BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by AT&T Communications of the Southern States, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960833-TP ORDER NO. PSC-97-0600-FOF-TP ISSUED: May 27, 1997

The following Commissioners participated in the disposition of this matter:

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

ORDER ON AGREEMENT BETWEEN AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC.

BY THE COMMISSION:

I. BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC § 151 et. seq., provides for the development of competitive markets in the telecommunications industry. Section 251 of the Act concerns interconnection with the incumbent local exchange carrier, and Section 252 sets forth the procedures for negotiation, arbitration, and approval of agreements.

Section 252(b) addresses agreements established by compulsory arbitration. Section 252(b)(1) states:

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

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> party to the negotiation may petition a State commission to arbitrate any open issues.

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

By letter dated March 4, 1996, AT&T on behalf of its subsidiaries providing telecommunications services in Florida, requested that BellSouth begin good faith negotiations under Section 252 of the Act. On July 17, 1996 AT&T filed its request for arbitration pursuant to 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-PCO-TP, issued August 9, 1996, the joint motion for consolidation was granted. On August 15, 1996, MCI filed its request for arbitration under the Act.

On October 9 through 11, 1996, we conducted an evidentiary hearing for the consolidated dockets. On December 31, 1996, we issued Order No. PSC-96-1579-FOF-TP which memorialized our decisions on the remaining unresolved issues between AT&T and BellSouth. In the Order, we directed the parties to file agreements memorializing and implementing our arbitration decision within 30 days.

On January 15, 1997, BellSouth filed its Motion for Reconsideration of Order No. PSC-96-1579-FOF-TP. On January 27, 1997, AT&T filed its response to BellSouth's Motion for Reconsideration and its Cross Motion for Reconsideration. BellSouth responded to AT&T's Cross Motion on February 4, 1997. We addressed the Motions in Order No. PSC-97-0298-FOF-TP, issued on March 19, 1997.

The parties filed their arbitrated Agreement with us on January 30, 1997, and identified the sections where there were

still disputes on the specific language. On March 19, 1997, we issued Order No. PSC-97-0300-FOF-TP, wherein we approved various sections of the Agreement that the parties were able to agree on, rejected sections that were not arbitrated, and established language for sections that were arbitrated and still in dispute. The Order specifically identified the language to be contained in the arbitrated Agreement.

Although we specifically identified all of the language to be included in the arbitrated Agreement, the parties still refuse to sign the Agreement due to a dispute over language proposed by BellSouth. On April 2, 1997, both parties filed separate versions of the Agreement. Having reviewed the agreements submitted by the parties, we approve AT&T's agreement as the final, binding arbitrated Agreement to the extent set forth below.

II. THE AGREEMENT

As discussed above, we resolved the unresolved issues in this proceeding on December 31, 1997, and directed the parties to file an agreement memorializing and implementing our arbitration decision within 30 days. The parties were unable to agree to all of the language that should be included in the Agreement. Therefore, the parties filed their version of the language that each believed should be part of the final arbitrated Agreement. By Order No. PSC-97-0300-FOF-TP, we established all of the language that should be included in the arbitrated Agreement for Docket No. 960833-TP. Even though we established the language, the parties not only have included language that we did not approve, but continue to argue over what language should be in the Agreement. We painstakingly went through the proposed language for each section in the parties' Agreement to determine what language should be included in the final arbitrated Agreement.

Although we believe the parties have directly violated Order No. PSC-97-0300-FOF-TP, by not signing the Agreement, we once again address the disputes between the parties on the appropriate language that should be included in the Agreement.

The various sections in the agreement filed by AT&T and BellSouth on April 2, 1997, can be categorized as follows: 1) Sections that the parties agreed to that require our approval since we did not consider them previously; 2) Sections we previously rejected in our Order because they were not agreed to and were not encompassed in an arbitrated issue, but the parties have since

negotiated language for our approval; 3) Sections we addressed in our Order, but the parties have included different language than what was in the Order in their agreement, and the language in each party's version of the agreement does not coincide; 4) Sections that are in dispute and were not arbitrated.

Category 1

We approved some of these sections by Order No. PSC-97-0300-FOF-TP, and the parties have agreed to other sections which we have not previously considered. Upon review, we approve all sections of AT&T's verion of the Agreement except for the sections discussed in categories 2 through 4 below.

Category 2

We rejected the language for the sections identified in Table A in Order No. PSC-97-0300-FOF-TP. These sections had not been arbitrated, and the parties were unable to agree on specific language that should be included in the Agreement. Since our decision, however, the parties have agreed to specific language for these sections. Although this action essentially allows the parties a second chance in getting Commission approval of their Agreement, we believe approving these sections at this time is more expedient than requiring the parties to remove the language and file an amendment to the arbitrated Agreement to be approved in a different docket. Upon review, we believe the sections identified in Table A comply with Section 252(e)(2)(B) of the Act. Accordingly, they are approved and shall be included in the arbitrated Agreement.

Table A

Agreement ID	Section	Title
Preface	1st Paragraph	Affiliates
General Terms and Conditions	12.1, 12.2, 12.3	Performance Measurement

Agreement ID	Section	Title
Attachment 3	3.8.3	Processing of Applications
Attachment 3	3.10.2.2	Construction of AT&T's Facilities
Attachment 7	6	Lost, Damaged, Destroyed Message Data
Attachment 9	2.2, 2.3	Revenue Protection
Attachment 12	1-6	Performance Measurement

Category 3

We already established language for the section identified in Table B in Order No. PSC-97-0300-FOF-TP. The language contained in the latest agreements filed by the parties on April 2, 1997, is different. Since we have already approved language for this section, we find it appropriate to require the parties to incorporate the language previously approved in the Agreement. Accordingly, the parties shall include the language we approved for this section in Order No. PSC-97-0300-FOF-TP, in the Agreement. If the parties want to amend this section, the parties shall file an amendment to the Agreement to be considered in a separate docket.

