BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960833-TP DOCKET NO. 960846-TP DOCKET NO. 960916-TP ORDER NO. PSC-96-1579-FOF-TP ISSUED: DECEMBER 31, 1996

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

TABLE OF CONTENTS

		PAGE(S)
	LIST OF ACRONYMS	5-6
I.	BACKGROUND	7-8
II.	NETWORK ELEMENTS	8-38
	A. Introduction	
	B. Specific Network Elements	
	C. Unused Transmission Media	
	D. Rates for Network Elements	
	E. Bundling of Network Elements	
III.	RESALE	38-64
	A. Introduction	
	B. Services Required to Be Offered for Resale	
	C. Wholesale Rates of Retail Services Offered for Resale	
	D. Resold Services Terms and Conditions	
	E. Notice Requirements	
	F. Branding of Resold Operator Services and Directory Service Calls	

TABLE OF CONTENTS (Cont'd) PAGE(S)

IV. TRANSPORT AND TERMINATION: COMPENSATION FOR EXCHANGE OF LOCAL TRAFFIC BETWEEN AT&T AND BELLSOUTH 64-68

V. IMPLEMENTATION MATTERS 68-104

A. Resold Local Exchange Service and Unbundled Local Switching Customized Routing

B. Resold Services and Network Elements Service Standards

C. Process and Data Quality Certification

D. General Contractual Terms

E. Operational Support Systems for Resold Services and Network Elements

1. Defining Provisions
2. ALEC Requests
3. Operational Interfaces for Each Function
4. Cost Recovery
5. Summary

F. Poles, Ducts and Conduits

1. Access to Engineering Records
2. Reservation of Capacity

G. PIC Change Requests

H. Application of Centralized Message Distribution System to Local and IntraLATA Calls

I. Rates, Terms and Conditions of Information Services Traffic

J. Billing System and Format for Unbundled Elements and Resold Services

K. White and Yellow Page Directory Cover Appearance

L. Interim Number Portability Solutions and Cost Recovery

TABLE OF CONTENTS (Cont'd) PAGE(S)

M. Switched Access

N. Intrastate Access Charges

O. Rates, Terms and Conditions of Physical and Virtual Collocation

P. Rates, Terms and Conditions for Local Traffic Dialing Parity

VI. MISCELLANEOUS 104-109

A. Arbitrated Approval Standard

B. Post-Decision Procedures

C. AT&T'S and MCI's Motion to Strike BellSouth's Notice

VII. CONCLUSION 109

ACRONYMS

ACSI	American Communications Services, Inc., American Communications Services of Jacksonville Inc.
ADSL	Asynchronous Digital Subscriber
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Carrier
AT&T	AT&T Communications of the Southern States, Inc.
BRI ISDN	Basic Rate Interface Integrated Services Digital Network
BAPCO	BellSouth Advertising and Publishing Corporation
BellSouth	BellSouth Telecommunications, Inc.
BOC	Bell Operating Company
CABS	Carrier Access Billing System
CMDS	Centralized Message Distribution System
CRIS	Customer Records Information System
CSA	Contract Service Arrangement
CCL	Carrier Common Line
DCS	Digital Cross-Connect System
DMOQs	Direct Measures of Quality
EXH	Exhibit
FCC	Federal Communications Commission
FDI	Feeder Distribution Interface
ICCF	Industry Carriers Compatibility Forum
IDLC	Integrated Digital Loop Carrier
ISDN	Integrated Services Digital network

IXC	Interexchange Carrier
LATA	Local Access and Transport Area
LEC	Local Exchange Carrier
LIDB	Line Information Database
LRIC	Long Run Incremental Cost
LTR	Local Transport Restructure
MCI	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
NID	Network Interface Device
OBF	Ordering and Billing Forum
PIC	Preferred Interexchange Carrier
POP	Point of Presence
USOA	Uniform System of Accounts
RIC	Residual Interconnection Charge
SCP	Service Control Point
SLC	Subscriber Line Charge
SS7	Signaling System Seven
STP	Signaling Transfer Point
TSLRIC	Total Service Long Run Incremental Cost
USTA	United States Telephone Association

I. BACKGROUND

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

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

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

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

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

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

On August 19, 1996, American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. (ACSI) requested that the Commission consolidate its arbitration proceeding with BellSouth with the petitions filed by AT&T and MCI.

ACSI filed its petition for arbitration under Section 252 of the Act on August 13, 1996, and Docket No. 960916-TP was established. By Order No. PSC-96-1138-PCO-TP, issued September 10, 1996, ASCI's motion for consolidation was granted.

On August 8, 1996, the Federal Communications Commission (FCC) released its First Report and Order in CC Docket No. 96-98 (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 Order.

On October 9 through 11, 1996, we conducted an evidentiary hearing for the consolidated dockets. On November 7, 1996, ACSI reached an agreement with BellSouth that was subsequently approved at our November 12, 1996, Agenda Conference. ACSI filed a notice of withdrawal of its petition for arbitration on November 12, 1996. Accordingly, our decision is limited to AT&T's and MCI's petitions for arbitration with BellSouth. AT&T's and MCI's petitions asked that we arbitrate the unresolved issues with BellSouth in four main subject areas: network elements; resale; transport and termination; and, implementation matters. Having considered the evidence presented at hearing, the posthearing briefs of the parties, and the recommendations of our staff, our arbitration decision is set forth below.

II. NETWORK ELEMENTS

A. Introduction

47 U.S.C. § 251(c)(3) requires incumbent LECs to provide the following:

> UNBUNDLED ACCESS - The duty to provide, to any requesting telecommunications carrier for the provision of 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.

The Act defines the term "network element" as:

> The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signalling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. 47 U.S.C. § 3(29).

The FCC's rules state that the incumbent LEC must provide nondiscriminatory access to the following network elements on an unbundled basis: local loop, network interface device, switching capability, interoffice transmission facilities, signalling networks and call related databases, operations support systems functions, operator services, and directory assistance. 47 C.F.R. § 51.319.

AT&T and MCI assert that the network interface device, unbundled loops, loop distribution, local switching, operator systems, multiplexing/digital cross-connect/channelization, dedicated transport, common transport, tandem switching, AIN capabilities, signaling link transport, and signal transfer points are network elements. AT&T only requests that BellSouth provide the network interface device, local loop facility, operations systems, dedicated and common transport, AIN services and operations support systems. MCI requests that BellSouth provide all of the items. According to AT&T and MCI, it is technically feasible for BellSouth to provide the items they have requested. BellSouth responds that it will provide each of the items that are technically feasible.

The FCC Rules implementing Section 251 of the Act describe technical feasibility as follows:

> Interconnection, access to unbundled 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 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 a 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 adverse network reliability impacts. 47 C.F.R. § 51.5.

We note that we are concerned with the FCC's definition of technical feasibility and its application to local conditions in the state of Florida. We question whether the FCC can effectively, or appropriately, dictate what is technically feasible in Florida. Nevertheless, since this portion of the FCC's rules has not been stayed, we shall apply the FCC's definition in this proceeding. Below is a discussion of each of these elements, with the exception of operations support systems. We address operations support systems in Part V of this Order.

B. Specific Network Elements

Network Interface Device

The FCC defines the network interface device (NID) as a cross-connect device used to connect loop facilities to inside-wiring. The FCC's rules require incumbent local exchange companies (ILECs) to permit requesting telecommunications carriers to connect their own loops to the inside-wiring of premises through the incumbent LEC's NID. The FCC states that the requesting telecommunications carrier shall establish this connection through an adjoining NID deployed by the telecommunications carrier. The FCC recognizes, however, that competitors may benefit by connecting directly to the incumbent LEC's NID and avoiding the cost of deploying their own

NIDs. The FCC has deferred to the states to determine whether direct connection to the incumbent LEC's NID can be achieved in a technically feasible manner.

AT&T witness Tamplin stated that AT&T would like to use any existing capacity on BellSouth's NID to connect its loops directly. If spare terminals are not available, AT&T would connect directly to the NID after disconnecting and grounding BellSouth's loop. Witness Tamplin claims that this solution will mitigate BellSouth's concerns regarding bodily injury and property damage, because in all cases BellSouth's loop will still be terminated and protected on the NID.

MCI originally requested the ability to connect directly to BellSouth's NID, but now agrees to a NID-to-NID arrangement, as the FCC described.

BellSouth opposes allowing AT&T direct access to its NID. BellSouth witness Milner states that AT&T's request would violate the National Electric Safety Code regarding grounding and protection of the loop. Witness Milner asserts that "[r]emoval of BellSouth's loop from an existing NID without retermination of that loop to another similarly bonded and grounded NID would create a potentially hazardous condition and thus a code violation." BellSouth uses many different types of NIDs in its network, depending on the type of application. Witness Milner states that this creates difficulties that will need to be resolved on a case-by-case basis, such as the type of protection needed, customer "down time," testing and maintenance. Given these concerns, BellSouth believes that the FCC's solution is more appropriate, provided that AT&T does not disrupt or disable BellSouth's loop and NID.

AT&T states that it understands the grounding requirements of the NID. AT&T states that properly trained technicians would ensure that all changes to the NID comport with the National Electric Safety Code. BellSouth admits that, if AT&T attaches to spare capacity in the NID, BellSouth's loop would remain grounded. Witness Milner points out, however, that the NID is sized to the application, and spare capacity may not always be available.

Upon consideration of the evidence, we find that BellSouth should allow AT&T to connect directly to its NID, where spare capacity is available. BellSouth's loop will still be connected to the NID, and thus will be properly grounded and protected. We are concerned, however, about the lack of safety code guidelines for NIDs without spare capacity available. Therefore, in instances where spare capacity does not exist, AT&T should adhere to the FCC

rules regarding a NID-to-NID arrangement until such time as the appropriate guidelines are developed and incorporated within the National Electric Safety Code.

Unbundled Loops

The FCC defines the local loop network element as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises. This definition includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals that provide services such as ISDN, ADSL, HDSL, and DS1-level signals. In addition, the FCC concluded that:

> ... incumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. IDLC technology allows a carrier to aggregate and multiplex loop traffic at a remote concentration point and to deliver that multiplexed traffic directly into the switch without first demultiplexing the individual loops. FCC Order 96-325 at ¶ 383.
>
> We find that it is technically feasible to unbundle IDLC-delivered loops. One way to unbundle an individual loop from an IDLC is to use a demultiplexer to separate the unbundled loop(s) prior to connecting the remaining loops to the switch. ... Again, the costs associated with these mechanisms will be recovered from requesting carriers. FCC Order 96-325 at ¶ 384.

AT&T requests access to unbundled loops, including those served by integrated and non-integrated digital loop carrier technology. Prior to the release of the FCC's Order, BellSouth objected to providing loops served on integrated digital loop carrier technology, because of the network modifications needed. BellSouth witness Milner explained that since the release of the FCC's Order, BellSouth agrees that there are appropriate methods for providing such unbundled access to loops.

Upon consideration of the evidence, it appears to us that there is no remaining disagreement between the parties with respect to access to unbundled loops served on integrated digital loop carrier technology. We find BellSouth shall provide AT&T and MCI with access to unbundled loops, including those loops served by integrated and non-integrated digital loop carrier technology.

Loop Distribution

AT&T has withdrawn its request for subloop unbundling, which includes loop distribution. Therefore, we only address MCI's request for loop distribution as an unbundled element.

Loop distribution is the portion of the loop from the customer's NID to the feeder distribution interface (FDI). The FDI is the connection point between the distribution and feeder plant. MCI witness Caplan states that given the various ways of deploying facilities to the customer, MCI is only requesting access to BellSouth loop distribution where there is an FDI. Witness Caplan explains that "it's the famous green box" people see located in their neighborhoods. MCI asserts that this type of access to loop distribution is being provided today in other jurisdictions where companies do not compete with one another. Witness Caplan explains that there is no need for BellSouth to modify its existing facilities, because MCI will bring its own feeder directly to the interface. MCI's feeder can then be connected the same way BellSouth connects it facilities today. Witness Caplan states that MCI is requesting that BellSouth continue to be responsible for any maintenance and installation at the feeder distribution interface.

