BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Motions of AT&T Communications of the Southern States, Inc., and MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc., to compel BellSouth Telecommunications, Inc. to comply with Order PSC-96-1579-FOF-TP and to set non-recurring charges for combinations of network elements with BellSouth Telecommunications, Inc., pursuant to their agreement.	DOCKET NO. 971140-TP ORDER NO. PSC-99-1989-FOF-TP ISSUED: October 11, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING AMENDMENTS
TO THE INTERCONNECTION AGREEMENTS

BY THE COMMISSION:

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 or BST), 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 Dockets Nos. 960757-TP, 960833-TP and 960846-TP for purposes of hearing.

At the December 2, 1997, Agenda Conference, the Commission directed that the Motions to Compel Compliance be set for hearing. Accordingly, in Order No. PSC-98-0090-PCO-TP, issued January 14, 1998, Docket No. 971140-TP, now embracing the Motions to Compel Compliance, was severed from Dockets Nos. 960757-TP, 960833-TP and 960846-TP.

On March 9, 1998, we conducted an evidentiary hearing. On June 12, 1998, Order No. PSC-98-0810-FOF-TP was issued that memorialized our decisions in this docket 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. The parties were required to submit written agreements memorializing and implementing the Commission's decisions within 30 days of the issuance of Order No. PSC-98-0810-FOF-TP.

On June 29, 1998, BellSouth filed its Motion for Reconsideration of Order No. PSC-98-0810-FOF-TP. On September 25, 1998, Order No. PSC-98-1271-FOF-TP was issued granting BST's motion for extension of time to file its interconnection agreement; denying its motion for reconsideration; granting clarification on how prices for combinations are determined; and deleting a statement incorrectly attributed to BST witness Alphonso Varner from Order No. PSC-98-0810-FOF-TP.

In October 1998, the parties stated that they were unable to reach agreement on the content of the amendments to be incorporated in their interconnection agreements. Accordingly, AT&T, MCIm, and BST each submitted individual amendments which they believed captured the Commission's decisions.

In January 1999, the United States Supreme Court issued its decision in AT&T Corp. v. Iowa Utilities Bd.,119 525 U.S. 366, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999) [hereinafter AT&T v. Iowa Utilities], which reinstated the FCC's rules on combinations. On March 2, 1999, our staff met with the parties to discuss what impact, if any, the Supreme Court's ruling may have on the pending amendments to the interconnection agreement and asked the parties to once again try and reach agreement on language that could be incorporated into the existing interconnection agreements, taking into consideration the Commission's decisions as well as the Supreme Court's opinion. Unfortunately, the parties' attempts to reach agreement were not successful, and once again each party submitted separate amendments to be incorporated into the agreements. Since the parties cannot agree on language that incorporates the Commission's decisions into their existing interconnection agreements, these issues are again before us.

DISCUSSION

A. Combinations that recreate a BST retail service

In Order No. PSC-98-0810-FOF-TP, the Commission determined that the MCIm-BST agreement provided a pricing standard for combinations of unbundled network elements (UNEs) that do not recreate an existing BST retail service, and the Commission directed the parties to negotiate prices for those that do recreate an existing BST retail service. The Commission drew a similar conclusion with regard to the AT&T-BST agreement, that in addition to negotiating prices for those combinations that recreate a BST service, AT&T and BST must also negotiate prices for those combinations of network elements not already in existence.

The Commission determined that the agreements between MCIm-BST and AT&T-BST did not address the specific issue of when UNEs are recombined to duplicate a retail service. Therefore, the Commission directed the parties to negotiate what the prices for combinations of network elements should be in the case where the combination would recreate an existing retail service. AT&T and BST were also directed to negotiate the prices for those combinations that do not presently exist. Upon mutual agreement and within the scope of the law, the parties could have included any language they believed appropriate regarding the price for UNE combinations that recreate. However, since the parties are at an impasse, we believe that the language we have provided herein

comports with our prior decisions, as well as the current state of the law.

As previously indicated, since Order No. PSC-98-0810-FOF-TP was issued in this docket, the United States Supreme Court issued its opinion in AT&T V. Iowa Utilities. Among other things, the Court reinstated the FCC's rules on combinations and affirmed its rationale. Specifically, the Court stated:

> Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor. As they did in the Court of Appeals, the incumbents object to the effect of this rule when it is combined with others before us today. TELRIC allows an entrant to lease network elements based on forward-looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely only on the incumbent's network in providing service. When Rule 315 (b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost-based rates.
>
> The incumbents argue that this result is totally inconsistent with the 1996 Act. They say that it not only eviscerates the distinction between resale and unbundled access, but that it also amounts to Government-sanctioned regulatory arbitrage . . . .
>
> As was the case for the all-elements rule, our remand of 319 may render the incumbents' concern on this score academic. Moreover, section 254 requires that universal service subsidies be phased out, so whatever possibility of arbitrage remains will be only temporary. In any event, we cannot say that Rule 315(b) unreasonably interprets the statute. . . .
>
> It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the [FCC] to opt in favor of ensuring against an anticompetitive practice.

