be determined for combinations of unbundled network elements that exist or do not exist at the time of MCIm's order and that do not recreate an existing BellSouth retail service. The prices for combinations of network elements in existence or not shall be determined as the sum of the prices of the individual elements comprising the combination as set forth in the agreement in Table 1 of Attachment I, except when the network elements are combined in a way to recreate an existing BellSouth retail service.

MCIm and BellSouth shall negotiate the price for those network element combinations that recreate an existing BellSouth retail service, whether or not in existence at the time of MCIm's order. We have, from the very first of the arbitration proceedings that have come before us under the Act, encouraged interconnecting companies and incumbents to reach interconnection agreements

through negotiation. This policy reflects the intent of Congress as expressed in Sections 251(c)(1) and 252(a)(1) of the Act.

We find further that a qualification to pricing UNE combinations that do not recreate an existing BellSouth retail service as the straightforward summation of the individual element prices is set forth in Section 8 of Attachment I of the agreement. There, the agreement provides that BellSouth shall provide recurring and non-recurring charges that do not duplicate charges for functions or activities that MCIm does not need when two or more network elements are combined in a single order. This language reflects our decision in Order No. PSC-97-0298-FOF-TP at pages 30 through 32 that the parties work together to establish recurring and non-recurring charges free of duplicate charges or charges for unneeded functions or activities when UNEs are combined in a single order.

In reaching these decisions, in addition to a concern with the appropriate price for network element combinations recreating an existing BellSouth retail service, we are concerned with the joint marketing restriction of Section 271(e)(1) of the Act and with the right to access charges. Section 271 (e)(1) would restrict MCIm from joint marketing local telecommunications services provisioned by means of resale obtained from BellSouth with its long distance services, until BellSouth is authorized to provide in-region long distance services. Conversely, the restriction is inapplicable where MCIm would provision local services by means of unbundled access. With respect to access charges, in FCC 96-325, supra, at ¶980, the FCC concluded that the Act requires that ILECs continue to receive access charge revenues when local services are resold under Section 251(c)(4), as opposed to Section 251(c)(3). Thus, were MCIm to provision local telecommunications services by means of resale purchased from BellSouth, interexchange carriers (IXCs) would still pay access charges to BellSouth for originating or terminating interstate traffic when the end user is served by MCIm. Conversely, if MCIm were to provision local service by means of unbundled access, it, not BellSouth, would be entitled to access charge revenues.[2]

[2]We noted that the Eighth Circuit's holding on the obligation of ILECs to provide bundled network elements is before the Supreme Court on certiorari. See n.1. BellSouth witness Varner testifies that if the Supreme Court affirms the Eighth Circuit's holding, the MCIm interconnection agreement at Section 2.4 of Part A, General Terms and Conditions, requires the parties to renegotiate mutually acceptable terms concerning the provisioning of UNEs, since an affirmation would materially affect a material term of the agreement.

2. Switched Access Usage Data

The issue presented is whether BellSouth is obligated under the terms of its interconnection agreement with MCIm to furnish switched access usage data to MCIm. As set forth in this part, we conclude that BellSouth is obligated under the terms of the agreement to furnish switched access usage data to MCIm when MCIm provides service using unbundled local switching.

MCIm

According to MCIm, the agreement in plain language specifically requires BellSouth to provide switched access usage data to MCIm. MCIm witness Parker testifies that Section 4.1.1.3 of Attachment VIII requires BellSouth to provide recorded usage data on all completed calls. Section 4 of Attachment VIII is entitled Provision of Subscriber Usage Data. Section 4.1.1.3 provides that:

> BellSouth shall provide MCIm with copies of detail usage on MCIm accounts. However, following execution of this Agreement, MCIm, may submit and BellSouth will accept a PON for a time and cost estimate for development by BellSouth of the capability to provide copies of other detail usage records for completed calls originating from lines purchased by MCIm for resale. Recorded usage data includes, but is not limited to, the following categories of information:
>
> Completed Calls
> Use of CLASS/LASS/Custom Features (under circumstances where BellSouth records activations for its own end user billing)
> Calls to Information Providers Reached Via BellSouth Facilities and Contracted by BellSouth
> Calls to Directory Assistance Where BellSouth Provides Such Service to an MCIm Subscriber
> Calls Completed Via BellSouth-Provided Operator Services Where BellSouth Provides Such Service to MCIm's Local Service Subscriber and Usage is Billed to an MCIm Account.

> For BellSouth-Provided MULTISERV Service, Station Level Detail Records Shall Include Completed Call Detail and Complete Timing Information Where Technically Feasible.

Witness Parker also testifies that Section 7.2.1.9 provides that the usage data required includes all data, and, particularly, switched access usage information, which MCIm needs to bill IXCs for originating and terminating switched access charges. MCIm argues that BellSouth witness Hendrix acknowledges that the agreement requires BellSouth to provide MCIm data on all completed calls. Section 7 is entitled Local Switching. Section 7.2.1.9 provides that:

> BellSouth shall record all billable events, involving usage of the element, and send the appropriate recording data to MCIm as outlined in Attachment VIII.

MCIm argues that the requirement to provide usage data is derived from the Act's definition of network element at Section 3(a)(2)(45) to include "information sufficient for billing and collection."

MCIm witness Martinez notes that Section 7.1.1 of Attachment III provides that local switching:

> shall include all the features, functions, and capabilities that the underlying BellSouth switch . . . is capable of providing, including but not limited to: . . . Carrier pre-subscription (e.g., long distance carrier, intraLATA toll) . . . . [and] routing local, intraLATA, interLATA, calls to international subscriber's preferred carrier, call features (e.g., call forwarding) and Centrex capabilities.

He also notes that Section 2.6 of Attachment III provides that MCIm may use the local switch to provide any feature, function or capability, or service within the capacity of a network element or network elements. MCIm argues that when it purchases local switching from BellSouth, it is paying BellSouth for the capability to be the access provider and has the right to use that capability.

MCIm argues that the provisioning of a combination of UNEs is a separate consideration from the pricing standard for the

combination. Witness Martinez maintains that when MCIm orders combinations of network elements, BellSouth must provision the combinations ordered regardless of the pricing standard applied. He argues that BellSouth witness Hendrix acknowledges that, pursuant to Section 7.1.1, with local switching, MCIm may route local, intraLATA and interLATA calls.

MCIm also argues that BellSouth wrongfully maintains that it is entitled to continue billing intrastate interLATA switched access charges when MCIm provides service through UNE combinations that recreates retail service. MCIm argues that with local switching it acquires the capability to provide switched access service for the price for local switching set forth in Part IV of the agreement. For that reason, witness Martinez argues that it is wrong for BellSouth to retain switched access for itself, requiring MCIm to effectively pay twice for the same switching capability. He rejects BellSouth witness Varner's contention that to supply intrastate interLATA usage data is inappropriate as a distortion of the language in Section 7.2.1.9.

MCIm argues further that Section 1 of Attachment III requires BellSouth to provide MCIm with UNEs in accordance with FCC rules and regulations. Witness Gillan testifies that the FCC considers that the roles of local service provider and access provider "go hand-in-hand." He notes that in FCC 96-325, supra, at ¶356, the FCC concluded that:

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

He also points to 47 C.F.R. §51.307(c) and §51.309(a) and (b) in support of his contention that unbundled access provides AT&T, not BellSouth, with the right to offer switched access. He further notes that in its September 27, 1996, Order on Reconsideration in CC Docket 96-98, FCC 96-394, the FCC determined at ¶11 that:

> when a requesting carrier purchases the unbundled local switching element, it obtains all switching features in a single [network] element on a per-line basis . . . Thus, a carrier that purchases the unbundled local

> switching element to serve an end user effectively obtains the exclusive right to provide all features, functions, and capabilities of the switch, including switching for exchange access and local exchange service, for that end user.

He argues that BellSouth's position that it may retain intrastate interLATA access would wrongly define the switch element as providing an entrant with only the functionality to provide some, not all, services to end users. That position, he maintains, is indefensible.

BellSouth

BellSouth witness Hendrix testifies that under Section 7.2.1.9 of Attachment III of the agreement, BellSouth is required to "record all billable events involving usage of the element, and send the appropriate recording data to MCIm as outlined in Attachment VIII." He states that interstate access records will be transmitted to MCIm via the Access Daily Usage File (ADUF).

Witness Hendrix testifies further that, pursuant to Section 7.2.1.15 of Attachment III, MCIm may only offer features within the capability of the switch that BellSouth offers to itself or to another party. He agrees, however, that MCIm has the ability with local switching to route local, intraLATA and interLATA calls.

He also testifies that, pursuant to Section 7.2.1.9, BellSouth will provide usage data to MCIm that will enable MCIm to bill its end users. Since BellSouth claims it retains intrastate interLATA access, however, such calls, he asserts, are not "billable events" for MCIm with respect to its end users, and therefore it is not appropriate for BellSouth to supply usage data for them. Witness Hendrix agrees that no language in the agreement requires that the parties treat interstate access and intrastate interLATA access differently, but he argues there is no language that would preclude different treatment either. BellSouth argues that Section 7.2.1.9, which requires BellSouth to record all billable events and send the appropriate data to MCIm, does not obligate it to provide intrastate interLATA usage data.

Concerning switched access, BellSouth witness Varner testifies that while we have not made a determination that ALECs may bill intrastate, interLATA access when they provide service by means of UNEs, the FCC has determined that they may bill interstate access,

thereby removing a source of contribution to the support of local rates. He acknowledges, however, that he cannot be certain that this has happened and he is merely suggesting to us that we ought to inquire into whether the FCC's decision has caused such a problem for the states. He states that access charges are a significant source of universal service support and the question, therefore, of whether ALECs purchasing unbundled local switching may bill for intrastate interLATA access is not one to be properly decided in this proceeding.

