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October 22, 1996

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket Nos. 960846-TP, 960833, 960916

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation in the above docket are the original and 15 copies of MCI's Post-Hearing Brief, together with a 5.1 WordPerfect diskette.

By copy of this letter, this document has been provided to the parties on the attached service list.

Very truly yours,

Richard D. Melson

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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., and American Communications Services, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996. | ) | Docket No. 960833-TP<br>Docket No. 960846-TP<br>Docket No. 960916-TP<br><br>Filed: October 22, 1996 |

**MCI'S POSTHEARING BRIEF**

MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, MCI) hereby file their posthearing brief.

**EXECUTIVE SUMMARY**

This arbitration proceeding, and others like it, will shape the future of local competition for years to come. The Telecommunications Act of 1996 (Act) sets forth numerous standards that the Commission must apply in resolving the issues submitted for arbitration. Among these is the provision in Section 252(c) which states that the Commission must apply the requirements set forth in the regulations prescribed by the Federal Communications Commission (FCC) pursuant to Section 251 of the Act (FCC Rules).

The United States Eighth Circuit Court of Appeals has entered a partial stay of the FCC Rules. The Commission is, of course, required to apply the remaining, unstayed provisions of those

rules. Although the Commission is not required at this time to apply the pricing provisions of those rules as a result of the stay, it is still required to comply with the pricing provisions of the Act.[1] The Eighth Circuit did not consider, much less decide, whether the FCC's pricing rules are inconsistent with the Act. Rather, the stay was issued solely on the ground that a question exists about the FCC's authority to promulgate pricing rules. As will be shown later in this brief, the pricing principles contained in the FCC Rules are consistent with sound economic principles and with the terms of the Act. The Act requires the Commission to set rates based on forward-looking economic cost (TELRIC). Any other costing methodology, such as one based on historical costs, would effectively create a barrier to entry and would violate the Act. MCI therefore urges the Commission to adopt pricing principles in this proceeding which follow the FCC Rules to the maximum extent possible, consistent with the Commission's view of any Florida-specific public interest factors.

In resolving the numerous issues presented in this proceeding, the Commission should ask:

- Does its decision create an environment that promotes investment and the development of a flourishing array of new services?
- Does it establish prices that mirror a fully competitive market?

[1] The Commission will be bound by those pricing rules in the event the stay is dissolved prior to the date of the Commission's vote in this docket.

- Does it provide vigilant oversight against anti-competitive practices?

Five of the major issues in this proceeding are the extent to which BellSouth is required to provide the unbundled network elements requested by MCI; the appropriate price for such network elements; the extent to which BellSouth is required to allow its services to be resold; the appropriate wholesale price for such resold services; and how to ensure that MCI is provided access to operational support systems that is equal in quality to BellSouth's access to such systems.

With respect to unbundled network elements, the Commission should strictly scrutinize any claim by BellSouth that unbundling is not technically feasible. The Commission should reject claims that unbundling is technically infeasible based on the lack of current ordering or tracking systems, or the need to make additional investment to permit access to elements on an unbundled basis. Unless the Commission applies an appropriate standard for technical feasibility, BellSouth will be able to create barriers to competitive entry by MCI and others. The Commission should also reject BellSouth's claim that MCI should not be allowed to combine unbundled network elements in any manner it chooses, even if that combination is used to provide a service that BellSouth provides today. Prices for unbundled network elements should be based on their forward-looking economic cost in accordance with total element long-run incremental cost (TELRIC) principles. The Hatfield Model results presented by MCI in this docket include all costs that would be incurred by an efficient wholesale provider of

unbundled network elements, and therefore provide a reasonable basis for setting rates consistent with TELRIC principles.

With respect to resale of BellSouth services, the Commission should not permit BellSouth to withhold any services from resale, nor to impose unreasonable or discriminatory restrictions or limitations on resale. The prices for resold services should be set to reflect the retail costs that BellSouth avoids when it provide services on a wholesale basis. The avoided cost study presented by MCI in this docket provides a reasonable basis on which to set a 25.06% discount for such wholesale services.

With respect to operational support systems, the Commission should require BellSouth to provide real-time, interactive electronic interfaces to support the ordering, provisioning, maintenance and billing functions as quickly as such systems can be deployed. BellSouth's failure to provide MCI with access to the same interfaces that BellSouth uses today will impair MCI's ability to offer its customers the same quality of service that end users currently receive from BellSouth.

## ISSUE-BY-ISSUE ANALYSIS

The following is a summary of MCI's position on the issues identified in the prehearing order, together with a discussion of the applicable portions of the Act, the FCC Rules, and the evidence that supports MCI's position on each issue.

### Issues Common to AT&T, MCI and BellSouth

Issue 1(a). Are the following items considered to be network elements, capabilities or functions? If so, is it technically

feasible for BellSouth to provide AT&T, MCI, or ACSI with these elements?

Network Interface Device (AT&T, MCI)
Unbundled Loop (AT&T, MCI, ACSI)
Loop Distribution (AT&T, MCI)
Loop Concentrator/Multiplexer (AT&T)
Loop Feeder (AT&T)
Local Switching (AT&T, MCI)
Operator Systems (DA Service/911 Service) (AT&T, MCI)
Multiplexing/Digital Cross-Connect/
Channelization (AT&T, MCI, ACSI)
Dedicated Transport (AT&T, MCI)
Common Transport (AT&T, MCI)
Tandem Switching (AT&T, MCI)
AIN Capabilities (AT&T, MCI)
Signaling Link Transport (AT&T, MCI)
Signal Transfer Points (AT&T, MCI)
Service Control Points/Databases (AT&T, MCI)

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

Section 251(c)(3) of the Act describes BellSouth's duty to provide access to unbundled network elements as follows:

> (3) UNBUNDLED ACCESS.-- The duty to provide, to any requesting telecommunications carrier, for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

Sections 51.307 to 51.321 of the FCC Rules flesh out BellSouth's duty to provide unbundled network elements.[2] Those rules require BellSouth to unbundle seven specifically identified and defined network elements. 47 C.F.R. §51.319. The rules also establish the standards that the Commission must apply in determining what additional unbundled elements must be provided. 47 C.F.R. §51.317. The elements requested by MCI in this proceeding will be discussed in two groups -- elements the FCC Rules provide must be unbundled, and elements that must be evaluated under the FCC-prescribed standards for additional unbundling.

The FCC has identified seven network elements that ***must*** be unbundled. If a carrier requests access to elements other than those seven, the FCC Rules require the Commission to first determine whether unbundling is technically feasible. 47 C.F.R. §51.317(a). If so, the Commission may decline to require unbundling only in certain limited circumstances. 47 C.F.R. §51.317(b).

In making determinations of technical feasibility, the Commission must apply the definition in §51.5 of the FCC Rules:

> Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access or methods. ***A determination of technical feasibility does not include***

[2] These portions of the FCC Rules have not been stayed and, under Section 252(c)(1) of the Act, are therefore binding on this Commission.

> ***consideration of economic, accounting, billing, space or site concerns***, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. ***The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible.*** An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access or methods would result in specific and significant network reliability impacts. (emphasis added)

Elements Specifically Identified in FCC Rules

FCC Rule 51.319 lists seven network elements which BellSouth is required to provided on an unbundled basis. These are: (1) the local loop, (2) the network interface device (on a NID-to-NID basis), (3) local and tandem switching capability (including all features, functions and capabilities of the switch), (4) interoffice transmission facilities, (5) signaling networks (including signaling links and signaling transfer points) and call-related databases, (6) operations support systems functions,[3] and (7) operator services and directory assistance facilities.

It appears BellSouth recognizes that it must unbundle local loops (except that BellSouth claims an exception where the loop is provided over integrated digital loop carrier facilities), NIDs (on a NID-to-NID basis),[4] tandem switching, interoffice transmission

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[3] Operations support systems are the subject of Issue 13, and will be dealt with below.

[4] MCI initially sought interconnection directly to BellSouth's NID. MCI is now willing to accept, at this time, unbundling via a NID-to-NID connection. (Caplan, T 943-4)

facilities (i.e. dedicated and common transport), signaling links and signaling transfer points, and operator services. The only question for these elements is price, which is covered later in Issue 1(b).

BellSouth does appear to question its obligation to provide unbundled local switching as defined in the FCC Rules. The issue raised by BellSouth in this regard relates to the technical feasibility of using the local switch to provide customized routing to another carrier's operator service, directory assistance service, and repair service platforms. This question is covered in Issue 9 below.

BellSouth also questions its obligation to provide an unbundled local loop where the end user is currently served using integrated digital loop carrier (IDLC) technology. (Milner, T 2633-8) The FCC's First Report and Order in CC Docket No. 96-98 (FCC Order), however, makes it clear that BellSouth must unbundle IDLC-delivered loops. (FCC Order ¶ 383-4) Without such an obligation, MCI would be unable to serve all of BellSouth's customers via unbundled loops. (See Tamplin, T 299) In the FCC's words, an exception to the unbundling requirement for these loops would encourage incumbent LECs to "hide" loops from competitors through the use of IDLC technology. (FCC Order ¶ 383) The record shows that there are a number of technically feasible ways to provide unbundled loops in this situation, including the use of preexisting copper facilities, the use of preexisting universal DLC facilities, the use of next generation digital loop carrier (where available), and, where sufficient demand is available, the purchase by the new

entrant of the entire IDLC's complement of contiguous loops. (Tamplin, T 299)

Additional Elements Requested by MCI

In addition to the seven minimum elements specified in the FCC Rules, MCI has asked BellSouth to unbundle loop distribution and multiplexing/digital cross-connect.[5] The multiplexing/digital cross-connect element is not in dispute except for price. BellSouth objects, however, to providing loop distribution on an unbundled basis, on the grounds of technical feasibility.