BellSouth states that it is not technically feasible to unbundle loop distribution. BellSouth witness Milner asserted that operation and support systems cannot handle the administration of loops without feeder facilities: "Ordering, provisioning, maintenance, administration and billing systems will be adversely affected." BellSouth is working with Bell Communications Research, a computer software developer, to determine how changes can be made to accommodate unbundled loop distribution. Witness Milner explains that manual procedures will be necessary, thus adding to the cost. Witness Milner maintains that additional facilities would need to be built, such as replacement of existing cross-connect boxes. Witness Milner believes that subloop unbundling will impede BellSouth's ability to install new technology.

BellSouth proposes the following set of criteria to determine technical feasibility:

1. The ability to provision, track and maintain the element;

2. The ability to deliver discrete, stand-alone facilities, equipment, or logical functions of the existing or scheduled LEC network;

3. The ability to maintain network integrity without undue risk, including risk of physical hazards to telephone plant or operating personnel, or risk to service degradation or service impairment of any kind;

4. The ability to provide physical or logical operational interfaces between the incumbent LEC and the requesting company.

Witness Milner asserts that the criteria are intended to aid in the implementation of the FCC's definition of technical feasibility and should be considered in our determination of what network elements should be unbundled.

As the FCC explained, a determination of technical feasibility does not include 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 a request does not determine whether satisfying an unbundling request is technically feasible.

The FCC addressed subloop unbundling by stating that:

> As a general matter, we believe that subloop unbundling could give competitors flexibility in deploying some portions of loop facilities, while relying on the incumbent LEC's facilities where convenient. For example, a competitor may seek to minimize its reliance on the LEC's facilities by combining its own feeder plant with the incumbent LEC's distribution plant. ... The record presents evidence primarily of logistical, rather than technical, impediments to subloop unbundling. Several LECs and the USTA, for example, assert

> that incumbent LECs would need to create databases for identifying, provisioning, and billing for subloop elements. Further, incumbent LECs argue that there is insufficient space at certain possible subloop interconnection points. We note that these concerns do not represent "technical" considerations under our interpretation of the term "technically feasible. FCC Order 96-325 at ¶ 390.

We note that the FCC declined to require subloop unbundling in its rules, because proponents did not address certain LEC concerns, such as access by competitors' personnel to LEC equipment, which raised network reliability concerns. See FCC Order 96-325 at ¶ 391.

Upon consideration of the evidence, and the FCC's definition of technical feasibility, we find that MCI's proposal for unbundling loop distribution is technically feasible. MCI's request is limited to loop distribution facilities that are cross-connected with feeder facilities. MCI requests that BellSouth perform any maintenance and installation regarding the feeder distribution interface. BellSouth's objections to MCI's request address identification, provisioning, billing, accounting, facility modification and economic concerns. Those concerns do not support a determination that the provision of the unbundled subloop MCI has requested is not technically feasible. Therefore, we hold that BellSouth shall unbundle loop distribution at the feeder distribution interface as MCI has requested.

Local Switching

The FCC determined that incumbent LECs must provide local switching as an unbundled network element. Section 51.319(c)(1)(i) of the FCC rules defines the local switching network element to encompass:

> (A) line-side facilities, which include, but are not limited to, the connection between a loop termination at a main distribution frame and a switch line card;
>
> (B) trunk-side facilities which include, but are not limited to, the connection between trunk termination at a trunk-side cross-connect panel and a trunk card; and

> (C) all features, functions, and capabilities of the switch which include, but are not limited to:
>
> > (1) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks, as well as, the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone: and
> >
> > (2) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signalling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

BellSouth witness Milner states that BellSouth will provide local switching as an unbundled network element. However, it is unclear to what extent BellSouth agrees with the FCC's definition of local switching as an unbundled network element. BellSouth witness Milner asserts that BellSouth does not agree with AT&T's inclusion of customized routing as part of unbundled local switching. We address customized routing in Section VI, Part A of this order.

Operator Systems

The FCC determined that incumbent LECs must provide access to operator services and directory assistance facilities where technically feasible. In Section 51.5 of the FCC's Rules, operator services and directory assistance are defined as follows:

> 'Operator services' are any automatic or live assistance to a consumer to arrange for billing or completion of a telephone call. Such services include, but are not limited to, busy line verification, emergency interrupt, and operator-assisted directory assistance services.

> 'Directory assistance service' includes, but is not limited to, making available to customers, upon request, information contained in directory listings.

In its Order the FCC explained:

> We conclude that incumbent LECs are under the same duty to permit competing carriers nondiscriminatory access to operator services and directory assistance facilities as all LECs are under section 251(b)(3). We further conclude that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with nondiscriminatory access to such facilities and functionalities at any technically feasible point. We believe that these facilities and functionalities are important to facilitate competition in the local exchange market. Further, the 1996 Act imposes upon BOCs, as a condition of entry into in-region interLATA services the duty to provide nondiscriminatory access to directory assistance services and operator call completion services. We therefore conclude that unbundling facilities and functionalities providing operator services and directory assistance is consistent with the intent of Congress. Order 96-325 at ¶ 534.

AT&T and MCI request that BellSouth provide operator services and directory assistance service as unbundled network elements, and BellSouth has agreed.

Multiplexing/Digital Cross-Connect/Channelization

MCI requests that BellSouth provide digital cross-connect and multiplexing either in conjunction with transport facilities or separately, so that MCI will be able to provide its own transport facilities, or use the transport facilities supplied by others.

The FCC states that incumbent LECs must provide requesting carriers with access to digital cross-connect system functionality. The FCC explains that:

> A DCS aggregates and disaggregates high-speed traffic carried between IXCs' POPs and incumbent LECs' switching offices, thereby facilitating the use of cost-efficient, high-speed interoffice facilities. ... We find that the use of DCS functionality could facilitate competitors' deployment of high-speed interoffice facilities between their own networks and LECs' switching offices. Therefore, we require incumbent LECs to offer DCS capabilities in the same manner that they offer such capabilities to IXCs that purchase transport services. Order 96-325 at ¶ 444.

The record does not show that BellSouth addresses MCI's request. MCI states, however, that price is the only issue in dispute. Therefore, consistent with the FCC's requirements, we find that BellSouth shall provide access to digital cross-connect system functionality. We will address pricing in section d. below.

Dedicated Transport and Common Transport

The FCC considers dedicated and common transport as interoffice transmission facilities, which it defines as follows:

> (1) Interoffice transmission facilities are defined as incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. 47 C.F.R. § 51.319.

AT&T and MCI request that BellSouth provide dedicated and common transport as unbundled network elements. BellSouth states that it will provide dedicated and common transport to AT&T and MCI.

Tandem Switching

The FCC determined that incumbent LECs must provide tandem switching as an unbundled element. The FCC's rules define the tandem switching network element as:

> (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card;
>
> (ii) the basic switching function of connecting trunks to trunks; and
>
> (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signalling conversion features. 47 C.F.R. § 51.319(c)(2).

AT&T and MCI request that BellSouth provide tandem switching as an unbundled network element. BellSouth states that it will provide tandem switching to AT&T and MCI.

AIN Capabilities, Signaling Link Transport, Signal Transfer Points and Service Control Points/Database

Signaling systems assist in routing telephone calls between switches. Most LECs employ signaling networks that are physically separate from their voice networks, and these "out-of-band" signaling networks simultaneously carry signaling messages for multiple calls. In general, most LECs' signaling networks adhere to a Bellcore standard SS7 protocol.

SS7 networks use signaling links to transmit routing messages between switches and between switches and call-related databases. A typical SS7 network includes a signaling link, which transmits signaling information in packets from a local switch to a high capacity packet switch called the signaling transfer point (STP). The STP switches packets onto other links according to the address information contained in the packet. These additional links extend to other switches, databases, and STPs in the LEC's network. A switch routing a call to another switch will initiate a series of signaling messages via signaling links through an STP to establish a call path on the voice network between the switches.

The Advanced Intelligent Network (AIN) is a network architecture that uses distributed intelligence in centralized databases to control call processing and manage network

information, rather than performing those functions at every switch. An AIN-capable switch halts call progress when a resident software "trigger" is activated, and uses the SS7 network to access intelligent databases, known as Service Control Points (SCPs), that contain service software and subscriber information, for instruction on how to route, monitor, or terminate the call. AIN is being used in the deployment of number portability, wireless roaming, and such advanced services as same number service (i.e., 500 number service) and voice recognition dialing.

AT&T requests access to BellSouth's AIN Service Control Points. AT&T claims that this is the only remaining issue with respect to Signalling Systems elements. AT&T witness Tamplin explains that the FCC determined that this type of access is technically feasible, but may present a need for mediation mechanisms to protect data in the AIN SCPs and protect against excessive traffic. AT&T does not believe mediation is necessary because safeguards are already built into the SS7 network. Witness Tamplin believes that, based on the experience with providing 800 portability, the industry is capable of establishing the necessary procedures to ensure that network performance and reliability are not compromised by multiple providers connecting to the SS7 network.

The FCC decision that AT&T witness Tamplin describes states:

> Although we conclude that access to incumbent AIN SCPs is technically feasible, we agree with BellSouth that such access may present the need for mediation mechanisms to, among other things, protect data in incumbent AIN SCPs and ensure against excessive traffic volumes. In addition, there may be mediation issues a competing carrier will need to address before requesting such access. Accordingly, if parties are unable to agree to appropriate mediation mechanisms through negotiations, we conclude that during arbitration of such issues the states (or the Commission acting pursuant to section 252(e)(5)) must consider whether such mediation mechanisms will be available and will adequately protect against intentional or unintentional misuse of the incumbent's AIN facilities. We encourage incumbent LECs and competitive carriers to participate in industry fora and industry testing to resolve outstanding mediation concerns. Incumbent

> LECs may establish reasonable certification and testing programs for carriers proposing to access AIN call related databases in a manner similar to those used for SS7 certification. Order 96-325 at ¶ 488.

BellSouth agrees with the findings of the FCC. BellSouth witness Milner explains that mediation mechanisms are necessary to prevent intentional and unintentional disruption of BellSouth's AIN network by an ALEC. AT&T admits that situations could exist where intentional and unintentional problems may occur, but adds that an appropriate level of security already exists in the network.

MCI states that it agrees with the FCC's findings and is willing to accept BellSouth's mediated access proposal. MCI witness Caplan adds that BellSouth has a legitimate concern about whether various applications are compatible with BellSouth's network.

Upon consideration of the evidence, we find that BellSouth shall provide access to its SS7 network and AIN as envisioned by the FCC's rules and order. We find that there is a sufficient record to warrant BellSouth's request for a mediation device. BellSouth shall be allowed to use mediation mechanisms as necessary.

C. Unused Transmission Media

We define unused transmission media, hereinafter referred to as dark fiber, as fiber optic cabling facilities that have not been equipped with the electronic equipment necessary to transmit signals through the fiber. We note the FCC declined to decide whether dark fiber qualifies as a network element under the Act.

AT&T asserts that dark fiber is a network element because it is "a facility or equipment used in the provision of telecommunications service." AT&T Witness Tamplin maintains that because it is not currently in use does not change its purpose, which is, to provide telecommunications service. Witness Tamplin believes that access to BellSouth's dark fiber will allow AT&T to create competitive facilities. AT&T asserts that BellSouth's failure to provide dark fiber already in place will "increase the financial and administrative cost of the telecommunications services AT&T seeks to offer." MCI witness Caplan echoes these concerns, and adds that without the ability to purchase dark fiber, MCI's only choices will be to install its own facilities or purchase transport services from BellSouth.

BellSouth argues that Sections 251 and 252 of the Act do not apply to dark fiber, because dark fiber is neither an unbundled network element nor a retail service. Witness Varner states that in order for dark fiber to be a retail service it must be available as a tariffed service offering, which it is not. Witness Varner asserts that in order for dark fiber to be an unbundled network element, it must have a functionality inherent in BellSouth's network, which it does not.