Witness Varner asserts, moreover, that, when MCIm orders local service through "switch as is," it is offering service resale and BellSouth will, accordingly, continue to bill the applicable access charges. In that case, he maintains, it is not necessary to provide usage data to MCIm.

Finally, BellSouth observes that Section 4.1.1.2 of Attachment VIII of the agreement requires it to "provide MCIm with Recorded Usage Data in accordance with provisions of Section 4." Section 4 is entitled Provision of Subscriber Usage Data. BellSouth argues that Section 4 obligates it only to provide "billable" usage data and that, only in the context of resale. For support, it cites Section 4.2.1.1, which provides that:

> BellSouth shall provide MCIm with unrated [Exchange Message Record System] records associated with all billable intraLATA toll and local usage which they record on lines purchased by MCIm for resale.

Conclusion

BellSouth's position that it is not obligated to provide MCIm with usage data for intrastate interLATA calls rests on its contention that the service MCIm provides when provisioned with a BellSouth loop and port combination recreates an existing BellSouth retail service. Under service resale, BellSouth is entitled to bill access charges; MCIm does not acquire the functionality of BellSouth's switch. Hence, in that context, a case can be made that BellSouth need not supply MCIm with usage data for intrastate interLATA calls pursuant to Section 7.2.1.9 of Attachment III. Such calls would not be "billable events" to its end users for MCIm.

We have concluded, however, that in providing service by means of purchasing unbundled loops and switch ports from BellSouth, MCIm

does not thereby recreate an existing BellSouth service. Here, we note that with the acquisition of local switching through the purchase of an unbundled switch port, the record supports that MCIm gains the right to provide all features, functions, and capabilities technically feasible within the switch, including exchange access service. See 47 C.F.R. §51.319(c); 47 U.S.C. §3(a)(2)(45). In addition, we note that BellSouth must provide MCIm, as a requesting carrier, with access to any unbundled network element in a manner that allows MCIm to provide any telecommunications service that can be offered by means of that network element, 47 C.F.R. §51.307(c), and that BellSouth may not impose limitations, restrictions, or requirements on requests for, or for the use of, unbundled network elements that would impair the ability of MCIm to offer a telecommunications service in the manner that MCIm intends, 47 C.F.R. §51.309(a); 47 U.S.C. §251(c)(3). Accordingly, we find upon consideration that BellSouth is required under the terms of its interconnection agreement with MCIm to record and provide MCIm with switched access usage data necessary for MCIm to bill IXCs when MCIm provides service using unbundled local switching purchased from BellSouth either on a stand-alone basis or in combination with other unbundled network elements.

Section 7.2.1.9 of Attachment III quite plainly provides that:

> BellSouth shall record all billable events, involving the usage of the element, and send the appropriate recording data to MCIm as outlined in Attachment VIII.

Section 4.1.1.3 of Attachment VIII provides that BellSouth shall supply MCIm with recorded usage data for "completed calls." No language in the agreement sets apart intrastate interLATA calls from "completed calls." We believe that BellSouth's argument that it is required by Section 4 of Attachment VIII only to supply MCIm with billable usage data in a resale context is unsustainable. Section 4 sets forth requirements generally for the provision of subscriber usage data. Section 4.2.1.1, on which BellSouth relies, speaks only of billable intraLATA toll and local usage in the context of resale.

With respect to BellSouth's obligation to provide usage data for all billable events, we find that the pertinent language of the agreement is plain and unambiguous. Again, because it is so, it is our task merely to determine what intent the language expresses.

C. AT&T-BellSouth Interconnection Agreement

1. UNE Combinations Pricing

The issue presented is whether the AT&T-BellSouth interconnection agreement provides a pricing standard for combinations of unbundled network elements. As set forth in this part, we conclude that the agreement provides a pricing standard for combinations of network elements in existence that do not recreate a BellSouth retail service, but requires the parties to negotiate prices for those combinations of network elements not already in existence and for those that recreate a BellSouth retail service, whether in existence or not.

AT&T

Principal Argument

According to AT&T, the interconnection agreement between it and BellSouth expressly and unequivocally requires BellSouth to provide AT&T with combinations of UNEs at cost, even if those combinations could duplicate BellSouth's existing retail service, less duplicative or unnecessary costs. It asserts that nothing in the agreement, our orders, the opinions of the Eighth Circuit, or the Act is to the contrary. It asserts further that the agreement as originally negotiated by AT&T and BellSouth required BellSouth to provide AT&T with combinations of UNEs at the agreement's cost-based UNE prices, and drew no distinction between combinations that would permit AT&T to recreate existing services and those that would not. Moreover, AT&T contends that this issue was revisited during the arbitration proceedings, and the agreement was revised expressly to confirm AT&T's right under the agreement to purchase combinations of UNEs that would recreate existing BellSouth retail services. See Order Nos. PSC-96-1579-FOF-TP, PSC-97-0298-FOF-TP, and PSC-97-0600-FOF-TP.

AT&T argues further that we have indicated a concern if the price for a UNE combination, which would permit AT&T to recreate a BellSouth service, would "undercut" BellSouth's resale rate for that service. It asserts that we are right to be concerned, but that our concern should be directed at BellSouth's retail rate for that service, not at the prices established by the agreement for the UNE combination. Since UNE prices are based on our determination of BellSouth's forward looking costs and a reasonable profit, the economically correct prices that should be found in an efficiently competitive market, AT&T contends that if BellSouth's

resale price for a UNE combination exceeds the UNE prices for that combination, the inference to be drawn is that BellSouth is "gouging" its retail customers. AT&T maintains that if competition based on UNE combination prices is permitted, those retail prices will be driven down, to the benefit of Florida's consumers.

AT&T witness Eppsteiner participated in the interconnection agreement negotiations. He testifies that AT&T's agreement with BellSouth requires BellSouth to furnish AT&T with combinations of network elements. He relies on Sections 1 and 1A of the agreement's General Terms and Conditions for this conclusion. Section 1 provides that:

> This Agreement sets forth the terms, conditions and prices under which BellSouth agrees to provide . . . (b) certain Unbundled Network Elements, or combinations of such Network Elements ("Combinations") . . . .

Section 1A provides that:

> AT&T may purchase unbundled Network Elements for the purpose of combining Network Elements in any manner that is technically feasible, including recreating existing BellSouth services.

Witness Eppsteiner also relies on Section 30.5 of Part II of the agreement, Unbundled Network Elements. That section provides that:

> BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit AT&T to provide Telecommunications Services to its Customers subject to the provisions of Section 1A of the General Terms and Conditions of this Agreement.

Witness Eppsteiner testifies that BellSouth and AT&T agreed that Section 1A would be added to their agreement, and referenced in Section 30.5, to express our arbitration of AT&T's complaint that BellSouth was refusing to provide combinations of UNEs that recreated existing BellSouth retail services. He testifies that we ruled that AT&T could combine UNEs in any manner it might choose, including recreating existing BellSouth retail services.

He testifies further that our ruling is reflected by the language in Section 1A.

Witness Eppsteiner points to other provisions in the agreement that also address BellSouth's obligation to provide AT&T with UNE combinations. First, Section 2.2 of Attachment 4, Provisioning and Ordering, provides that:

> Combinations, consistent with Section 1.A of the General Terms and Conditions of this Agreement, shall be identified and described by AT&T so that they can be ordered and provisioned together and shall not require enumeration of each Element within that Combination on each provisioning order.

Next, Section 3.9 of Attachment 4, provides that:

> BellSouth will perform testing with AT&T to test Elements and Combinations purchased by AT&T.

Finally, Section 4.5 provides that:

> When AT&T orders Elements or Combinations that are currently interconnected and functional, such Elements and Combinations will remain interconnected and functional without any disconnection or disruption of functionality. This shall be known as Contiguous Network Interconnection of network elements.

He testifies that these provisions were negotiated.

With respect to prices for UNE combinations, witness Eppsteiner testifies that those prices, recurring and nonrecurring, are set forth in Table 1, Unbundled Network Elements, of Part IV, Pricing, as the sum of the individual element prices, except that they reflect duplicate and unnecessary charges that must be removed. As support for this conclusion, he relies on Section 36 of Part IV, which provides that:

> The prices that AT&T shall pay to BellSouth for Unbundled Network Elements are set forth in Table 1.

He relies further on Section 36.1, Charges for Multiple Network Elements, which provides that:

> Any BellSouth non-recurring and recurring charges shall not include duplicate charges or charges for functions or activities that AT&T does not need when two or more Network Elements are combined in a single order. BellSouth and AT&T shall work together to mutually agree upon the total non-recurring and recurring charge(s) to be paid by AT&T when ordering multiple network elements. If the parties cannot agree to the total non-recurring and recurring charge to be paid by AT&T when ordering multiple Network Elements within sixty (60) days of the Effective Date, either party may petition the Florida Public Service Commission to settle the disputed charge or charges.

He maintains that Section 36.1 reflects our ruling in Order No. PSC-97-0298-FOF-TP. AT&T argues that if UNE combinations were to be priced at resale prices, as BellSouth contends, there would be no need for the Section 36.1 provision eliminating duplicative or unnecessary charges when combined elements are provided. AT&T argues that there is no indication in Section 36 or in Table 1, that the UNE prices set forth in Table 1 are not to be used in determining the proper charge for UNEs that are included in a UNE combination.

