BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996.	DOCKET NO. 960757-TP ORDER NO. PSC-96-1531-FOF-TP ISSUED: December 16, 1996

The following Commissioners participated in the disposition of this matter:

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

APPEARANCES:

Morton J. Posner, Esquire, and Richard Rindler, Esquire, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, DC 20007.
On behalf of MFS Communications Company, Inc..

Nancy White, Esquire, and J. Phillip Carver, Esquire, BellSouth Telecommunications, Inc., 150 South Monroe Street, Room 400, Tallahassee, FL 32301.
On behalf of BellSouth Telecommunications, Inc.

Michael Billmeier, Esquire, and Donna Canzano, Esquire, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Commission Staff.

ORDER ON PETITION FOR ARBITRATION

BY THE COMMISSION:

CASE BACKGROUND

The Federal Telecommunications Act of 1996 (Act), 47 USC § 251 et.seq., governs the development of fully competitive markets in the telecommunications industry. Section 251 of the Act addresses the interconnection, unbundling and resale of incumbent local

exchange carriers' networks and facilities with other telecommunications providers. Section 252 of the Act sets forth the procedures for negotiation, arbitration, and approval of interconnection and resale agreements.

Section 252(b) addresses agreements established through compulsory arbitration when parties are unable to negotiate an agreement themselves. Specifically, Section 252(b)(1) states:

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

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

On February 8, 1996, MFS Communications Company, Inc. (MFS) began negotiations with BellSouth Telecommunications, Inc. (BellSouth). On June 28, 1996, MFS filed a petition requesting that the Commission arbitrate various issues in its negotiations with BellSouth. We held an administrative hearing on the unresolved issues on August 27 and 28, 1996.

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

On the first day of the hearing, August 27, 1996, MFS and BellSouth announced that they had reached agreement resolving most of the issues in MFS' arbitration petition. MFS withdrew those from consideration in the case, and the parties submitted a separate negotiated agreement. Three substantive issues then remained to be arbitrated: the appropriate rates, terms and conditions for billing, collection and rating of information

services traffic; the appropriate rate for unbundled loops; and the terms, conditions and rates for physical collocation. This arbitration order will address these remaining unresolved issues. Having considered the evidence presented at hearing and the posthearing briefs of the parties, we make our decision on the issues as described in detail below.

We note that at the beginning of our Special Agenda Conference on November 1, 1996, where we made our substantive decisions on the issues in this case, we addressed two related post-hearing motions filed by the parties, BellSouth's Motion to Strike Portions of the Post-Hearing Brief of MFS, and MFS' Opposition to Motion to Strike or, in the Alternative, to Reopen the Record for Receipt of Supplemental Documentation. We granted BellSouth's motion and denied MFS' motion on the grounds that the attachments to MFS' brief constituted non-record evidence that could not be considered in this proceeding. We further determined that given the number of arbitration proceedings presently before us, all on compressed schedules, and the late moment the additional evidence was proffered, we did not believe it was reasonable to reopen the record. We have not considered the extra record evidence attached to MFS' brief in our decision below.

DECISION

I. The appropriate rates, terms, and conditions for billing, collection, and rating of information services traffic.

MFS has proposed a specific treatment for the handling (rating and billing) of end user calls to Information Services Providers (ISPs). N11 and 976-XXXX are typical numbers associated with information services. For example, end users might dial 311 to reach a sports report from an ISP. The local exchange company (LEC) would bill the end user a prearranged charge for that call and remit the amount to the ISP, less a specified fee for billing and collecting. The end user charge and the billing and collection fee are specified in a contract between the ISP and the LEC.

In this proceeding, MFS has proposed an arrangement to be used if one of its customers calls an ISP that has a contract with BellSouth but not with MFS. MFS proposes that it send the call detail to BellSouth, which would rate the call according to its contract with the ISP and send the rated call detail back to MFS. MFS would then bill its own customer, and remit the money to BellSouth less $.05 per minute for handling and less uncollectibles. MFS has proposed that this be a reciprocal

arrangement in the event that it decides to provide an information services platform.

