BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of proposed agreements with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960833-TP DOCKET NO. 960846-TP DOCKET NO. 960916-TP ORDER NO. PSC-97-0298-FOF-TP ISSUED: March 19, 1997

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JULIA L. JOHNSON
DIANE K. KIESLING
JOE GARCIA

FINAL ORDER ON MOTIONS FOR RECONSIDERATION AND AMENDING ORDER NO. PSC-96-1579-FOF-TP

BY THE COMMISSION:

By letter dated March 4, 1996, AT&T Communications of the Southern States (AT&T), on behalf of its subsidiaries providing telecommunications services in Florida, requested that BellSouth Telecommunications, Inc. (BellSouth) begin good faith negotiations under Section 251 of the Telecommunications Act of 1996 (the Act). On July 17, 1996, AT&T filed its request for arbitration under the Act.

MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCI) requested that BellSouth begin good faith negotiations by letter dated March 26, 1996. Docket No. 960846-TP was established in the event MCI filed a petition for arbitration of the unresolved issues. On July 30, 1996, AT&T and MCI filed a joint motion for consolidation with AT&T's request for arbitration with BellSouth. By Order No. PSC-96-1039-TP, issued August 9, 1996, the joint motion for consolidation was granted. On August 15, 1996, MCI filed its request for arbitration with BellSouth under the Act.

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

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (FCC Order). The Order established the FCC's requirements for interconnection, unbundling and resale based on its interpretation of the 1996 Act. This Commission appealed certain portions of the FCC order, and requested a stay of the FCC Order pending that appeal. On October 15, 1996, the Eighth Circuit Court of Appeals granted a stay of the FCC's rules implementing Section 251(i) and the pricing provisions of the Order.

We conducted a hearing in these consolidated dockets on October 9 through 11, 1996. AT&T and MCI sought arbitration of issues in four main subject areas: network elements; resale; transport and termination; and implementation matters. ACSI and BellSouth later reached an agreement. Consequently, ACSI withdrew its petition for arbitration on November 12, 1996.

On December 31, 1996, we issued Order No. PSC-96-1579-FOF-TP, resolving the issues in AT&T's and MCI's petitions for arbitration with BellSouth. On January 9, 1997, we issued Amendatory Order No. PSC-96-1579A-FOF-TP correcting scrivener's errors. On January 15, 1997, BellSouth Filed a Motion for Reconsideration of Order No. PSC-96-1579-FOF-TP. On January 27, 1997, MCI and AT&T filed separate responses to the Motion for Reconsideration. AT&T also filed a Cross Motion for Reconsideration on that day. On February 4, 1997, BellSouth filed its response to AT&T's Cross Motion.

We address each motion and the issues raised therein below. We also amend Order No. PSC-96-1579-FOF-TP to include language that was inadvertently omitted from that order.

I. BellSouth's Motion for Reconsideration

The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that we overlooked or failed to consider in rendering our order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for

reconsideration, it is not appropriate to reargue matters which have already been considered. See Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958)(the petition should not be used to reargue matters already addressed in briefs and oral argument).

In its motion, BellSouth seeks reconsideration of our decisions on the pricing of the recombination of unbundled network elements, tariff terms and conditions, services excluded from resale, pricing of channelization and common and dedicated transport, primary interexchange carrier (PIC) changes, CABS-formatted billing, access to customer records, and pricing of network elements.

BellSouth argues that reconsideration of our Order is necessary in order to correct misunderstandings of BellSouth's position, to eliminate confusion over the terms "rebundling" and "recombination," to amend our misapprehension of our legal authority, and to correct misconceptions regarding the assumption of risk involved in rebundling as opposed to resale.

Pricing of Rebundled Network Elements

BellSouth argues that we misunderstand BellSouth's position regarding the recombination of network elements. BellSouth asserts that MCI and AT&T can combine network elements provided by BellSouth. BellSouth takes issue, however, with the pricing of the unbundled elements when they are recombined to reproduce or duplicate an existing BellSouth service.

BellSouth argues that the pricing standard for individual elements that is set forth in Section 252 (d)(1) of the Act is not the appropriate standard to apply to recombined elements. BellSouth states that the Act establishes two pricing standards: one for the resale of services, and another for the purchase of unbundled network elements. BellSouth argues that the appropriate pricing standard for recombined elements is actually that used for the resale of services. BellSouth further argues that to apply the standard for pricing individual elements would only encourage competitors to choose resold services or to purchase unbundled elements based on which would best provide the competitor with an advantage. BellSouth argues that the problem with this is that competitive advantage would be based on any historical or social agendas that this Commission or other regulatory bodies may have had in the past which resulted in lower prices for certain services. BellSouth argues that this is simply not rational.

BellSouth also argues that the same service can be provided by a competitor, whether obtained through resale or the purchase of unbundled elements. BellSouth states, however, that if the service is obtained through resale, the service is subject to the joint marketing restrictions of Section 271 of the Act and the competitor is billed the retail rate less the resale discount. If the service is obtained by recombining network elements, the competitor avoids the joint marketing restrictions and is billed only for the unbundled loop and port. In addition, BellSouth asserts that competitors would avoid payment for vertical features, such as Caller-ID and Call Waiting, that would be charged under resale. BellSouth asserts that this cannot be Congress' intent.

BellSouth asserts that unbundling and rebundling are a pricing issue. Thus, BellSouth argues that pricing of recombined elements falls under the pricing provisions that have been stayed by the Eighth Circuit. BellSouth, therefore, argues that we have the authority to find that rebundled elements should be priced under the resale provisions of the Act.

BellSouth further argues that the pricing of rebundled elements has a tremendous impact on the Act's joint marketing restrictions. BellSouth contends that Congress would not have created the joint marketing restriction had they intended for them to be easily circumvented by the rebundling of unbundled network elements.

In support of its assertions, BellSouth cites a Brief of Amicus Curiae filed by the Honorable John D. Dingell with the Eighth Circuit, and arbitration proceedings in Georgia, Tennessee, and Louisiana involving BellSouth, AT&T, and MCI.

AT&T asserts that BellSouth is simply rearguing its case. Regarding the pricing of recombined unbundled network elements, AT&T asserts that each of the arguments raised by BellSouth in its motion were addressed in our staff's recommendation and rejected in our Order. Thus, AT&T asserts that BellSouth has not met the Diamond Cab standard for a motion for reconsideration.

AT&T also asserts that any confusion regarding BellSouth's position on unbundled network elements is the result of BellSouth's own statements in its post-hearing brief. AT&T asserts that BellSouth argued in its brief that AT&T and MCI should not be allowed to rebundle unbundled elements to duplicate a service that is already available through resale, but that BellSouth is now changing its position. AT&T argues that we are not confused about BellSouth's position, but that BellSouth has simply changed its position. AT&T further argues that BellSouth has done this in an

attempt to create confusion and, therefore, establish some basis for reconsideration. AT&T argues, however, that we have never shown any confusion or misunderstanding of the pricing provisions in the Act.

AT&T disagrees with BellSouth's argument that the recombination of unbundled elements is actually a pricing matter and that the FCC's rules on the subject were included in the Eighth Circuit's stay. AT&T argues that the Act's provisions on this issue, Sections 251 (d)(1) and 251 (c)(3), do not relate to the stayed pricing provisions in the FCC Order. Even if the Eighth Circuit's stay does affect unbundled elements, AT&T argues that BellSouth cannot ignore the specific pricing provisions for unbundled elements set forth in the Act itself.