AT&T Corp. v. Iowa Utilities Bd.,119 525 U.S. 366, 142 L. Ed. 2d 834, 119 S. Ct. 721 (1999) (Slip Opinion pages 25-28.)

In summary, while the Court did not use the specific term "recreate," we believe that the Court's opinion allows an entrant to purchase UNE combinations that recreate retail services at prices based on forward-looking costs.

We also believe that since the Supreme Court has reinstated the FCC's rules, under those rules and section 251 of the Act, combinations that recreate a retail service should be priced under the same pricing standard as those combinations which do not recreate a retail service. FCC rule 51.315 does not distinguish between combinations that do or do not recreate an existing service. We concluded that the interconnection agreements between AT&T-BST and MCIm-BST did provide a pricing standard (adding up the individual prices for the network element and then subtracting any duplicate or unnecessary charges) for UNE combinations that did not recreate an existing BST service. (Order at pages 10 and 33). Therefore, on a going-forward basis, as it relates to the interconnection agreements of AT&T-BST and MCIm-BST, the prices for UNE combinations, whether or not they are in existence, or whether or not they recreate an existing retail service, shall be determined based on the same pricing standard for UNE combinations that do not recreate a retail service. Therefore, we order the parties to incorporate the language contained in Attachments A and B to this Order, which by reference are incorporated herein, in their interconnection agreements.

B. Incorporation of the non-recurring charges for certain loop and port combinations

In Order No. PSC-98-0810-FOF-TP, at page 67, we concluded:

> 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.

MCI proposed the following language be inserted into its agreement:

Based on the Order issued by the Florida Public Service Commission on June 12, 1998 in Docket No. 971140-TP, the rates for non-recurring charges for the migration of a loop and port combination as ordered are set forth below.

Network Element Combinations	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

The rates in the above table are those rates approved and shown in Table II on page 68 of Order PSC-98-0810-FOF-TP. We hereby approve the language in Attachments A and B for inclusion into the MCIm-BST and AT&T-BST agreements. The language in these Attachments is identical to the language proposed by MCIm on this matter.

Upon consideration, we believe the non-recurring charges approved by the Commission and shown in Table II on page 68 of Order PSC-98-0810-FOF-TP should be incorporated in the MCIm-BST and AT&T-BST agreements. Accordingly, we order the parties to incorporate the language in Attachments A and B to this order.

We will require further the parties to submit a final arbitration agreement consistent with our decisions herein and Orders Nos. PSC-98-0810-FOF-TP and PSC-98-1271-FOF-TP for approval within 30 days of issuance of this Order.

Based on the foregoing, it is, therefore

ORDERED by the Florida Public Service Commission that AT&T Communications of the Southern States, Inc., BellSouth Telecommunications, Inc., and MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. incorporate the language contained in Attachments A and B of this Order, which by reference are incorporated herein, into their respective interconnection agreements at issue in this docket. It is further

ORDERED that the non-recurring charges approved by the Commission and shown in Table II on page 68 of Order No. PSC-98-

0810-FOF-TP should be incorporated in the MCIm-BellSouth and AT&T-BellSouth interconnection agreements at issue in this docket. It is further

ORDERED that the parties shall submit a final arbitration agreement consistent with our decisions herein and Order No. PSC-98-0810-FOF-TP and PSC-98-1271-FOF-TP for approval within 30 days of issuance of this Order. It is further

ORDERED that this docket shall remain open pending approval of the final arbitration agreement.

By ORDER of the Florida Public Service Commission this 11th day of October, 1999.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CBW

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 by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A
APPROVED AMENDMENTS TO THE MCIm-BST AGREEMENT

1) Based on the Order issued by the Florida Public Service Commission on June 12, 1998, in Docket No. 971140-TP, the rates for non-recurring charges for the migration of a loop and port combination as ordered are set forth below. These rates shall be incorporated in Attachment 1, Table 1, of the existing agreement.

Network Element Combinations	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

2) Attachment 1, Section 8, of the existing agreement, shall be amended as follows:

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. The prices for combinations of network elements shall be the sum of the individual element prices as set forth in Table 1. 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 include duplicate charges for function or activities that MCIm does not need when two or more network elements are combined in a single order. MCIm and BellSouth shall work together to establish the recurring and non-recurring charges in situation where MCIm is ordering multiple network elements. Where the parties cannot agree to these charges, either party may petition the Florida Public Service Commission to settle the disputed charge or charges. BellSouth must notify the Commission when a rate is set that excludes duplicate charges by filing a report within 30 days of the rate being established. This report must specify the elements being combined and the charges for that particular combination.

ATTACHMENT B
APPROVED AMENDMENTS TO THE AT&T-BST AGREEMENT

1) Based on the Order issued by the Florida Public Service Commission on June 12, 1998 in Docket No. 971140-TP, the rates for non-recurring charges for the migration of a loop and port combination as ordered are set forth below. These rates shall be incorporated in Part IV, Table 1, of the existing agreement.

Network Element Combinations	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

2) Part IV, Section 36.1, of the existing agreement, shall be amended as follows:

The prices for combinations of network elements shall be the sum of the individual element prices as set forth in Part IV, Table 1. 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.