MFS' witness admitted at hearing that MFS had not yet attempted to approach ISPs to discuss billing and collection contracts. MFS' witness stated that it intends to do so in the future but that it has limited resources, and it wanted to have information services available to its customers as soon as it offers local service.

MFS states that its proposal constitutes a request for an unbundled network element as defined in both the Act and the FCC Order. MFS argues that in both the Act and the Order, an unbundled network element includes "information sufficient for billing and collection," which is what MFS argues it is proposing here.

BellSouth's witness argues that ISP traffic is not subject to arbitration, because it is neither an unbundled network element nor any of the other items listed as negotiable under Section 251 of the Act. BellSouth submits that the Order is silent on this point since the reference to billing in the definition of an unbundled network element does not refer specifically to ISPs. BellSouth argues that therefore we should not arbitrate this issue. BellSouth suggests that if we do decide to arbitrate the issue, MFS should be required to negotiate its own contracts with ISPs.

BellSouth's witness testified that BellSouth offers tariffed access to information services, such as N11 or 976, so that the end user can dial a code or a number to be connected to the ISP's network. BellSouth's witness said that BellSouth may also provide billing and collection for the ISP. Pursuant to a contract with the ISP, BellSouth will record the call, bill the end user the tariffed charges, and remit the revenues to the ISP, less a billing and collection fee. BellSouth argues that MFS simply wants to "subtend" BellSouth's arrangements with ISPs by inserting itself into the contract relationship and keeping a $.05 per minute charge. BellSouth contends that this is inappropriate in the absence of a definite contract between MFS and the ISP. BellSouth's witness also noted that MFS provided no justification for its proposed $.05 per minute charge.

BellSouth's witness stated that BellSouth would prefer that MFS set up its own arrangements with ISPs, and rate and bill its own customers' ISP calls. BellSouth notes that its tariffed N11 Service currently requires that, in order to provide access to an N11 number to end users in an independent company territory, ISPs must make appropriate arrangements with the independent company

serving the area. BellSouth believes that tariff provision ought to apply to all LECs, including MFS.

Upon consideration, we agree to some extent with both parties. We agree with MFS that a seamless network is preferable for the end-user. As local markets become more competitive, with several providers serving one area, these providers need to cooperate to provide the services that end users want without blockages and needless delays. We also agree with BellSouth, however, that it is inappropriate for MFS to simply assume that it has a right to BellSouth's contract with an ISP and a right to keep fees for services which were not agreed to by the ISP. We note that in its proposal MFS did not suggest that BellSouth should be compensated for the rating service that MFS wants BellSouth to perform.

Based on the above, we find that MFS' request for call detail sufficient to bill and collect its customers should be defined as a network element, and BellSouth should provide it. MFS' proposal should be approved with the exception that neither carrier should be allowed to deduct or retain for itself any portion of the amounts due an ISP, unless that carrier and that ISP have a signed agreement specifying the appropriate charges.

Both BellSouth and MFS should provide rate information on customer calls to ISPs to each other upon request. We believe that rating and billing arrangements for information services traffic should be transparent to an end user. Therefore, neither BellSouth nor MFS should block calls to an ISP simply because it does not have a contract with that ISP. This approach should provide an incentive to MFS to enter into its own contracts with ISPs as quickly as possible. To the extent BellSouth incurs any additional costs as a result of handling the rating and billing of ISP calls for MFS, nothing in our decision will preclude BellSouth from recovering those costs through incremental charges to MFS.

II. The appropriate rate for unbundled loops

Both MFS and BellSouth agree that 2-wire analog voice grade loops, 4-wire analog voice grade loops, 2-wire ISDN digital grade loops, and 4-wire DS-1 digital grade loops should be unbundled. The remaining disagreement between MFS and BellSouth is how the first three types of loops should be priced. Because the pricing provisions of the FCC's Order have been stayed, we will base our arbitration decision on our interpretation of the Act's requirements described in 47 USC § 252(d).