AT&T argues that BellSouth's assertions that unbundled element pricing for recombined elements would lead to competition based solely on arbitrage is deceptive. AT&T asserts that arbitrage simply means shopping for the lowest price available; a concept which is not inconsistent with competition. AT&T asserts that carriers will always enter the market with the lowest cost production available, no matter which rate is applicable. AT&T argues that setting the price of unbundled elements at TSLRIC is the most market-efficient method for facilities, and is the point at which carriers will decide whether to enter the market or not based on their own cost of providing service.

In addition, AT&T asserts that BellSouth is trying to impose rates that exceed economic costs, which will, in turn, hamper competitors' ability to compete and encourage inefficient facilities entry. AT&T argues that BellSouth will, therefore, defeat any significant price competition until facilities-based competitors can enter the market.

Furthermore, AT&T argues that BellSouth's examples of element prices compared to resale prices are misleading in that they ignore nonrecurring charges that BellSouth assesses its competitors. AT&T argues that BellSouth's examples actually demonstrate that price competition will not come to Florida residential customers unless network element prices are reduced. AT&T adds that it disagrees with BellSouth's implication that it will, essentially, be providing vertical services free of charge when AT&T purchases local switching as an unbundled element. AT&T states that vertical features are included in the local switching rate only because these functions are inherent in the switch and are sufficiently covered by the rate.

AT&T notes BellSouth's submission of an amicus brief to the Eighth Circuit from members of the U.S. House of Representative. Citing Weinberger v. Rossi, 456 U.S 25 (1982) and Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980), AT&T asserts that such post-legislative briefs from members of Congress are to be given very little weight in statutory construction. Nevertheless, AT&T attaches a Brief of Amicus Curiae filed by the Honorable Thomas Bliley, Jr. with the Eighth Circuit Court as support for its arguments. AT&T also states that while three southern states have imposed limitations on the recombination of unbundled elements, 31 states have determined that no such limitations should be imposed.

MCI also argues that BellSouth has created any confusion that may exist regarding BellSouth's position on rebundling of network elements. Citing statements in BellSouth's brief, MCI asserts that BellSouth cannot now change the entire focus of its position in an effort to present new arguments.

MCI states that the Eighth Circuit has not stayed FCC Rule 51.315 on the recombination of unbundled elements. MCI also states that although the FCC pricing rules have been stayed, this Commission must still apply the statutory pricing standard; that is, the price for elements must be based on cost. As such, MCI asserts that BellSouth's avoided cost standard is inapplicable because it does not base the rate for elements on cost.

MCI further asserts that the relationship between unbundled elements and joint marketing restrictions is not a basis for reconsideration. MCI argues that we fully addressed this issue, not only in our Order, but also in discussion leading to our decision.

In addition, MCI argues that BellSouth has improperly relied on various matters extraneous to this arbitration proceeding, including the amicus brief which BellSouth included in its motion. MCI further states its belief that this amicus brief was the subject of an improper ex parte communication. MCI agrees with AT&T that such post-legislative briefs have little significance and adds that the brief would not have been admissible as evidence of legislative intent had BellSouth offered it at the hearing. MCI adds that BellSouth has failed to indicate that the majority of decisions in other arbitrations have not limited the combination of unbundled elements.

Decision

We shall not reconsider our decision on the rebundling of network elements for two reasons: 1) we have already fully addressed this issue in our Order, and 2) BellSouth is attempting to present a new argument and new evidence through its Motion for Reconsideration. BellSouth has not met the standard for reconsideration set forth in Diamond Cab Co. v. King.

Our decision on the rebundling of network elements is set forth at pages 33 through 38 of Order No. PSC-96-1579-FOF-TP. Therein, we addressed each of BellSouth's arguments in full. After much consideration, we indicated that we have concerns regarding the FCC's interpretation of Section 251 (c)(3) of the Act and regarding the inapplicability of the joint marketing restrictions on recombined unbundled elements set forth in Section 271 of the Act. We noted, however, that the FCC's interpretation of Section 251 (c)(3) was not affected by the Eighth Circuit's stay. We therefore determined that AT&T and MCI could combine network elements provided by BellSouth in any manner. In so ruling, we stated that we made our determination based on the arbitration standards set forth in Section 251 of the Act and upon the FCC rules on the matter that remained in effect. Based on the extensive discussion set forth in our Order, BellSouth has not indicated any point of fact or law that we failed to address in considering the issue before us.

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. In raising this issue, BellSouth appears to be rearguing its case from a different angle. Such an attempt to engraft new arguments onto an issue which has already been fully addressed is inappropriate. See Sherwood v. State, 111 So. 2d 96 at 99 (Fla. 3rd DCA 1959)(advancing new or other points identified as one of several reasons for rejecting a motion for rehearing). See also Diamond Cab Co. v. King, 146 So. 2d 889 at 891 (stating that rehearing is not available for re-arguing the whole case simply because the losing party disagrees).

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. As such, we find that BellSouth's motion does not identify any point of fact or law that we failed to address. We agree with AT&T and MCI that BellSouth is merely presenting its

previous argument from a different angle in an effort to have us reconsider an issue which we have already considered and decided. Nevertheless, we note that we would be very concerned if recombining network elements to recreate a service could be used to undercut the resale price of the service.

Further, we note that the Brief of Amicus Curiae cited by BellSouth and the various arguments raised by MCI against it were not a part of the record of this proceeding, were not considered by us in rendering our Order, and shall not now be considered.

Tariff Terms and Conditions

BellSouth argues that we should reconsider our determination that tariff restrictions would only apply to the resale of grandfathered services, residential services, and Lifeline/Linkup services. BellSouth asserts that its tariff restrictions should apply to all resold services.

BellSouth argues that the Act and the FCC Order permit us to apply any reasonable terms and conditions to the resale of its services. BellSouth states that the FCC, in fact, approved a number of specific restrictions in its Order. BellSouth adds that only unreasonable or discriminatory conditions or restrictions were prohibited. As such, BellSouth argues that we should have allowed BellSouth's tariff restrictions to apply to its resold services. BellSouth argues that such restrictions must be reasonable and nondiscriminatory because we have approved them. BellSouth further argues that if a reseller finds a particular restriction to be unreasonable, the reseller would be free to challenge that provision before us.

BellSouth further argues that we are "throwing the baby out with the bathwater." BellSouth asserts that its tariffs contain numerous beneficial tariff restrictions that, under the Order, are eliminated. Such restrictions include restrictions on the use of the services for illegal purposes, and prohibitions on placing equipment on the line that may cause injury to BellSouth employees. BellSouth argues that these restrictions are appropriate and reasonable; therefore, these restrictions should have been retained.

Furthermore, BellSouth argues that the elimination of restrictions, terms, and conditions will affect both the price of the services and the competitive environment, as well. BellSouth argues that the price of services will certainly be affected, because many services are currently restricted for social reasons. BellSouth presents the example that residential lines are priced

much below business lines, and, usually, below cost. If cross-class selling restrictions are removed, the residential line could be sold to anyone, thereby foiling the purpose of the social pricing.