Upon consideration of the evidence before us, we find that dark fiber is not a network element, as defined by the Act, because it is not a facility or equipment used in the provision of a telecommunications service. Therefore, neither the unbundled access provisions in Section 251, nor the associated arbitration and pricing provisions in Section 252 of the Act apply. Accordingly, we do not require BellSouth to provide AT&T and MCI with access to dark fiber in this proceeding.

D. Rates for Network Elements

Section 252(d) of the Act contains the pricing standards for unbundled network elements. 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.

In conformance with this section of the Act, we find that the appropriate cost methodology to determine the prices for unbundled elements is an approximation of Total Service Long Run Incremental Cost (TSLRIC). We note that we adopted TSLRIC as the appropriate cost methodology for unbundled elements in our state proceeding in

Docket No. 950984-TP, by Order No. PSC-96-0811-FOF-TP, issued June 24, 1996.

We also find that the Act can be interpreted to allow geographic deaveraging of unbundled elements, but we do not believe it can be interpreted to require geographic deaveraging. We further find that the record in this proceeding does not support a decision to geographically deaverage the price for unbundled elements, because the record does not contain sufficient cost evidence.

TELRIC, LRIC and TSLRIC

The FCC defines Total Element Long Run Incremental Cost (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. See FCC Rule 51.505(b).

In addition, the Rule provides:

> (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.

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." See FCC Order 96-325 at ¶ 678. It should be noted that the methodology the FCC uses to define TELRIC would not necessarily be used by this Commission in

determining the TSLRIC costs. For example, the FCC's TELRIC definition uses a scorched node approach. We have used a TSLRIC approach using efficient technology in our proceedings conducted pursuant to Chapter 364, Florida Statutes. The difference between these methodologies is that the scorched node approach only considers the current location of central offices, and not the existing technology or physical architecture deployed by the carrier in either the central office or outside plant. The TSLRIC based forward-looking approach considers the current architecture and the future replacement technology. Upon consideration, we do not believe there is a substantial difference between the TSLRIC cost of a network element and the TELRIC cost of a network element.

In addition, the FCC states that prices should be based on the TSLRIC of the network element, which is called the Total Element Long Run Incremental Cost (TELRIC), and includes a reasonable allocation of forward-looking joint and common costs.

BellSouth defines long-run incremental costs (LRIC) as costs that include product specific volume sensitive incremental costs. According to BellSouth, volume sensitive costs are costs that vary with a change in volume. BellSouth witness Caldwell defines TSLRIC as costs that include both the product specific volume sensitive and volume insensitive costs. Witness Caldwell states there are no volume insensitive costs associated with loop and, therefore, concludes that loop costs are both LRIC and TSLRIC.

AT&T Witness Kaserman states that the relevant cost to which prices should be equated to TSLRIC. Witness Kaserman explains that TSLRIC:

> ...measures the total incremental cost incurred in the long run that is caused by the addition (or deletion) of a service or element from an existing set of services or elements. Technically, the prices are set equal to the TSLRIC (which is a total dollar amount) divided by the number of units to be sold, so that prices are stated as dollars per unit.

Witness Kaserman further explains why TSLRIC is the theoretically correct basis for pricing unbundled network elements:

> First, TSLRIC is an incremental cost. As a result, socially optimal purchase and entry decisions will be fostered with prices set at this level. Second, TSLRIC is long-run in nature. Because the decision to enter a

> market is, by definition, a long-run decision, TSLRIC prices will send economically correct signals to potential entrants. Third, TSLRIC is an economic cost. As such, it includes a normal (competitive) profit on the capital that is invested to provide the relevant service or element. And fourth, the concept applies to total service costs, which means that all costs that can be causally attributed to production of the product in question are incorporated in these prices. Thus, TSLRIC prices for interconnection services and unbundled network elements are subsidy-free and economically efficient. Such prices will promote efficient and sustainable competition in local exchange markets.

Based on the foregoing, we find TSLRIC should be 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. In other words, the costs should exclude the current network structure.

Cost Studies

AT&T and MCI recommend that the Commission use the results of the Hatfield Study. They claim that the Hatfield Model provides results that are consistent with the FCC's TELRIC pricing standard.

BellSouth provided LRIC and TSLRIC cost studies for unbundled network elements. Five days before the hearing began, BellSouth provided TELRIC cost studies only for unbundled loops. Even though BellSouth submitted TELRIC cost studies for loops, BellSouth argues that all of its unbundled element rates should be based on its TSLRIC cost studies.

Our initial review of BellSouth's TELRIC cost studies was limited because BellSouth filed the cost studies just days prior to the hearing. Accordingly, we find it inappropriate to set rates, interim or permanent, using the TELRIC studies at this time. Below is our consideration of each of the cost studies submitted in this proceeding.

Hatfield Model Study

The Hatfield Model was developed by Hatfield and Associates, Inc. at the request of AT&T and MCI. The model has been updated several times since its inception. The version used in this proceeding is version 2.2 release 2. The model was designed to estimate the TELRIC costs of the unbundled network elements and to estimate the cost of basic local exchange telephone service. The Hatfield Model is a "scorched node" model, in that it assumes all network facilities would be designed and built, constrained only by the current location of central offices. The developers purport that the model develops forward-looking network investments and costs for unbundled network elements and basic local exchange service. The model does not represent any one specific LEC network, but was designed to be adaptable to any LEC or geographic area.

The Hatfield Model contains six functional modules which contain the information and methodology used to calculate estimated plant investment and expenses. They are the line converter, data, loop, wire center, convergence and expense modules.

A primary data source used by the Model is the BCM-PLUS input data file. The BCM-PLUS input data file is used within the Hatfield Model as the first step in developing the investment level associated with the feeder and distribution elements of the local loop. This file contains 1995 estimates of households per Census Block Group (CBG), data regarding the size of each CBG, and other CBG-specific data. The Hatfield Model adjusts the household data, converting it to access lines and accounting for multi-line residences, business, payphone and special access lines. BCM-PLUS was derived from part of the Benchmark Cost Model, the BCM1 version, which was developed by US WEST, NYNEX, MCI and Sprint.

BellSouth raises several criticisms concerning the results generated by the model. Witness Varner states the model does not calculate costs based on BellSouth's actual network used to provide service. MCI witness Wood states that the model is not intended to cost BellSouth's embedded network. According to witness Wood, the Hatfield model uses least cost forward-looking technology currently available in the market place, which is also known as the scorched node model. He states the scorched node model builds a theoretically efficient network based solely on a LEC's existing switch locations.

BellSouth states the model does not use BellSouth or Florida-specific input data. The model incorporates publicly available data from areas throughout the country.

Under cross-examination, MCI witness Wood explained that tax factors used in the model were derived from federal, state and local taxes as occurred throughout the country, economic depreciation lives determined in a Bell Atlantic Maryland proceeding, and an average drop wire investment amount taken from a 1993 New Hampshire study.

BellSouth argues that the Hatfield Model assumes hypothetical cable routes. According to BellSouth, the Hatfield model makes several assumptions that do not reflect the actual placement of the network, other than wire center locations, to customer locations. BellSouth witness Emmerson states that the model:

> ...assumes that census block groups (CBGs) are square in shape, are assigned to the wire center closest to the centroid of the CBG, that feeder routes extend to the nearest midpoint of a side of the assumed square perimeter of the CBG (or penetrate 1/4 of the length of a perimeter side into the square CBG). These assumptions do not reflect actual customer locations.

BellSouth argues that the Hatfield Model calculates shorter cable routes per CBG, and therefore, underestimates the cost.

Under cross-examination MCI witness Wood acknowledged that there could be highly irregularly shaped CBGs, such that the cable sizing algorithms in the Hatfield model would generate sufficient distribution facilities to serve all customers in the CBG. However, he asserted that on average over all CBGs, the model produces reasonable results.

BellSouth witness Emmerson criticizes various features of the Hatfield model. He states they are "unrealistic, imprecise, and may lead to certain problems and errors, or are simply wrong." Specifically, witness Emmerson's criticisms include: 1) Possible underestimation of BellSouth's Florida service territory by misassignment of CBGs, miscalculation of areas and/or missing CBGs; 2) Assignment of CBGs to the wrong wire centers; 3) Assignment of CBGs to the wrong serving LEC; 4) Problems related to CBGs served by multiple wire centers and/or multiple LECs; 5) Labor and switching cost inputs may be substantially understated; 6) Operating expenses may be understated via cable cost multipliers; 7) Fill rates for feeder and distribution cable appear unrealistically high leading to unrealistically low costs; 8) Fill rates appear to be higher than stated in the models documentation; 9) Implied fill rates for serving area interface (SAI) and

multiplexing (MUX) appear unrealistically high; 10) The model appears to be unwieldy and difficult to run; 11) The source for manhole, terminal, splice and servicing area interface and other costs appear to be based on "subject matter" expert judgment without documentation or validation; 12) The identification of subject matter experts (SMEs) utilized by the models is not clear; 13) Where and how SME expertise was utilized is not clear; 14) Switching costs appear substantially understated; 15) What would be expected as major changes in the model do not lead to major changes in the results of the model; 16) The models do not reflect the additional costs of changing facilities which exist in a growing demand environment; 17) Cost of money and depreciation costs may be unrealistically low; 18) Costs for digital cross connects, SS7 network components and essential network support systems may be excluded or understated; and, 19) Operator position costs appear understated.

As noted above, the Hatfield model runs filed in this proceeding were not based on Florida-specific depreciation rates. However, MCI produced an alternative model run that reflected the last Commission-authorized depreciation rates for BellSouth. The model using the depreciation rates set by this Commission resulted in an increase of $0.24 in the total cost of a loop.

The Hatfield Model incorporates a default value of .700 for a "Forward-Looking Network Operations Factor." According to MCI witness Wood, this factor reduces network operations expense amounts initially computed in the model by 30%, assuming that over time an efficient firm would be able to achieve such a reduction relative to historic expense levels. During cross-examination, witness Wood acknowledged that Network Operations Expenses actually consists of five subaccounts. One of these subaccounts is Power, which relates to expenses associated with electricity required to power the telecommunications network; another subaccount pertains to testing expense. Witness Wood agreed that the application of the forward-looking network operations factor effectively assumes that an efficient LEC will be able to reduce expenses for power and testing by 30%. Witness Wood also agreed that without this assumption of efficiency, the Hatfield model will compute total loop costs $0.94 higher than those sponsored by MCI and AT&T.

During cross-examination, witness Wood agreed that the Hatfield Model has built into it a "structure sharing factor." Structures include the costs of trenching, conduit, and telephone poles, which are associated with the installation of buried, underground, and aerial cable, respectively. The model assumes that supporting structures will be "shared" with other firms; typically, a cable company and an electric utility. In order for

the costs of trenching to be shared, a LEC would need to coordinate its efforts with such other utilities. Witness Wood acknowledged, during cross-examination, that he was not aware whether it was BellSouth's policy to contact other utilities before doing the trenching to bury telephone cable. He also did not know if MCI had such a policy. The default values for the structure sharing factors in the Hatfield model are set at .33. Witness Wood agreed the effect of applying these .33 values is to exclude 2/3 of the investment in supporting structures initially computed from the final cost outputs. Therefore, setting these values to 1.0, which attributes 100% to the LEC, total loop costs derived by the model increased by $3.37, or 28%.

We find the cumulative impact of the above three adjustments results in an increase to the Hatfield estimated total loop costs of $4.55 per line per month. The Hatfield loop cost for all BellSouth loops as submitted by MCI and AT&T is $11.89. Therefore, when the adjustments are added to the loop costs submitted by AT&T and MCI, the result is a sum which is greater than BellSouth's TSLRIC loop cost.

Upon consideration of the evidence, we find that the Hatfield Model does not produce estimated costs which are representative of the costs of BellSouth's network in Florida. The Hatfield model is extremely complex and our efforts in thoroughly evaluating the model were impeded by the presence of numerous locked cells in the spreadsheets. As demonstrated above, our review leads us to conclude that the Hatfield Model understates costs. Accordingly, we will not set permanent rates based on the Hatfield model results. Further, we will not, with one exception, base interim rates for unbundled network elements upon the results of the Hatfield Model. The exception is where no other cost information exists in the record to set a rate for a particular network element. Finally, where used, the Hatfield cost for an element will be adjusted upward to reflect a more appropriate cost estimation.