Section 252(d)(1), Interconnection and Network Element Charges, states:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
>
> (A) shall be-
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit.

This section of the Act requires that the prices set for unbundled elements be based on cost, be nondiscriminatory and may include a reasonable profit. Our interpretation of this requirement leads us to the conclusion that the appropriate cost methodology to determine prices for unbundled elements should approximate TSLRIC. This is the pricing policy we adopted in our state proceeding on unbundling and resale. See Order No. PSC-96-0811-FOF-TP, issued June 24, 1996, in Docket No. 950984-TP. We believe it is an equally appropriate pricing policy to apply in this arbitration.

MFS's witness argued that if we do not have Total Element Long-Run Incremental Cost (TELRIC) data, as defined in the FCC Order, upon which to set rates, we must apply the Florida proxy ceiling of $13.68 for unbundled loops in the interim.

BellSouth's witness admitted that the cost studies it submitted in this proceeding are not TELRIC studies, but asserted that the loop rates should be based on the Total Service Long-Run Incremental Cost (TSLRIC) studies that it did submit.

TELRIC, LRIC, and TSLRIC

In Order 96-325, the FCC defines TELRIC as:

> the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as

> incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.
>
> (1) *Efficient network configuration*. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.
>
> (2) *Forward-looking cost of capital.* The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.
>
> (3) *Depreciation rates.* The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates. (FCC Rules, 51.505(b))

BellSouth defines long-run incremental costs (LRIC) as costs that include product specific volume sensitive incremental costs. Volume sensitive costs are costs that vary with a change in volume. BellSouth defines TSLRIC costs as costs that include both the product specific volume sensitive and volume insensitive costs. BellSouth' witness testified that BellSouth had not found any volume insensitive costs associated with loops, and therefore considered LRIC loop costs and TSLRIC loop costs to be the same.

MFS defines LRIC as the direct economic cost of a given facility, including the cost of capital. According to MFS's witness, LRIC represents the cost that the LEC would otherwise have avoided if it had not installed the relevant increment of plant, local loops, in a given region. MFS' initial testimony in this proceeding advocated basing loop rates on LRIC methodologies, but when the FCC's Interconnection Order was issued it changed its testimony and relied on the TELRIC methodology.

Upon consideration, we adopt the following definition of TSLRIC for the purposes of this proceeding:

> TSLRIC is defined as the costs to the firm, both volume sensitive and volume insensitive, that will be avoided by discontinuing, or incurred by offering, an entire product or service, holding all other products or services offered by the firm constant.

This definition should not be construed as requiring or assuming that the firm would reoptimize its input mix and facilities when a service is added to or removed from the existing product mix. That is, TSLRIC, should not be calculated based upon a "scorched earth" or "green field" analysis.

Theoretically there should not be a substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element. In fact, the FCC states that, "while we are adopting a version of the methodology commonly referred to as the TSLRIC as the basis for pricing interconnection and unbundled elements, we are coining the term 'total element long run incremental cost' (TELRIC) to describe our version of this methodology." (FCC Order 96-325, Par. 678)

There does appear to be a difference, however, between TSLRIC and TELRIC for purposes of setting prices, and we note that we would not necessarily use the methodology the FCC employs to price a network element. For example, the FCC's TELRIC definition uses a "scorched node" methodology, while we used a TSLRIC "forward looking technology" methodology in our state interconnection proceedings. The scorched node method only considers the current location of central offices, and not the existing technology deployed by the carrier in either the central office or outside plant. The TSLRIC-based forward looking method considers the current architecture and the future replacement technology. Both methods contemplate inclusion of a reasonable allocation of forward-looking joint and common costs.