Witness Eppsteiner observes that we rejected language proposed by BellSouth for inclusion in Section 36.1 that would have required the parties to address the price of a retail service recreated by UNE combinations through further negotiations. Noting our concern with the pricing of services recreated by UNE combinations, he, nonetheless, concludes that our rejection of this language provides for no exception to the manner in which UNE combinations are to be priced under the agreement. He testifies that the agreement contains no language that would ever allow BellSouth to treat UNE combinations as service resale.

Witness Eppsteiner also testifies that BellSouth acknowledged that prices of all UNE combinations are established by Part IV. He states that, because the parties could not agree on language with respect to additional charges, BellSouth proposed the following language (which we rejected in Order No. PSC-97-0300-FOF-TP):

> BellSouth shall charge AT&T the rates set forth in Part IV when directly interconnecting any Network Element or Combination to any other Network Element or Combination ....

AT&T concludes that Sections 1 and 1A of the agreement require BellSouth to provide AT&T with combinations of UNEs to be priced, without exception, according to Table 1 of Part IV.

Finally, AT&T argues that as a logical extension of BellSouth's position concerning recreated retail services, BellSouth could effectively block AT&T, or any ALEC, from purchasing any UNE combination at cost-based rates by simply filing a tariff, thereby invoking the service resale price standard.

AT&T's basic position is that its agreement with BellSouth specifies that the price of a combination of UNEs is the total of the cost-based UNE prices, less any duplicative or unnecessary charges for functions or activities that AT&T does not need when the UNEs are combined. AT&T asserts that the agreement makes no distinction between the pricing of combined UNEs and uncombined UNEs, except to provide that the prices of combined UNEs shall not include duplicate or unnecessary charges. AT&T also asserts that the agreement makes no distinction between the pricing of UNE combinations that would permit AT&T to recreate an existing BellSouth retail service and those that would not.

Alternative Argument

In the alternative, AT&T argues that even though its interconnection agreement with BellSouth provides prices for UNE combinations, in the event that we were to find otherwise, appropriate prices for UNE combinations must be cost-based and forward looking pursuant to Section 252(d)(1) of the Act, not discounted from service resale prices. AT&T notes that the Eighth Circuit found that competing carriers may obtain the ability to provide finished telecommunications services entirely through the use of UNEs purchased at cost-based prices, and suggests that that finding "forecloses any possible argument that combinations of network elements used to provide services to customers can be priced as though they were resale," the very argument that BellSouth makes. AT&T asserts that using combined network elements is not the functional equivalent of providing telecommunications service through resale. AT&T further asserts that if it can purchase loop and switch port combinations only through service resale, it is effectively precluded from joint marketing local

services with its long-distance services pursuant to Section 271(e) of the Act. AT&T notes that BellSouth witness Varner acknowledges that to be the necessary outcome of BellSouth's recreated service resale theory.

AT&T witness Gillan argues that what BellSouth proposes is a third pricing standard, one that is in addition to the standards set forth in Sections 252(d)(1) and (3) of the Act, and one not contemplated in the Act. BellSouth witness Hendrix testifies that "in Florida, when a[n] [ALEC] orders a combination of network elements or orders individual network elements that, when combined, duplicate a retail service provided by BellSouth, for purposes of billing and provisioning, such orders should be treated as resale." Witness Gillan rejects that, arguing that that statement "renders meaningless the entire premise of non-discriminatory access." He maintains that the Act as interpreted by the Eighth Circuit provides no support for the theory that pricing and provisioning of a network element depends upon the entrant's use of the services it offers.

AT&T witness Falcone argues that BellSouth should not be permitted to physically disconnect already assembled network elements, as it proposes to do if the Eighth Circuit is upheld, thereby requiring AT&T to reassemble them by means of costly physically collocated facilities. Such a practice, he argues, serves no valid commercial purpose, is needlessly disruptive to service, is unnecessary, and creates an insurmountable entry barrier. He asserts that BellSouth can separate a migrating customer's loop and switch port electronically and then AT&T, using the features, functions and capabilities of the unbundled switch it purchased, would also electronically recombine them. He describes this process as one that is similar to the "recent change" process BellSouth uses when deactivating service to a customer. He testifies that AT&T has learned that at least two vendors are capable of supplying technology that would effectively adapt the "recent change" process for the purposes of interconnecting ALECs. He argues that BellSouth's "recent change" process is a reasonable and available alternative to physical collocation, and states that:

> If BellSouth has an inexpensive, efficient, and nondisruptive mechanism for changing its customers' local and long distance service, the nondiscrimination provisions of the Act mandate that competing carriers not be burdened by a more expensive, less efficient,

> disruptive, and anticompetitive procedure for proving service using combined UNEs.

According to AT&T witness Gillan, what divides BellSouth and AT&T on the matter of recreated retail services is not price. He offers an illustration of revenues from a typical Florida residential customer whose service might be provided by service resale or network elements, which shows the cost of providing service by network elements to be almost $10.00 more than by service resale. He argues that:

> If BellSouth was actually willing to sell us these network elements for the service resale price, we'd take it. But what they're not willing to do is recognize that a network element purchaser steps into the market as a complete local telephone company, fully competing against BellSouth like any other local telephone company, with the ability to offer any set of services on these network elements, including exchange access services, and bring the full brunt of competition to this entire range of activities.

What witness Gillan intimates is that the real stake for BellSouth is retaining an entitlement to access charge revenues.

BellSouth

Basic Argument

BellSouth witness Hendrix, the company's lead negotiator, states that BellSouth intends to abide by its contractual obligation to provide AT&T with UNEs in combinations. He notes that BellSouth took on this obligation only because it believed that the law applicable at the time required it to do so. He noted further that BellSouth believes the Eighth Circuit's ruling on rehearing, Iowa Utilities Board II, supra, will remove this obligation from BellSouth if affirmed by the Supreme Court and require the parties to renegotiate the affected provisions of their agreement.

According to witness Hendrix, BellSouth's interconnection agreement with AT&T specifies prices only for individual network elements and does not specify prices for combinations of network elements, including combinations that recreate an existing

BellSouth retail service. BellSouth argues that, as evidenced by Order Nos. PSC-96-1579-FOF-TP, PSC-97-0298-FOF-TP, and PSC-97-0600-FOF-TP, we did not arbitrate the price AT&T would pay for network element combinations. BellSouth argues further that AT&T witness Eppsteiner acknowledges this to be true.

BellSouth contends that there is no evidence to suggest that it voluntarily relinquished its long held position that UNE combinations recreating BellSouth retail services should be priced as service resale. BellSouth witness Varner testifies that BellSouth has contested the ALECs' position on the pricing standard for recreative combinations in arbitration proceedings in every state in its region, in every Section 271 proceeding, before the FCC and before the Eighth Circuit. BellSouth argues that AT&T witness Eppsteiner's testimony that BellSouth refused to provide AT&T with combinations that recreated existing BellSouth retail services at cost-based prices is additional evidence of BellSouth's steadfastness.

Witness Hendrix testifies that Table 1 of Part IV of the agreement does not contain specific prices for UNE combinations; rather, the prices it contains are for individual UNEs. He rejects witness Eppsteiner's assertion that the prices for UNE combinations are the sums of the prices in Table 1 for the component elements. BellSouth contends that AT&T witness Eppsteiner in fact agrees that Table 1 is a list of the prices for individual unbundled network elements.

Witness Hendrix testifies that Section 36.1 of Part IV only obligates the parties to work together to establish total recurring and non-recurring charges for orders for multiple network elements; it does not specify prices for combinations. He acknowledges, however, that Section 36.1 is pertinent only when multiple elements are ordered as combinations, and is not pertinent in a service resale context. He testifies further that Section 4.5 of Attachment 4 merely prohibits BellSouth from separating already combined elements; it does not address pricing. BellSouth contends that witness Eppsteiner agrees that no language in the agreement states the price for UNE combinations as the sum of element prices.

Witness Hendrix also acknowledges that the state commission in Kentucky ruled that AT&T can combine UNEs even to recreate a BellSouth retail service and that AT&T would pay the sum of the element prices for combinations. While he also acknowledges that the language related to pricing in BellSouth's Florida agreement with AT&T was in most respects the same as the language in its

Kentucky agreement, Section 36.1, which is not in the Kentucky agreement, and whose full significance is often missed, is a key difference and sustains BellSouth's contention that its Florida agreement with AT&T does not specify the pricing standard for UNE combinations.

Witness Hendrix testifies that Section 36.1 of the agreement consists of two separate pricing requirements. The first requirement is expressed in the first sentence:

> Any BellSouth non-recurring and recurring charges shall not include duplicate charges or charges for functions or activities that AT&T does not need when two or more Network Elements are combined in a single order.

That requirement simply recognizes that some economies are likely to prevail when AT&T orders network elements in combination on the same order as compared with a series of orders for either individual or combined elements.

The second requirement is expressed in the second sentence:

> BellSouth and AT&T shall work together to mutually agree upon the total non-recurring and recurring charge(s) to be paid by AT&T when ordering multiple network elements.

Witness Hendrix acknowledges that under the requirement of the first sentence of Section 36.1, the parties are to negotiate the removal of duplicate and unnecessary charges when AT&T orders two or more elements in a single order. He goes on, however, to assert that Section 36.1 requires the parties to also negotiate non-recurring charges and recurring charges when AT&T orders multiple elements, as required by Order Nos. PSC-97-0298-FOF-TP and PSC-97-0600-FOF-TP. Asked if Section 36.1 means that AT&T pays the sum of the network elements comprising a combination less any duplicate or unnecessary charges, witness Hendrix says it does not, stating that the price AT&T should pay is a market-based price that reflects the risks attendant to the organizational requirements BellSouth must undertake to provision network element combinations, as well as the elimination of duplicate and unnecessary charges.