<u>BellSouth's TSLRIC Cost Studies</u>

BellSouth provided LRIC and TSLRIC cost studies for most of the unbundled network elements requested by the parties. BellSouth witness Caldwell states that the cost studies use incremental costing techniques and do not include shared or common costs. The LRIC studies include volume sensitive direct long run incremental costs, and the TSLRIC studies include both volume sensitive and insensitive costs.

According to BellSouth witness Caldwell, BellSouth only provided cost studies for those elements which it considered to be technically feasible to provide. Specifically, with respect to recurring rates, BellSouth did not provide cost studies for the NID, loop distribution, 4-wire analog port, directory assistance transport elements, and AIN. Further, BellSouth did not provide cost studies for nonrecurring rates associated with the NID, loop distribution, 4-wire analog port, dedicated transport, directory assistance transport and Switched Dedicated Transport.

AT&T witness Ellison made several criticisms of the BellSouth cost studies in his direct testimony. According to AT&T, in early negotiations, BellSouth offered many rates for certain unbundled elements that were taken from existing tariffs. Witness Ellison states that tariffed rates contain costs which are applicable to retail costs, such as advertising, marketing and customer service related costs. He states further that other elements in the tariff contain mark-ups not consistent with cost-based pricing and would not be appropriate for wholesale purposes.

Although AT&T claims that it has not been successful in obtaining and analyzing studies and back-up material necessary to validate BellSouth's stated costs, witness Ellison does state that he was able to determine that most of BellSouth's LRIC cost studies reflected TSLRIC results. MCI witness Wood asserts that the lack of publicly available information related to a LEC's cost study makes a meaningful review difficult or impossible.

AT&T witness Ellison reviewed cost studies BellSouth submitted to the Louisiana Commission earlier this year, to consider whether BellSouth's cost studies submitted in this proceeding are appropriate. Witness Ellison asserts that AT&T was able to validate that several individual BellSouth studies were within reasonable limits.

In his testimony, AT&T witness Ellison recommended rates that were a result of several adjustments AT&T made to BellSouth's TSLRIC cost studies. However, during the hearing, witness Ellison stated that AT&T recommends the Hatfield rates. Witness Ellison asserts the reason AT&T is recommending the Hatfield results over those originally proposed are: 1) AT&T did not obtain further cost support documentation from BellSouth and; 2) the FCC's TELRIC pricing requirement would require some minor modifications, and BellSouth did not provide AT&T the data to make those modifications. Although AT&T is recommending Hatfield based rates, we believe AT&T's suggested adjustments to BellSouth's cost study results are worth noting and we will consider them in setting rates.

Generally, both AT&T and MCI criticize BellSouth's TSLRIC cost studies; AT&T, however, cites several specific concerns. They are:

Loops

AT&T contends that the cost studies provided for 2-wire loops do not reflect least-cost, forward-looking loop technologies. However, BellSouth's supporting documentation does include such information and AT&T asserts that it used that information to calculate an appropriate loop cost. AT&T claims that BellSouth included analog conversion costs to loops carried over digital loop carriers. AT&T states that during negotiations BellSouth explained that the use of digital loop carrier systems requiring analog conversion is declining and that only a small percentage of its loops require such conversion. Therefore, the loop costs are overstated.

AT&T disputes the return on equity used in the 2-wire loop studies. AT&T claims the return on equity of up to 18% is too high and that a more reasonable return of 11.5% for monopoly network elements is appropriate. After making adjustments to BellSouth's loop costs, AT&T further adjusted those costs by multiplying the figures by an 85% cost of money factor to produce the 11.5% return on equity.

AT&T contends that it has concerns with BellSouth's cost studies for its BRI ISDN loops. First, AT&T asserts that BellSouth provided insufficient documentation on the assumptions used in the cost studies. According to AT&T, during negotiations, BellSouth stated that the studies for the BRI ISDN loops contained the same assumptions as those used in prior studies. The prior studies used metallic loop facilities for customers within 12,000 feet of the customer's wire center, and digital loop carrier for all other customers. However, the supporting documentation indicates the use of fiber for feeder lines and metallic for distribution lines. AT&T claims this raises concerns about which technology was used in the cost study.

Local Switching

AT&T states that it was able to determine BellSouth's costs for local voice switching services. However, AT&T asserts it was unable to verify costs for data switching elements because no data was provided. AT&T claims the original cost studies provided to AT&T differ from the studies provided to the Commission, and that these latter studies contain additional and unsupported local switching costs for billing, business office, and operator services.

Operator Systems

AT&T believes the cost estimates for operator systems provided by BellSouth appear reasonable. However, AT&T states that insufficient documentation was provided with the studies; therefore, AT&T recommends reducing the costs by a factor of 10% to account for the possibility of inappropriate cost loadings.

Common and Dedicated Transport

AT&T found the common transport costs to be reasonable except for the cost of money. AT&T applied an 85% cost of money adjustment factor to arrive at its proposed rate.

AT&T also found the dedicated transport cost estimate to be reasonable, but it included certain pricing limitations. These limitations concern the way BellSouth bundled elements to arrive at service configurations. AT&T believes that the elements should be priced and offered separately. The dedicated rates proposed by AT&T are based on information from the Louisiana study.

AT&T has determined that BellSouth's costs for Tandem Switching, Signaling Link Transport, Signal Transfer Point, Service Control Point are reasonable. The latter two elements are subject to an 85% cost of money adjustment factor.

Takings Argument

AT&T states, in its brief, that BellSouth contends that the pricing rules adopted by the FCC constitute a taking under the Fifth Amendment of the Constitution. In particular, AT&T states that BellSouth complains that a TELRIC pricing methodology precludes it from recovering all of its costs, especially its embedded costs.

We note BellSouth did not make a constitutional taking argument in its brief with respect to the rates for unbundled elements. Nonetheless, AT&T's analysis of the takings issue is consistent with previous Commission decisions. See PSC-96-1148-FOF-TP and PSC-96-0811-FOF-TP.

Conclusion

Upon review, the evidence reveals that BellSouth's cost studies are appropriate because they approximate TSLRIC cost studies and reflect BellSouth's efficient forward-looking costs. As explained above, AT&T asserts that BellSouth's cost of money assumption is too high. BellSouth's witness Caldwell argues that

the company's use of a 13.2% cost of money, 16% for equity and 8.9% for debt, is reasonable based on the return on equity authorized by this Commission under BellSouth's incentive regulation plan adopted prior to passage of price regulation. Under BellSouth's incentive regulation plan, the Company could earn up to 12.5% return on equity with no sharing of earnings and a maximum of 17.5% with sharing. We believe the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the other assumptions appear reasonable. The rates we are setting take into consideration that BellSouth's cost of money assumption may be at the upper range of reasonableness.

Upon consideration of the evidence in the record and based on the Act, we find it appropriate to set permanent rates based on BellSouth's TSLRIC cost studies. The rates are for the unbundled network elements we consider to be technically feasible. The rates cover BellSouth's TSLRIC costs and provide some contribution toward joint and common costs. See "Attachment A" Commission Approved Recurring and Nonrecurring Rates for Unbundled Network Elements. Further, in those instances where BellSouth did not provide a TSLRIC study, we find it appropriate to set interim rates based on the Hatfield Study results with modifications or BellSouth's tariff. Since we find that TSLRIC is the appropriate costing methodology, BellSouth shall file TSLRIC cost studies for those elements for which we are setting interim rates within 60 days of the issuance of this order.

We note that AT&T and MCI did not identify the specifics of AIN capabilities in their request. Accordingly, we are unable to set rates without the specifics of the request. Therefore, if AT&T or MCI cannot negotiate a rate, or rates, for AIN capabilities, then BellSouth should file a TSLRIC cost study with this Commission within 30 days from the date of a bona fide request.

Finally, where BellSouth provided nonrecurring cost studies, we are setting permanent rates which cover BellSouth's costs. The evidence reveals that BellSouth's proposed nonrecurring rates are, in some instances, excessive. Where BellSouth did not provide nonrecurring cost studies, BellSouth shall provide TSLRIC cost studies within 60 days from the issuance of the order.

E. Bundling of Network Elements

Section 251 (c)(3) of the Telecommunications Act of 1996 states that the incumbent local exchange carrier has 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...

This same section in the Act also states:

> 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.

This section of the Act can be interpreted to permit the rebundling of network elements in any manner AT&T or MCI chooses, including the recreation of an existing BellSouth service.

BellSouth witness Scheye argues that "nowhere in the Act does it anticipate the recreation of an existing service by the simple reassembling of the LEC's unbundled elements. According to witness Scheye, if that is what Congress had in mind, it would have eliminated the resale provision." The FCC's rules state that a requesting telecommunications carrier can provide any telecommunications service that can be offered by means of network elements. Specifically, Section 51.307(c) provides that:

> An incumbent LEC shall provide a requesting telecommunications carrier access to an unbundled network element, along with all of the unbundled network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element.

Also, Section 51.309(a) provides that

> An incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner that the requesting telecommunications carrier intends.

(account 6623). In accordance with the FCC Order, AT&T and MCI have treated these accounts as 90 to 100% avoided. The FCC Order also provides, however, that its criteria are intended to provide state commissions with broad latitude in selecting costing methodologies. The Order further states that the rules for identifying avoided costs by USOA expense accounts are cast as rebuttable presumptions, and the FCC did not adopt as presumptively correct any avoided cost model. See FCC Order 96-325 at ¶ 909.

The third area of concern is the treatment of certain overhead expenses. The FCC Order provides, under its "reasonably avoidable" standard, that an avoided cost study must include indirect, or shared costs, as well as direct costs. The reason for this is that indirect or shared costs, such as general overheads, support all of the IILECs functions, including marketing, sales, billing and collection, and other avoided retail functions. Thus, a portion of the indirect costs must be considered "attributable to cost that will be avoided" pursuant to Section 252(d)(3). See FCC Order 96-325 at ¶ 912. AT&T and MCI agree with the guidelines set forth in the Order; however, BellSouth did not include indirect costs in its study, with the exception of uncollectibles.

BellSouth has proposed a wholesale discount rate of 19.0% for residential services and 12.2% for business services. AT&T and MCI have proposed that we set one wholesale rate for both residential and business services. AT&T's proposed wholesale discount rate is 39.99% and MCI's is 25.06%.

AT&T's Avoided Cost Study

AT&T proposes that we adopt a permanent wholesale discount of 39.99%, applicable to all of BellSouth's retail service rates. AT&T contends that its cost study complies with the requirements of the Act, and identifies all retail costs that will be avoided by BellSouth.

AT&T's witness Lerma states that the Act provides substantial guidance for determining the wholesale rates for services that IILECs must sell to other carriers for resale. He asserts that to determine wholesale rates, the Act identifies three specific categories of costs that are to be excluded from retail rates: marketing, billing, and collection costs. Witness Lerma adds that the Act also prescribes the removal from retail rates of any "other cost that will be avoided." He argues that effectively the Act prescribes that all retail-related costs are to be removed from retail rates to establish wholesale rates.

Witness Lerma also states that AT&T used its "Avoided Retail Cost Model" (Model) to identify all types of BellSouth's costs associated with retail activities in the local service market. The witness contends that the objective of the Model is to measure all retail costs that will be avoided by BellSouth when services are sold at wholesale to AT&T. The Model will also express the total of the costs as a percentage of BellSouth's retail rates.

The Model is divided into three phases. Phase I assigns revenues and costs to seven separate categories. Phase II reorganizes revenues and costs for those seven categories into the five traditional lines of business: Miscellaneous, Private Line, Local, Access, and Toll. Phase III analyzes the costs assigned to local service to identify costs that will be avoided, and calculates the appropriate reduction to local services retail rates to produce wholesale local service rates.