BellSouth also argues that removing the restrictions on resold services will impede effective competition. BellSouth asserts that it will still remain subject to service restrictions in its tariff, while resellers will have access to BellSouth services without similar restrictions. BellSouth argues that this will harm its ability to compete with the resellers. BellSouth, therefore, argues that the restrictions, terms, and conditions applicable to resold services under BellSouth's tariff are simply part of the resold service and should be viewed by us as such. Thus, when these services are resold, the same restrictions should apply to the reseller.

AT&T argues that BellSouth has already failed at the hearing, and fails again in its motion, to show that all of its tariff restrictions, terms, and conditions are reasonable. AT&T also argues that BellSouth's use of cross-class selling restrictions as an example of the reasonableness of all BellSouth's terms and conditions is irrelevant since cross-class selling restrictions have been retained. Furthermore, AT&T argues that BellSouth has presented no proof that its selling restrictions are reasonable or are based on social goals. AT&T argues that, in fact, most of BellSouth's terms and conditions are based solely on the economic welfare of BellSouth.

AT&T also disagrees with BellSouth's assertion that our decision to eliminate restrictions on resold services will harm BellSouth's ability to compete. AT&T argues that while BellSouth will be subject to restrictions in its own tariff, BellSouth can change its tariff whenever necessary. On the other hand, AT&T argues that if we chose to apply all of BellSouth's terms and conditions to resold services, BellSouth would have the ability to control competition.

MCI states that BellSouth appears to assert that all of its restrictions, terms, and conditions on services are presumptively reasonable. In making this assertion, MCI argues that BellSouth is improperly shifting the burden of proof to MCI and AT&T.

MCI argues that under the FCC rules, a LEC may only impose restrictions on services if it proves to us that the restriction is reasonable and nondiscriminatory. Under the FCC rules, MCI argues that the burden of proof is clearly on the LEC to prove that its restrictions are reasonable. MCI further asserts that BellSouth

offers no proof as to the reasonableness of its tariff restrictions; therefore, BellSouth's motion should be denied.

Decision

BellSouth has not presented any point of fact or law that we failed to consider in our decision. We addressed terms and conditions for resold services in depth on pages 56 through 60 of Order PSC-96-1579-FOF-TP. In its motion, BellSouth only reiterates arguments we have already addressed and upon which we have ruled.

Furthermore, we note that in considering the propriety of resale restrictions, we stated that the FCC had already determined that resale restrictions are presumptively unreasonable. Order at 57, citing FCC Order at ¶ 939. BellSouth has not raised any argument that would warrant shifting the burden of proof as to the reasonableness of BellSouth's restrictions. In addition, BellSouth presents no evidence that we failed to consider regarding the reasonableness of its tariff restrictions. We, therefore, decline to reconsider our decision regarding tariff restrictions on resold services.

Services Excluded from Resale

BellSouth argues that we should also reconsider our determination that BellSouth must offer for resale any services BellSouth offers at retail to end user customers who are not telecommunications carriers.

BellSouth argues that contract service arrangements (CSAs) are customer-specific contracts designed to respond to competitive actions. Under our order, BellSouth asserts that AT&T and MCI will be able to purchase the CSA and resell it at a lower price to the same customer for whom it was designed, thereby creating a competitive advantage for AT&T and MCI.

BellSouth cites to an Arbitrator's Report from AT&T's arbitration proceeding in Louisiana wherein the arbitrator found that CSAs are not telecommunications services subject to resale under the Act. BellSouth also cites to the Kentucky Commission's Order on arbitration with MCI wherein the Kentucky Commission found that while CSAs are subject to resale, they are to be resold at no additional discount. BellSouth now asks that this Commission choose either one of these two approaches and apply it to CSAs.

In addition, BellSouth asks that we reconsider our decision to require the resale of services grandfathered prior to the initiation of the arbitration proceedings and the Lifeline/Linkup

services. Regarding grandfathered services, BellSouth argues that competitors will be able to structure alternatives to the grandfathered services. Furthermore, BellSouth states that we can refuse to allow grandfathering if we find that grandfathering will impede competition. As for Lifeline/Linkup services, BellSouth asserts that it is more appropriate for BellSouth to sell the residential service to the ALEC and then let the new service provider apply to the National Exchange Carrier Association for the subsidy on the customer's behalf. To do otherwise, asserts BellSouth, would result in BellSouth subsidizing AT&T or MCI.

BellSouth also seeks clarification of our statement at page 42 of the Order regarding application of the wholesale discount to resale of short-term promotions. BellSouth argues that FCC Rule 51.613(a)(2) allows short-term promotions to be resold at the retail rate for the retail service involved in the promotion, less the wholesale discount.

AT&T responds by stating that BellSouth's argument on resale is almost exactly the same argument BellSouth previously presented, which we rejected in our Order. Thus, AT&T argues, this argument should be rejected.

AT&T also argues that requiring the resale of CSAs will prevent BellSouth from being able to push its competitors out of the market by pricing its CSAs below cost. Since the competitors cannot price below their own direct costs, BellSouth would be able to eliminate competition in any instance where its costs are below the wholesale tariff rates of the competitors. Thus, AT&T argues that resale of CSAs is the only way to prevent BellSouth from using predatory pricing.

AT&T further asserts that BellSouth's only support for its argument regarding Lifeline/Linkup services is Commissioner Deason's dissent on the issue. AT&T, however, suggests that the Commissioner's dissent only indicates a difference of opinion, rather than an error in our decision. As such, AT&T argues that BellSouth has not pointed out any fact overlooked or erroneous application of the law in our Order.

In addition, AT&T argues that there is no need for clarification of our statement regarding promotional offerings. AT&T argues that the FCC Rule cited by BellSouth does not preclude a competitor from purchasing a promotional offering at the retail rate.

MCI argues that BellSouth's assertions regarding resold services is a "hodgepodge" of issues. MCI argues, however, that

nothing in BellSouth's assertions indicates a point of fact or law that we have overlooked. MCI states that BellSouth's motion as it pertains to resold services is simply reargument. In addition, MCI states that the dissent of one Commissioner does not indicate an error in our decision, but merely a difference of opinion.

Furthermore, MCI states that BellSouth is only partially correct in its argument regarding clarification of our statement on promotional offerings. MCI argues that a competitor can choose to purchase the underlying service at the normal discount from the retail price. MCI also argues that a competitor can purchase a promotion for resale at the full promotional price. MCI adds that while the FCC has exempted short-term promotions from the wholesale pricing provisions of the Act, such promotions are still subject to the resale requirement of Section 251 (b)(1) of the Act.

Decision

Each issue raised by BellSouth regarding services excluded from resale is addressed in our Order. The exclusion of grandfathered services is addressed on pages 39 through 41 of the Order. The exclusion of CSAs is addressed on page 41, and promotions are addressed on page 42. The exclusion of Lifeline/Linkup services is addressed on pages 43 through 44 of the Order. BellSouth has identified no point of fact or law which we failed to consider in rendering our Order. Therefore, we decline to reconsider our decision regarding the exclusion of these services.

BellSouth also requested clarification of our statement on the application of the wholesale discount to promotional offers. The statement in question is found on page 42 of the Order. Therein we stated, "Short-term promotions, however, those in effect for no more than 90 days, are not subject to the wholesale discount." This statement is in agreement with FCC Rule 61.613 (a)(2). We shall, however, clarify that the wholesale discount may be applied only to the tariffed rate, not to the promotional rate.