The evidence shows unbundling loop distribution is technically feasible. Loops are commonly divided into two portions: loop distribution from a customer's premises to a cross-connect point, such as a feeder distribution interface (FDI) or a loop concentrator/multiplexer; and loop feeder from the cross-connect point to BellSouth's central office. (Caplan, T 933-4; Tamplin, T 283) Unbundled loop distribution is necessary to give MCI the flexibility to use its own loop feeder plant where available. For example, MCI has deployed SONET fiber rings in many metropolitan areas, including Miami, Tampa and Orlando. (Caplan. T 964) By interconnecting its fiber with BellSouth's unbundled loop distribution at existing cross-connect points, MCI can carry traffic from a customer directly to MCI's local switch. (Caplan, T

[5] MCI initially asked BellSouth to provide loop concentration and loop feeder on an unbundled basis. MCI has withdrawn its request for these subloop elements at this time. MCI also initially asked BellSouth to provide unmediated access to various AIN capabilities. MCI is now willing to accept mediated access to service control points (SCPs) through BellSouth's signal transfer points (STPs), which MCI understands is the form of AIN access that BellSouth is willing to provide. MCI reserves the right to make a bona fide request for any or all of these unbundled elements in the future.

934; Tamplin, T 283-4) This enables MCI to make more efficient use of its own facilities, since it avoids the need to use BellSouth's loop feeder, to make a cross-connection at BellSouth's central office, and then to transport the traffic over interoffice transport facilities to MCI's switch. By permitting MCI to maximize the use of its facilities where they are available, unbundling of loop distribution facilities will encourage more rapid development of facilities-based competition. (Caplan, T 934-5)

BellSouth claims that unbundling of loop distribution is not technically feasible for a number of reasons, all of which fall into two categories: (1) the lack of current record-keeping and billing systems to support subloop unbundling, or (2) the existence of a potential impact on future network rearrangements. (Milner, T 2628-2630) These claims, however, rely on a definition of technical feasibility that is not consistent with the controlling definition of technical feasibility set forth in Section 51.5 of the FCC Rules. In his direct testimony, Mr. Milner added four criteria to the FCC's definition of technical feasibility, then in his rebuttal testimony he added another three. (See Milner, T 2617, 2696-7) As Dr. Cornell testified, Mr. Milner's additions to the definition of technical feasibility are an attempt both to subvert the clear intent of the Act and to create a large barrier to entry. (Cornell, T 1201-4) That effort should be rejected outright by this Commission.

Mr. Milner's reliance on the current lack of record-keeping and billing systems is clearly inconsistent with the FCC Rules.

The FCC has explicitly rejected the lack of ordering and tracking systems as an indication of technical infeasibility. (FCC Order ¶ 390) This is infinitely sensible. Of course BellSouth does not currently have a system for ordering and billing subloop elements -- it has never before faced a competitive environment for local exchange service, and never before been required to offer such elements on an unbundled basis.

Interconnection at an existing cross-connect point such as the FDI is not rocket science.[6] The technical feasibility of such interconnection is evidenced by the fact that this type of interconnection arrangement has been in effect since 1978 between US West and Northwest Iowa Telephone Company. (Caplan, T 971) MCI's request for unbundling of loop distribution does not create network security or reliability concerns -- MCI is willing to have all work at the cross-connect point performed for MCI by BellSouth personnel. (Caplan, T 936, 972) Unbundling of loop distribution does not require BellSouth to make any modifications to its existing cross-connect facilities, nor does it impact BellSouth's use of integrated digital loop carrier for its own feeder facilities. (Caplan, T 972-4) There simply is no credible basis in the record to conclude that unbundling of loop distribution is in any way technically infeasible.

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[6] MCI is not asking for the Commission to require unbundling of loop distribution in cases where there is no existing cross-connect point, as where BellSouth utilizes a "multiple" or "home run" feeder-distribution design. MCI is willing to use a bona fide request process to obtain unbundled distribution in these unique situations. (Caplan, T 933, 936)

Issue 1(b). What should be the price of each of the items considered to be network elements, capabilities, or functions?

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

Section 252(c)(2) of the Act requires the Commission to establish rates for unbundled network elements according to the pricing standards of Section 252(d)(2). That section in turn provides that:

> (d) PRICING STANDARDS.--
>
> (1) INTERCONNECTION AND NETWORK ELEMENT CHARGES.-- Determinations by a State commission of. . .the just and reasonable rate for network elements for purposes of subsection (c)(3) of [section 251]--
>
> (A) shall be--
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the. . .network element. . ., and
>
> (ii) nondiscriminatory, and
>
> (b) may include a reasonable profit.

In order to meet the requirements of Section 252(d)(2), prices must be set based on their forward-looking economic cost. (Cornell, T 1150) The use of revenue-requirement-based embedded cost standards would prevent the market from driving local exchange rates to economic cost and would violate the provision of the Act which precludes reference to rate-of-return or rate-based proceedings. (Cornell, T 1200)

The FCC coined a new term -- Total Element Long-Run Incremental Cost (TELRIC) -- for its forward-looking costing methodology. Nevertheless, the TELRIC methodology is nothing more than a Total Service Long-Run Incremental Cost (TSLRIC) methodology in which the item to be costed is an "element" rather than a "service." While the Commission is not currently required to apply the FCC's TELRIC methodology due to the stay of the pricing provisions of the FCC Rules, the Commission has previously adopted the similar TSLRIC standard as a basis for setting prices under state law (see Order No. PSC-96-0811-FOF-TP, pages 14-15, 25), and should continue to use a TSLRIC/TELRIC standard for its cost and price determinations under the Act.

The Commission has been provided with competing cost studies which purport to comply with TSLRIC/TELRIC pricing principles. One set of studies, sponsored by Ms. Caldwell of BellSouth, was furnished on a confidential basis. Like prior BellSouth cost studies, these studies use a "black box" approach, under which the relationships used to translate from inputs to outputs are unavailable for critical review. (Cornell, T 1164-6)

The other study, the Hatfield Model presented by Mr. Wood, is an open model which makes use of publicly available data to estimate the forward-looking costs that a wholesale-only LEC would incur to produce the entire range of outputs that the FCC Order requires to be unbundled. (Cornell, T 1167-70) The Hatfield Model includes cost of capital in its cost calculations, thus satisfying the provision of the Act that permits the recovery of a reasonable profit. (Wood, T 1052) The Hatfield Model attributes costs of

shared plant to each of the network elements that use that plant, thus appropriately capturing these shared plant costs. It also adds a 10% markup to capital and network operations costs as an estimate of forward-looking overhead costs. (Cornell, T 1168-70)

If the Commission set the prices for network elements equal to the costs that the Hatfield Model reports for each element, those prices would allow BellSouth to recover all of its economic costs, including a reasonable profit, of doing business as a wholesale-only firm engaged in the business of providing network elements. (Cornell, T 1170) Pricing in accordance with the Hatfield Model is both reasonable, and fully consistent with the pricing principles of the Act.

Strengths of the Hatfield Model

The primary strengths of the Hatfield Model are that it uses sound economic costing principles to estimate the relevant costs of a wholesale provider of unbundled network elements using the best publicly available data and that, as an open model, its operations can be readily scrutinized and a large number of its key inputs can be set by users. (Wood, T 1048)

The Hatfield Model is consistent not only with the costing provisions of the FCC Order but also with sound economic costing principles generally. (Wood, T 1045) The Hatfield Model is forward-looking. As such, it does not use embedded investment, but instead uses existing wire center locations and then develops investments using the most efficient, currently available technologies for the provision of loop facilities, switching, interoffice transport, and signaling. (Wood, T 1052-3) The

Hatfield Model uses a long-run, total element methodology. It models a period long enough so that all of the firm's investments and expenses become variable or avoidable, and it studies an increment equal to the entire quantity of the network element being costed. (Wood, T 1051-2) The Hatfield Model uses a forward-looking cost of capital, thereby providing a reasonable profit on the firm's forward-looking investment. (Wood, T 1052) The Hatfield Model uses cost-causative principles to identify forward-looking costs with specific network elements, and it attributes the cost of shared investments to specific elements in reasonable proportions. (Wood, T 1054-5) The Hatfield Model adds a 10% markup to capture an appropriate level of overhead (or common) costs. (Wood, T 1055-6)

As mentioned above, the Hatfield Model is an open model. The model itself, and accompanying documentation, is publicly available through the International Transcription Service of Washington, D.C. (Wood, T 1048) In fact, both the model and its documentation have been entered into the record in this proceeding (Ex. 31, 37), and the Commission staff has run the model with differing inputs to test the sensitivity of the model to changes in assumptions. (See Wood, T 1116, 1120) The inputs into the model are available for inspection (Ex. 34, pages C-1 to C-7; Ex. 37, DJW-6, Late Filed Deposition Ex. 8), and, except for Census Block Group and U.S. Geological Survey data, the model inputs are user definable. (Wood, T 1130-1) This degree of openness, which is unprecedented in telecommunications cost studies, enables independent scrutiny and evaluation of the assumptions and methodology, and enables a

reviewer to test the reliability of the final product. (Wood, T 1049-50)

Response to Criticisms of the Hatfield Model

Mr. Varner, who does not appear from his resume to be an expert in cost studies, leveled a number of unsubstantiated criticisms at the Hatfield Model. (Varner, T 1444, 1496-7) Each of these will be discussed briefly.