Proxy vs. Permanent Rates

MFS argues that we must use the FCC's Florida proxy ceiling of $13.68 for unbundled loops until BellSouth can provide TELRIC cost data. BellSouth's witness stated that if the pricing provisions of the FCC order are upheld on appeal, BellSouth will have to provide cost studies in accordance with the TELRIC methodology. Until that happens, however, BellSouth suggests that we should price unbundled loops using the interim rates we set for BellSouth in our state interconnection proceedings.

On the basis of our interpretation of the Act and our pricing policies established in Docket Nos. 950984-TP and 950985-TP, we find that the TSLRIC cost studies provided by BellSouth in this proceeding are appropriate for setting permanent loop rates at this time.

Analysis of BellSouth's TSLRIC Cost Studies

BellSouth provided LRIC cost studies for all three loop-types requested by MFS. As stated earlier, BellSouth determined that there were no volume insensitive costs associated with the loops, and therefore considered loop costs to be both LRIC and TSLRIC. BellSouth's witness testified that the cost studies are current, valid, and contain all the direct long-run incremental costs associated with the provision of the unbundled elements. BellSouth's witness also asserted that shared and common costs are not included in the cost studies.

BellSouth states that the voice grade and ISDN (integrated services digital network) loop studies analyze two technologies: copper and digital loop carrier on fiber. According to BellSouth's witness, copper and digital loop carrier on fiber represent the most efficient method of deploying voice grade (2-wire and 4-wire) and 2-wire ISDN loops now and in the future. The witness testified that the most efficient way to provide a loop that is less than 12,000 feet on a going forward basis would be on copper. The witness also testified that if the total loop length is greater than 12,000 feet, the most efficient technology would be digital loop carrier on fiber.

MFS's witness agreed with BellSouth that copper would be the most efficient technology, at least to 12,000 feet. The witness testified that depending on what other applications are placed on the same cable, copper can be the most efficient technology to use to as far as 18,000 feet. For loops greater than 18,000 feet, the optimal choice would most likely be a combination of cooper in the distribution plant and digital loop carrier on fiber in the feeder.

MFS's witness testified that BellSouth's cost studies make no attempt to estimate the costs of providing loops using the most efficient, forward-looking technology. MFS's witness stated that his understanding was that BellSouth's costs were based on a 1995 cost study and questioned whether BellSouth's 1995 cost study could be forward-looking. BellSouth's witness testified that the loop designs in the cost studies are forward-looking. The witness asserted that BellSouth sampled actual loops, and if, for example, the loop was 15,000 feet and served on copper, it was converted to digital loop carrier on fiber for the study.

Upon consideration of the evidence in this record, we find that BellSouth's cost studies are appropriate because they approximate TSLRIC cost studies and reflect BellSouth's efficient forward-looking cost for loops. Although MFS generally criticized BellSouth's cost studies, MFS did not identify any specific

problems with the studies. We find that the studies were reasonable and provide a rational basis on which to set permanent 2-wire analog voice grade, 4-wire analog voice grade, and 2-wire ISDN digital grade loop rates. BellSouth also proposed nonrecurring charges for the ordering of each type of unbundled loop. MFS did not argue that BellSouth's nonrecurring costs were too high. Upon review, we find that BellSouth's method for determining nonrecurring charges in this proceeding is also appropriate. We therefore approve the following permanent rates, which cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs:

		Recurring	Nonrecurring	
			First	Add'l
a.	2-wire analog voice grade loop	$17.00	$140.00	$42.00
b.	4-wire analog voice grade loop	$30.00	$141.00	$43.00
c.	2-wire ISDN digital grade loop	$40.00	$306.00	$283.00
d.	4-wire DS-1 digital grade loop - MFS no longer requests this element.			

Geographic Deaveraging

MFS asserted that the loop rates we establish here must be geographically deaveraged into at least 3 zones to reflect the cost differences between the zones. MFS's witness testified that the geographic zones should be defined by clustering the wire centers based on the average loop length. The wire centers with the shorter average loop lengths would have lower costs and would typically be in urban areas, while the wire centers with the longer loop lengths would have higher costs and would typically be located in the rural areas.