Witness Lerma states that AT&T has proposed a single avoided local retail cost percentage because avoided cost data for the specific local services that BellSouth offers has not been made available to AT&T. The data AT&T lacks includes revenue and avoided cost data relating to residential versus business customers. Nevertheless, Witness Lerma contends that AT&T's cost study is a "top-down" study based on the embedded cost, as reflected in BellSouth's publicly available ARMIS report. All of the USOA cost categories that are presumed avoidable in the FCC Order are considered avoided in the AT&T study. In addition, Witness Lerma states that, to the extent that costs are included in the study that are not presumed avoidable in the FCC regulations, AT&T provides supporting rationale that demonstrates why it believes these costs should be reflected as avoided costs. AT&T further asserts that it properly identifies costs subject to proration between retail and wholesale.

BellSouth argues that AT&T's approach to calculating a wholesale discount factor overstates the calculated discount in at least three broad areas. BellSouth's witness Reid contends that the first area of overstatement is caused by the procedure AT&T used to assign amounts for expense/cost to local exchange service. The second area of overstatement is caused by AT&T's arbitrary identification of avoided retail costs. The third area of overstatement is the result of the limited revenue base that AT&T uses to divide into the avoided costs from its study. AT&T's revenue base does not include intraLATA toll revenue.

Witness Reid states that AT&T has treated all directory assistance expenses as local and has ignored the fact that current cost assignments and revenue recoveries treat some directory

assistance expense as access or toll. BellSouth's witness Reid also contends that this distorts the resulting relationship between avoided expense and local revenues.

Witness Reid also asserts that costs associated with uncollectibles should not be avoided at 100%. Witness Reid argues that this is not a reasonable calculation since AT&T has assigned 95% of BellSouth's total intrastate regulated uncollectible expense to the local category.

In addition, BellSouth disagrees with AT&T's position that Product Management expenses should be treated as 100% avoidable. Witness Reid contends that this expense includes costs incurred in performing administrative activities related to marketing products and services. This includes costs for performing competitive analyses, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels. Witness Reid argues that the nature of this expense is not volume sensitive; therefore, resale of some quantity of BellSouth's services should not result in avoided product management expenses. BellSouth's witness Reid adds that resellers will be only one of the distribution channels considered in the management of the service.

Witness Reid further states that AT&T is asking BellSouth to unbundle parts of its retail services for purposes of calculating a wholesale discount. AT&T proposes to treat the costs for certain of these unbundled parts, such as operator services and certain repair services, as avoidable costs. As such, BellSouth argues that AT&T is attempting to mix the concepts of unbundling and resale. BellSouth argues that the unbundling of services should be handled through the unbundling tariffs, not through the wholesale tariffs. BellSouth's witness Reid argues that the wholesale service price should correspond to the related retail service provided by BellSouth.

BellSouth argues that all other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that BellSouth will operate, hypothetically, as just a wholesale provider of services. BellSouth argues that since it is undisputed that BellSouth will provide both retail and wholesale services, we should disregard the studies based on that methodology.

BellSouth's witness Reid also contends that, to the extent AT&T takes over the operator services function from BellSouth by routing local telephone calls to AT&T operators, it is taking over

a line of business with its own revenue stream. BellSouth asserts that it is not selling its retail operator service to AT&T at wholesale. Witness Reid argues that, instead, AT&T is taking over a competitive line of business, and AT&T will be receiving revenues from customers to compensate it for its operator services expenses.

Witness Reid also states that AT&T has treated a portion of the General & Administrative category as avoided. BellSouth believes this is inappropriate since it does not expect to see reductions due to resale. BellSouth also contends that since AT&T's revenue base was limited to basic local revenues including local vertical services, BellSouth would give AT&T a local discount that includes costs that are actually being recovered through intraLATA toll revenues.

We find that costs associated with operator and directory assistance services will not be 100% avoided, because AT&T will be providing its own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail services offered to customers shall be made available for resale. If AT&T wants to purchase pieces of services, it must, instead, buy unbundled elements and package these elements in a way that meets its needs.

In addition, we find that it is not reasonable to assume that BellSouth will operate as only a wholesale provider, when it will still be operating as a retailer. Since AT&T made this assumption, we conclude that AT&T's cost study does not accurately reflect BellSouth's avoided costs.

Also, since expenses for residential and business services vary significantly, residential and business services shall have different wholesale discounts. As an example of this variation, we note that the expenses associated with product advertising for business services is substantially higher than that for residential services. As such, we find that a separate rate is appropriate and will more accurately reflect the costs associated with providing the service.

In addition, we note that AT&T's revenue base for BellSouth does not appear to contain all the necessary revenues. AT&T appears to have omitted intraLATA toll revenues, which we find must be included.

Based on the evidence presented, AT&T's cost study is rejected. Furthermore, we find that AT&T's cost study is not in compliance with the Act, since it has removed all retail-related

costs. We note that the Act only requires that portions attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier, should be excluded. The Act does not require all retail costs to be considered avoided.

MCI's Avoided Cost Study

MCI proposes a wholesale discount rate of 25.06%. MCI contends that its approach to calculating BellSouth's avoided costs is conservative and tends to understate the amount of the appropriate discount. Witness Price states that the FCC's Order establishes minimum criteria for the avoided cost methodology based broadly on the MCI study. The witness also indicates that the costs in certain USOA accounts are identified as directly avoided, while costs in other accounts are treated as indirectly avoided. Witness Price explains that the avoided indirect costs are calculated by determining the ratio of directly avoided costs to total costs, and then applying that proportion to the total indirect costs for the accounts.

In response, BellSouth's witness Reid argues that MCI's model has two major problems. The first problem is that the MCI model inappropriately treats operator services expenses as 100% avoided. BellSouth argues that operator service expenses, such as call completion and number services accounts, are not avoidable in a resale environment. Witness Reid states that, to the extent that MCI takes over the operator services function from BellSouth by directly routing local telephone calls to its operators, it also takes over a line of business with its own revenue stream. Thus, Witness Reid contends this represents a competitive loss to BellSouth and a competitive gain to MCI.

BellSouth further contends that the second major problem with MCI's model relates to MCI's mishandling of published directory listing expense. Witness Reid argues that this category of expense includes the cost of classified and white page directories published and distributed by BellSouth's affiliate, BAPCO. BellSouth asserts that this expense is clearly not avoidable because BAPCO will continue, in a resale environment, to publish and distribute these directories, including listings for both BellSouth's customers and other local exchange carriers' customers.

Witness Reid argues that the FCC's criteria overstate the wholesale discount rate by using a "reasonably avoidable" concept to identify avoided expenses and by allocating indirect expenses as avoidable amounts.

MCI's study only included those accounts that the FCC established as presumed avoided. MCI has not provided any independent evidence to substantiate the costs it claims will be avoided. MCI's witness Price stated that MCI did not attempt to prove that any other cost accounts are avoided. Thus, since MCI assumed, as did AT&T, that BellSouth would operate only as a wholesale provider, we find that MCI's cost study does not accurately reflect the appropriate avoided costs. Other than referencing the criteria identified in the FCC's Order, MCI has not provided any evidence to substantiate the costs it claims will be avoided.

As previously noted, the evidence shows that 100% of the cost of the operator and directory assistance services will not be avoided just because resellers may be providing their own services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregrate a retail service into more discrete retail services. The Act merely requires that any retail service offered to customers be made available for resale. Thus, we have determined that if MCI wants to purchase pieces of services, it should purchase unbundled elements instead and package those elements to meet its needs. Also as previously noted, residential and business services should have different wholesale discounts.

Analysis of BellSouth's Avoided Cost Study

BellSouth submits that its wholesale price discounts of 19.0% for residential services and 12.2% for business services should be adopted. Witness Reid claims that these discounts are based on the relationship between avoided costs and revenues, and are calculated using 1995 revenues subject to discount. The witness further asserts that because characteristics and levels of revenues and costs vary between residential and business customers, BellSouth recommends two separate discounts. He explains that inherent in BellSouth's methodology and application of the wholesale discounts is the assumption that residential or business customers that choose to go with a reseller will be average revenue customers for that class of service. Witness Reid argues that to the extent a reseller targets higher than average revenue customers, the monetary discount that the reseller will receive will, logically, exceed the costs that will be avoided by BellSouth.

Witness Reid states that in order to determine the costs that will be avoided, BellSouth analyzed the work functions that are currently being performed to provide retail services to its customers. The witness states that BellSouth has an internal accounting system that identifies the major work functions of the business and tracks the costs associated with various work

functions being performed. The information from this system is then used for management purposes, as well as to help determine the assignment of costs between regulated and non-regulated operations. Witness Reid states that BellSouth analyzed each of its work functions for the categories of expense that would be affected by a wholesale market. Using that information, it then identified, using 1995 Florida operating data, the level of expense for each work function that would be avoided with resale.

Witness Reid asserts that the costs that will be avoided are the direct, volume-sensitive costs included in the expense categories for customer services and billing (account 6623), sales (account 6612), uncollectibles (account 5301), and advertising through bill inserts (account 6623). Witness Reid argues that these costs are volume sensitive amounts that are associated with the provision of regulated residential or business retail services. Furthermore, these avoided costs are associated with work functions that directly relate to interaction between BellSouth and the customer, an interaction that will not normally occur under resale. In addition, BellSouth contends it will treat call completion (account 6621) and number services (account 6622) as non-avoidable for resale purposes. Witness Reid argues that AT&T and MCI will continue to secure operator services from BellSouth under resale. Thus, these expenses are not avoidable expenses, because the functions will continue to be performed.

BellSouth also submitted calculations of a wholesale discount for retail services based on the criteria described in the FCC Order. Witness Reid states that BellSouth does not agree with the FCC's criteria regarding the determination of avoided/avoidable costs. The witness asserts that it is BellSouth's position that its study best complies with the Act. In order to provide us with information concerning the effect of the FCC's Rules and Order, however, BellSouth determined that a wholesale discount rate for both business and residential services would be 19.7%. Witness Reid added that BellSouth's methodology for calculating wholesale discounts for residence and business services is a reasonable approach that meets the requirements of the Act.

AT&T claims that BellSouth's original study improperly omits direct categories of costs that will be avoided, or that reasonably could be avoided, in a wholesale environment. AT&T's witness Lerma also argues that BellSouth's study fails to recognize avoided indirect costs, lacks sufficient detail to permit necessary adjustments to cost categories that are included, and fails to explain why less than 100% of those accounts the Act says are always avoided or are presumed avoided are included in the study.

AT&T's witness Lerma further contends that BellSouth shows little or no avoided costs for product management (account 6611), call completion (account 6621), and number services (account 6622-directory assistance). AT&T argues that these are cost categories that the FCC presumes are avoided. Witness Lerma contends that BellSouth has not provided either convincing rationale or evidence that these costs should remain when wholesale service is provided.

AT&T also argues that 100% of costs for sales and customer service (accounts 6612 and 6623) should have been avoided. Witness Lerma states that insufficient evidence was provided to support anything less. In addition, he contends that BellSouth's revised cost study, which reflects the FCC Order, provides inadequate support for the low percentages of avoided costs that it assigns to several accounts the FCC presumes are totally avoided. The witness states that BellSouth assigns no avoided costs at all to call completion (account 6621) and number services (account 6622). Witness Lerma argues that BellSouth makes no allowance for avoided profit or contribution, although the FCC Order indicates it is appropriate to do so. Thus, Witness Lerma argues that BellSouth underestimates the portion of indirect costs that are avoided by employing an improper ratio calculation. AT&T suggests that the proper formula should be directly avoided costs divided by total direct costs.

AT&T asserts that, according to BellSouth, the Act requires a deduction of only those costs which it will actually avoid in the short term. AT&T states that BellSouth has misinterpreted the Act in developing the cost study upon which it bases its proposed discounts. AT&T also argues that BellSouth's cost methodology has already been rejected by the state commissions of Georgia, Kentucky and Louisiana. AT&T alleges that Georgia found BellSouth's methodology a "narrow, constrained view of the avoided cost approach." AT&T also states that the Kentucky Commission found that BellSouth's approach is "too simplistic and has insufficient detail." AT&T further asserts that the Louisiana Commission also rejected BellSouth's methodology.