Pricing of Channelization and Common and Dedicated Transport

BellSouth also seeks reconsideration or clarification of our ruling on channelization, common transport, and dedicated transport.

BellSouth argues that we should specify that the prices for channelization apply only to the DS1 voice-grade system, and that the phrase "channelization system" be revised to "unbundled loop channelization system (DS to VG) - per system."

BellSouth argues that its cost studies only supported TSLRIC rates for the DS1 to voice grade system. BellSouth asserts, however, that the word channelization has often been used in a generic sense which sometimes leads to confusion. BellSouth, therefore, argues that the precise use of the word "channelization" should be clarified.

BellSouth further argues that since its cost studies only supported a rate for the DS1 to voice grade channelization system, it has assumed that is what we approved. BellSouth, therefore, seeks clarification of what we approved.

BellSouth also seeks reconsideration of the price for certain parts of common and dedicated transport. BellSouth argues that the rate set by us of $1.60 per mile is not discussed within the body of the Order. BellSouth assumes that this rate is for the DS1 level because we set facility termination and the non-recurring charge at the rate in the tariff for the DS1 level. BellSouth argues, however, that it did not supply a cost study for the mileage element, but instead, proposed a tariff rate of $16.75 per mile. Thus, BellSouth requests that we reconsider our decision on this issue and institute a rate of $16.75 per mile as the correct mileage rate for dedicated transport. BellSouth adds that it would also like clarification that the rates for dedicated transport are for DS1 only.

In addition, BellSouth argues for clarification of our determination of the $0.0005 per termination rate under dedicated transport. BellSouth argues that the cost and rate per access minute structure for dedicated transport do not include a rate per termination. However, the cost and rate structure for common transport does support such a rate. BellSouth argues that there is, nevertheless, no such rate included in our Order for common transport. BellSouth asserts its belief that the rate was set in error for dedicated transport when, actually, it should have been set for common transport. Thus, BellSouth seeks clarification of whether the rate applies to common transport or dedicated transport.

AT&T states that it does not object to the adoption of the term "Unbundled Loop Channelization System (DS1 to VG) - per system."

With respect to the rate for portions of common and dedicated transport, AT&T argues that the $1.60 rate is amply supported in the record by Exhibit 10 to Wayne Ellison's testimony. AT&T also argues that the rate is supported by BellSouth's Local Transport Restructure cost study which establishes that it is substantially

in excess of BellSouth's cost for dedicated transport. The cost information, AT&T states, is found in the study in Exhibit 17. AT&T concludes that BellSouth has not brought to the Commission's attention any matter that we overlooked or upon which we erred.

AT&T supports BellSouth's request for clarification on the $.0005 per termination rate listed under dedicated transport.

MCI states that it does not oppose BellSouth's request for clarification on this issue. MCI agrees, however, with us that tariffed rates are not an appropriate basis for pricing unbundled network elements. Further, MCI adds that the $1.60 per mile rate set by us is supported by evidence presented by AT&T's witness Ellison.

Decision

Upon consideration, we hereby clarify that the prices we ordered for the channelization system apply to the DS1 level to voice grade system. We also clarify that the channelization element description means the unbundled loop channelization system (DS1 to VG)-per system.

The $0.0005 termination rate for common transport was inadvertently placed under dedicated transport, as shown on page 115 of the Order. Therefore, the Order shall be amended to reflect that the $0.0005 termination rate applies to termination of common transport instead of dedicated transport. We note that there is no rate element for termination of dedicated transport.

We do not, however, believe that the $1.60 per mile rate for dedicated transport should be changed to the $16.75 rate proposed by BellSouth. The $1.60 rate is supported by sufficient evidence in the record, which we considered at the time we made our decision. BellSouth has not presented a legal or factual basis for us to reconsider our decision on this rate.

PIC Changes

BellSouth also seeks clarification of our determination that when BellSouth is contacted by a customer of another LEC for the purpose of changing his primary interexchange carrier (PIC), BellSouth must direct the customer to his LEC and give the customer the contact number for the local carrier.

BellSouth argues that it currently accepts PIC changes electronically from IXCs. BellSouth asserts that the Order seems to prohibit it from accepting and processing such requests,

including those from customers of local providers other than AT&T and MCI. BellSouth further asserts that some ALECs who resell BellSouth's local exchange service may direct interexchange carriers to BellSouth's electronic system to process PIC changes.

BellSouth argues that the Order should be clarified to allow BellSouth to process PIC changes if the customer's local provider has directed BellSouth to process such changes. BellSouth states that this will allow it to meet the needs of ALECs, other than AT&T and MCI. BellSouth asserts that it will implement procedures to reject PIC changes received directly from IXCs through its system for all local customers of AT&T and MCI. BellSouth would still refer customers of AT&T or MCI to the appropriate carrier.

BellSouth adds that it also seeks reconsideration of our determination that BellSouth must provide any non-BellSouth end user who calls BellSouth's business office to request a PIC change with the contact number of their local carrier. BellSouth argues that it should not be required to maintain the contact numbers for every local service provider's customer service office. BellSouth argues that to require it to do so would be unduly burdensome on BellSouth's customer representatives and would increase administrative costs. BellSouth states that it should only be required to direct the customer to contact his local exchange carrier.

AT&T states that, in view of BellSouth's commitment to implement the Order's provisions on PIC changes for AT&T's customers, AT&T does not object to the clarification requested by BellSouth.

AT&T does, however, object to BellSouth's request that we reconsider our determination that BellSouth must provide the contact numbers for other carriers when customers of those other carriers contact BellSouth. AT&T argues that maintaining such a list should not be unduly burdensome because the list would only be for carriers that do not choose to use BellSouth's PIC change system. Furthermore, other carriers maintain such lists with very little problem. AT&T argues that BellSouth will be able to recover any measurable incremental cost from maintaining such a list through the rates it charges for its services. Thus, AT&T argues that BellSouth has identified no error or oversight in our decision.

MCI also does not object to BellSouth's request for clarification regarding its ability to accept and process PIC change requests through its electronic system in those instances where the ALEC directs BellSouth to process such requests. MCI

states that it would be appropriate for the Order to further state that BellSouth shall not process PIC changes at the direction of an ALEC unless BellSouth has also been directed to do so by the customer's local service provider. MCI asserts that this additional requirement would address our concern that the responsibility for PIC change requests resides with the local service provider.

MCI disagrees, however, with BellSouth's request for reconsideration of our requirement that BellSouth maintain a list of the contact numbers other carriers. MCI simply states that BellSouth has presented no basis for this request.

Decision

We find it appropriate to clarify our intent regarding PIC changes. Upon review of BellSouth's proposed clarification and in view of AT&T's and MCI's concurrence with that proposed clarification, we find BellSouth's proposed clarification appropriate. Thus, we hereby adopt BellSouth's proposed clarification to the process of handling PIC change requests. We believe that it is appropriate for BellSouth to be allowed to process PIC changes if the customer's local provider has directed BellSouth to process such changes.

As for BellSouth's request for reconsideration associated with directing customer inquiries, that request shall be denied since BellSouth has not meet the standards for reconsideration. We shall, however, clarify our Order to indicate that BellSouth must only direct customer inquiries for those ALECs that provide BellSouth with contact information. For ALECs that do not provide the contact information to BellSouth, BellSouth shall simply direct the customer to contact his or her local exchange company. While we do not believe it is unduly burdensome to require BellSouth to provide the contact numbers for other carriers, we do believe that other carriers should be responsible for providing BellSouth with the contact information.