Mr. Varner criticizes the Hatfield Model for not calculating the cost of unbundled elements based on the "actual network used to provide service." (Varner, T. 1444) This is nothing more than a criticism of forward-looking cost studies. A study that was based on the actual network used to provide service would be an embedded cost study, and would not calculate forward-looking economic costs. (Wood, T 1070-1)

Mr. Varner criticizes the Hatfield Model based on the fact that it has evolved over time. (Varner, T 1444) The record shows that this evolution has enabled the model to take into account new data and to include additional features -- it is thus a strength of the model rather than a weakness. (Wood, T 1071-2)

Mr. Varner criticizes the Hatfield Model for using data based on the Benchmark Cost Model, which he states is "fatally flawed." (Varner, T 1444) Mr. Varner does not describe any of these so-called fatal flaws in his testimony, nor does he point out that US West and Sprint have developed a new version of the BCM (referred to as BCM2), which makes many of the same improvements to the original BCM model that the Hatfield Model has incorporated into its BCM-Plus module. (Wood, T 1072-3)

Mr. Varner criticizes the Hatfield Model for using unusually low estimates of joint and common costs, an unrealistic cost of money, an overly high plant utilization factor, and overly long depreciation lives. (Varner, T 1444) This summary criticism, however, does not reveal how Mr. Varner believes that any of the assumptions could be improved. In fact, the Hatfield Model includes all the costs described by the FCC as "joint and common" that an efficient carrier would incur on a going-forward basis; the Hatfield Model uses a weighted average cost of capital of 10.01%, which is ***higher*** than the last weighted cost of capital authorized for BellSouth by this Commission; the Hatfield Model uses conservative estimates of engineering fill, which are then translated by the model into effective fill factors that are even lower than engineering fill levels; the Hatfield Model uses the last depreciation lives authorized by the FCC; and the Hatfield Model has been rerun, at the staff's request, to use the last depreciation lives authorized by this Commission, which makes only a minor change in the model's results. (Wood, T 1074-1076, 1097-8; Ex. 37, DJW-6, page 28; see Ex. 37, DJW-6, Late Filed Depo. Ex. 7, pages 69-72)

Dr. Emmerson likewise leveled a number of unsubstantiated criticisms at the Hatfield Model, even though he has not personally reviewed the documentation for the current release of the model. (Emmerson, T 2079-80; Emmerson Depo., Ex. 64, p. 36) Dr. Emmerson's first four criticisms of the Hatfield Model all relate to the CBG assignment process and result, in his words, in "possible underestimation" of BellSouth's Florida service

territory. (Emmerson, T 2079) Dr. Emmerson's deposition reveals, however, that he could not say whether any CBG misassignments exist in Florida, so his concern is speculative at best. (Ex. 64, p. 41-2)

Dr. Emmerson also criticizes the Hatfield Model for using unrealistically high fill rates, yet he was unable to identify either the fill rates used by the Hatfield Model or the fill rates that he believed would be more realistic. (Emmerson, T 2080; Ex. 64, p. 42-5)

Dr. Emmerson criticizes the Hatfield Model for its use of subject matter experts to support various inputs, yet his staff's review of the Hatfield Model relied on conversations with unidentified local telephone company subject matter experts as the basis for his belief that the Hatfield Model's fill factors are inappropriate. (Emmerson, T 2080; Ex. 64, p. 44-5)

Dr. Emmerson criticizes the Hatfield Model for using an unrealistically low cost of money, yet at his deposition he did not know what cost of money the Hatfield Model used, nor what would be an appropriate cost of money for BellSouth in Florida. (Emmerson, T 2080; Ex. 64, p. 45-6)

Dr. Emmerson also cites a BCM2 cost result for Florida as evidence that the Hatfield Model results are too low, but admits that he did not participate in the development of BCM2 and does not even know whether the number he cites is a statewide average rate for all Florida LECs, or a statewide average rate for BellSouth Florida, although he believes it is the former. (Emmerson, T 2082; Ex. 64, p. 46-7)

Dr. Emmerson does tout the Cost Proxy Model (CPM) which was jointly developed by his firm and Pacific Bell. (Emmerson, T 2080-1) Yet even though he ran the CPM for BellSouth Florida, he did not present those model results to the Commission, and did not even know those results during his deposition. (Ex. 64, p. 47)

In summary, Dr. Emmerson's criticisms are long on rhetoric and short on underlying data. As such, they are entitled to no weight.

Finally, BellSouth's cross-examination of Mr. Wood focused extensively on the Hatfield Model's modelling assumption that census block groups (CBGs) are square, and that (except for the two lowest density sets of CBGs) households are evenly distributed within those groups. The cross-examination showed that this assumption will tend to underestimate distribution requirements in a handful of oddly shaped CBGs, just as it will tend to overestimate distribution requirements in more compact CBGs. It is significant, however, that of the 4,000 plus CBGs in BellSouth's Florida territory, BellSouth was able to locate only 8 CBGs with which to demonstrate the underestimation "problem." (Wood, T 1099-1110, 1136-8) In short, this "problem" is not a problem in practice at all.

Weaknesses of BellSouth's TSLRIC/TELRIC Cost Studies

BellSouth submitted what purport to be sixteen TSLRIC cost studies for various unbundled network elements. (Exs. 65 and 66) BellSouth did not, however, provide any cost studies for a number of the unbundled elements at issue in this case, including local switching, common transport, tandem switching, interconnection, or transport and termination. (Caldwell, T 2244-5) Thus the *only*

evidence in the record on the cost of these elements is that provided by the Hatfield Model. Five days prior to the hearing, BellSouth also provided what purports to be a TELRIC cost study for 2-wire and 4-wire analog loops and 2-wire ISDN loops. (Ex. 68) Except for the studies of 800 Access 10-Digit Screening Service and LIDB Access Service, each of these seventeen studies was provided on a proprietary basis.

As Dr. Cornell testified, the single TELRIC cost study presented by BellSouth represents a significant step backwards from forward-looking economic costing principles. (Cornell, T 1212) Two of the major problems with the so-called TELRIC study are the use of embedded ARMIS-type expense data as an overlay on the underlying TSLRIC study, and the use of embedded, actual fill factors instead of forward-looking fill rates. Taken together, these features mean that BellSouth's TELRIC study is much more like an embedded cost study that safeguards BellSouth's revenue requirement than it is like a forward-looking economic cost study. (Cornell, T 1212-4; Kahn 1369-70) Further, by allocating common costs based on investment, rather than total cost, the study disproportionately increases the cost of the unbundled loop, which is both one of the more capital intensive components of the network and one of the most critical to competition. (Kahn, T 1370)

The evolution of BellSouth's cost numbers for 2-wire loops demonstrates the unreliability of its study process. That cost figure has increased by roughly 50% from the cost figures presented to the Commission in January, 1996 to the figures presented to the Commission in October, 1996. At the time of the hearings in the

unbundling docket (Docket No. 960984-TP), BellSouth's cost studies estimated the TSLRIC cost of an unbundled loop in the $15.53 to approximately $17.00 range. (See Order No. 96-0444-FOF-TP at p. 15-16) BellSouth now estimates the TELRIC cost of the same unbundled loop at just over $24.00. In the interim, however, there have been two intermediate TSLRIC cost studies in which that cost first went down from the $17 figure, then moved up to a level above that figure, but substantially below the current $24 level. (See Confid. Ex. 66, DDD-7, Section 3; Confid. Ex. 68, Section 3; Confid. Ex. 71, Caldwell Depo., p. 16-17) Those substantial changes to the underlying TSLRIC results in a matter of several months calls into question the reliability of BellSouth's cost study as a basis for setting prices. (Kahn, T 1368-9)

Despite Ms. Caldwell's testimony that the new TELRIC study does not include any embedded cost data, an examination of the manner in which that study was performed belies that contention. One of the major differences between the so-called TELRIC study and the underlying TSLRIC study was the inclusion in the new study of "directly attributable shared and common costs." (Ex. 71, p. 21) The factors used to calculate these costs, however, started with embedded ARMIS data. These were translated to what BellSouth calls "forward-looking costs" by applying an inflation factor to project them forward for a three-year period. (Ex. 71, p. 22-3) There appears to have been no independent effort to determine if the level of costs embedded in ARMIS was representative of the costs that BellSouth would incur on a going-forward basis.