MCI also argues that BellSouth's approach is inconsistent with the Act. Witness Price states that BellSouth seeks to determine costs that will no longer be incurred by BellSouth. MCI agrees that BellSouth will continue to be a retail provider of telecommunications services and that it will incur retailing costs. However, in looking only at the costs that BellSouth will no longer incur, Witness Price suggests that the resulting discount could overstate the wholesale rates, place BellSouth in an unfair competitive position in the retail market, and deny end users the benefits that resale competition could otherwise bring. MCI

asserts that by failing to take into account all of BellSouth's retailing costs in calculating the discount, the resulting wholesale rates will burden BellSouth's wholesale customers with recovery of the portion of BellSouth's retail costs that were ignored in the calculation of the discount.

MCI's witness Price also argues that BellSouth's analysis ignored retailing costs that BellSouth believes are non-volume sensitive, retailing costs that BellSouth believes it will continue to incur, costs of functions supporting BellSouth's retailing activities (i.e., indirect costs), and costs associated with call completion and number services functions. MCI suggests that omitting "non-volume sensitive" costs, such as advertising, would result in BellSouth's retail competitors paying a portion of BellSouth's advertising costs or any other costs considered to be "non-volume sensitive." Witness Price also contends that BellSouth has omitted from retail rates the costs associated with retailing. He argues that this approach would place BellSouth's retail competitors in the position of having to pay for a portion of BellSouth's retailing costs.

Furthermore, MCI's witness Price argues that BellSouth incurs overhead costs which support all other functions, including those that are associated with its retail operations. By ignoring such indirect costs, Witness Price argues that BellSouth's retail competitors would be forced to pay a portion of BellSouth's overhead costs. Witness Price also contends that this would give BellSouth a competitive advantage, because its competitors will have to recover their own overheads to compete in the retail market, while being required to pay a portion of BellSouth's.

MCI supports AT&T's argument that it is incorrect for BellSouth to ignore costs associated with call completion and number services. MCI's witness Price contends that call completion and number services will either be provided by the other provider or the subject of a separate contract. MCI argues that to include those costs in the calculation of the wholesale discount would require BellSouth's retail competitors to pay twice for those functions.

We agree with BellSouth that all other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that BellSouth will operate in a hypothetical world, only as a wholesale provider of services. We also agree with BellSouth that since it will provide both retail and wholesale services, it is unreasonable to assume that it only performs wholesale functions. Therefore, we reject AT&T and MCI's basic methodology. Furthermore, we agree that it

In addition, Section 51.315(a) states that "an incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carrier to combine such network elements in order to provide a telecommunications service." Finally, Section 51.315(c) specifically provides that upon request,

> an incumbent LEC shall perform the functions necessary to combine unbundled elements <u>in any manner</u>, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is:
>
> (1) technically feasible; and
>
> (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

In ¶ 333 of the Order, the FCC states:

> Additionally, carriers solely using unbundled network elements can offer exchange access services. These services, however, are not available for resale under section 251 (c)(4) of the 1996 Act.

While the service may appear the same to an end-user, the service is clearly different to the carrier, based on how it is provisioned. At the hearing, AT&T witness Gillan explained that ordering flat rate residential service is not the same as recombining a loop, switch, port and local usage.

The FCC's Order, ¶ 334, states:

> If a carrier taking unbundled elements may have greater competitive opportunities than carriers offering services available for resale, they also face greater risks... It thus faces the risk that end-user customers will not demand a sufficient number of services using that facility for the carrier to recoup its cost. (Many network elements can be used to provide a number of different services.) A carrier that resells an incumbent LEC's services does not face the same risk. This distinction in the risk borne by carriers entering local markets through

> resale as opposed to unbundled elements is likely to influence the entry strategies of various potential competitors.

We note that the FCC distinguished the risks involved for carriers purchasing unbundled network elements compared to carriers reselling an incumbent's service. The evidence reveals that purchasing a retail service at wholesale does not contain the same element of risk as recombining unbundled elements to recreate a service. Purchasing a retail service at wholesale provides a certain level of mark-up, since the service can then be resold at the retail rate. Recreating a service with unbundled elements does not guarantee any level of return to AT&T or MCI, yet, as stated by AT&T witness Gillan, BellSouth will be fully compensated for the use of those network elements.

BellSouth states that unbundled network elements should only be combined with AT&T's or MCI's own capabilities to create a unique service. The FCC believes, however, that limiting access to unbundled network elements only where carriers could provide their own facilities could diminish competition. According to the FCC, by limiting access to unbundled network elements, carriers would have an incentive to enter only those local markets that would support the duplication of some or all of the LEC's local network. See FCC 96-325 at ¶ 340.

BellSouth also argues that allowing unbundling and rebundling would unfairly benefit AT&T and MCI, because they would avoid the joint marketing restriction in Section 271 of the Act. The restriction in Section 271(e) states that:

> Until a Bell operating company is authorized pursuant to subsection (d) to provide interLATA services in an in-region State, or until 36 months have passed since the date of enactment of the Telecommunications Act of 1996, whichever is earlier, a telecommunications carrier that serves greater than 5 percent of the Nation's presubscribed access lines may not jointly market in such State telephone exchange service obtained from such company pursuant to section 251(c)(4) with interLATA services offered by that telecommunications carrier.

BellSouth states that this restriction would apply to prevent AT&T and MCI from jointly marketing their resold services that they purchase from BellSouth on a resold basis with their interLATA

services. BellSouth argues that if a service is bought under the unbundled/rebundled fiction, then the joint marketing provision can be avoided.

The FCC rejected this argument in Paragraphs 335 and 336 of its Order. As noted above, the FCC pointed out differences in opportunities and risks involved for a carrier taking unbundled elements rather than carriers offering services for resale. The FCC found that the Act does not prohibit all forms of joint marketing.

> In other words, we see no basis upon which we could conclude that section 271(e)(1) restricts joint marketing of long distance services, and local services provided solely through the use of unbundled network elements, without also concluding that the section restricts the ability of carrier to jointly market long distance services and local services that are provided through a combination of a carrier's own facilities and unbundled network elements. Moreover, we do not believe that we have the discretion to read into the 1996 Act a restriction on competition which is not required by the plain language of any of its sections.

Based on the foregoing, it appears to us that AT&T and MCI should be able to combine unbundled network elements in any manner they choose. We note that we are concerned with the FCC's interpretation of Section 251(c)(3) of the Act. Specifically, we are concerned that the FCC's interpretation could result in the resale rates we set being circumvented if the price of the same service created by combining unbundled elements is lower. Our responsibility to set rates is underscored by the fact that the portion of the FCC's order on pricing has been stayed. We are also concerned about the possibility that the joint marketing prohibitions in section 271(e)(1) could be circumvented. The FCC has interpreted Section 271(e)(1) as only prohibiting the joint marketing of resold services and not services created by combining unbundled network elements. We believe it is inconsistent to have a service subject to marketing restrictions when resold and not apply the same restrictions to the same service provided through rebundling of network elements.

Upon consideration, although we are concerned with the FCC's interpretation of Section 251(c)(3) of the Act, we are applying it to this proceeding. We do this based on the arbitration standards

we are to follow as set forth in Section 251 of the Act and because the portion of the FCC's Order interpreting this section has not been stayed by the 8th Circuit Court of Appeals. Therefore, since it appears, based on the above, that the FCC's Rules and Order permit AT&T and MCI to combine unbundled network elements in any manner they choose, including recreating existing BellSouth services, that they may do so for now. However, we will notify the FCC about our concerns and revisit this portion of our Order should the FCC 's interpretation change.

III. RESALE

A. Introduction

Section 251(c)(4) of the Act requires LECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. This is further clarified in the FCC's Order. The dispute before us concerns which services are retail services.

BellSouth's witness Scheye argues that certain options or service offerings are not retail services and should be excluded from resale. Witness Scheye states that obsolete/grandfathered services, contract service arrangements, promotions, LinkUp and Lifeline services, N11 and E911 and 911 should not be resold. BellSouth further argues that under the Act, these services are either not retail services or bear special characteristics that should exclude them from resale. AT&T and MCI contend that the Act does not provide for any exceptions. Thus, AT&T and MCI argue that any telecommunication service offered at retail to end user customers who are not carriers should be resold. AT&T does state, however, that BellSouth can deny AT&T the right to purchase obsolete/grandfathered services, contract service arrangements, promotions, LinkUp and Lifeline services, N11 and E911 and 911 services only if BellSouth can prove that these services are narrowly tailored, reasonable, and non-discriminatory. See FCC Order 96-325 at ¶ 939. AT&T asserts that BellSouth has not met this burden of proof.

AT&T's witness Sather disagrees with BellSouth's statement that resale does not bring the benefits of true competition as compared to alternative networks. Witness Sather argues that history has shown differently. Witness Sather argues that resale was the primary vehicle used by new entrants in the long distance market. MCI's witness Price agrees. Witness Price adds that an effective local resale market is essential to the development of full facilities-based local competition. Witness Price asserts

that, in addition to promoting facilities-based competition, the resale of local services provides independent benefits to consumers through retail competition.

MCI's witness Price further argues that the FCC addressed the need for resale competition in its Order. Specifically,

> Resale will be an important entry strategy for many new entrants, especially in the short term when they are building their own facilities. Further, in some areas and for some new entrants, we expect that the resale option will remain an important entry strategy over the longer term. Resale will also be an important entry strategy for small businesses that may lack capital to compete in the local exchange market by purchasing unbundled elements or by building their own networks. In light of the strategic importance of resale to the development of competition, we conclude that it is especially important to promulgate national rules for use by state commissions in setting wholesale rates. . . FCC Order 96-325 at ¶ 907.

AT&T and MCI both allege that BellSouth is required, pursuant to the Act, to make all existing retail services available for resale. AT&T's witness Sather contends that by precluding specific services or categories from being resold, BellSouth effectively restricts these services to BellSouth's existing customers, thereby shielding particular customer classes from competition. As a result, consumers lose their ability to choose to get these services from other providers, and are locked into taking the services from BellSouth at BellSouth's prices.

B. Services Required to Be Offered for Resale.

Grandfathered and Obsolete Services

BellSouth witness Scheye states that grandfathered services are no longer available for sale to, or for transfer between, end users. As such, BellSouth argues that these services should not be transferrable between providers. Witness Scheye alleges that BellSouth has made new services available to replace the existing services. Witness Scheye further contends that allowing grandfathered services to be resold would only undermine the basic definition of grandfathered services. Once a customer decides to obtain his services through another LEC provider, that customer is

no longer a BellSouth customer and should no longer be eligible for services grandfathered by BellSouth. Witness Scheye did state, however, that the FCC Order indicates that only newly grandfathered services should be required to be resold.

AT&T and MCI argue that the Act and the Order also require withdrawn services to be resold. In its brief, AT&T argues that the Act does include withdrawn services within the definition of telecommunications services because withdrawn services are offered "for a fee directly to the public." See 47 C.F.R.. § 13(46). In addition, MCI contends that the portions of the FCC Rules that are not stayed 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. AT&T's witness Sather argues that MCI's assertion is further supported by the Order, which states that withdrawn services must be made available at wholesale rates to a requesting carrier. FCC Order 96-325 at ¶ 968.

MCI's witness Price also argues that without resale requirements, BellSouth would be able to offer services to its customers that resale competitors would be unable to match. Both MCI and AT&T contend that, in some cases, BellSouth's discontinued services will remain available for up to six years. Witness Price adds that because of pricing advantages, many BellSouth customers want to keep these services. AT&T's witness Sather states that it is AT&T's intention to provide these grandfathered services only to customers receiving them from BellSouth at the time they switch to AT&T. AT&T is not seeking to offer these services to customers not currently receiving them.

The FCC Rules state:

> When an ILEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the ILEC must also make such a service available at wholesale rates to requesting carriers to offer on a resale basis to the same limited group of customers that have purchased such a service in the past. 47 C.F.R. § 51.615.