CABS-formatted billing

BellSouth asks that we reconsider the 120 day requirement for providing CABS-formatted billing for both resale and unbundled elements. BellSouth asks that we extend that time requirement to 180 days.

BellSouth asserts that, currently, its CABS system is not able to bill for local exchange services. While BellSouth's Customer Records Information System (CRIS) is capable of billing local

exchange services, BellSouth asserts that the system is not yet able to issue bills in the CABS format. In order to fulfill the requirement for CABS-formatted billing, BellSouth also asserts that it must analyze the outputs of its CRIS system, map data files, program system changes, and conduct testing to ensure system accuracy. BellSouth argues that this cannot be accomplished in 120 days from the issuance of the Order. Thus, BellSouth requests that we extend the time period to 180 from the issuance of the Order.

AT&T states that it is willing to work with BellSouth towards interconnection; thus, it does not object to the extension of time.

MCI takes no position on BellSouth's request for an extension, since MCI had previously agreed that 180 days was the appropriate time requirement.

Decision

In view of the parties' apparent agreement, we believe that an extension of the time requirement for implementing CABS-formatted billing is appropriate. Thus, CABS-formatted billing shall be implemented within 180 days from the issuance of Order No. PSC-96-1579-FOF-TP.

We note, however, that BellSouth does not present any point of fact or law that we failed to consider, or any error in our Order. While an extension is appropriate, such a request would have been more appropriately made in a petition for waiver or motion for extension of time.

Access to customer records

BellSouth also asks that we reconsider our decision requiring BellSouth to provide unrestricted, direct, on-line access to all of its customer records before BellSouth has implemented "roaming" protection.

BellSouth states that its customer records and resellers' records are currently within the same database. BellSouth states that it does not have any means in place to prevent access to individual records in any part of that database. BellSouth argues that without knowing which customer's records AT&T or MCI want to review and whether that customer has authorized such review, BellSouth has no way to restrict review of the customer's record.

BellSouth further asserts that the FCC has recognized such unlimited access may jeopardize customer privacy. BellSouth adds that it is continuing to look for ways to provide the necessary

access to individual records without disturbing the confidentiality of other records in the database.

BellSouth, therefore, recommends that, until protections can be implemented and the problems with direct, on-line access are resolved, one of the following alternatives should be implemented. First, for customers who are unable to locate their bills, BellSouth recommends a three-way call to the BellSouth service center, or a faxed copy of the record, either of which can be done upon verbal authorization from the customer. BellSouth also suggests a "switch as is" process, so that the customer's current service can be switched without the customer having to specify the exact services it is currently taking.

BellSouth argues that if we do not change our ruling on access to customer records, the potential for slamming will grow tremendously. BellSouth further asserts that a blanket letter of authorization (LOA) is not sufficient to remedy the threat. BellSouth argues that LOAs are used now and slamming remains a problem. BellSouth adds that this is an issue of customer privacy and convenience. Thus, BellSouth requests that we find that a blanket LOA is not sufficient to gain access to all customer records. BellSouth states that it is willing to provide the necessary information after the customer has authorized the request.

In the alternative, BellSouth asks that if a blanket LOA is allowed, that we implement detailed rules governing slamming and unauthorized records access. BellSouth states that such rules should also provide for serious consequences for any violations. BellSouth believes that such rules may minimize the possibility of slamming or unauthorized records access.

AT&T responds by stating that it is also concerned about customer privacy. AT&T argues, however, that BellSouth's customer privacy arguments are the same ones addressed and rejected by us. AT&T adds that BellSouth appears to be attempting to substitute inefficient manual methods for ordering and preordering that could deter competition.

AT&T further asserts that BellSouth has not presented any argument or fact that we overlooked or failed to consider in our previous Order. Thus, AT&T requests that BellSouth's motion be denied.

MCI states that BellSouth's concerns about "roaming" were explicitly discussed in our Order. MCI adds that both it and AT&T were directed to work with BellSouth to develop an interface that

will discourage roaming. MCI argues that our Order also addressed customer privacy concerns and the use of a blanket LOA.

MCI further asserts that neither of the alternatives presented by BellSouth was discussed at the hearing or suggested in BellSouth's brief. Thus, MCI argues that BellSouth's motion should be denied.

Decision

Access to customer service records was discussed in full at pages 79 through 81 of our Order. Therein, we considered BellSouth's customer privacy argument, as well as the parties' arguments regarding blanket LOAs. Our decision is supported by the evidence in the record. BellSouth has failed to identify any point of fact or law upon which we erred or which we failed to consider.

Furthermore, the alternatives presented by BellSouth were not previously advanced at the hearing or in its brief. Presenting new arguments on an issue which has already been fully addressed is inappropriate. We, therefore, decline to reconsider our ruling on this issue.

We must emphasize, however, our concerns regarding the potential for slamming in this newly competitive environment. The companies should note that not only does Section 222 of the Act state that customer information should be used only for certain specified purposes, Section 258 of the Act outlines stringent penalties for slamming. In fact, Section 258(b) states that a carrier that violates the verification procedures and collects charges for toll or exchange service

> shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the [Federal Communications] Commission may prescribe.

The Act further states that these actions are in addition to any other remedies available at law. We also remind the companies that we will continue to enforce our own rules on slamming to their fullest extent.

Pricing-General

BellSouth asks that it be allowed to defer filing TSLRIC cost studies for the elements for which we set interim rates and for

nonrecurring costs. BellSouth states that the Eighth Circuit is currently considering the validity of the pricing standard chosen by the FCC. In an effort to prevent relitigation of this issue, BellSouth recommends that it be allowed to defer filing of its TSLRIC studies and that we defer our decision to set permanent rates. BellSouth suggests that this can be accomplished by making all the rates that are set interim until the proper pricing standards have been established. BellSouth adds that it believes that such interim rates should be subject to true-up.

AT&T states that it does not object to having the rates set in this proceeding be declared interim, as long as we state that we will allow AT&T to again address all the rates that are established when the controversy is resolved.

AT&T argues that BellSouth's request is a "smokescreen" attempt to hide the anti-competitive effect of high interconnection costs. AT&T asserts that a true-up could not correct the effects of even interim prices set at inefficient levels. AT&T adds that it does believe that prices will be set at efficient levels, but that it wants to remind us of the effects of inefficient pricing.

MCI argues that BellSouth's request has two problems. MCI argues that interim rates create uncertainty and risk for new entrants, thus a chilling effect on market entry would take place. MCI also argues that our intent to establish permanent rates must be clear in order to obtain timely and complete judicial review.

MCI also argues that BellSouth should not be allowed to defer filing of its TSLRIC cost studies. MCI asserts that BellSouth must file these studies so that MCI can make sure that it will not overpay for any function for any extended length of time.

Decision

We considered and addressed the need for BellSouth to file TSLRIC studies at pages 32 through 33, and page 101 of the Order. We also determined that TSLRIC was the proper costing methodology for determining permanent rates; thus, for those elements that BellSouth had not provided a TSLRIC study, we required BellSouth to file a TSLRIC study within 60 days of the issuance of the Order. BellSouth has not identified any point of fact or law that we overlooked or failed to consider. We, therefore, decline to revisit our decision to set permanent rates. In addition, BellSouth shall not be allowed to defer filing its TSLRIC studies. BellSouth must file the studies as set forth in Order PSC-96-1579-FOF-TP.