The parties also had only a limited opportunity to review and evaluate the so-called TELRIC study. The proprietary support materials for that study were provided to the parties on the day prior to the start of the hearing. (Caldwell, T. 2230-1) The workpapers for the derivation of the critical "directly attributed shared and common cost factors" which appear on page 64 of that study (Ex. 68) were voluminous -- consisting of a spreadsheet 17 sheets deep and 37 sheets wide. (Caldwell, T 2231) Thus it may not be surprising that at the time of the hearing even Ms. Caldwell was unable to point to a page in the workpapers where any one of these factors was shown, or to trace back how the total dollar amount of directly attributed shared and common costs had been calculated. (Caldwell, T 2232, 2236)

The testimony of Ms. Caldwell did cast significant doubt on the validity of the TELRIC cost numbers for Florida. First, BellSouth sampled only residential and single-line business loops -- not multi-line business and ESSX loops -- in defining the "typical" loop for purposes of its study. (Caldwell, T 2302-4) Second, BellSouth's cost study included the cost of testing associated with special access circuits, a type of testing that is not ordinarily performed in the provision of a loop used to provide local exchange service. (Caldwell, T 2291-2) Third, costs associated with the main distribution frame were included in both the unbundled loop study and again in the unbundled local switching study. (Caldwell, T 2281-2) This results in a double-counting in any case where a new entrant purchases an unbundled loop and combines it with unbundled local switching. Fourth, the common

costs that were "directly attributed" in converting the TSLRIC study to a TELRIC study were regionwide costs, not specific to Florida. (Ex. 71, p. 37-8) These shortcomings, along with the general approach which tends to approximate an embedded cost study rather than a forward-looking cost study, makes BellSouth's TERLIC study an unreliable basis on which to estimate BellSouth's forward-looking common costs of providing unbundled loops in Florida.

Issue 2. Should AT&T and MCI be allowed to combine unbundled network elements in any manner they choose, including recreating existing BellSouth's services?

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

Section 252(c)(3) of the Act obligates BellSouth to provide "network elements in a manner that allows requesting carriers to combine such elements" in order to provide telecommunications services.

BellSouth does not appear to oppose MCI using combinations of network elements with one exception -- it contends that MCI must not be permitted to combine an unbundled loop and an unbundled port (i.e. local switching) to provide local exchange service. The FCC Order makes clear, however, that the proposed prohibition is simply not allowed. FCC Rule 51.315(b) specifically provides that:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

Since BellSouth currently combines loops and switching, this rule precludes BellSouth from separating them, except upon the request

of the purchaser of the unbundled elements. If BellSouth does not have the right to separate the elements, MCI certainly has the right to combine them.

Since the portion of the FCC Rules relating to combination of elements has not been stayed, the Commission must require BellSouth to allow these elements to be combined. In fact, BellSouth admitted as much when Mr. Scheye said:

> It appears clear that if the FCC's Rules are adopted as issued, BellSouth's position on this issue [the combination of unbundled elements] will need to change. (Scheye. T 1775)

BellSouth's objection to the combination of loops and switching appears to be based on its desire to retain access charges whenever possible. If MCI offers service through the resale of an existing BellSouth service, BellSouth bills and retains any interexchange access charges. If MCI offers service through the use of unbundled elements -- either in combination with each other or in combination with MCI's own facilities -- then MCI bills and retains any interexchange access charges.[7]

The Act provides three methods for a new carrier to enter the local market -- through resale of LEC services, through the use of unbundled network elements (alone or in combination with the new entrant's own facilities), and through full facilities-based networks. The Act establishes two distinctly different pricing mechanisms for resold services and for unbundled network elements.

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[7] There is an interim exception in the stayed portion of the FCC Rules for the interstate CCL and a portion of the interstate TIC in cases in which MCI makes use of BellSouth's unbundled local switching, rather than MCI's own switch. Rule 51.515(b) The question of a similar interim exception for the intrastate CCL and RIC -- which MCI opposes -- is discussed in Issue 24 below.

For resold services, prices are set "top-down" on the basis of current retail rates less avoided retail costs. (See Issue 4, below.) For unbundled network elements, prices are set "bottoms-up" on the basis of forward-looking economic costs. (See Issue 1(b), above.) Each new entrant has the choice of which method or methods it will use to provide competitive services.

In either scenario, BellSouth is fully compensated for the service it provides. In the resale scenario, BellSouth continues to receive all revenues it would have received from offering service at retail, less only a discount equal to the retail costs that BellSouth avoids by offering the service at wholesale. In the unbundling scenario, BellSouth receives a different level of revenues, but one which is designed to fully cover all of its forward-looking economic costs, including a reasonable profit. In the latter case, BellSouth may lose some "contribution" that it would have obtained from access charges had it retained the end-user customer, but BellSouth has no right to expect to remain revenue-neutral when it loses a customer to competition.

Issue 3. What services provided by BellSouth, if any, should be excluded from resale.

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

Section 251(c)(4) of the Act establishes BellSouth's obligation to offer services for resale. Under that section, BellSouth has the duty:

> (A) *to offer for resale* at wholesale rates *any telecommunications service* that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) *not to prohibit*, and not to impose unreasonable or discriminatory conditions of limitations on, *the resale of such telecommunications service*, except that a State commission may, consistent with regulations prescribed by the [FCC] under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

The Act makes no exceptions to this resale obligation. Thus there is no basis for BellSouth to refuse to offer any retail service for resale.

BellSouth nevertheless takes the position that it will not offer the following services for resale: grandfathered services, contract service arrangements, promotions, LinkUp, Lifeline, 911/E911, and N11 services.[8] BellSouth claims either that these services are not services provided at retail to end user customers who are not telecommunications carriers OR that its proposed prohibition on resale is a "reasonable and nondiscriminatory limitation" that is permitted by the Act. (See Scheye, T 1728)

This latter claim must be rejected outright as a matter of law. The Act does not permit "prohibitions" on the resale of

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[8] BellSouth also takes the position that state specific discount plans should be excluded from resale (Prehearing Order, Issue 3 at page 21), even though Mr. Scheye states that there are no such discount plans in Florida. (Scheye, T 1619)

retail telecommunications services. The "conditions or limitations" that can be imposed on a reasonable and nondiscriminatory basis thus refer to limitations that constitute something less than a total prohibition on resale. BellSouth ignores this statutory distinction, and treats a prohibition on resale as simply another type of condition or limitation. This interpretation is at odds with the plain language of the Act and must be rejected.

Each of the services that BellSouth would exempt from resale will be addressed briefly.

Grandfathered Services. The unstayed portion of the FCC Rules require that grandfathered services be available for resale to the same customers who have purchased the service in the past. 47 C.F.R. §51.615. BellSouth points to nothing in the Act or the FCC Order that would allow it to ignore this clear mandate. BellSouth's attempt to do so is merely another effort to prevent effective competition.

MCI needs the ability to resell grandfathered services to customers who currently purchase such services from BellSouth. Absent resale, BellSouth would be able to offer services to its customers that resale competitors would be unable to match. (Price, T 779-80) For example, BellSouth has recently replaced its ESSX service with a new service called MultiServ. Many customers, however, prefer to remain on ESSX because it offers them a pricing advantage. (See Scheye, T 1875-6) Some of these customers can stay on the grandfathered ESSX service for up to six more years. (Scheye, T 1874-5) If the grandfathered ESSX service is not

available for resale, MCI will have no effective way to compete for these customers. And if grandfathered services generally are not available for resale, BellSouth will have an incentive to engage in "strategic grandfathering" designed to protect groups of customers from the threat of resale competition.

Contract Service Arrangements. A contract service arrangement is simply a retail service that has been priced pursuant to contract rather than tariff. If BellSouth were permitted to preclude the resale of contract service arrangements, it would be able to use such contracts to provide differential pricing to customers that it knows its competitors could not meet. This would enable BellSouth to avoid its obligation under the Act to make all retail services available for resale. (Price, T 832-3, 885-6)

Promotions. BellSouth objects to providing promotions for resale on the grounds that a promotion is not a separate retail service, but simply a temporary pricing discount for the underlying retail service. The FCC, in an unstayed portion of its rules, held that all promotions must be available for resale, but that the wholesale discount can be applied to the ordinary retail rate (rather than the promotional rate) if the promotion is for less than 90 days and the LEC does not use successive promotions to avoid the wholesale rate obligation. 47 C.F.R. §51.613(a)(2). MCI must therefore be permitted to resell promotions of 90 days or less at the promotional price, although it is not entitled to receive a further discount off the promotional price.

LinkUp and Lifeline. LinkUp and Lifeline are subsidized programs designed to assist low income residential customers. It

is entirely appropriate to place a limitation which restricts the resale of these services to customers who would be eligible to obtain the service directly from BellSouth. It is inappropriate, however, to prohibit their resale. BellSouth will continue to receive any subsidy funds associated with the offering of these services for resale.

911/E911 and N11 Services. BellSouth takes the position that 911/E911 and N11 services are not "retail services" because they are offered to a limited class of customers -- governmental bodies and information service providers. (Scheye, T 1730-1) Again BellSouth misinterprets the Act. The Act permits resale of any service offered at retail to subscribers who are not telecommunications carriers. The 911/E911 and N11 services are offered at retail, and the governmental bodies and information service providers to whom they are offered are not telecommunications carriers. While the Commission could properly restrict the resale of these services to these same categories of customers, there is no basis in the Act to prohibit their resale.

Issue 4. What are the appropriate wholesale rates for BellSouth to charge when AT&T or MCI purchases BellSouth's retail services for resale?