We believe a distinction should be made between the application of the resale provisions to existing grandfathered services and services that may be grandfathered in the future. We do not believe that existing grandfathered services should be resold. On the other hand, we do not think it is appropriate to restrict the resale of services that are grandfathered in the

future. To do so might give ILECs an incentive to grandfather services in an attempt to retain customers, to the detriment of competition.

Nevertheless, we are constrained to find that all grandfathered services are subject to resale. The FCC's Rules and Order require that IILECs offer wholesale rates for existing grandfathered services to resellers for the purpose of serving those grandfathered customers.

Contract Service Arrangements

BellSouth argues that contract service arrangements (CSAs) are designed to respond to specific competitive threats on a customer-by-customer basis. BellSouth's witness Scheye further asserts that CSAs contain rates established specifically for each competitive situation. Thus, Witness Scheye argues that service arrangements should be excluded from resale. Witness Scheye argues that it is completely illogical for BellSouth to develop a customer-specific proposal containing non-tariffed rates, only to have AT&T or MCI purchase the proposal from BellSouth at a discount and offer the same proposal to the customer at a slightly lower price.

AT&T's witness Sather responds that CSAs are tariffed services offered at customer-specific, non-tariffed rates. He states that in order to be competitive, an ILEC will offer CSAs to customers for a specific time in which designated services can be received at a discounted rate. According to witness Sather the Act mandates that IILECs offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

MCI's witness Price argues that CSAs are simply a retail service that has been priced by contract rather than tariff. Witness Price also states that if BellSouth were permitted to restrict the resale of CSAs, it would be able to use such contracts to provide differential pricing that competitors could not meet. As such, Witness Price argues that BellSouth would avoid its obligation under the Act to make all retail services available for resale.

We are concerned that by requiring the resale of CSAs we will eliminate any incentive to ever enter into CSAs. We note, however, that the FCC Order specifically states that "contract and other customer-specific offerings should not be excluded from resale." FCC Order 96-325, ¶ 948. Therefore, we shall require BellSouth to offer contract service arrangements for resale.

3. Promotions

BellSouth's witness Scheye also argues that promotions are not retail services, and thus should not be resold. He states that in most instances, promotions are simply waivers of nonrecurring charges that last for a limited time only. Witness Scheye contends that it would be completely illogical for BellSouth to run promotions to attract customers, only to be required to give AT&T and MCI the same limited time waiver on nonrecurring charges, in addition to the already discounted wholesale monthly recurring rate, so that AT&T and MCI can attract customers. Witness Scheye argues that, in effect, BellSouth would be subsidizing AT&T and MCI's marketing program. He adds that if AT&T and MCI wish to conduct promotions, its stockholders should have to bear the consequences just as do BellSouth's stockholders. Witness Scheye argues that competitive advantage should be earned in the marketplace, not given through an inappropriate resale requirement or discount. If a reseller wishes to promote a particular service, BellSouth contends there is nothing to stop the reseller from offering its own promotion of an already discounted BellSouth resold service or any of its own services. Witness Scheye also argues that the FCC Order is in line with BellSouth's position in that it allows promotions used for 90 days or less and not in a continuous manner to be restricted from resale. See FCC Order 96-325 at ¶ 950.

AT&T states that promotional plans are specific pricing arrangements designed to encourage customers to purchase particular services and new features. AT&T's witness Sather also states that, generally, BellSouth's promotional plans involve waiving a fee, such as a non-recurring charge, or offering the first month of service free of charge. AT&T and MCI both contend that the portion of the FCC Order that has not been stayed requires that all promotions must be available for resale, except those that are short-term in nature. FCC Order 96-325 at ¶ 949. Specifically, Witness Sather argues 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. That way the LEC does not use successive promotions to avoid the wholesale rate obligation.

The FCC Order is clear that promotional or discounted offerings should not be excluded from resale. See FCC Order 96-325 at ¶ 948. Short-term promotions, however, those in effect for no more than 90 days, are not subject to the wholesale discount. The FCC's rule further provides that ILECs cannot use these promotional offerings to evade the wholesale rate obligation by, for example, offering a sequential series of 90-day promotional rates. See 47 C.F.R. § 51.613(a)(2).

<u>LinkUp and Lifeline Services</u>

BellSouth states that LinkUp and Lifeline are subsidy programs designed to assist low income residential customers by providing a monthly credit on recurring charges and a discount on nonrecurring charges for basic telephone service. BellSouth argues that these services should not be resold. BellSouth's witness Scheye argues that if AT&T, MCI, or any other competitor wants to provide similar programs through resale, the companies should be required to purchase BellSouth's basic residential service. Witness Scheye adds that the companies may then resell the service at an appropriate rate, and apply to the appropriate agency for funding of the subsidy program. BellSouth contends that the FCC's Order recognizes this issue and allows resale restrictions to be placed upon services for which other subscribers would be ineligible.

AT&T's witness Sather, however, defines LinkUP and Lifeline as services that include arrangements to help defray the cost of the non-recurring installation fees and to provide reduced monthly service charges for customers who qualify for financial assistance. AT&T and MCI both state that these services are means-based, subsidized retail residential services to assist low income customers. The recipients of these services are not telecommunications carriers, and, therefore, BellSouth must resell these services. AT&T's witness Sather disagrees with BellSouth's position that AT&T should resell basic residential service to eligible customers at appropriate rates and then seek certification and funding from the appropriate state agency. Witness Sather contends that this is just another regulatory burden that new entrants would have to overcome.

MCI's witness Price adds that it is entirely appropriate to restrict the resale of these services to customers who would be eligible to obtain the service directly from BellSouth. Witness Price argues, however, that it is inappropriate to completely prohibit their resale. MCI contends that BellSouth will continue to receive any subsidy funds associated with the offering of these services for resale.

We have concerns regarding the resale of LinkUp and Lifeline services. It appears to us that Lifeline and LinkUp are not services that should be resold. They are subsidy programs offered to eligible low income residential customers. Lifeline and LinkUp are merely the means by which a company recoups the cost of the subsidy it offers to those customers. Competitors who wish to offer Lifeline and LinkUp should have to apply for the subsidy on behalf of the customer and determine the customer's eligibility for the service, just as BellSouth currently does.

We find, however, that based on the evidence presented and upon the FCC Order, LinkUp and Lifeline services shall be resold to those end users who are eligible to receive the services. The FCC Order states that there is general agreement that residential services should not be resold to non-residential end users and that restrictions prohibiting such cross-class reselling of residential services are reasonable. The Order further states that Section 251(c)(4)(B) of the Act allows states to make similar prohibitions on the resale of Lifeline, or any other means-tested service offering, to end users not eligible to subscribe to such service offerings. See FCC Order 96-325 at ¶ 962.

N11 including 911/E911

BellSouth's witness Scheye states that N11 services, including 911 and E911, are not retail services provided to end users. BellSouth provides N11 services to other companies or government entities who, in turn, provide the actual service to end user customers. Thus, Witness Scheye states that BellSouth believes it should not be required to offer these services for resale.

AT&T's witness Carroll explains that 911 service provides the facilities and equipment required to route emergency calls made in a particular geographic area to the appropriate Public Safety Answering Point. E911 provides more flexibility by using a database to route calls to the appropriate point. N11 is a service offered to information service providers who, in turn, provide information services to consumers via three digit dialing.

AT&T's witness Sather argues that making N11 and 911/E911 available for resale prevents BellSouth from maintaining monopoly control over the provision of such services. Witness Sather adds that BellSouth provides these services to customers who are not telecommunications carriers and, therefore, must offer them for resale. Witness Sather asserts that permitting resale of these services will ensure that consumers can look to other carriers to provide, at a minimum, the same type and quality of services they have received from the ILEC.

MCI also disagrees with BellSouth's witness Scheye that these services are not retail services because they are offered to a limited class of customers. MCI argues that the Act permits resale of any service offered at retail to any subscribers who are not telecommunications carriers.

We agree with AT&T and MCI's position that 911/E911 and N11 services are subject to resale. These services are sold to customers who are not telecommunications carriers. Pursuant to

Section 251(c)(4) of the Act, BellSouth, as the incumbent LEC, is required to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers, including governmental bodies and information providers.

C. Wholesale Rates of Retail Services Offered for Resale

The 1996 Act directs state commissions to determine the appropriate methodology for local exchange companies to set wholesale discount rates for retail services. Section 252(d)(3) of the Act specifically requires that:

> For the purpose of section 251(c)(4), a State commission shall determine 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.

There are three key areas of contention over how this provision should be interpreted. First, the parties differ as to how the phrase "will be avoided" should be construed. AT&T and MCI both agree with the FCC's conclusion that the wholesale discount should be calculated on the basis of "costs that reasonably can be avoided when an ILEC provides a service for resale. . . ." 47 C.F.R. § 51.609(b). Under this interpretation the avoided costs are those that an ILEC would no longer incur if it were to cease retail operations and instead provide all of its services through resellers.

BellSouth disagrees with that interpretation of the Act. BellSouth believes that it is unreasonable to assume that it will cease retail operations and function only as a wholesale provider. BellSouth contends this is a misrepresentation of the intent of the Act. BellSouth further argues that the Act requires it to consider those costs that actually "will be avoided," as avoided costs. BellSouth does not believe that avoided costs are those that "could be avoided" if it were a wholesale-only provider.

The second area of disagreement concerns what expense accounts are avoidable and how much will be avoided. The FCC Order identifies six accounts that presumably should be avoided: 1) Product Management (account 6611), 2) Sales (account 6612), 3) Product Advertising (account 6613), 4) Call Completion (account 6621), 5) Number Services (account 6622), and 6) Customer Services

(account 6623). In accordance with the FCC Order, AT&T and MCI have treated these accounts as 90 to 100% avoided. The FCC Order also provides, however, that its criteria are intended to provide state commissions with broad latitude in selecting costing methodologies. The Order further states that the rules for identifying avoided costs by USOA expense accounts are cast as rebuttable presumptions, and the FCC did not adopt as presumptively correct any avoided cost model. See FCC Order 96-325 at ¶ 909.

The third area of concern is the treatment of certain overhead expenses. The FCC Order provides, under its "reasonably avoidable" standard, that an avoided cost study must include indirect, or shared costs, as well as direct costs. The reason for this is that indirect or shared costs, such as general overheads, support all of the IILECs functions, including marketing, sales, billing and collection, and other avoided retail functions. Thus, a portion of the indirect costs must be considered "attributable to cost that will be avoided" pursuant to Section 252(d)(3). See FCC Order 96-325 at ¶ 912. AT&T and MCI agree with the guidelines set forth in the Order; however, BellSouth did not include indirect costs in its study, with the exception of uncollectibles.

BellSouth has proposed a wholesale discount rate of 19.0% for residential services and 12.2% for business services. AT&T and MCI have proposed that we set one wholesale rate for both residential and business services. AT&T's proposed wholesale discount rate is 39.99% and MCI's is 25.06%.

AT&T's Avoided Cost Study

AT&T proposes that we adopt a permanent wholesale discount of 39.99%, applicable to all of BellSouth's retail service rates. AT&T contends that its cost study complies with the requirements of the Act, and identifies all retail costs that will be avoided by BellSouth.

AT&T's witness Lerma states that the Act provides substantial guidance for determining the wholesale rates for services that IILECs must sell to other carriers for resale. He asserts that to determine wholesale rates, the Act identifies three specific categories of costs that are to be excluded from retail rates: marketing, billing, and collection costs. Witness Lerma adds that the Act also prescribes the removal from retail rates of any "other cost that will be avoided." He argues that effectively the Act prescribes that all retail-related costs are to be removed from retail rates to establish wholesale rates.

Witness Lerma also states that AT&T used its "Avoided Retail Cost Model" (Model) to identify all types of BellSouth's costs associated with retail activities in the local service market. The witness contends that the objective of the Model is to measure all retail costs that will be avoided by BellSouth when services are sold at wholesale to AT&T. The Model will also express the total of the costs as a percentage of BellSouth's retail rates.

The Model is divided into three phases. Phase I assigns revenues and costs to seven separate categories. Phase II reorganizes revenues and costs for those seven categories into the five traditional lines of business: Miscellaneous, Private Line, Local, Access, and Toll. Phase III analyzes the costs assigned to local service to identify costs that will be avoided, and calculates the appropriate reduction to local services retail rates to produce wholesale local service rates.