Local Switching

We note that BellSouth, at Footnote 3 of its Motion for Reconsideration, contests our definition of local switching. AT&T addressed this footnoted comment in its Response.

We agree with AT&T that our definition is supported by the FCC and the evidence contained in the record of this proceeding. We shall not revisit this issue.

II. AT&T's Cross Motion for Reconsideration

AT&T argues that there are certain errors and inconsistencies in our decisions which clearly result from points we overlooked or failed to consider and must be corrected. Specifically, AT&T addresses our determination of wholesale discounts for residential and business services and rates for unbundled network elements.

A. Wholesale Discounts

The Order established a business wholesale discount of 16.81% and a wholesale residential discount of 21.83%. AT&T requests that we reconsider our decision regarding wholesale discounts and establish an additional discount rate that excludes operator services expenses from the wholesale rate for those situations in which AT&T and MCI provide their own operator services.

AT&T states that in our analysis of the avoided cost standard we determined that the cost for operator services would not be excluded from the calculation of the avoided cost discounts. It appears, according to AT&T, that our finding is based on Witness Reid's testimony that AT&T and MCI will continue to secure operator services from BellSouth under resale.

AT&T argues that when AT&T provides its own operator services and does not use BellSouth's operator services, none of BellSouth's expenses for operator services can be attributed to the local service provided to AT&T. According to AT&T, BellSouth will actually avoid these expenses. AT&T argues that this actual avoidance of operator services expenses must, under our articulated standard for setting the resale discount, be factored into the calculation of avoided costs. In this case, AT&T argues, the retail service provided by BellSouth will be local service and will not include any operator services. Thus, AT&T concludes that requiring it to pay for even a portion of BellSouth's operator services expenses in those instances where no operator services are being performed by BellSouth is inconsistent with our avoided cost

standard and BellSouth's own description of the relationship between the retail service and wholesale price.

AT&T also argues that the Order seems to assume that if AT&T purchases basic local service from BellSouth at a discount that, somehow, operator services are included in the package. This assumption, AT&T argues, is incorrect. According to AT&T, we overlooked the fact that operator services are a discrete service separate and apart from local or other services.

BellSouth argues that AT&T's Motion simply raises again the inclusion of operator services in the calculation of the avoided discount and the establishment of prices for unbundled elements based on BellSouth's cost studies.

BellSouth argues that AT&T's rationale is defeated by its own argument. BellSouth asserts that AT&T describes operator services as:

> ...a discrete service separate and apart from local or other services. This service has its own discrete tariffed terms and rates and recovers its costs from those rates.

BellSouth argues that by AT&T's own admission, the retail tariff rates for local services other than operator services do not recover the costs of operator services. According to BellSouth, if this is the case, there can be no rationale on which to base any contention that AT&T should receive an increased discount on these other retail local services when AT&T provides its own operator services. When AT&T provides its own operators, it is essentially taking over a competitive line of business. BellSouth states that AT&T will be receiving revenues for the provision of operator services that will offset its operator services expenses. Thus, BellSouth concludes, there would be no other "avoided" costs to be removed from the rates for retail services that remain.

BellSouth further argues that our decision is supported by the Act. Specifically, BellSouth cites Section 252(d)(3) which states that a state commission shall determine wholesale rates on the basis of retail rates charged to subscribers excluding costs that will be avoided by the local exchange carrier.

Decision

Essentially, AT&T argues that we should establish an additional discount rate that excludes operator services expenses from the wholesale rate for those situations in which AT&T and MCI

provide their own operator services. No matter how this argument is presented here, it is a reiteration of what AT&T and MCI originally argued and what we rejected in our Order. We stated:

> We are persuaded that call completion and number services accounts should not be 100% avoided by BellSouth, even if AT&T and MCI will provide their own operator services. The evidence is convincing that even in a resale environment, BellSouth will continue to perform these functions; therefore, these costs will not be avoided as a result of an ALEC reselling a LEC's retail service. As we stated previously, we do not interpret Section 251(c)(4) of the Act to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services, as AT&T and MCI have requested. The Act only requires that any retail services offered to customers be made available for resale. If AT&T and MCI want to purchase pieces of services, they must buy unbundled elements and package these elements in a way to meet their needs.

Order No. PSC-96-1579-FOF-TP at p. 55.

AT&T's assertion that we overlooked the fact that operator services are a discrete service separate and apart from local or other services is without merit. AT&T simply disagrees with us on what is included in basic local service.

Based on the foregoing, we hereby deny AT&T's Motion for Reconsideration on this point. AT&T has not raised a point of fact or law which we failed to consider when rendering our Order in the first instance.

B. Pricing of Unbundled Elements

AT&T states that we established prices based on BellSouth's cost studies submitted in this proceeding and that AT&T's witness Ellison made numerous criticisms of the BellSouth cost studies. AT&T argues that although we stated that we would consider AT&T's adjustments, we failed to do so; thus, we should reconsider our decision.

BellSouth argues that AT&T's motion simply raises again the establishment of prices for unbundled elements based on BellSouth's cost studies. BellSouth points out that during the hearing AT&T

abandoned rates based on its originally proposed adjustments in favor of rates based solely on the Hatfield model. Now, BellSouth argues, AT&T wishes to go back to its original proposal.

We note that AT&T does not refer to the record in this proceeding to show that we failed to consider the problems which it argues exist. Rather, in those instances in which AT&T does provide a reference, it refers to the deposition of Daonne Caldwell taken in Louisiana. The deposition was taken on November 21, 1996, which was after the conclusion of the hearing in this docket and is not a part of this record. With respect to AT&T's criticisms that were a part of this record, we noted that "Generally, both AT&T and MCI criticize BellSouth's TSLRIC cost studies; AT&T, however, cites several specific concerns." In fact, we found:

> Although AT&T is recommending Hatfield based rates, we believe AT&T's suggested adjustments to BellSouth's cost study results are worth noting and we will consider them in setting rates.

Order at p. 30.

For example, AT&T argued that BellSouth's cost of money assumption was too high. We considered the evidence on this argument and held:

> We believe the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the other assumptions appear reasonable. The rates we are setting take into consideration that BellSouth's cost of money assumption may be at the upper range of reasonableness.

Order at p. 33.

As illustrated above, AT&T's assertion that we described AT&T's criticisms, but did not make any adjustments to the costs is incorrect. Further, even if we had decided not to make any adjustments based on AT&T's criticisms, we would not be required to reconsider our decision for that reason alone. We note that AT&T expected all rates to be set at cost. However, our rates were based on TSLRIC cost and included contribution to joint and common costs. We agree with BellSouth that we were not required to set rates at cost.

Nonrecurring Cost Studies

AT&T argues that there are several problems with BellSouth's nonrecurring cost study. First, BellSouth's nonrecurring cost study assumed heavy manual intervention in the service order process for such activities as engineering circuits and field work. AT&T argues that in light of our decision to require BellSouth to provide real-time interactive electronic interfaces for service ordering, preordering, trouble reporting, customer usage data transfer and local account maintenance, BellSouth's costs are overstated. AT&T concludes that because the heavy manual intervention, assumed by BellSouth, will be obviated by the electronic interfaces, the costs for service ordering must be reduced. This, AT&T argues, will more accurately reflect the environment in which BellSouth will be operating.