BellSouth argues that deaveraging loop prices would be contrary to the current retail pricing practices for basic local exchange service. BellSouth also argues that while zone pricing and rate rebalancing should be implemented for all services in the long run, we should deny MFS' request for deaveraging until such time as we price retail services in the same manner. BellSouth's witness argued that Florida's current statute caps flat-rate residential and single line business basic rates until January 1, 2001, and flat-rated multi-line business rates until January 1, 1999; thus, deaveraging of retail rates is prohibited at present. We believe, however, that Section 364.051(5), Florida Statutes, allows the LECs to petition the Commission for increases to basic rates if they believe that circumstances have changed substantially.

It is our interpretation that the Act permits, but does not require, geographic deaveraging. We think geographic deaveraging of loop rates is appropriate as long as the zones are well defined and reflect appropriate cost differences; but we do not have the requisite cost evidence in this record to deaverage loop rates properly. MFS' proposed deaveraging methodology is not appropriate, because it does not reflect the actual cost differences for providing loops in each zone. Therefore, we will not require BellSouth to deaverage its loop rates at this time.

2-wire ADSL compatible, and 2-wire and 4-wire HDSL compatible loops

ADSL (Asynchronous Digital Subscriber Line) is a transmission path that facilitates 6 Mbps digital signal downstream and 640 kbps digital signal upstream, while simultaneously carrying an analog voice signal. One possible application of this type of technology, for example, would be for transmitting video signals. Two-wire HDSL (High-bit-rate Digital Subscriber Line) permits the transmission of a 768 kbps digital signal over a copper loop, while four-wire HDSL allows the transmission of 1.544 Mbps over two two-wire pairs. This allows telecommunications companies to increase the capacity of copper loops without having to replace them.

BellSouth and MFS have agreed to the provision of 2-wire ADSL compatible, and 2-wire and 4-wire HDSL compatible loops as unbundled elements, but they have not agreed to the price of those loops. BellSouth's witness asserted at the hearing that BellSouth has not proposed rates for ADSL and HDSL loops at this time, because BellSouth is working with MFS to determine appropriate technical specifications and rate structure. Once the specifications and rate structure are finalized, BellSouth will conduct the appropriate cost studies.

MFS asserts that until TELRIC-based cost studies are available, ADSL and HDSL compatible loops should be set at the FCC Florida proxy rate of $13.68. MFS's witness stated that ADSL and HDSL compatible loops are basically copper loops; therefore, they should be priced the same as an unbundled loop. MFS's witness did explain that in some cases extra equipment may be needed because of excessive distances. MFS's witness stated that MFS will pay the cost difference for special conditioning if needed. BellSouth's witness stated that he does not know enough about the specifications to comment on whether the cost of ADSL and HDSL compatible loops would be higher or lower than the cost of a two-wire analog loop.

In its Order the FCC addressed special loop conditioning in this way:

> Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide service not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. ... The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning. (Order at ¶ 382)

Considering the lack of cost evidence in the record in this proceeding for ADSL and HDSL compatible loops, we will set the price for 2-wire ADSL compatible and 2-wire HDSL compatible loops at the 2-wire analog loop rate we approved above, plus the cost of any additional conditioning required. We will set the price for 4-wire HDSL compatible loops at the 4-wire analog loop rate we approved above, plus the cost of any additional conditioning required. We will also require BellSouth to file a TSLRIC cost study for 2-wire ADSL compatible, and 2-wire and 4-wire HDSL compatible loops within 60 days of the date this order is issued.