TABLE B

Attachment	Section	Title
Part IV	Table 3	Rights of Way

Category 4

The parties' main dispute appears to involve the language in this category. BellSouth's latest agreement includes language associated with cost recovery of any additional performance

standards, and the pricing of rebundled network elements to duplicate a resold service.

COST RECOVERY FOR HIGHER LEVEL PERFORMANCE STANDARDS

BellSouth's latest version of the agreement includes Section 12.4 which addresses cost recovery for additional performance standards that AT&T may request, but BellSouth does not provide itself. That section states:

> If AT&T requests, in writing, a higher level of performance than BellSouth provides to its own subscribers, BellSouth shall inform AT&T, in writing, of the amount AT&T's desired performance level exceeds that which BellSouth provides to its subscribers as well as a reasonable estimate of what it would cost BellSouth to meet, measure, and report these standards. If AT&T then communicates, in writing, to BellSouth that it desires such higher levels of performance, AT&T shall pay BellSouth for the costs incurred in providing such higher level of service. Moreover, AT&T shall pay for all mechanisms necessary to capture and report data, required to measure, report or track any performance measurement that BellSouth does not, as of the Effective Date, measure, report or track for itself or its own subscribers. In the event such system is not developed exclusively for AT&T, but rather is developed for use with other CLECs, as well as AT&T, BellSouth shall allocate to AT&T, on a competitively neutral basis, AT&T's share of the costs associated with such system.

BellSouth asserts that this language incorporates the decision of the Commission in Order No. PSC-96-1579-FOF-TP, page 87, as it relates to performance standards sought by AT&T that are not part of the performance standards BellSouth regularly reports or utilizes itself. Upon review, we find that BellSouth mischaracterizes our Order. The language specifically states:

> Based on the foregoing, each party shall bear its own cost of developing and implementing electronic interface systems, because those systems will benefit all carriers. If a system or process is developed exclusively for a certain carrier, however, those costs shall be recovered from the carrier who is requesting the customized system.

We find this language does not address cost recovery for higher level performance standards. Although we discussed this issue at our Agenda Conference, we stated that we had not arbitrated the cost recovery of higher level performance standards; and therefore, pricing of these higher level performance standards would either be negotiated or arbitrated in a subsequent proceeding. Accordingly, BellSouth's proposed language shall not be included in the Agreement.

PRICING FOR REBUNDLED UNEs THAT DUPLICATE A RESOLD SERVICE

BellSouth proposes to include the following language (Section 36.1) associated with the pricing of rebundled unbundled network elements (UNEs).

> Any BellSouth non-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. **Further negotiations between the parties should address the price of a retail service that is recreated by combining UNEs. Recombining UNEs shall not be used to under cut the resale price of the service recreated.** If the parties cannot agree to the total non-recurring and recurring charge(s) 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.

BellSouth proposes to include the bold language above based solely on our deliberations at our Agenda Conference on BellSouth's Motion for Reconsideration in this proceeding. We expressed concerns with the potential pricing of UNEs to duplicate a resold service at our Agenda Conference, and we expressed our concerns in our Order in dicta; however, we stated that the pricing issue associated with the rebundling of UNEs to duplicate a resold service was not arbitrated. Accordingly, we declined to make a determination on this matter, and did not approve any language to be included in the arbitrated Agreement. We find BellSouth's proposal to include this language and refusal to sign the Agreement without such language completely unacceptable. Accordingly,

BellSouth's proposed language shall not be included in the arbitrated Agreement.

III. REQUIREMENT TO SIGN AGREEMENT

As discussed earlier, we have already identified all of the specific language that should be included in the arbitrated Agreement between AT&T and BellSouth. We directed the parties to file an Agreement memorializing and implementing the arbitration decision within 30 days. Neither party has complied with our Order. Instead, the parties have negotiated different language than we ordered, attempted to include language that we did not order, and are still disputing language that was not at issue in the Arbitration. We believe the parties have violated Section 252(b)(5) of the Act. That Section states:

> Refusal to Negotiate. The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State Commission shall be considered a failure to negotiate in good faith.

Upon consideration therefore we find that the parties shall include our decisions in this Order in a signed Agreement, incorporating the exact language approved herein, within 14 days of the issuance of this Order. If a signed Agreement is not submitted, pursuant to Section 364.285, Florida Statutes, we will issue an Order to Show Cause immediately against the non-signing party to show in writing why it should not be fined $25,000 per day for willful refusal to comply with our Order.

If the signed Agreement is timely submitted and comports with our Orders in this docket, an administrative order shall be issued acknowledging that a signed Agreement has been filed. Further, if the signed Agreement comports with our Orders, the Agreement shall be deemed approved on the date the administrative order is issued.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that AT&T Communications of the Southern States, Inc.'s Agreement is approved to the extent set forth in the body of this Order. It is further

ORDERED that AT&T and BellSouth shall sign the arbitrated Agreement within 14 days of the issuance of this Order or an Order to Show Cause shall be issued against the non-signing party as discussed in the body of this Order. It is further

ORDERED that this docket shall remain open.

By Order of the Florida Public Service Commission, this 27th day of May, 1997.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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).