He testifies that stranded plant (idle loops in the hands of ALECs) with exhaust imminent also represents a risk because it would jeopardize BellSouth's ability to meet customer demand,

whether from ALECs or end users. He testifies that another risk BellSouth would incur is a negative effect on revenues resulting from BellSouth's inability to use facilities in the hands of ALECs to market its own products. He suggests that the second requirement is the one by which the risk that BellSouth incurs in organizing to provide UNE combinations to AT&T can be reflected in the price. He testifies that the price of any network element combination, save those that recreate an existing BellSouth retail service, should be negotiated by AT&T and BellSouth, and that those prices should be market based in order to reflect the risks BellSouth is required to assume. He maintains that this contention is bolstered by the language it attempted to include in Section 36.1.

BellSouth witness Varner insists, contrary to AT&T witness Gillan's intimation that the real concern in this case is entitlement to access charge revenues, that this case is indeed about price and that it is not about provisioning terms and conditions under which ALECs would provide competitive local telecommunications services. He testifies, however, that the provision of basic residential telephone service only begins to become economically attractive with consideration of access charges. He provides an illustration showing that the typical cost of providing Rate Group 12 residential service without features is $24.90 compared with the retail price of $10.65. With access charges of $14.11 in total, however, the retail price increases to $24.76. We note again that where an ALEC provisions local services by means of service resale, BellSouth retains the entitlement to access charge revenues.

BellSouth witness Landry BellSouth, responding to AT&T witness Falcone's testimony concerning the "recent change" process, also known as Dedicated Inside Plant and Dedicated Outside Plant (DIP/DOP), states the DIP/DOP is applicable to retail and resale services, but not to unbundled network elements. He asserts that provisioning a functional loop and switch port to a ALEC requires that they be physically separated and interconnected to the ALEC. He testifies that once an ALEC is interconnected, it can activate the service electronically through the switch.

BellSouth's basic argument is that its agreement with AT&T does not provide a pricing standard for combinations of network elements other than a requirement that the parties negotiate market-based prices for combinations that do not recreate an existing BellSouth retail service and that the price for network element combinations that do recreate an existing BellSouth retail

service should be the retail price for the service less the appropriate wholesale discount. BellSouth makes the same case here for AT&T generally with respect to network element combinations that recreate existing BellSouth retail services as it does above for MCIm.

Conclusion

Provisioning

Under the Eighth Circuit's construction of the Act, nothing prevents ILECs from providing network elements in combinations, if they so choose. Indeed, as AT&T witness Eppsteiner testifies, the AT&T interconnection agreement with BellSouth provides in Section 30.5 of Part II, that BellSouth shall offer UNEs in combination with any other UNE or UNEs in order to permit AT&T to provide telecommunications services. At Section 30.4 of Part II, the agreement authorizes AT&T to use UNEs to provide any feature, function, or service option within the capacity of the UNE. Thus, we find that BellSouth clearly is obligated under its agreement with AT&T to provide network elements as defined in 47 C.F.R. §51.31, individually or in combinations, if so ordered, whether already combined at the time of order or not, and that AT&T may provision network element combinations in any manner of its choosing, including the recreation of existing BellSouth retail services.

BellSouth witness Hendrix testifies that BellSouth does not dispute that it has an obligation under the agreement to provide UNE combinations to AT&T, even combinations not yet in existence. BellSouth witness Varner is in accord. What is generally in contention is the price at which BellSouth must provide AT&T with network element combinations, and particularly the applicable pricing standard when AT&T combines UNEs in a manner that recreates an existing BellSouth retail service.

Pricing

Section 34 of Part IV of the agreement provides that network elements and combinations shall be:

> priced in accordance with all applicable provisions of the Act and the rules and orders of the Federal Communications Commission and the Florida Public Service Commission.

Section 36 of Part IV, states that:

> [t]he prices that AT&T shall pay to BellSouth for Unbundled Network Elements are set forth in Table 1.

Table 1 sets forth the recurring and non-recurring rates we approved in Order No. PSC-96-1579-FOF-TP at Attachment A. Section 36.1 of Part IV, provides, as both witness Eppsteiner and witness Hendrix testify, that AT&T and BellSouth shall work together to eliminate "duplicate charges or charges for functions or activities that AT&T does not need" when AT&T orders network elements in combinations.

The rates that we approved in Order No. PSC-96-1579-FOF-TP are applicable to UNEs when ordered individually. Neither party disputes this. In Order No. PSC-97-0298-FOF-TP, however, we stated at pages 30 and 31 that we were not presented with the specific issue of the pricing of recombined elements when recreating the same service offered for resale, and for that reason it was inappropriate for us to then decide that issue. Even more broadly, we stated in effect that we had not been presented with the issue of combinations pricing in general. Thus, we find that the prices set forth in Part IV of AT&T's agreement with BellSouth are limited in applicability to unbundled network elements when ordered individually, with one exception, which we discuss immediately below. We find no language in the agreement that would in some way extend their applicability to unbundled network elements when otherwise ordered in combination. Of pivotal importance, no limiting language such as the language in Section 2.6 of Attachment III in MCIm's agreement with BellSouth appears in AT&T's agreement.

Having found that the prices in Part IV apply generally only to individually ordered UNEs, we find as an exception that the agreement provides a pricing standard for combinations of network elements already in existence that do not recreate an existing BellSouth retail service. We are persuaded by witness Falcone's testimony that an existing customer, for which an assembled loop and switch port is in place, can be migrated from BellSouth to AT&T electronically. Indeed, Section 4.5 of Attachment 4 of the AT&T-BellSouth agreement provides that BellSouth shall not disconnect assembled network elements, but shall provide them to AT&T "interconnected and functional without any disconnection or disruption of functionality." Therefore, for network element combinations that do not recreate an existing BellSouth retail service and that exist at the time of AT&T's order, we find, as an

exception, that the price AT&T shall pay is the sum of the prices for the component elements shown in Table 1 of Part IV. For the specific case of a migration of an existing BellSouth customer to AT&T, the price AT&T shall pay is the sum of the prices for the loop and switch port. This exception is sustainable since the elements are already assembled and cannot be disassembled. BellSouth will not incur a cost for assembling or reassembling them, or any other combining-related cost.

The provisions on which AT&T relies for its contention that BellSouth is obligated to provide element combinations without limitation as to the use to which AT&T may put them, have that effect clearly enough. The provisions of its agreement on which AT&T relies for its contention that the pricing standard for UNE combinations in any case is the sum of the prices for the component elements in Table 1 of Attachment I, however, do not have a similarly clear effect. Section 1, General Terms and Conditions, provides that the agreement sets forth the prices for network elements individually and for network element combinations. Sections 36 and 36.1 of Part IV accordingly establish those prices, Section 36 for UNEs ordered individually and Section 36.1 for UNEs ordered in combinations (or multiple network elements). Separate pricing provisions for UNEs ordered individually and for UNEs ordered in combination are reasonable since AT&T could be expected to adopt both facilities-based and unbundled access entry strategies.

We disagree with AT&T that the prices AT&T should pay BellSouth for UNE combinations recreating an existing BellSouth retail service should not be determined differently than for UNE combinations that do not recreate an existing BellSouth retail service. We note, however, that the Eighth Circuit has addressed the pricing standard applicable to UNE combinations without exception as to the service provided, as follows:

> Although a competing carrier may obtain the capability of providing local telephone service at cost-based rates under unbundled access as opposed to wholesale rates under resale, unbundled access has several disadvantages that preserve resale as a meaningful alternative. Carriers entering the local telecommunications markets by purchasing unbundled network elements face greater risks than those carriers that resell an incumbent LEC's services.

* * *

> The increased risk and the additional cost of recombining the unbundled elements will hinder the ability of competing carriers to undercut [Section 251(c)(4)] prices and lure these customers away from the incumbent LECs. Nor do we believe that subsection 271(e)(1)'s limitation on the joint marketing of local services with long-distance services will be meaningless.

120 F.3d at 815.

While we ruled in Order No. PSC-96-1579-FOF-TP at page 38 that ALECs may combine network elements in any manner of their choosing, including in a manner recreating an existing BellSouth retail service, we have several times expressed our concern with the potential undermining of the Section 251(c)(4)(A) resale pricing standard. In addition, we have noted above our concerns with the Section 271(e)(1) joint marketing restriction and with the entitlement to access charge revenues. At the same time, we conclude, as we have more fully developed below, that this record shows that the purchase of a BellSouth loop and switch port combination does not, without more, constitute a recreation of an existing BellSouth retail service, nor does it constitute, without more, a retail service of any kind.

Thus, upon consideration, we find that the AT&T agreement with BellSouth does provide a pricing standard for those UNE combinations that are not already in existence and those that recreate a BellSouth retail service, whether in existence or not. That standard, which is expressed in Section 36.1 and not modified in any way elsewhere in the agreement, is that the parties must negotiate total recurring and non-recurring charges for UNE combinations that at least reflect the elimination of duplicate and unnecessary charges. Both of these requirements appear in the agreement because of our rulings in Order Nos. PSC-97-0298-FOF-TP and PSC-97-0600-FOF-TP. We note that Section 36.1 provides both in the case of the first and of the second requirement that if the parties are unable to reach agreement through negotiation they may petition for an arbitrated resolution. AT&T may alternatively purchase unbundled network elements individually at the prices set forth in the parties' agreement, in which case, BellSouth shall be required to provide AT&T with access to its network for purposes of combining elements in order to provide telecommunications services.