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

Section 252(d)(3) of the Act provides the methodology for determining the wholesale price for resold telecommunications services:

> (d) PRICING STANDARDS.--
>
> (3) WHOLESALE PRICES FOR TELECOMMUNICATIONS SERVICES.-- For purposes of section 251(c)(4), a State commission shall determine the wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

The purpose of calculating the wholesale rates in this manner is to quantify, and deduct, costs of BellSouth that are not incurred in the provision of service at wholesale. In order to determine the appropriate wholesale rates, all -- not just part -- of BellSouth's retailing costs must be deducted from the retail rates. (Price, T 833-4)

The fundamental feature of the avoided cost calculation presented by Mr. Price is that it determines and excludes the total amount of BellSouth's retailing costs in calculating the wholesale discount. (Price T. 834) In this regard, it leaves in the wholesale price only those costs that are incurred in the provision of the service at wholesale. This calculation shows that the appropriate wholesale discount for BellSouth-Florida is 25.06%. (Price, T 789; Ex. 22, DGP-3)

Mr. Reid's calculation, on the other hand, excludes only a portion of BellSouth's retailing costs, on the theory that BellSouth will continue to be a retail service provider and will continue to incur those retailing costs. What Mr. Reid's approach

ignores, however, is that these retailing costs can and will be recovered through its retail rates, and under the Act should not be recovered through its wholesale rates. (Price, T 834-5, 839-40) For example, Mr. Reid concludes that BellSouth's advertising costs are not volume sensitive, and therefore does not exclude those costs in calculating the wholesale rate. This is tantamount to saying that these advertising costs are a cost of providing service at wholesale -- which they clearly are not -- and that it is therefore appropriate for BellSouth's wholesale competitors to pay a portion of those advertising costs through their rates for the wholesale service. (Price, T 835-6) This approach ignores the clear intent of the Act to deduct the costs associated with retailing when setting the wholesale price for a service. (Price, T 836, 837-8)

If anything, MCI's approach to calculating BellSouth's avoided costs is conservative, and tends to understate the amount of the appropriate discount. For example, MCI made the conservative assumption that indirect costs are avoided in proportion to the ratio of avoided direct costs to total direct and indirect costs, rather than the ratio of avoided direct costs to total direct costs. (Price, T 851-2) MCI's study -- in an effort to be true to the methodology used by the FCC to calculate the default proxies -- also did not consider some additional categories of costs which MCI's original filing at the FCC had demonstrated would in fact be avoided. (Price, T 856) To the extent that MCI had not made either of these conservative assumptions, and instead had applied the

literal language of either the FCC Rules or the Act, the discount it calculated would have been higher.

BellSouth criticizes MCI's study for treating call completion and number services costs as costs that are avoided when services are provided to a reseller at wholesale. Yet in a resale environment, these are either services that will be provided by the new carrier, in which case BellSouth does not have any call completion or number services costs associated with the provision of the resold service, or they are services for which BellSouth will be separately compensated, in which case failure to treat them as avoided in the wholesale discount calculation would result in new entrants paying twice for the same service. (Price, T 837)

One additional difference between Mr. Price's avoided cost study and Mr. Reid's study is the data source used to determine the costs that currently are included in BellSouth's retail rates. Mr. Price appropriately used BellSouth's ARMIS 43-04 report, whose components tie to the total expenses subject to separations and used for ratemaking purposes, rather than the ARMIS 43-03 report, whose components total to less than the amount subject to separations. (Price, T 877-9, 886-8)

Issue 5. What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth services?

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

As noted above, Section 251(c)(4) of the Act establishes BellSouth's obligation to offer services for resale. Under that section, BellSouth cannot "impose unreasonable or discriminatory conditions or limitations on, the resale of. . .telecommunications service," except for certain cross-class selling restrictions.

MCI agrees that certain cross-class selling restrictions are appropriate, in particular those which would limit resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such services directly from BellSouth. (Price, T 781)

BellSouth goes further and suggests that any existing tariff limitations should also apply to the resale of services. (Scheye, T 1734-6) The FCC Order specifically rejected this contention:

> 939. We conclude that resale restrictions are presumptively unreasonable. Incumbent LECs can rebut this presumption, but only if the restrictions are narrowly tailored. Such resale restrictions are not limited to those found in the resale agreement. They include limitations contained in the incumbent LEC's underlying tariff. . . .

With one exception -- volume discounts for Saver Service -- BellSouth has failed to specifically identify any tariff limitations which it believes must be continued. BellSouth has therefore failed to show that its proposed restrictions are "narrowly tailored," or otherwise to rebut the presumption that such restrictions are unreasonable.

With respect to Saver Service, BellSouth contends that the pricing of the service might be affected if the service could be used by multiple end users and the usage aggregated. (Scheye, T

1735) BellSouth therefore suggests, in effect, that resale of Saver Service be limited to situations in which a reseller's end user meets the volume requirements in BellSouth's tariff. (See Scheye, T 1735-6) This position flies in the face of the FCC Order, which held that:

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

It is also totally at odds with the practice in the interexchange arena, where many resellers make a business of purchasing a volume-discounted service from AT&T or MCI and reselling it to a collection of end users, none of whom could individually qualify for the volume discount.

Having failed to put forth competent substantial evidence to rebut this particular presumption for volume discount offerings, or the broader presumption against tariff limitations in general, BellSouth cannot be permitted to apply any tariff limitations beyond appropriate cross-class restrictions specifically approved by this Commission.

Issue 6. Should BellSouth be required to provide notice to its wholesale customers of changes to BellSouth's services? If so, in what manner and in what timeframe?

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

MCI has requested that BellSouth provide notice of changes to its retail services at least 45 days prior to the effective date of the change, or concurrent with BellSouth's internal notification process for such changes, whichever is earlier. (Ex. 27, Appendix VIII, §1.2.1, page VIII-4) Unless MCI receives such notification, it will be unable to notify its customers and customer service personnel of the change in a timely manner.

BellSouth, on the other hand, proposes that MCI obtain notice of such changes through the tariff filing process, even if such changes are known to BellSouth at an earlier date. The basis for BellSouth's position appears to be a concern that it could be liable to MCI in the event that BellSouth notified MCI of an upcoming change and subsequently made a business decision to abandon that change. (Scheye, T 1913-6) So long as MCI is protected against the possibility of BellSouth providing intentional misinformation, it would appear to be appropriate for the Commission to protect BellSouth from liability for normal changes in business plans which occur after it has provided a reseller with notice of an upcoming retail service change.

Issue 7. What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to AT&T and MCI by BellSouth?

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

In order to compete with BellSouth, MCI must be able to offer at least the same level of quality that BellSouth provides to its customers. To monitor that performance, BellSouth should be required to meet objective measures of service quality and to provide periodic reports to MCI on the level of service provided to MCI and to its other customers, including end users. Examples of appropriate measurements of quality, and associated reporting requirements, are contained throughout Appendix VII of Exhibit 27. (See, §§2.5, 3.4, 4.3, 4.4, 4.5, 5.4, and 6.4) Adherence to these standards should be enforced through a system of credits for failures to meet the applicable performance standards. Appropriate credit provisions are contained in Attachment X of Exhibit 27.

Issue 8(a). When AT&T or MCI resells BellSouth's services, is it technically feasible or otherwise appropriate for BellSouth to brand operator services and directory services calls that are initiated from those resold services?

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

In a resale environment, branding of operator services and directory assistance calls is essential to enable the reseller to establish an identity in the marketplace, to attempt to differentiate its services from those of the incumbent, and to avoid customer confusion. (Price T 782-4) FCC Rule 51.613(c) recognizes the importance of branding in the resale environment, and requires that such branding be provided on request of the reseller, except in certain limited circumstances:

> (c) Branding. When operator, call completion, or directory assistance service is part of the

> service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale.
>
> (1) An incumbent LEC may impose such a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory, such as by proving to a state commission that the incumbent LEC lacks the capability to comply with unbranding or rebranding requests.

BellSouth's provision of branding in the resale environment depends on its ability to identify an operator service or directory assistance call as having originated from the customer of a particular reseller. This is another aspect of the "selective call routing" capability that is necessary to route DA, operator services, or repair calls to another carrier's platform in an unbundled element environment. As discussed in more detail in Issue 9, below, the record shows that such selective call routing is technically feasible. Since BellSouth has presented no evidence that branding should be denied for any other reason, the Commission must order BellSouth to provide unbranding or rebranding on MCI's request.

Issue 8(b). When BellSouth's employees or agents interact with AT&T's or MCI's customers with respect to a service provided by BellSouth on behalf of AT&T or MCI, respectively, what type of branding requirements are technically feasible or otherwise appropriate?

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

MCI and BellSouth appear to agree that when BellSouth employees interact with an MCI customer with respect to a resold service (1) it is appropriate for the BellSouth employees to identify themselves as providing service on behalf of MCI, and (2) the BellSouth employees should not be permitted to market BellSouth services to the MCI customer. (Scheye, T 1747-48; Price, T 826) The parties disagree on the appropriate branding of "leave-behind cards" and other written materials.

MCI has requested that BellSouth use leave-behind cards provided by MCI which are branded to identify MCI as the provider of the service. (Price, T 827) BellSouth refuses to use such reseller-provided leave-behind materials, but offers instead to have its field personnel write MCI's name in the blank on a generic, BellSouth-provided leave-behind card. (Scheye, T 1737) There appears to be no technical or operational reason that BellSouth cannot comply with MCI's request. Mr. Scheye argued only that the use of multiple leave-behind cards would be an administrative burden and would create the risk that a field technician would leave behind the wrong card. Mr. Scheye was unable to explain, however, why it would be more difficult for a field technician to select the correct card than to correctly write-in the reseller's name on a generic card. (Scheye, T 1918-21)

Issue 9. When AT&T or MCI resells BellSouth's local exchange service, or purchases unbundled local switching, is it technically feasible or otherwise appropriate to route 0+ and 0- calls to an operator other than BellSouth's, to route 411 and 555-1212 directory assistance calls to an operator other than BellSouth's, or to route 611 repair calls to a repair center other than BellSouth's?