III. Terms, conditions, and rates for physical collocation

Section 251(c)(6) of the 1996 Act states that incumbent LECs have:

> The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

BellSouth described 3 methods that the FCC identified for developing collocation costs and prices. The first method is to follow the TELRIC rules defined in § 51.501 through § 51.515 of the FCC rules. The second method is to use the prices set forth in BellSouth's interstate expanded interconnection tariffs as proxies. The third method is to establish a proxy. Specifically section 51.513(6) of the FCC rules states:

> To the extent that the incumbent LEC does not offer a comparable form of collocation in its interstate expanded interconnection tariffs, a state commission may, in its discretion, establish a proxy-based rate, provided that the state commission sets forth in writing a reasonable basis for concluding that its rate would approximate the result of a forward-looking economic cost study, as described in § 51.505 of this part.

We note that § 51.501 through § 51.515 of the FCC's rules have been stayed. The standards for collocation found in § 51.323 are still effective.

BellSouth's witness testified that we cannot apply the FCC's TELRIC rules for collocation at this time, because BellSouth has not conducted TELRIC based cost studies for collocation. BellSouth's witness also testified that BellSouth does not have any physical collocation tariffs. BellSouth suggests that since the first two options are not applicable, we should adopt the FCC's third option and establish rates based on BellSouth's Collocation Handbook.

MFS's witness agreed that BellSouth does not have TELRIC cost studies or a physical collocation tariff available for our review. Therefore, MFS's witness suggested that a comprehensive collocation agreement would be necessary. He asserted that BellSouth's Collocation Handbook is not a comprehensive collocation agreement, and without appropriate TELRIC cost data, we should approve the proposed rates in MFS' draft agreement.

MFS based the rate proposals for physical collocation in its draft agreement on BellSouth's interstate and intrastate virtual collocation tariffs. MFS removed overhead loadings for some rates. MFS' witness explained that MFS did not have a BellSouth Florida cost study for physical collocation; therefore, the overhead loadings were derived from estimates based on MFS' knowledge of collocation and cost studies it has reviewed from other states.

BellSouth asserts that physical collocation is not the same as virtual collocation. BellSouth's witness stated that there may be some similarity, but the rates are not a "perfect mirror or perfect match." The witness maintained that rates proposed in BellSouth's Collocation Handbook for physical collocation cover relevant costs and conform with the pricing standards set forth in the Act.

MFS does not agree that BellSouth's Collocation Handbook conforms with the Act, or the FCC's order, because according to MFS the rate levels contain a large amount of contribution. MFS's witness argued that physical collocation should be tariffed, so that collocation items would be available to all parties on a non-discriminatory basis.

The FCC notes in its order that LECs have filed interstate expanded interconnection tariffs, but its review of the tariffs is not complete. (Order, ¶ 826)

We do not believe there is adequate support in this record for MFS' methodology and proposed rates for physical collocation. While BellSouth did provide a physical collocation proposal for review, and asserted that its proposed rates do cover costs, we cannot determine what costing methodology was used. Therefore, we direct BellSouth to file a TSLRIC cost study for physical collocation within 60 days of the date this order is issued. The cost study should comply with § 51.323 of the FCC's rules and with the expanded interconnection guidelines set out in the FCC's Order. We will approve BellSouth's Telecommunications Handbook for Collocation in the interim until we can set cost-based rates for physical collocation, or until the FCC approves a BellSouth tariff for physical collocation.

MFS is also requesting the ability to work directly with BellSouth-approved vendors to install the necessary physical collocation infrastructure. MFS's witness asserted that MFS will meet all of BellSouth's standards for the central office. MFS claims that this arrangement will allow MFS to incur these costs on a one-time basis rather than on a monthly recurring basis.

BellSouth asserts that its main concern is one of administration. Its witness stated that MFS and BellSouth need to coordinate security and management of personnel in the central office. BellSouth believes that someone in its central offices will need to understand the overall process in order to avoid overlaps in construction with multiple vendors trying to work at the same time.