We believe that Section 36.1, read in conjunction with other provisions in the agreement related to pricing and BellSouth's obligation to provide AT&T with UNE combinations, is plain and unambiguous. While this same language appears in MCIm's interconnection agreement with BellSouth, its effect in that case is substantially modified by other language. No such modifying language appears in the AT&T agreement. As we noted, this difference is of pivotal importance. Thus, the language in Section 36.1, plain and unambiguous as it is, must be construed as the expression of the parties' intent at the time of forming the agreement. Because this language is plain and unambiguous, it is again our task only to determine what intent the language expresses, not to divine another intent that might have been in the minds, in this case, of AT&T's negotiators. See James v. Gulf Insur. Co., 66 So.2d 62 (Fla. 1953); Acceleration Nat'l Service Corp. v. Brickell Financial Services Motor Club, Inc., 541 So.2d 738 (Fla. 3d DCA 1989), rev. den., 548 So.2d 662 (Fla.1989).

We reach this conclusion as well mindful that the matter of the pricing standard to be applied when unbundled network elements are combined or recombined to recreate an existing BellSouth retail service has been vigorously disputed by these parties from the very beginning. For that reason, we are not able to interpret the language in the AT&T-BellSouth agreement to represent a meeting of the minds of the parties with respect to pricing network element combinations that recreate retail services in favor of AT&T's position.[3]

2. Switched Access Usage Data

The issue presented is whether BellSouth is obligated under the terms of its interconnection agreement with AT&T to furnish switched access usage data to AT&T. As set forth in this part, we conclude that BellSouth is obligated under the terms of the agreement to furnish switched access usage data to AT&T when AT&T provides service using unbundled local switching.

[3]Here, we also note BellSouth witness Varner's testimony that BellSouth will negotiate with AT&T the portion of their agreement relating to the provisioning of UNE combinations if the Supreme Court affirms the Eighth Circuit. Section 9.3, General Terms and Conditions, of the AT&T-BellSouth agreement requires the parties to renegotiate in good faith mutually acceptable new terms if a final and nonappealable judicial act "materially affects any material terms" of the agreement.

AT&T

AT&T witness Eppsteiner testifies that Attachment 7 of AT&T's agreement with BellSouth sets forth BellSouth's obligation to provide usage data for switched access service. He testifies that Section 2.1 provides that:

> BellSouth shall provide AT&T with Recorded Usage Data in accordance with this Attachment 7.

He testifies further that Section 3.1 provides that:

> BellSouth will record all usage originating from AT&T customers using BellSouth-provided Elements or Local services. Recorded Usage Data includes, but is not limited to, the following categories of information:
>
> Completed Calls
> Use of Feature Activations for Call Return, Repeat Dialing, and Usage Sensitive Three Way
> Rated Calls to Information Providers Reached Via BellSouth Facilities
> Calls to Directory Assistance Where BellSouth Provides Such Service to an AT&T Subscriber
> Calls Completed Via BellSouth-Provided Operator Services Where BellSouth Provides Such Service to AT&T's Local Service Customer originating from AT&T's customer or billed to AT&T
> For BellSouth-Provided Centrex Service, Station Level Detail Records Shall Include Completed Call Detail and Complete Timing Information

Witness Eppsteiner testifies that the language of the agreement was crafted broadly enough to include interstate and intrastate access service, local exchange service and long-distance service.

Witness Eppsteiner testifies further that BellSouth has not provided correct usage data for test calls made by AT&T customers.

He testifies that BellSouth has neither provided usage data for interstate access services, nor for switching minutes of use.

AT&T relies also on the testimony of witness Gillan, which we discuss above in detail in Part II.B.2.

BellSouth

BellSouth witness Hendrix argues that AT&T witness Eppsteiner does not identify any language in the AT&T-BellSouth interconnection agreement that would obligate BellSouth to provide intrastate interLATA usage data when AT&T is purchasing unbundled local switching from BellSouth. BellSouth argues further, as we also discuss in more detail in Part II.B.2 above, that, because we have not ruled that an ALEC purchasing unbundled local switching is entitled to bill for intrastate interLATA access, BellSouth will continue to bill the applicable charges on intrastate interLATA calls. It argues also that there is no need for it to furnish intrastate interLATA usage data to AT&T.

Conclusion

BellSouth's position that it is not obligated to provide AT&T with usage data for intrastate interLATA calls rests on its contention that the service AT&T provides when provisioned with a BellSouth loop and port combination recreates an existing BellSouth retail service. We have concluded, however, that in providing service by means of purchasing unbundled loops and switch ports from BellSouth, AT&T does not recreate an existing BellSouth service. The record shows that, with the acquisition of local switching through the purchase of an unbundled switch port, AT&T gains the right to provide all features, functions, and capabilities technically feasible within the switch, including exchange access service. See 47 C.F.R. §51.319(c); 47 U.S.C. §3(a)(2)(45). In addition, we note that BellSouth must provide AT&T, as a requesting carrier, with access to any unbundled network element in a manner that allows AT&T to provide any telecommunications service that can be offered by means of that network element, 47 C.F.R. §51.307(c), and that BellSouth may not impose limitations, restrictions, or requirements on requests for, or for the use of, unbundled network elements that would impair the ability of AT&T to offer a telecommunications service in the manner that AT&T intends, 47 C.F.R. §51.309(a); 47 U.S.C. §251(c)(3). Accordingly, we find upon consideration that BellSouth is required under the terms of its interconnection agreement with AT&T to record and provide AT&T with switched access usage data necessary

for AT&T to bill IXCs when AT&T provides service using unbundled local switching purchased from BellSouth either on a stand-alone basis or in combination with other unbundled network elements.

Section 2.1 of Attachment 7 quite plainly provides that:

> BellSouth shall provide AT&T with Recorded Usage Data in accordance with this Attachment 7.

Section 3.1 of Attachment 7 provides that BellSouth shall supply AT&T with recorded usage data for "completed calls." No language in the agreement sets apart intrastate interLATA calls from "completed calls."

With respect to BellSouth's obligation to provide usage data for switched access service, we believe that the pertinent language of the agreement in this case as well is plain and unambiguous. Again, because it is so, it is our task merely to determine what intent the language expresses.

D. Common Matters

1. Standard for Recreated Retail Service

The issue presented is what standard should be used to identify what combinations of unbundled network elements recreate an existing BellSouth retail service. As set forth in this part, we conclude that a loop and a port combination by itself does not constitute the recreation of a BellSouth retail service and we direct the parties to determine through negotiation what services provisioned through unbundled access, if any, do constitute the recreation of a BellSouth retail service.

The parties differ in their view of which network elements, when combined, recreate a BellSouth retail service. We believe that BellSouth's concern is over the recreation of its basic local service. BellSouth's position is that a loop and port combination recreates basic local service. In the following, we address BellSouth's concern in the context of Section 364.02(2), Florida Statutes, which defines basic flat-rate residential and single-line, flat-rate, business services.

Basic Local Service Defined

Section 364.02(2), Florida Statutes, defines Basic Local Telecommunications Service as:

> voice-grade, flat-rate residential and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing ....

This definition lists what constitutes basic service for the end user, but it does not include an exhaustive list of the network elements or functions necessary to provide basic local service.

BellSouth witness Hendrix states that with basic local service, an end user obtains the capability to complete local calls, and access to operator services, 911, and other carriers. BellSouth witness Varner confirms that capability and adds White Pages listing. AT&T witness Walsh agrees, stating that with basic local service, an end user would receive the same capability whether an AT&T customer or a BellSouth customer.

Customer Migration and "Switch As Is" for Combinations of UNEs

BellSouth's position is that when loop and port elements are combined, basic local service is recreated and should be priced at the discounted wholesale rate. BellSouth witness Varner states that use of the word "migration" in this proceeding could lead to confusion, since the term typically applies to a "switch as is" situation. BellSouth witness Varner states that the term "switch as is" applies only to the retail service environment and this, he states, is not a resale proceeding. AT&T witness Walsh states that "migration occurs when a customer with existing service requests a change in its local service provider, i.e., moving an existing BellSouth customer to AT&T." Witness Walsh contrasts this definition with service installation, which he defines as "the establishment of any new (or additional) service for a[n] [A]LEC customer." MCIm witness Hyde provides a similar definition, stating that migration occurs when an existing customer moves from

one local exchange provider to another. Witness Hyde presents an example where migration occurs when a customer moves from BellSouth to MCIm and as well when later that same customer migrates from MCIm to AT&T, and then from AT&T back to BellSouth. Witness Hyde states that all of these cases represent migration.

The term "migration" is used for a specific reason. AT&T and MCIm request that in this proceeding we address the non-recurring charge for migrating specific loops and ports that serve an existing BellSouth customer. This is because the AT&T-BellSouth and MCIm-BellSouth agreements state that network elements currently in use may not be broken apart when ordered in combination. Specifically, the MCIm-BellSouth agreement states in Section 2.2.15.3 of Attachment VIII:

> When MCIm orders Network Elements or Combinations that are currently interconnected and functional, Network Elements and Combinations shall remain connected and functional without any disconnection or disruption of functionality.

The AT&T-BellSouth agreement states in Section 4.5 of Attachment 4:

> When AT&T orders Elements or Combinations that are currently interconnected and functional, such Elements and Combinations will remain interconnected and functional without any disconnection or disruption of service.

We conclude that, under this language, BellSouth is obligated to provide AT&T and MCIm any combination of network elements that are currently serving a BellSouth customer on an "as is" basis.