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

FCC Rule 51.319(c)(1)(i)(C)(2) requires BellSouth to unbundle "any technically feasible customized routing functions" provided by a local switch. MCI has requested that BellSouth provide customized routing to allow calls by MCI's local customers to directory assistance (411), repair service (611), or operator service (0-) to be routed to an appropriate MCI platform. BellSouth has refused to agree to provide such routing, claiming that it is not technically feasible to do so.

As in the case of its other refusals to provide requested network elements on an unbundled basis, BellSouth has created its own definition of technical feasibility which does not comport with the definition adopted by the FCC. (Price, T 829-30) For example, Mr. Milner and Mr. Scheye both argue that the use of line class codes to accomplish selective call routing is not technically feasible because there are a limited number of such codes, which would be exhausted at some point if every reseller wanted to use selective routing and every reseller required the same number of line class codes as BellSouth uses today. (Milner, T 2653) Yet the evidence shows that many resellers would not elect to use selective call routing, and that those who do are likely to require many fewer line attribute codes (15 to 75) than the approximately 350 in use by BellSouth today. (Caplan, T 957-9) Of course, at any point in time there is a limited number of line attribute codes available -- although Nortel has announced plans to quadruple the number of

such codes in its DMS-100 switch in two phases over the next 18-24 months. (Caplan, T 952-4) The limitation of the existing resource, however, can be dealt with by taking steps to conserve line attribute usage; by assigning line attributes on a first-come, first-served basis; and by preventing warehousing of codes by either BellSouth or any new entrants. (Caplan, T 959-62) There are models for this type of conservation in both the NNX assignment and physical collocation arenas. (Caplan, T 963) Such an approach is certainly more reasonable than denying selective routing to any carrier other than BellSouth on the grounds that BellSouth today could not meet the theoretical demands of all carriers. It is also necessary to avoid violating the Act's requirements for nondiscrimination and for dialing parity, and to avoid creating an unnecessary barrier to entry. (Cornell, T 1206-7)

Further, line class codes are only one of the available methods to implement selective routing. Bell Atlantic-Pennsylvania has agreed to implement selective routing by June 30, 1997, using AIN capabilities. (Cornell, T 1207) The fact that another incumbent LEC can use this technology undercuts BellSouth's claim that use of AIN in this application is not technically feasible. (See Milner, T 2657-8) If BellSouth needs to undertake some additional development work to employ AIN for this purpose, it could make use of line class codes to provide this functionality for an interim period while such development work is underway.

Finally, although it certainly is not the preferred solution, parity could be achieved by requiring all customers -- MCI and BellSouth's alike -- to dial a 7-digit or 1-800 number for access

to BellSouth's repair service. BellSouth does use 7-digit dialing for repair service in some other states, and Bell Atlantic has agreed to use 1-800 access for repair calls as a means of achieving local dialing parity. (Scheye, T 1917-8; Price, T 828-9)

Issue 10. Do the provisions of Sections 251 and 252 apply to access to unused transmission media (e.g. dark fiber, coaxial cable, twisted pair)? If so, what are the appropriate rates, terms, and conditions?

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

Dark fiber refers to fiber optic transmission facilities which have been installed in the BellSouth network, but which have not yet been equipped with the electronic equipment necessary to transmit signals through the fiber. Dark fiber is necessary for MCI to expand the reach of its network using electronics that comport with its network architecture. It does not make sense to require MCI to purchase transport services (i.e. "lit" fiber) from BellSouth when MCI could purchase the spare, unlit facilities and match them with MCI's own, more efficient electronic technologies. (Caplan, T 923-4)

Section 251(c)(3) of the Act requires BellSouth to provide "nondiscriminatory access to network elements on an unbundled basis." Section 3(45) of the Act defines network element to mean "a facility or equipment used in the provision of a telecommunications service." BellSouth appears to contend that since dark fiber has never been activated, it is not "used in the

provision of a telecommunications service" and is not subject to the unbundling requirement of the Act. (Varner, T 1480, 1527-8)

BellSouth's position is based on an overly narrow reading of the Act. Dark fiber has been deployed by BellSouth to provide future capacity for the provision of telecommunications services. From an engineering perspective, it is simply another level in the hierarchy of dedicated interoffice transport. (Caplan, T 923-4) In this regard, it is similar to unused space in a central office (which is available for future growth or for physical collocation by third parties) or to unused line class codes in a switch. Because fiber is deployed with multiple strands within a single cable sheath, dark fiber commonly coexists in the same cable sheath with "lit" fiber. To label one strand a "network element" and another strand "not a network element" is nothing more than another attempt by BellSouth to create barriers to competitive entry.

Issue 11. Is it appropriate for BellSouth to provide copies of engineering records that include customer specific information with regard to BellSouth's poles, ducts and conduits? How much capacity, if any, is appropriate for BellSouth to reserve with regard to its poles, ducts, and conduits?

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

All carriers are entitled to nondiscriminatory access to BellSouth's poles, ducts, conduits and rights-of-way. It would be inconsistent with this nondiscrimination provision for BellSouth to

be permitted to reserve such capacity for itself for a period of five years, as suggested by Mr. Scheye.

MCI has proposed the following procedure for its use of BellSouth's poles, ducts, conduits and rights-of-way:

1. Within 20 business days of a request by MCI to use particular facilities (Request), BellSouth should provide information on the availability and condition of such facilities, including a written confirmation of the availability of such facilities (Confirmation).

2. BellSouth should reserve the requested facilities for MCI for a period beginning on the date of the Request and terminating 90 days after the date of the Confirmation.

3. MCI should elect whether or not to use such facilities during that reservation period. If it decides to use such facilities, MCI should send a written notice of acceptance to BellSouth (Acceptance).

4. MCI should have six months after Acceptance to begin attachment and/or installation of its facilities, and one year after Acceptance to complete such activities.

To ensure nondiscriminatory treatment, similar timeframes should be applied to requests by other carriers, including BellSouth, to use such facilities. (Price, T 818-819; Ex. 27, Attachment VI, §§3.9 to 3.11, page VI-3; Ex. 22, DGP-7, pages 6-7)

In addition, in order for MCI to make meaningful use of its right to access BellSouth's poles, conduits and rights-of-way, BellSouth should provide MCI with access to detailed engineering records and drawings of poles, ducts, conduits and rights-of-way on

two days' notice, and with information not reflected in such records on the location and condition of such facilities within twenty business days of a request by MCI. (Price, T 818; Ex. 27, Appendix VI, §§3.7 and 3.9, pages VI-2 to VI-3) To the extent that such records contain any customer proprietary information, it can be protected by an appropriate confidentiality agreement.

Issue 12. How should BellSouth treat a PIC change request received from an IXC other than AT&T or MCI for an AT&T or MCI local customer?

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

Today, a monopoly local service provider such as BellSouth accepts PIC changes directly from its local customer or from an IXC. Tomorrow, BellSouth proposes to continue to accept PIC changes from an IXC for MCI's local customers who are served by the resale of BellSouth's services. This is inappropriate.

Just as the IXC's request today must be submitted to the customer's local service provider (i.e. BellSouth will not accept a PIC change for a customer of General Telephone), the IXC's request tomorrow should likewise be submitted to the customer's local service provider, in this case MCI. BellSouth does not have a direct relationship with MCI's customer and should not undertake to make PIC changes affecting that customer except when that request is forwarded to it by MCI.

Issue 13. Should BellSouth be required to provide real-time and interactive access via electronic interfaces as requested by AT&T and MCI to perform the following:

Pre-Service Ordering
Service Trouble Reporting
Service Order Processing and Provisioning
Customer Usage Data Transfer
Local Account Maintenance

If the process requires the development of additional capabilities, in what time frame should they be deployed? What are the costs involved, and how should these costs be recovered?

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

Section 251(c)(3) of the Act requires BellSouth to provide "nondiscriminatory access to network elements on an unbundled basis." Section 3(45) of the Act defines network element to include "subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

The FCC concluded that operations support systems and the information they contain fall squarely within the definition of "network element" and must therefore be unbundled upon request. (FCC Order ¶ 516) Further, the requirement for nondiscriminatory access means that if BellSouth's internal systems provide such information electronically, similar electronic access must be provided to competing carriers. (FCC Order ¶ 516) The FCC codified this requirement in Section 51.319(f) of its Rules, which requires

specified operations support systems functions -- including each of those requested by MCI -- to be made available as expeditiously as possible, but in any event no later than January 1, 1997.

In order to provide service that is equal in quality to that provided by BellSouth, it is essential that MCI have real-time, interactive access to the various operations support systems. While BellSouth appears to acknowledge its obligation to provide access to the operations support systems, it has not agreed to provide real-time, interactive access by a date certain, much less by the January 1, 1997 date required by the FCC Rules.

In some cases, BellSouth even appears to disagree with the basic requirement to provide access. For example, BellSouth does not agree that MCI is entitled to have access to customer records during the pre-ordering phase, before orders are actually placed. Accordingly, BellSouth has provided no interface for MCI to access this critical information. (Martinez, T 1010-11) The lack of ability to check a customer's account data -- with the customer's permission -- will adversely affect MCI's ability to provide competitive service to its customers. To verify orders and avoid rejection by BellSouth, MCI must have accurate information about the details of the customer's account, and such information must be available in a timely manner. (Martinez, T 1012) Residential and small business sales generally take place during the course of a single telephone call, in which all sales order and pre-ordering activities occur. Unless MCI's salespeople have on-line, real-time access at that point to the customer's service records, MCI will not be able to accurately quote prices for service comparable to

what the customer currently receives, nor to accurately place an order to replicate the customer's existing service. (Martinez, T 1006, 1011-2) If MCI does not have access to the information necessary to take and process the customer's order in an error-free manner, the customer will perceive this as the fault of the new provider.