BellSouth argues in response that the existence vel non of electronic interfaces has nothing to do with the need for the manual labor engineering circuits and field work. These are distinct and separate. Manual intervention is required to coordinate cutovers, as well as for the coordination of the loop and port connection. Therefore, the service ordering costs are not overstated.

Second, BellSouth's nonrecurring cost study reflects field work in every instance. In support of its argument, AT&T quotes BellSouth's Motion for Reconsideration:

> If MCI or AT&T wins this customer, and chooses to resell the service, then only the billing records are changed so that the service is billed to MCI or AT&T, instead of the end-user. No physical work is done to the customer's service. By way of comparison, without modification, the Commission's Order will allow MCI and AT&T to simply advise BellSouth that it has won the existing customer, and to request that the service be provided and billed to it at the at the unbundled rates for the loop and port. The same service results. (emphasis supplied)

AT&T states that, as admitted by BellSouth, when a UNE platform is purchased from BellSouth, the NRCs in the study are overstated. AT&T asserts that we did not consider this cost overstatement when setting rates. Therefore, according to AT&T, we must establish separate rates to reflect installations involving customer

transfers and installations requiring field work and those where no field work is necessary.

BellSouth argues that AT&T has lifted the sentence "no physical work is done to the customer's service" out of context. BellSouth asserts that its "statement explicitly and clearly referred to the situation where the loop and port are not unbundled (i.e., remain a retail service) and the billing records are simply transferred. BellSouth states that nonrecurring cost studies specifically establish the cost of providing unbundled network elements, not existing retail services.

Third, BellSouth's nonrecurring cost study assumes that there would be no combinations of loops and ports. Thus, since we determined that loops and ports may be combined, it appears that duplicate service order processing charges are included in the combined NRC for ports and loops. AT&T argues, therefore, that we must correct this duplication which causes BellSouth's NRCs to be overstated. BellSouth did not respond to this point in its response.

Fourth, BellSouth's nonrecurring cost study assumes that each loop ordered by AT&T will require a design layout record (DLR). AT&T argues that this function adds significantly to the cost of a loop. AT&T argues that it has not requested engineered circuits, therefore, BellSouth's incorrect assumption that each loop requires a DLR causes the nonrecurring loop cost to be significantly overstated. In making this assertion, AT&T cites the deposition of Daonne Caldwell taken in Louisiana (transcript pp. 90-94 dated 11/2/96). BellSouth did not respond to this point in its response.

Decision

Upon consideration, AT&T's Cross Motion for Reconsideration on nonrecurring charges is hereby granted in part and denied in part.

We have reviewed the record and AT&T's brief. We find that no party raised an argument with respect to the effect of manual intervention on the cost studies. Therefore, we deny AT&T's Motion on this point since AT&T has failed to meet the Diamond Cab standard.

Regarding AT&T's assertion that we must establish separate rates to reflect installations involving customer transfers and installations requiring field work and those where no field work is necessary, we find that AT&T has raised this argument for the first time in its Motion for Reconsideration. Therefore, we deny AT&T's

Motion on this point. AT&T has failed to meet the Diamond Cab standard on this point also.

AT&T's Motion shall be granted with respect to DLRs, however. BellSouth's witness Scheye stated under cross-examination that BellSouth would consider offering different NRCs for different situations. The cost studies for NRCs by BellSouth appear to include costs for functions that may not be needed by AT&T. The DLR is an example. If a DLR, or other function is not needed by AT&T, then the cost should not be included in the total NRC. Therefore, we will grant reconsideration of our decision on this point. We order BellSouth not to include DLRs if AT&T's request for a loop does not require a DLR. Furthermore, we modify our Order to require BellSouth not to include DLRs if MCI's request for a loop does not require a DLR.

Another reason that we shall grant AT&T's Motion as it pertains to DLRs is that we set a NRC for each network element on an individual or stand-alone basis. We did not, however, set NRCs when multiple network elements are combined. AT&T witness Ellison testified:

> Although BellSouth provided non-recurring cost estimates, the BellSouth studies assume that unbundled elements will be ordered on an individual, stand-alone basis. This approach is not consistent with the manner in which unbundled elements are likely to be purchased. The Commission should therefore determine those network elements BellSouth must provide and, thereafter, require BellSouth to submit new non-recurring cost estimates structured to reflect the various single element and combination element ordering and provisioning processes actually required.

Based on the foregoing, we hereby order BellSouth to provide NRCs that do 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. Furthermore, we amend our Order with respect to MCI to maintain consistency, and order BellSouth to provide NRCs that do not include duplicate charges or charges for functions or activities that MCI does not need when two or more network elements are combined in a single order. We do, however, believe that requiring BellSouth to submit cost studies for every combination of network elements would be burdensome or unnecessary. The parties must, therefore, work together to establish the NRC in situations where the ALEC is ordering multiple network elements. If the parties cannot agree to the total NRC when ordering multiple network elements, then either party may

petition us to settle the disputed charge or charges. Furthermore, BellSouth shall notify us when a rate is set that excludes duplicated or avoided charges. The report shall be filed within 30 days of the rate being established and must specify the elements being combined and the NRC for that combination.

BellSouth's Recurring Monthly Cost Studies

AT&T argues that BellSouth's recurring monthly cost studies assume a main distribution frame termination charge for the loop and again for the port based on an incorrect assumption that there will be no loop/port combinations. Again, citing Caldwell's deposition in Louisiana, AT&T asserts that, with a combined loop and port, only one main frame connection and one protector would be included. Also, when a loop is served by an integrated digital loop carrier, the loop central office terminal associated with unintegrated digital loop carrier would not be included.

BellSouth argues that AT&T's claim that the main distribution frame cost and the central voice terminal cost are duplicated is unfounded. BellSouth asserts that it calculated the costs of providing unbundled network elements and that costs for the main distribution frame appear in both the loop and port studies. BellSouth argues that the unbundled loop must terminate on the main frame so that it can be cross connected to the ALEC's switch. According to BellSouth, the port must also be on the main frame so that it can be cross connected to the ALEC's loop. BellSouth argues that when a BellSouth loop and a BellSouth port are both provided to the ALEC to serve a particular customer, it must be priced as the resale of an existing retail service, not as unbundled network elements.

BellSouth further argues that even if we find on reconsideration that an ALEC can purchase the unbundled loops and port at unbundled network element prices, there will still be situations where a facilities-based carrier will order the loop or the port, but not both. BellSouth concludes in that situation the cost of the main distribution frame must be included in both network elements.

BellSouth argues that AT&T's claim that it is inappropriate to include the cost of a central office terminal when the loop is served by an integrated digital loop carrier is also unfounded. According to BellSouth, the unbundled local loop must terminate on the main distribution frame at the voice grade level in order to connect the loops to the ALEC's switch. Further, a central office terminal is required for loops that are provisioned over an integrated digital loop carrier in order to convert the loops to

voice grade level. In addition, any ALEC who purchases a loop from BellSouth that is served over a digital loop carrier will require the central office terminal.