We note that the MCIm-BellSouth and AT&T-BellSouth agreements both define the term "combination." The MCIm-BellSouth agreement states in Part B at page 3 that:

> "Combinations" means provision by ILEC of two or more connected Network Elements ordered by MCIM to provide its telecommunications services in a geographic area or to a specific customer and that are placed on the same order by MCIM.

The AT&T-BellSouth agreement in Attachment 11 at page 3 states:

> "Combinations" consist of multiple Network Elements that are logically related to enable AT&T to provide service in a geographic area or to a specific customer and that are placed on the same order by AT&T.

The apparent purpose of this language in the agreements is to avoid the disconnection of network elements already in place. Under BellSouth's collocation-based proposal in this proceeding, when a loop and port are ordered, each element would be physically disconnected from BellSouth's network and reconnected at the ALEC's collocation facility. BellSouth witness Landry states that when an ALEC orders a loop and port combination, BellSouth will separate the request into two separate service orders and process the request as if each element had been received as an individual order.

We find that BellSouth's requirement that an ALEC must be collocated in order to receive access to UNEs is in conflict with the Eighth Circuit. As we have already noted, the court stated held that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network and has no obligation to own or control some portion of a telecommunications network before being able to purchase unbundled elements. Iowa Utilities Bd. I, 120 F.3d at 814. BellSouth's collocation proposal would impose on an ALEC seeking unbundled access the very obligation the court held to be inappropriate under the Act, i.e., to own or control some portion of the network.

Nowhere in the Act or the FCC's rules and interconnection orders or the Eighth Circuit's opinions is there support for BellSouth's position that each network element ordered in sequence (in combination or for combining) by an ALEC must be physically disconnected from an ILEC's network, be connected to an ALEC's collocation facility, and then be re-connected to the ILEC's network. We believe that under the Eighth Circuit's opinion, collocation is only a choice for the ALEC, not a mandate, a choice typically to be selected when an ALEC wishes to interconnect its own facilities with those of the ILEC. Section 251 (c)(3) of the Act states that an incumbent local exchange carrier has:

> The duty to provide, to any requesting telecommunications carrier for the provision

> of a telecommunications service, non-discriminatory access to unbundled network elements on an unbundled basis at any technically feasible point ... 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.

Based on the evidence in the record, we conclude that migration of an existing BellSouth end user means that the same network elements serving that end user must be provided "as is" without physical disconnection. However, this does not prohibit AT&T or MCIm from substituting one or more of its own UNEs in conjunction with the UNEs that currently serve the end user. We believe that if the AT&T and MCIm interconnection agreements did not prohibit BellSouth from disconnecting already combined network elements, migration of network elements would not occur because of the court's ruling that ILECs are not required to provide bundled access. Therefore, when AT&T or MCIm places an order for network elements, and those elements are currently combined, BellSouth is obligated to migrate those elements on an "as is" basis.

Network Elements Necessary to Recreate a BellSouth Retail Service

BellSouth witness Hendrix states that there are several factors that we should consider in determining whether or not a combination of UNEs requested by an ALEC recreates an existing retail telecommunications service. Witness Hendrix states that we should "look at the core functions of the requested combination to see if those functions mirror the functions of an existing retail service offering." AT&T witness Gillan states that regardless of what combination of network elements is used, "it simply is not possible for an entrant to recreate a BellSouth service." Witness Gillan asserts that it takes more than the physical interplay of network elements to define a service. Witness Gillan states that how a service is priced, how the service is supported, and what need the service satisfies defines a service.

BellSouth witness Varner states that basic exchange service is recreated with the purchase of the loop and port in combination. He asserts that other functions such as operator services, directory assistance (DA) and signaling systems are not part of basic local service, because an additional charge is incurred when they are

used. Witness Varner states that the loop and port provide access to the same capabilities as are accessible through resale of basic local service.

Witness Varner describes access to operator services, for example, as a function of the switch, that is to say, the switch provides access to the operator services platform. However, we believe that access to operator services and DA through resale is different from access through a loop and switch port. Witness Varner states that if an ALEC ordered a loop and switch port, it would still need an operator services trunk to transmit an operator services call to the operator. The same is true for DA and for 911 service. These trunks are additional network elements for which an ALEC is subject to additional charges. Therefore, we conclude that a loop, port (local switching element), and trunk are necessary to access the operator services platform. Under resale, basic local service includes the operator services trunk for access to an operator, because an end user can literally talk to an operator, without charge, by simply dialing "0". In addition, under resale DA can also be utilized by the end user. In fact, BellSouth offers three free DA calls. Therefore, no additional charges are incurred by an ALEC for the use of operator services trunks and DA trunks under resale. The only additional charges incurred for use of an operator or for DA under resale are the charges when an end user actually uses operator services. In this case, the ALEC pays the retail rate, less the wholesale discount.

Witness Varner, in essence, treats operator services and DA as though they were vertical services, i.e., additional services separate from local service or nonbasic services. On the contrary, access, including the trunk, to operator services and to DA is part of basic local service. When a new end user calls for service, BellSouth does not ask if the end user wants to be connected with the operator. Operator service is a UNE; therefore, access to operator services cannot be provided if no operator exists. An end user does not incur a charge to access operator services. A charge is only assessed based on the type of service actually provided by the operator. Moreover, we have already stated that when an ALEC orders basic local service for resale, the ALEC receives that service exactly as BellSouth provides it for its own end users. We stated that if an ALEC wants to change a service offering provided by BellSouth, then the ALEC must purchase UNEs to provide such service. This decision was the result of a dispute between AT&T and BellSouth in their arbitration proceeding. AT&T's position was that it wanted to provide its own operator services in conjunction with reselling BellSouth's local service. AT&T argued that such

costs would be avoided by BellSouth and should be removed in determining the wholesale discount. We stated that:

> We find that costs associated with operator and directory assistance services will 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 shall be made available for resale. If AT&T wants to purchase pieces of services, it must instead, buy unbundled elements and package these elements in a way that meets its needs.

Order No. PSC-96-1579-FOF-TP, page 49. We have been clear that access to operator services and DA services is inherent in basic local service and we find that this is properly reflected in the wholesale discount rate for service resale that we established there.

Our discussion on access to services is important in determining which network elements are necessary to provide basic local service. When an ALEC purchases a loop and port combination, those are the only elements it receives. Not only are operator services, DA, 911 and signaling system databases separate network elements, but the trunks to access each of them are also separate elements.

A loop and switch port serving an end user will not provide a capability to reach all other end users in the local calling area. BellSouth witness Varner states that a loop and switch port combination provides an end user with an ability to call every other end user that is served by the wire center in which the combination is housed. A wire center is the local switch that serves a particular calling area. Therefore, a loop and switch port combination would only afford an end user with the capability to call other end users that are also served by the same switch. We recognize, moreover, that the area served by a switch is not usually the entire local calling area.

BellSouth witness Varner acknowledges that BellSouth's basic local service includes calling capability to customers that are served by another local switch. He states that about 35 per cent

of the local calls on average are handled by the same switch that serves a particular end user and that the other 65 per cent of the calls are transported to another switch. Therefore, when more than one switch serves a local calling area, each switch must be connected in some manner in order to transfer the call from one switch to the other. The network element which carries the call between switches is transport. There are two types of transport: common transport and dedicated transport. Common transport is transport that is utilized by multiple carriers and dedicated transport is utilized by only one carrier. Transport is a separate network element, and use of transport in combination with a loop and port requires an additional charge. No additional charge for transport, however, is assessed under resale.

According to AT&T witness Falcone, not all switches are directly connected to each other with a transport element. Nevertheless, they have a common connection to another switch, usually a tandem switch. He explains that when a local call originating on one switch must be directed to another switch to which it is not directly connected, the originating switch will route the call to either another central office switch or to the tandem switch, which, in turn, will route the call to the terminating switch. Witness Falcone states that typically each switch in the network will be directly connected to another switch. Switches which are not directly connected, but require a local call to be transported by way of the tandem, are not the norm. However, witness Falcone states that these circumstances can be found in BellSouth's network.

Witness Falcone states that, in addition to Operations Support Systems (OSSs), all of the following elements are necessary to provide basic local service: the loop, local switching, operator services (including DA), the signaling system network, transport, tandem switching, and the trunks connecting operator services, DA, and the signaling system to the switch.

The functions of OSSs are pre-ordering, ordering, provisioning, maintenance and repair, and billing. OSSs are essential to providing basic local service. Without OSSs, an ALEC cannot provide billing statements to its customers. We find, therefore, that OSS functions are also a necessary network element in the provision of local service.

Conclusion

We conclude that the record shows that in order to actually provision local service, AT&T or MCIm would have to own or control some or all of the network elements we have just described for each end user beyond the loop and the local switching element. Also, AT&T or MCIm would need to interconnect these elements with BellSouth's network, if either provides any one or more of these elements itself. If AT&T or MCIm orders only a loop and port combination from BellSouth, then to recreate basic local service, we find that they may have to pay either transport or additional switching charges, or both, when a call terminates to a BellSouth customer. This will occur when more than one switch is used to process a call. For example, when a customer of AT&T or MCIm calls a BellSouth customer, the call would pass from facilities owned or controlled by AT&T or MCIm to BellSouth's network. If, after receiving the call, BellSouth transports it, then transport charges would be assessed to AT&T or MCIm. The call must then pass through the switch serving BellSouth's end user. BellSouth would also assess termination switching charges.