MCI recognizes the customer privacy implications of access to BellSouth's customer service records in the pre-ordering situation. MCI will provide a blanket letter of authorization to BellSouth which represents that MCI will access such information only with the customer's permission, and MCI would support deployment of a system which prohibits "roaming" through customer records. (Martinez, T 1029-33) It should be noted, however, that while both Section 222(c)(1) of the Act and Section 364.24(2), Florida Statutes, require the customer's approval or authorization before customer information is disclosed, neither the federal or state law requires that authorization to be in writing. BellSouth's insistence on written authorization is thus simply another attempt to create artificial barriers to competitive entry.

BellSouth proposes to use electronic data interchange (EDI) on an interim basis for pre-ordering and the other interfaces required to support local service, but this method of data interchange is neither real-time nor interactive. These interim measures still involve a manual element -- BellSouth technicians will take information transmitted electronically by MCI and use it to manually input orders into BellSouth's service order system.

In the case of service trouble reporting, the lack of real-time, interactive electronic interfaces will adversely affect the timeliness of repairs. MCI will have to place telephone calls to BellSouth to report customer trouble. This produces nothing but delay. In contrast, when electronic bonding for repair was implemented in the long distance access service arena, MCI saw a dramatic decrease in repair times. Electronic bonding is MCI's interface of choice for all operations systems, but MCI recognizes that electronic bonding for all systems may be realistic in the near-term. The industry Electronic Communications Implementation Committee has only recently agreed to review electronic bonding interfaces with respect to local operations systems.

The issue of service order processing and provisioning is currently before the industry Order and Billing Forum, which has published the initial draft of the Local Service Ordering Guideline (LSOG) and the Local Service Request (LSR)/Industry Support Interface (ISI) for ordering all unbundled and resold local services. Many issues remain to be resolved, however, so it is apparent that non-interactive, non-real-time interfaces will continue to be in place for an interim period of time.

In order to comply with the Act and the FCC Order, the Commission should direct BellSouth to file a schedule detailing its plans for developing real-time, interactive electronic interfaces by the FCC's deadline of January 1, 1997. The Commission should further direct BellSouth to specify, if it cannot meet that deadline, the impediments it faces; to outline its plans for developing the required electronic bonding; to identify the date by

which deployment of such systems will be possible; and to detail the interim systems it plans to implement in the absence of electronic bonding. BellSouth has no incentive to develop these interfaces on its own. It is only when state commissions require BellSouth to develop a realistic timetable for system deployment -- as the Georgia Commission did earlier this year -- that BellSouth will begin to take seriously its obligation to provide access to such systems on a nondiscriminatory basis.

The costs of implementing electronic bonding have not been identified. It is clear that there will be shared benefits to such interfaces, however, since BellSouth will be able to eliminate costly, manual processes that are required in the absence of electronic bonding. Therefore each party should bear its own costs of implementing the necessary interfaces. Section 251(c)(3) of the Act requires access to operations support systems to be provided on terms and conditions that are just, reasonable, and nondiscriminatory. That standard will not be met if MCI and the other new entrants are required to pay more than their own costs. All parties have the obligation to develop a competitive local market. Requiring new entrants to pay all of the costs for BellSouth systems that will make BellSouth a more efficient provider of wholesale services would place a huge financial burden on the new entrants, would unduly favor BellSouth, and would not be competitively neutral. Establishing a system in which each party bear its own costs would not only reflect the sharing of the benefits, but would also provide BellSouth with the incentive to

keep the systems development expense reasonable -- an incentive it lacks if it can look to its competitors for payment of those costs.

Issue 14(a) Should BellSouth be required to use the CMDS process for local and intraLATA calls in the same manner as it is used today for interLATA calls?

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

The Commission should require BellSouth to use the CMDS process for billing of intraLATA collect, third-party and calling card calls to the same extent that it is used today in the interLATA environment. Under this process, all such calls are billed at the originating service provider's rates. (Shurter, T 213-4) In general, this process has greatly simplified the billing procedure for interLATA calls and has eliminated confusion and disputes as to which rates apply and the compensation due to each carrier. (Shurter, T 213-4) BellSouth appears to agree that it can provide such capability with systems that are currently state specific, and provides no reason that it could not make these systems uniform within the BellSouth region. (Scheye, T 1786)

Issue 14(b). What are the appropriate rates, terms and conditions, if any, for rating information services traffic between AT&T or MCI and BellSouth?

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

The Commission should order that calls to information service providers be presented by BellSouth to MCI in rated format for billing to the customer. (See Carroll, T 754-8)

Issue 15. What billing system and what format should be used to render bills to AT&T or MCI for services and elements purchased from BellSouth?

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

The industry Ordering and Billing Forum has established a Carrier Access Billing data format which provides a uniform, nationwide format for the provision of billing information for access services. This format provides an appropriate level of detail for carrier-to-carrier billing, allows a carrier to obtain bills in the same format from all LECs, and ensures that the bills can be audited on a mechanized basis. In August, 1996, the industry Ordering and Billing Forum approved specifications for CABS-formatted billing for unbundled network elements and resold services. The use of CABS-formatted billing in the unbundling and resale environment is necessary to provide MCI with billing information in a usable format.

BellSouth proposes to use CABS-formatted billing for unbundled network elements, but not for resold services. For the latter, it proposes to use a CRIS format, similar to that it provides today to end user customers. Since CRIS-formatted bills vary from state to state and LEC to LEC, MCI would have to develop and maintain multiple operational systems to deal with a wide variety of billing formats. This would create inefficiencies in the billing process and would impose unnecessary costs to MCI.

MCI recognizes that BellSouth may still use its CRIS billing system to collect the relevant billing information. BellSouth should be required, however, to translate the output from that system into a CABS-format before forwarding it to MCI. Such a translation is clearly technically feasible. NYNEX will be using its CRIS system to produce CABS-formatted billing effective October 1, 1996.

In a similar vein, when MCI began operation of the Telephone Relay Service in Florida, the Commission gave MCI thirty days to provide billing information to the LECs in a specified format which was different than the one produced by MCI's proprietary billing system. MCI undertook the necessary work to translate its billing data to the required format. MCI believes that with a similar incentive provided by a Commission order, BellSouth should be able to complete the necessary translation work in a short timeframe. Without such an order, however, BellSouth appears to lack the incentive to provide CABS-formatted billing on its own.

Issue 16. Should BellSouth be required to provide Process and Data Quality Certification for carrier billing, data transfer, and account maintenance?

**MCI: Yes.**

See MCI's discussion of Issue 7.

Issue 17. Should BellSouth be required to allow AT&T and MCI to have an appearance (e.g. logo or name) on the cover of the white and yellow page directories?

**MCI: Yes. To the extent that the Commission's ability to enforce this requirement directly against BAPCO is questioned by BellSouth or BAPCO, the Commission should

order BellSouth to require -- as a condition of BellSouth providing its customer listing information to BAPCO -- that BAPCO allow MCI to have such an appearance on the directory cover.**

BellSouth directories are published by BellSouth Advertising and Publishing Company (BAPCO), an affiliate of BellSouth. As part of the overall directory publishing arrangement, BellSouth provides directory listing information to BAPCO. In return, as part of the overall arrangement, BAPCO places BellSouth's logo on the cover of the directories. (Scheye Depo., Ex. 63, pp. 33-34)

MCI has reached agreement with BAPCO on numerous issues related to white and yellow page directory listings. MCI has been unable to reach agreement, however, on the use of MCI's logo on the directory cover. To ensure that MCI receives treatment by BellSouth's affiliate equivalent to the treatment afforded to BellSouth itself, the Commission should order BellSouth to require -- as a condition of BellSouth providing its customer listing information to BAPCO -- that BAPCO allow MCI to have such an appearance on the directory cover.

**Issues Specific to AT&T and BellSouth**

Issue 18. Should BellSouth be required to provide interim number portability solutions besides remote call forwarding? If so, what are the costs involved and how should they be recovered?

**MCI: This is an ATT-only issue.

Issue 19. Do the provisions of Section 251 and 252 apply to the price of exchange access? If so, what is the appropriate price for exchange access?

**MCI: This is an ATT-only issue.

Issue 20. What are the appropriate trunking arrangements between AT&T or MCI and BellSouth for local interconnection?

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

Issue 21. What should be the compensation mechanism for the exchange of local traffic between AT&T or MCI and BellSouth?

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

Issue 22. What are the appropriate general contractual terms and conditions that should govern the arbitration agreement (e.g. resolution of disputes, performance requirements, and treatment of confidential information)?

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

**Issues Specific to MCI and BellSouth**

Issue 23. What should be the cost recovery mechanism for remote call forwarding (RCF) used to provide interim local number portability in light of the FCC's recent order?

**MCI: There should be no explicit monthly recurring charge for remote call forwarding used to provide interim local number portability. BellSouth and MCI should each bear their own cost of implementing the interim number portability mechanism.

BellSouth maintains that the appropriate cost recovery mechanism for remote call forwarding used to provide interim local number portability should not be decided in this arbitration proceeding, but instead should be resolved in the context of the Commission's upcoming generic investigation into interim local number portability.