The FCC addressed this issue and concluded that collocating parties should be able to subcontract the construction of physical collocation arrangements with contractors approved by the incumbent LEC. (Order at ¶ 598) We believe that MFS should have the ability to contract directly with BellSouth-approved vendors. Coordination should be required for vendor access to the necessary BellSouth facilities. Therefore, we will require BellSouth to allow MFS to contract directly with BellSouth-approved vendors for provisioning physical collocation facilities. We direct MFS to work with BellSouth on issues such as vendor access to the central office, timing of any construction, and any other coordination issues that may arise.

CONCLUSION

We have conducted the arbitration of the unresolved issues in this proceeding pursuant to the directives and criteria of the Telecommunications Act of 1996, 47 USC § 251 and § 252. We believe that our decision is consistent with the terms of section 251 and the provisions of the FCC Rules that have not been stayed pending appeal. Section 252(e) of the Act sets out the standards for approval by state commissions of interconnection agreements adopted by negotiation or arbitration. The section provides, in pertinent part, that any interconnection agreement adopted by negotiation or arbitration must be submitted for approval to the state commission. The state commission must approve or reject the agreement, with written findings concerning any deficiencies. The state commission may only reject an agreement adopted by arbitration if it finds that the agreement does not meet the requirements of section 251, the regulations promulgated by the FCC pursuant to section 251, or the pricing provisions delineated in section 252(d) of the Act. Section 252(e)(4) of the Act provides that the Commission must act to approve or reject the arbitrated agreement within 30 days after its submission by the parties for approval.

BellSouth argues that the Act does not contemplate a process by which we set a schedule for submission and approval of an agreement following arbitration. BellSouth contends that our role is only to arbitrate the unresolved issues. We disagree. A state commission's role under the provisions of Section 252(b),(c),(d) and (e) is both to arbitrate the unresolved issues and approve the "agreement" that results. Section 252(e)(1) states that any agreement adopted by negotiation or arbitration must be approved by the state commission. Section 252(e)(2)(B) sets out the grounds for rejection of an agreement adopted by arbitration. Finally, Section 252(e)(4) provides that the state commission must act to approve or reject the agreement adopted by arbitration within 30 days of its submission by the parties or it shall be deemed

approved. The Act gives us considerable flexibility to fashion arbitration procedures that will be compatible with our processes and accomplish the policy purposes of the Act.

Accordingly, pursuant to the terms of Section 252(e)(4) of the Act, we direct the parties to submit a written agreement memorializing and implementing our arbitration decision within 30 days of the issuance of this arbitration order. Within 30 days of submission of the agreement, our staff will review the agreement. If the agreement comports with our arbitration decisions here, the agreement is deemed approved without further Commission action. If the agreement is not consistent with our arbitration decision, our staff will bring the agreement to us for review. If the parties cannot agree to the language of the agreement, they shall each submit their version of the agreement, and we will decide on the language that best incorporates the substance of our arbitration decision.

Based on the foregoing it is,

ORDERED by the Florida Public Service Commission that the Petition by Metropolitan Fiber Systems of Florida, Inc. for arbitration with BellSouth Telecommunications, Inc. concerning interconnection rates, terms, and conditions, pursuant to the Federal Telecommunications Act of 1996 is resolved as set forth in the body of this Order. It is further

ORDERED that the parties shall submit a written agreement memorializing this arbitration decision within 30 days of the date this Order is issued. If the agreement is consistent with this arbitration decision it is be deemed approved without further Commission action. If the agreement is not consistent with this arbitration decision, our staff shall bring the agreement before us for review. If the parties cannot agree to the language of the agreement they shall each submit their version, and we will decide on the language that best incorporates the substance of this arbitration decision. It is further

ORDERED that BellSouth shall submit a TSLRIC cost study for physical collocation within 60 days of the date this order is issued. It is further

ORDERED that this docket shall remain open pending the submission of the parties' written agreement memorializing this decision.

By ORDER of the Florida Public Service Commission, this 16th day of December, 1996.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MCB

DISSENT

Commissioner Deason dissented from the Commission's decision regarding the appropriate rates, terms and conditions for billing, collection and rating of information services traffic between MFS and BellSouth.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.