If AT&T or MCIm uses its own loop and local switch, then reciprocal compensation charges would apply to traffic that is exchanged between their and BellSouth's networks. Reciprocal compensation is compensation for the exchange of traffic between the networks of two individual carriers. See Order PSC-96-1579-FOF-TP, pages 64-68. Even if AT&T or MCIm own their own loop and switch, they would still need to use BellSouth's network to terminate a local call if one of the end users was not an AT&T or MCIm end user. Therefore, we further conclude that a loop and local switching element combination are insufficient to provision or recreate basic local service.

Another option available for provisioning basic local service, avoiding the use of BellSouth's network, is for AT&T or MCIm to duplicate BellSouth's entire network. According to witness Gillan, this could be achieved by providing all of the elements themselves or by a combination of their own elements and the use of another carrier's network. Again, if AT&T or MCIm do not own or control the facilities that serve both the end user originating the call and the end user to whom the call is terminated, then AT&T or MCIm must either pay to use BellSouth's network, another carrier's network, or provide all of the network elements themselves.

We believe that BellSouth's network is designed using the network elements necessary to provide various services, not only

for the local calling areas of its end users, but also to provide access to its entire service territory as well as outside of it. A new market entrant needs more than a loop and the local switching element to provide local service to an end user. Without access to or control of facilities between other end users, or access to the networks of other carriers, the new entrant would not be able to complete or pass on calls made by a significant number of its end users.

Based on the evidence in the record, and having concluded that a loop and local switching element are insufficient by themselves to recreate a BellSouth retail service, we also conclude that it is appropriate for us to leave it to the parties to negotiate what precisely does constitute the recreation of a BellSouth retail service. We note, without endorsement, the argument of AT&T and MCI that combinations of network elements alone serving an end user will not constitute the recreation of a BellSouth retail service and that it is necessary to put into the equation management competency and skills, quality of service, customer support, and marketing. We also recognize that it may well be the strategy of AT&T and MCIm, as well as other ALECs, to provision local telecommunications services by means of network element combinations in ways that will distinguish their services from those of BellSouth in the marketplace. We choose, however, to impose no restrictions on these negotiations apart from our conclusion that something more than a loop and local switching element is necessary.

2. Non-recurring Charges

The issue presented is what are the appropriate non-recurring charges (NRCs) for the following combinations of network elements in the case of the migration of an existing BellSouth end user: 2-wire analog loop and port; 2-wire ISDN (Integrated Services Digital Network) loop and port; 4-wire analog loop and port; and 4-wire DS1 (Digital Bipolar Signal One) loop and port. As set forth in this part, we conclude that non-recurring charges are to be based on present technology and the work times required therewith to resolve fallout and to perform switch translations and, in certain cases, the activation of designed services.

Development of Nonrecurring Charges for the Migration of an Existing BellSouth Customer Without Loop and Port Separation

MCIm

Until we determine the appropriate NRCs for loop and port combinations for the migration of an existing BellSouth customer, MCIm asserts in its petition that the migration NRCs would be determined by adding the stand-alone rates for the loops and ports, which we established in Order No. PSC-96-1579-FOF-TP. This would result in NRCs as follows: $178 for the 2-wire analog loop and port; $394 for the 2-wire IDSN loop and port; $179 for the 4-wire analog loop and port; and $652 for the 4-wire DS1 loop and port. These NRCs are inappropriate, MCIm contends, because in each case, the process should entail less than two minutes to perform and cost less than $1.49.[4]

MCIm witness Hyde filed cost studies based on the assumption that soft dial tone using DIP/DOP was deployed in the BellSouth network and that BellSouth would not disconnect the loop and port before furnishing the UNEs to MCIm. He states that his studies mirror BellSouth's filing in Georgia in Docket No. 7061-U, except that unnecessary functions are removed and BellSouth's proposed fallout rate is reduced from 20 per cent to three per cent.

MCIm witness Hyde assumes there will be fallout (rejection) resolution costs associated with the Local Carrier Service Center (LCSC)(JFC 2300). This center serves as the customer point of contact where orders containing errors are resolved. MCIm proposes an LCSC installation work time of 0.0075 hour based on three per cent of the orders falling out during the provisioning process. MCIm further assumes that each fallout episode takes an average time of 15 minutes to resolve. MCI only assigns LCSC installation work times to the initial combined loop and port. Witness Hyde argues that fallout resolution work time should only be applied to the first loop and port combinations, not additional ones, because BellSouth assumes fallout resolution on a per order, not per loop and port combination, basis. He further states that he proposes a three per cent fallout rate because BellSouth witness Stacy

[4]BellSouth currently charges $1.49 to perform a PIC (Presubscribed Interexchange Carrier) change. A PIC change is the process by which telecommunications end users switch long distance providers. MCIm argues that the functions necessary to migrate a loop and port combination are essentially the same as performing a PIC change.

testified in the aforementioned Georgia docket that this is what BellSouth was currently experiencing. We note, however, that while witness Stacy stated that BellSouth has achieved a flow-through rate of approximately 97 per cent in certain exchanges for retail residential services, he added that after two years, it had not achieved flow-through at all for UNEs and he could not anticipate flow-through greater than 80% in the foreseeable future. Witness Hyde notes that Southwestern Bell reportedly experiences a current flow-through rate of 99 per cent with its service resale provisioning system and that it expects to achieve this rate for UNE provisioning as well.

MCIm also assumes "recent change" translation associated with the Recent Change Memory Administration Group (RCMAG)(JFC 4N1X). As we have noted, a "recent change" translation process for a loop and port combination simply involves reprogramming the switch to recognize that an ALEC is now the carrier for billing purposes. Witness Hyde states that the "recent change" translation job function would have to be manually performed today. He states, however, that in a forward-looking environment that function should be automated as is the case presently in the BellSouth network for ESSX [Electronic Switching System Extension] and some other functions.

MCIm's witness Hyde states that charges for ISDN and DS1 loop and port combinations are higher than for 2-wire and 4-wire analog loop and port combinations because these applications involve designed services, e.g., Circuit Provisioning Group (CPG), Account Customer Advocate Center (ACAC), and Special Services Installation and Maintenance (SSIM), where BellSouth provides not only dial tone as in "plain old telephone service" (POTS), but also data transmission capability.

AT&T

AT&T filed cost studies also based on the "recent change" process. AT&T's "recent change" process assumes only fallout resolution costs associated with the RCMAG job functions and assumes that the switch translations are electronically performed. AT&T's proposed NRCs are the same for each loop and port combination in issue.

AT&T witness Walsh proposes no LCSC installation work time because a "recent change" switch translation is all that is required, which he believes would be handled entirely by the RCMAG. AT&T witness Walsh states that AT&T's NRCM assumes efficient OSSs

with 98 per cent of the fallout being electronically handled by the Provisioning Analyst Work Station (PAWS), or a similar OSS, involving only processing time. The remaining two per cent would require manual assistance by the RCMAG to deliver "recent change" translation instructions to the switch. The LCSC (JFC 2300) and the Connect & Test (JFC 2730) functions are not required with electronic ordering according to witness Walsh, and he estimates an average time of no more than seventeen and a half minutes for the RCMAG to resolve fallout conditions. Witness Walsh further states that cross-audits performed as a regular general maintenance routine can totally avoid synchronization problems that lead to much of the fallout. He states that the costs of such audits would be captured in recurring rates. Witness Walsh states that fallout in the LCSC can be automatically redirected to the ALEC for resolution. Although he states that LCSC activity is not required, he notes that the LCSC might occasionally call the ALEC in an effort to manually resolve a problem. In such a case, AT&T would assign fallout resolution cost only to the initial combined loop and port because AT&T considers the entire ordering process involving multiple combinations to be one order. For example, while an order might consist of several loop and port combinations, which would involve as many internal processes, AT&T would assign the work time only to the initial combination.

BellSouth Proposal

BellSouth witness Caldwell's non-recurring cost development is based on a collocation proposal that involves physically disconnecting the existing loop and switch port combination on BellSouth's network, with the ALEC recombining the elements at a physical collocation space. The AT&T and MCIm cost studies are based, however, on a "switch as is" theory, that is to say, an existing connected customer is switched (migrated) without physical disconnection. Witness Caldwell contends that "switch as is" constitutes resale.

Under BellSouth's collocation proposal, witness Landry states that while loop and port combination orders would be submitted to BellSouth on one service request, BellSouth would separate the request into two separate service orders and process the request as if each element had been received as an individual order. He argues that the loop and port must be separated into two service orders, because the unbundled loop offerings are currently processed by access billing systems and the port offerings are processed by non-access billing systems.

BellSouth witness Varner states that there is no such thing as migration of a loop and port. Typically, he explains, migration involves moving the end user from one carrier to another. It is synonymous with "switch as is," it is pertinent only to a resale environment, and, therefore, he asserts, the NRCs for the loop and port combination should be priced at the resale rate.

BellSouth witness Caldwell identifies the work center activities, LCSC and ACAC for the port and LCSC, Network Services, and RCMAG for the loop, as necessarily involved migration activities, given the working assumption that the migration of an existing BellSouth customer to either MCIm or AT&T can be accomplished without separating the loop and port combinations. While BellSouth witness Caldwell provides estimated values for these cost components, we note that BellSouth did not actually develop NRCs for migration as we have defined it in this proceeding. Asked to make a cost comparison of the loop and port ordered individually and in combination, witness Caldwell testifies that the only cost savings when a loop and port are ordered in combination rather than individually is a reduction in the ACAC work time.

The work activity associated with the ACAC (JFC 471X) is the coordination of the service turn-up and the turn-up testing. According to witness Caldwell, BellSouth's proposed fallout resolution costs associated with the LCSC (JFC 2300) are based on a fallout rate of 20 per cent, with a fallout resolution time of 15 minutes.