This contention was properly rejected by the Prehearing Officer. Section 251(b)(2) of the Act requires BellSouth to provide number portability in accordance with requirements prescribed by the FCC. Section 251(c)(1) of the Act requires BellSouth to negotiate the terms of an agreement to fulfill the duties imposed by Section 251(b). And Section 252(b) of the Act gives MCI the right to arbitrate any open issues which have not been resolved by negotiation.

Under the terms of the FCC's First Report and Order in Docket No. 95-199 (the FCC's iLNP Order), the cost of providing interim local number portability must be recovered on a competitively neutral basis. The existing cost recovery mechanism approved by this Commission -- under which the costs are recovered solely from new entrants -- does not comply with the requirements of the FCC's iLNP Order.

The Commission thus should approve a cost recovery mechanism for purposes of this arbitration proceeding in which each carrier, MCI and BellSouth, bears its own costs of providing interim local number portability. This "bill and keep" arrangement is the simplest method of complying with the FCC's iLNP Order, and it avoids the time and expense of implementing more complicated cost recovery mechanisms which would be in place for only a short period of time. (Price, T 796-7, 831)

Issue 24. What intrastate access charges, if any, should be collected on a transitional basis from carriers who purchase BellSouth's unbundled local switching element? How long should any transitional period last?

**MCI: The price for unbundled local switching should be based on its forward looking economic cost in accordance with TELRIC principles. The price should not include any additional charge for intrastate switched access minutes that traverse BellSouth's switch.**

As discussed under Issue 1(b), above, the Act establishes a fully compensatory cost-based pricing standard for unbundled network elements. Those rates may include a reasonable profit, but may not include any funding for universal service, which must be dealt with through a separate mechanism under Section 254 of the Act and comparable provisions of state law.

Under the Act, a new entrant who purchases unbundled facilities can use those facilities, alone or in combination with its own facilities, to provide any telecommunications service, including exchange service to its end user customers and access service to interexchange carriers. As the "lessor" of the unbundled elements, the new entrant is entitled to all revenues generated through the use of those elements, including any access charges that the entrant chooses to impose on interexchange carriers.

Notwithstanding this statutory scheme, the FCC used its rulemaking authority to create an interim exception to the cost-based pricing standard for local switching. FCC Order ¶¶ 716-32; 47 C.F.R. § 51.515. Under that interim exception (which has been stayed by the Eighth Circuit Court of Appeals), BellSouth would be allowed to continue to collect the non-cost-based CCLC and 75% of the non-cost-based TIC with respect to interstate access minutes which traverse an unbundled local switching element purchased by a new entrant. A parallel rule also permitted, but did not require,

the states to impose a similar interim charge on intrastate minutes that made use of an unbundled local switching element.

With the Eighth Circuit's stay in effect, however, there is no authority for the Commission to impose such a transitional charge. Instead the Commission is bound by the pricing provisions of the Act, which do not permit any non-cost-based charge for local switching or for any other unbundled network element.

Even if this portion of the FCC Rules had not been stayed, the Commission should have declined to impose this non-cost-based charge on new entrants, since it would only serve to artificially raise the cost to new entrants and, ultimately, the price paid by consumers for competitive local exchange service. (Gillan, T 102-105)

Issue 25. What are the appropriate rates, terms and conditions for collocation (both physical and virtual)?

**MCI: MCI should be able to collocate subscriber loop electronics, such as DLC; to interconnect with other collocators; to interconnect to unbundled dedicated transport obtained from BellSouth; and to collocate via either physical or virtual facilities. Rates for collocation should be based on forward-looking economic cost in accordance with TELRIC principles.**

Section 251(c)(6) of the Act places on BellSouth a duty to provide "on rates, terms, and conditions that are non-discriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements," except that virtual collocation can be provided if a state commission finds that physical collocation is not practical for technical reasons or because of space limitations.

The requirements for collocation for interconnection and access to unbundled network elements are different, and broader, than what was needed in the past for competitive access providers. (Caplan, T 936) To ensure that collocation is a viable means of providing interconnection and access to unbundled network elements, the Commission should confirm that:

1. MCI has the right to collocate subscriber loop electronics, such as digital loop carrier, in the central office;

2. MCI has the right to purchase unbundled dedicated transport from BellSouth between the collocation facility and MCI's network;

3. MCI has the right to interconnect with other collocators in the same central office; and

4. MCI has the ability to collocate via either physical or virtual facilities. (Caplan, T 937)

Rates for collocation facilities -- like rates for unbundled network elements -- should be based on forward-looking economic costs, in accordance with TELRIC pricing principles. (See Cornell, T 1150)

Issue 26. What are the appropriate rates, terms and conditions related to the implementation of dialing parity for local traffic?

**MCI: MCI customers must be permitted to dial the same number of digits to make a local telephone call as are dialed by a BellSouth customer, and call processing times for MCI calls within BellSouth's network must be equivalent to those experienced by BellSouth. Any incremental costs directly relating to the provision of dialing parity should be collected on a competitively neutral basis.**

Section 251(b)(3) of the Act imposes on BellSouth "the duty to provide dialing parity to competing providers of telephone exchange service" and "the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays." MCI believes that this section is an independent source of authority for the Commission to require BellSouth to route 0-, 411 and 611 calls to MCI's operator, DA and repair platforms on request. (See Issue 9, above.)

Beyond this, the requirement for nondiscriminatory access means that BellSouth must provide competing providers with access that is at least equal in quality to what BellSouth provides itself. For example, call set-up and call processing times for MCI customers on BellSouth's network should be equivalent to those for BellSouth itself, and any dialing delays on BellSouth's network should be no longer than those experienced by BellSouth's customers for identical call types. (Price, T 801)

Issue 27. What are the appropriate arrangements to provide MCI with nondiscriminatory access to white and yellow page directory listings?

**MCI: This issue was withdrawn by MCI.**

Issue 28. What terms and conditions should apply to the provision of local interconnection by BellSouth to MCI?

**MCI: This issue was stricken by the Prehearing Officer.**

**Other Issues for All Parties**

Issue 29. Should the agreement be approved pursuant to the Telecommunications Act of 1996?

**MCI: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e).**

Section 252(e)(1) of the Act requires that any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the state commission. Under Section 252(e)(2), different standards govern approval of agreements (or portions thereof) adopted by negotiation versus agreements (or portions thereof) adopted by arbitration.

As discussed in Issue 30, below, MCI expects that this proceeding will result in the submission of an arbitrated agreement, which should then be approved or rejected applying the standards contained in Section 252(e)(2)(B).

Issue 30. What are the appropriate post-hearing procedures for submission and approval of the final arbitrated agreement?

**MCI: The parties should be directed to negotiate a comprehensive agreement that incorporates the Commission's decisions on the issues decided in this proceeding within 14 days of the Commission's vote. In the event the parties are unable to conclude an agreement within that timeframe, each party should submit its proposed agreement within 20 days of the vote. The Commission should then adopt the proposal, or the portions of the competing proposals, which best incorporates its decisions into a comprehensive agreement.**

In Order No. PSC-96-1107-PCO-TP, the Prehearing Officer ruled that the Commission will take action on the major issues identified by the parties to this proceeding, but will not resolve all of the subsidiary issues necessary to produce a final arbitrated

agreement. The Prehearing Officer proposed a post-decision procedure under which the parties would be given a specified period of time to submit a comprehensive arbitrated agreement that incorporates the Commission's decisions on the major issues. If the parties are unable to reach a comprehensive agreement in the specified time frame, the Prehearing Officer proposed that each party would submit its own version of a proposed agreement, and that the Commission would choose and approve the agreement that best comports with its decision.

MCI believes that it has a right under the Telecommunications Act of 1996 for the Commission to resolve all the issues that MCI submitted for arbitration. Given the number of issues, MCI initially proposed a "Mediation Plus" procedure that was outlined in its Petition for Arbitration. The Mediation Plus procedure contemplated a hearing on the major issues identified by the parties, coupled with Commission-supervised mediation of other issues. MCI's proposal would have required additional hearings on any issues that the parties were unable to resolve in a timely fashion. The Prehearing Officer denied MCI's request for Mediation Plus, and MCI elected not to seek full Commission review of that ruling.

MCI believes that, with a slight modification, the Prehearing Officer's proposal may be a workable procedure for achieving a final arbitrated agreement.

First, the Commission should set the deadline for the parties to submit a comprehensive agreement at 14 days after the date of the Commission's vote on the major issues. The parties can

continue to negotiate general contractual terms concurrently with the Commission's hearing and post-hearing procedures, and a 14-day time frame should be sufficient to incorporate the effect of the Commission's vote into a comprehensive agreement. Such a deadline is consistent with the intent of the Act that arbitration proceedings be completed on an aggressive schedule. If no agreement is reached in that time frame, each party should have until 20 days from the date of the vote to submit its own version of a proposed agreement.

Second, in the event that a comprehensive agreement is not reached by the Commission-imposed deadline, the Commission should not bind itself to accept, in its entirety, the proposed agreement submitted by either party. Instead the Commission should retain the flexibility (a) to accept the entire proposed agreement submitted by either party, or (b) to accept, on an issue-by-issue basis, parts of the proposed agreements offered by each party. This is consistent with the discretion that the FCC would vest in its arbitrators to use either "entire package" final offer arbitration or "issue-by-issue" final offer arbitration in cases where the FCC has assumed jurisdiction over an arbitration. 47 C.F.R. §51.807(d)

RESPECTFULLY SUBMITTED this 22nd day of October, 1996.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 22nd day of October, 1996.

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