Decision

Based on the foregoing, we find that the prices we set for UNEs are appropriate on an individual basis. However, when two or more UNEs are combined, AT&T or MCI may be paying duplicate charges. In the example of combining a loop and port, we believe it is inappropriate for an AT&T or MCI to incur duplicate mainframe connection and protector charges. Therefore, we shall reconsider our decision on this point and require BellSouth to remove all duplicate charges when combinations of network elements are ordered. In order to be consistent, we also order BellSouth to provide recurring charges that do not include duplicate charges for functions or activities that MCI does not need when two or more network elements are combined in a single order.

Requiring BellSouth to submit cost studies for every combination of network elements would be burdensome or unnecessary. Therefore, the parties must work together to establish the recurring charge in situations where the ALEC is ordering multiple network elements. If the parties cannot agree to the recurring charge when ordering multiple network elements, then either party may petition us to settle the disputed charge or charges. Further, we hereby order BellSouth to notify us when a rate is set that excludes duplicated charges. The report shall be filed within 30 days of the rate being established and must specify the elements being combined and the recurring charge for that particular combination.

BellSouth's Local Switching Cost Study

AT&T asserts that BellSouth's local switching cost study overstates local switching costs. AT&T argues that this is particularly true with respect to the additional charge included in the local switching rate for the first minute. AT&T states that included in BellSouth's switching cost study is an "expense per message charge." AT&T argues that this charge significantly increases the price of the first minute additive. AT&T points to Caldwell's deposition transcript wherein she states that the per message charge is not an appropriate TSLRIC charge and that it was removed from BellSouth's Louisiana study. While this charge appears small, argues AT&T, its impact is very large because of the total number of minutes that will be subject to the charge. The local switching rate must, therefore, be corrected to more accurately reflect BellSouth's costs.

In response, BellSouth argues that under the Act, we have the freedom to set prices based on costs; we are not required to set prices at cost. BellSouth asserts that indeed prices should be set to cover not only incremental costs, but also to provide joint and common costs. Thus, BellSouth concludes, AT&T's assertion that we did not set the price for local switching at cost is irrelevant and does not provide the basis for reconsideration.

Decision

Based on the foregoing, we shall not reconsider our decision on this point. Our decision was based on the evidence in the record. AT&T did not provide evidence for our consideration in this proceeding to refute BellSouth's cost study for this element. AT&T is attempting to raise a new argument based upon a deposition transcript that is not part of this record. Therefore, AT&T has failed to raise a point of fact or law that we failed to consider in rendering our Order in the first instance.

Exhibit No. 72

Finally, AT&T argues with respect to the loop cost study, that we overlooked Exhibit No. 72 in our deliberations. Exhibit 72 is a Commission Staff Audit Report that examines BellSouth's cost studies. According to the report, the total monthly recurring cost, based on BellSouth's cost studies, for an ESSX loop is $5.68. This, argues AT&T, is significantly below BellSouth's stated loop costs in this proceeding. AT&T argues that Exhibit 72 is particularly significant in that BellSouth's witness Milner stated during cross examination that there was no significant technical difference between a single-line residential loop and an ESSX loop. AT&T concludes that the dramatic differences between the two studies regarding the same facility, the loop, indicate that BellSouth's TSLRIC loop cost study in this proceeding badly overstates its loop costs and cannot be relied upon to establish permanent rates. AT&T asserts that to conclude otherwise would indicate that BellSouth has entered into a competitive contract service arrangement at rates substantially below its actual costs.

BellSouth asserts that AT&T is arguing that either BellSouth's loop cost study overstated costs or BellSouth entered into a contract service arrangement. BellSouth argues that neither of these claims are valid since Exhibit 72 shows that BellSouth's recurring and nonrecurring costs were covered by recurring and nonrecurring revenues. BellSouth asserts that while it is true that there is no technical difference between a single-line residential loop and an ESSX loop, there are other substantial differences between the two. According to BellSouth, the major

difference is the average length of each loop. ESSX service is a distance sensitive offering; ESSX customers tend to be located closer to the central office than the average residential customer. This, BellSouth states, lessens the cost of each ESSX loop.

Decision

Based on the foregoing, we decline to reconsider our decision on BellSouth's unbundled loop rates. We note that we did consider Exhibit 72 and set a rate based on all the evidence in the record. We note that the ESSX costs in Exhibit 72 cannot be identified since the cost study to arrive at those costs was not entered into the record.

III. AMENDMENT OF PART V.E. OF THE ORDER

In Part V.E. of Order No. PSC-96-1579-FOF-TP, we ordered BellSouth to provide real-time and interactive access via electronic interfaces as requested by AT&T and MCI to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer and local account maintenance. However, the following language, which reflects our decision, was inadvertently omitted:

> If any of the processes require additional capabilities, BellSouth shall develop the additional capabilities by January 1, 1997. If BellSouth cannot meet that deadline, BellSouth shall file a report with the Commission that outlines why it cannot meet the deadline, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. BellSouth, AT&T and MCI shall also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. These electronic interfaces shall conform to industry standards where such standards exist or are developed.
>
> BellSouth shall not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the customer service records (CSRs). MCI and AT&T shall issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing CSRs. Further, BellSouth shall develop a real-time operational interface to deliver CSRs to ALECs, and the interface shall only

provide the customer information necessary for MCI and AT&T to provide telecommunications service.

In view of this omission, Part V.E. of Order No. PSC-96-1579-FOF-TP is hereby amended to include the foregoing language.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc.'s Motion for Reconsideration is denied. It is further

ORDERED that our decisions set forth in Order No. PSC-96-1579-FOF-TP regarding the description of the channelization element and the prices for the channelization system are clarified as set forth in the body of this Order. It is further

ORDERED that our decisions set forth in Order No. PSC-96-1579-FOF-TP regarding PIC change requests and the forwarding of customer inquiries are clarified as set forth in the body of this Order. It is further

ORDERED that our decision set forth in Order No. PSC-96-1579-FOF-TP regarding the application of the wholesale discount to short-term promotions is clarified as set forth in the body of this Order. It is further

ORDERED that BellSouth Telecommunications, Inc.'s request for an extension of time to provide CABS-formatted billing within 180 days of the issuance of Order No. PSC-96-1579-FOF-TP is granted. It is further

ORDERED that Order No. PSC-96-1579-FOF-TP is amended to reflect that the $0.0005 termination rate set forth on page 115 of the Order applies to common transport rather than to dedicated transport. It is further

ORDERED that AT&T Communications of the Southern States' Cross Motion for Reconsideration is granted in part regarding duplicate nonrecurring and recurring charges, and design layout records as set forth in body of this Order. It is further

ORDERED that AT&T Communications of the Southern States' Cross Motion for Reconsideration is denied in all other respects. It is further

ORDERED that BellSouth Telecommunications, Inc. shall notify the Commission within 30 days when a rate is set that excludes duplicated or avoided charges. It is further

ORDERED that the reconsideration of our decision on nonrecurring and recurring charges, and design layout records shall also apply to MCI Telecommunications Corporation. It is further

ORDERED that Section V.E. of Order No. PSC-96-1579-FOF-TP is amended to include the language identified in the body of this Order. It is further

ORDERED that these docket shall remain open until the parties have filed their signed arbitration agreement, and we have completed our review of BellSouth Telecommunications, Inc.'s cost studies.

By ORDER of the Florida Public Service Commission, this 19th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

BC

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 judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).