AT&T witness Walsh states that BellSouth's proposal assumes a disconnection and a reconnection. Witness Walsh states that for the reconnection, BellSouth requires a separate order for the loop and a separate order for the port. In this circumstance, witness Walsh explains that there is a charge to disconnect the loop and a charge to disconnect the port, and further charges to reconnect them. BellSouth also proposes to collect, up front, charges for future disconnection of these elements. Witness Walsh further states that BellSouth's OSSs are set up so that when a request involving a loop and port is received, they would assign the nearest loop and port. He argues that there is no reason why this cannot be done on one service order within BellSouth's present provisioning system.

Differing with witness Landry, MCIm witness Hyde states that there is no technical reason why BellSouth cannot use the existing telephone number identifier for the loop so that it can be

processed by non-access billing systems on the same service order with the port. We believe that BellSouth can use the same telephone number previously assigned to the loop without having to break apart the loop and port combinations for processing purposes. As we have noted, each of the agreements requires that currently combined elements remain connected. Therefore, we find that BellSouth shall be required to process each loop and port combination ordered on a single service order as one service order, without breaking apart the existing loop and port combination and thereby requiring AT&T or MCIm to recombine them at a collocation facility.

AT&T witness Falcone states that BellSouth's collocation proposal is inconsistent with the Act as interpreted by the Eighth Circuit. He notes that AT&T's "recent change" process for a loop and port combination only involves reprogramming the switch to recognize that an ALEC is now the carrier for billing purposes. According to witness Falcone, the switch records the customer's local and access usage data for billing purposes. Therefore, he argues, the cost associated with the migration of an existing BellSouth customer should only involve "processor time to reflect the change in who is serving the customer, and to activate different billing systems to reflect the use of unbundled network elements by the [A]LEC." Even with a collocation facility in place, witness Falcone states that AT&T is not going to win over many customers if they have to be told that they may be out of service during "cut over" for periods as extended as four hours.

In staff witness Young's review of the staff's audit of BellSouth's non-recurring cost study, she states that:

> [Witness Caldwell's] schedules ... do not represent the migration of an existing BellSouth customer ... BellSouth's definition of migration is resale. It appears that the ... schedules assume that the loop and port have to be separated to be provided to the [ALEC].

Witness Young states that each BellSouth subject matter expert interviewed in the audit stated the BellSouth non-recurring cost study did not address migration.

Based on the evidence in the record, we conclude that BellSouth's collocation proposal is unnecessary for the migration of an existing BellSouth customer. We conclude further that

BellSouth's proposal to break apart loop and port combinations that are currently connected, requiring AT&T or MCIm to establish a collocation facility where the unbundled loop and the unbundled port would be recombined, is in conflict with the terms of the parties' agreements and the Act as interpreted by the Eighth Circuit. Iowa Utilities Bd. I, 120 F.3d at 814. Moreover, we find that BellSouth's proposal does not address the migration of an existing BellSouth end user. Hence, we reject it.

Commission Approved Nonrecurring Charges for the Migration of an Existing BellSouth Customer Without Loop and Port Separation

We have found that BellSouth's NRC study does not address migration. MCIm's NRC study is based on today's technology. AT&T's NRC study is based on totally forward-looking, best-available technology. Based on the evidence in the record, we find it appropriate to base our approval of NRCs for the loop and port combinations in issue on today's technology. BellSouth's basis is inapplicable to migration and AT&T's basis is presently unrealistic.

Most of the evidence in this record related to fallout rates on which AT&T and MCIm rely is based on service resale. BellSouth's proposed fallout rate of 20 per cent is based on ordering individual UNEs, rather than combinations of UNEs. We note that this proceeding is specific to the migration of loop and port combinations already in place. We believe it is not reasonable to assume that fallout rates will improve markedly over the life of these agreements. Nevertheless, we believe on the basis of this record that the fallout rate for combination orders will be greater than the fallout rate for resale, but significantly less than the fallout rate for individual UNE orders. This assessment is based on the nature of each of the provisioning processes as developed in this record. MCIm proposes a three per cent fallout rate based on BellSouth-specific evidence that indicates that three per cent is the best fallout rate that can be obtained in the resale environment. Given the range of three per cent to 20 per cent, we find that a fallout rate of five per cent is reasonable for the migration of loop and port combination orders in which the elements are already combined, and we approve it.

Having determined the fallout rate to be reasonably expected, we next determine the work time reasonably necessary to resolve the fallout. BellSouth and MCIm both estimate 15 minutes, and AT&T estimates 17 or 17.5 minutes. We give somewhat greater weight to

BellSouth's estimate in light of its experience with fallout resolution. Accordingly, we find it reasonable to approve a fallout resolution time of 15 minutes.

BellSouth and MCIm propose the same work time of 0.0250 hour for manually performing the switch translations for each loop and port combination. AT&T does not propose a work time for performing the actual switch translations because it believes this should be performed electronically. Upon consideration, we find 0.0250 hour to be reasonable for manually performing switch translations for each loop and port combination, except the 2-wire ISDN loop and port combination, and we therefore approve it. We find that a work time of 0.0667 hour for the 2-wire ISDN loop and port combination, as proposed by BellSouth, is reasonable, and, upon consideration, we approve it.

AT&T proposes the use of fully loaded labor rates based on a provider employing best available forward-looking technology. They fall below the BellSouth rates MCIm proposes for use. In our belief, these are unrealistic and unsuitable for present purposes. MCIm proposes the use of direct labor rates which are equal to BellSouth's partially loaded direct labor rates less consideration of shared and common costs and an allowance for profit. Upon consideration, we find that these rates are reasonable and we approve them for determining NRCs in this proceeding.

AT&T and MCIm both argue that an up-front disconnection charge should not be imposed, but imposed rather at the actual time of disconnection. Upon consideration, we agree. Eliminating disconnection costs from up-front NRCs is a reasonable way to relieve some of the burden associated with high start-up (non-recurring) costs.

We agree with BellSouth and MCIm that there are designed service activities associated with the ISDN and DS1 loop and port combinations. BellSouth, however, only provided estimated work times, assuming the migration of an existing BellSouth customer can be accomplished by means of the loop and port combinations at issue in this proceeding. AT&T does not propose to include designed service activity. Upon consideration, we find that MCIm's proposed designed service work times are reasonable, and we approve the use of them for purposes of this proceeding.

We also find that in cases not involving designed services, where fallout does not occur, and when electronic "recent change" translation is available, the time to migrate an existing BellSouth

customer to an ALEC, that is to say, changing the presubscribed local carrier (PLC) code, is equal to the time it takes BellSouth to migrate a customer to an IXC by changing the PIC code.

Upon review of the evidence in this record, we approve the non-recurring work times and direct labor rates shown in Table I for each loop and port combination in issue in this proceeding for the migration of an existing BellSouth customer to AT&T or MCIm without unbundling. We furthermore approve the resultant NRCs shown in Table II.

Table I

Commission-Approved
Non-recurring Work Times and Direct Labor Rates
for
Loop and Port Combinations

Function	JFC	Installation First (Hour)	Installation Add'l (Hour)	Direct Labor Rate
LCSC	2300	0.0125	0.0000	$42.09
RCMAG[1]	4N1X	0.0250	0.0250	$37.34
ACAC[2]	471X	0.0019	0.0019	$38.26
CPG[2]	470X	0.0040	0.0000	$36.25
SSIM[2]	411X	0.0075	0.0050	$42.96

[1]For the 2-wire ISDN loop and port combination we approve an RCMAG work time of 0.0667 hour for first and additional installations.
[2]These functions are pertinent only to the DS1 4-wire loop and port combination.

Table II

Commission-Approved
Non-recurring Charges
for
Loop and Port Combinations

Network Element Combination	First Installation	Additional Installations
2-wire analog loop and port	$1.4596	$0.9335
2-wire ISDN loop and port	$3.0167	$2.4906
4-wire analog loop and port	$1.4596	$0.9335
4-wire DS1 loop and port	$1.9995	$1.2210

III. CONCLUSION

We have conducted this proceeding pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing rules, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the provisions of the interconnection agreement entered into by MCImetro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., related to pricing of combinations of unbundled network elements are to be construed as set forth in Part II.B.1 of this Order. It is further

ORDERED that the provisions of the interconnection agreement entered into by MCImetro Access Transmission Services, Inc., and

BellSouth Telecommunications, Inc., related to switched access usage data are to be construed as set forth in Part II.B.2 of this Order. It is further

ORDERED that the provisions of the interconnection agreement entered into by AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc., related to pricing of combinations of unbundled network elements are to be construed as set forth in Part II.C.1 of this Order. It is further

ORDERED that the provisions of the interconnection agreement entered into by AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc., related to switched access usage data are to be construed as set forth in Part II.C.2 of this Order. It is further

ORDERED that non-recurring charges for 2-wire analog loop and port combinations; 2-wire ISDN loop and port combinations; 4-wire analog loop and port combinations; and 4-wire DS1 loop and port combinations are approved as set forth in Part II.D.2 of this Order. It is further

ORDERED that the parties to this proceeding shall be required to negotiate on their initiative what competitive local telecommunications services provisioned by means of unbundled access, if any, constitute the recreation of the incumbent local exchange carrier's retail service. It is further

ORDERED that the parties shall submit written agreements memorializing and implementing our decisions herein within thirty days of the issuance of this Order. It is further

ORDERED that the agreements shall be submitted for approval in accordance with Section 252(e)(2)(b) of the Telecommunications Act of 1996. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 12th day of June, 1998.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).