Witness Lerma states that AT&T has proposed a single avoided local retail cost percentage because avoided cost data for the specific local services that BellSouth offers has not been made available to AT&T. The data AT&T lacks includes revenue and avoided cost data relating to residential versus business customers. Nevertheless, Witness Lerma contends that AT&T's cost study is a "top-down" study based on the embedded cost, as reflected in BellSouth's publicly available ARMIS report. All of the USOA cost categories that are presumed avoidable in the FCC Order are considered avoided in the AT&T study. In addition, Witness Lerma states that, to the extent that costs are included in the study that are not presumed avoidable in the FCC regulations, AT&T provides supporting rationale that demonstrates why it believes these costs should be reflected as avoided costs. AT&T further asserts that it properly identifies costs subject to proration between retail and wholesale.

BellSouth argues that AT&T's approach to calculating a wholesale discount factor overstates the calculated discount in at least three broad areas. BellSouth's witness Reid contends that the first area of overstatement is caused by the procedure AT&T used to assign amounts for expense/cost to local exchange service. The second area of overstatement is caused by AT&T's arbitrary identification of avoided retail costs. The third area of overstatement is the result of the limited revenue base that AT&T uses to divide into the avoided costs from its study. AT&T's revenue base does not include intraLATA toll revenue.

Witness Reid states that AT&T has treated all directory assistance expenses as local and has ignored the fact that current cost assignments and revenue recoveries treat some directory

assistance expense as access or toll. BellSouth's witness Reid also contends that this distorts the resulting relationship between avoided expense and local revenues.

Witness Reid also asserts that costs associated with uncollectibles should not be avoided at 100%. Witness Reid argues that this is not a reasonable calculation since AT&T has assigned 95% of BellSouth's total intrastate regulated uncollectible expense to the local category.

In addition, BellSouth disagrees with AT&T's position that Product Management expenses should be treated as 100% avoidable. Witness Reid contends that this expense includes costs incurred in performing administrative activities related to marketing products and services. This includes costs for performing competitive analyses, product and service identification and specification, test market planning, demand forecasting, product life cycle analysis, pricing analysis, and identification and establishment of distribution channels. Witness Reid argues that the nature of this expense is not volume sensitive; therefore, resale of some quantity of BellSouth's services should not result in avoided product management expenses. BellSouth's witness Reid adds that resellers will be only one of the distribution channels considered in the management of the service.

Witness Reid further states that AT&T is asking BellSouth to unbundle parts of its retail services for purposes of calculating a wholesale discount. AT&T proposes to treat the costs for certain of these unbundled parts, such as operator services and certain repair services, as avoidable costs. As such, BellSouth argues that AT&T is attempting to mix the concepts of unbundling and resale. BellSouth argues that the unbundling of services should be handled through the unbundling tariffs, not through the wholesale tariffs. BellSouth's witness Reid argues that the wholesale service price should correspond to the related retail service provided by BellSouth.

BellSouth argues that all other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that BellSouth will operate, hypothetically, as just a wholesale provider of services. BellSouth argues that since it is undisputed that BellSouth will provide both retail and wholesale services, we should disregard the studies based on that methodology.

BellSouth's witness Reid also contends that, to the extent AT&T takes over the operator services function from BellSouth by routing local telephone calls to AT&T operators, it is taking over

a line of business with its own revenue stream. BellSouth asserts that it is not selling its retail operator service to AT&T at wholesale. Witness Reid argues that, instead, AT&T is taking over a competitive line of business, and AT&T will be receiving revenues from customers to compensate it for its operator services expenses.

Witness Reid also states that AT&T has treated a portion of the General & Administrative category as avoided. BellSouth believes this is inappropriate since it does not expect to see reductions due to resale. BellSouth also contends that since AT&T's revenue base was limited to basic local revenues including local vertical services, BellSouth would give AT&T a local discount that includes costs that are actually being recovered through intraLATA toll revenues.

We find that costs associated with operator and directory assistance services will not be 100% avoided, because AT&T will be providing its own customers these services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregate a retail service into more discrete retail services. The Act merely requires that any retail services offered to customers shall be made available for resale. If AT&T wants to purchase pieces of services, it must, instead, buy unbundled elements and package these elements in a way that meets its needs.

In addition, we find that it is not reasonable to assume that BellSouth will operate as only a wholesale provider, when it will still be operating as a retailer. Since AT&T made this assumption, we conclude that AT&T's cost study does not accurately reflect BellSouth's avoided costs.

Also, since expenses for residential and business services vary significantly, residential and business services shall have different wholesale discounts. As an example of this variation, we note that the expenses associated with product advertising for business services is substantially higher than that for residential services. As such, we find that a separate rate is appropriate and will more accurately reflect the costs associated with providing the service.

In addition, we note that AT&T's revenue base for BellSouth does not appear to contain all the necessary revenues. AT&T appears to have omitted intraLATA toll revenues, which we find must be included.

Based on the evidence presented, AT&T's cost study is rejected. Furthermore, we find that AT&T's cost study is not in compliance with the Act, since it has removed all retail-related

costs. We note that the Act only requires that portions attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier, should be excluded. The Act does not require all retail costs to be considered avoided.

MCI's Avoided Cost Study

MCI proposes a wholesale discount rate of 25.06%. MCI contends that its approach to calculating BellSouth's avoided costs is conservative and tends to understate the amount of the appropriate discount. Witness Price states that the FCC's Order establishes minimum criteria for the avoided cost methodology based broadly on the MCI study. The witness also indicates that the costs in certain USOA accounts are identified as directly avoided, while costs in other accounts are treated as indirectly avoided. Witness Price explains that the avoided indirect costs are calculated by determining the ratio of directly avoided costs to total costs, and then applying that proportion to the total indirect costs for the accounts.

In response, BellSouth's witness Reid argues that MCI's model has two major problems. The first problem is that the MCI model inappropriately treats operator services expenses as 100% avoided. BellSouth argues that operator service expenses, such as call completion and number services accounts, are not avoidable in a resale environment. Witness Reid states that, to the extent that MCI takes over the operator services function from BellSouth by directly routing local telephone calls to its operators, it also takes over a line of business with its own revenue stream. Thus, Witness Reid contends this represents a competitive loss to BellSouth and a competitive gain to MCI.

BellSouth further contends that the second major problem with MCI's model relates to MCI's mishandling of published directory listing expense. Witness Reid argues that this category of expense includes the cost of classified and white page directories published and distributed by BellSouth's affiliate, BAPCO. BellSouth asserts that this expense is clearly not avoidable because BAPCO will continue, in a resale environment, to publish and distribute these directories, including listings for both BellSouth's customers and other local exchange carriers' customers.

Witness Reid argues that the FCC's criteria overstate the wholesale discount rate by using a "reasonably avoidable" concept to identify avoided expenses and by allocating indirect expenses as avoidable amounts.

MCI's study only included those accounts that the FCC established as presumed avoided. MCI has not provided any independent evidence to substantiate the costs it claims will be avoided. MCI's witness Price stated that MCI did not attempt to prove that any other cost accounts are avoided. Thus, since MCI assumed, as did AT&T, that BellSouth would operate only as a wholesale provider, we find that MCI's cost study does not accurately reflect the appropriate avoided costs. Other than referencing the criteria identified in the FCC's Order, MCI has not provided any evidence to substantiate the costs it claims will be avoided.

As previously noted, the evidence shows that 100% of the cost of the operator and directory assistance services will not be avoided just because resellers may be providing their own services. We do not believe the intent of the Act was to impose on an ILEC the obligation to disaggregrate a retail service into more discrete retail services. The Act merely requires that any retail service offered to customers be made available for resale. Thus, we have determined that if MCI wants to purchase pieces of services, it should purchase unbundled elements instead and package those elements to meet its needs. Also as previously noted, residential and business services should have different wholesale discounts.

Analysis of BellSouth's Avoided Cost Study

BellSouth submits that its wholesale price discounts of 19.0% for residential services and 12.2% for business services should be adopted. Witness Reid claims that these discounts are based on the relationship between avoided costs and revenues, and are calculated using 1995 revenues subject to discount. The witness further asserts that because characteristics and levels of revenues and costs vary between residential and business customers, BellSouth recommends two separate discounts. He explains that inherent in BellSouth's methodology and application of the wholesale discounts is the assumption that residential or business customers that choose to go with a reseller will be average revenue customers for that class of service. Witness Reid argues that to the extent a reseller targets higher than average revenue customers, the monetary discount that the reseller will receive will, logically, exceed the costs that will be avoided by BellSouth.

Witness Reid states that in order to determine the costs that will be avoided, BellSouth analyzed the work functions that are currently being performed to provide retail services to its customers. The witness states that BellSouth has an internal accounting system that identifies the major work functions of the business and tracks the costs associated with various work

functions being performed. The information from this system is then used for management purposes, as well as to help determine the assignment of costs between regulated and non-regulated operations. Witness Reid states that BellSouth analyzed each of its work functions for the categories of expense that would be affected by a wholesale market. Using that information, it then identified, using 1995 Florida operating data, the level of expense for each work function that would be avoided with resale.

Witness Reid asserts that the costs that will be avoided are the direct, volume-sensitive costs included in the expense categories for customer services and billing (account 6623), sales (account 6612), uncollectibles (account 5301), and advertising through bill inserts (account 6623). Witness Reid argues that these costs are volume sensitive amounts that are associated with the provision of regulated residential or business retail services. Furthermore, these avoided costs are associated with work functions that directly relate to interaction between BellSouth and the customer, an interaction that will not normally occur under resale. In addition, BellSouth contends it will treat call completion (account 6621) and number services (account 6622) as non-avoidable for resale purposes. Witness Reid argues that AT&T and MCI will continue to secure operator services from BellSouth under resale. Thus, these expenses are not avoidable expenses, because the functions will continue to be performed.

BellSouth also submitted calculations of a wholesale discount for retail services based on the criteria described in the FCC Order. Witness Reid states that BellSouth does not agree with the FCC's criteria regarding the determination of avoided/avoidable costs. The witness asserts that it is BellSouth's position that its study best complies with the Act. In order to provide us with information concerning the effect of the FCC's Rules and Order, however, BellSouth determined that a wholesale discount rate for both business and residential services would be 19.7%. Witness Reid added that BellSouth's methodology for calculating wholesale discounts for residence and business services is a reasonable approach that meets the requirements of the Act.

AT&T claims that BellSouth's original study improperly omits direct categories of costs that will be avoided, or that reasonably could be avoided, in a wholesale environment. AT&T's witness Lerma also argues that BellSouth's study fails to recognize avoided indirect costs, lacks sufficient detail to permit necessary adjustments to cost categories that are included, and fails to explain why less than 100% of those accounts the Act says are always avoided or are presumed avoided are included in the study.

AT&T's witness Lerma further contends that BellSouth shows little or no avoided costs for product management (account 6611), call completion (account 6621), and number services (account 6622-directory assistance). AT&T argues that these are cost categories that the FCC presumes are avoided. Witness Lerma contends that BellSouth has not provided either convincing rationale or evidence that these costs should remain when wholesale service is provided.

AT&T also argues that 100% of costs for sales and customer service (accounts 6612 and 6623) should have been avoided. Witness Lerma states that insufficient evidence was provided to support anything less. In addition, he contends that BellSouth's revised cost study, which reflects the FCC Order, provides inadequate support for the low percentages of avoided costs that it assigns to several accounts the FCC presumes are totally avoided. The witness states that BellSouth assigns no avoided costs at all to call completion (account 6621) and number services (account 6622). Witness Lerma argues that BellSouth makes no allowance for avoided profit or contribution, although the FCC Order indicates it is appropriate to do so. Thus, Witness Lerma argues that BellSouth underestimates the portion of indirect costs that are avoided by employing an improper ratio calculation. AT&T suggests that the proper formula should be directly avoided costs divided by total direct costs.

AT&T asserts that, according to BellSouth, the Act requires a deduction of only those costs which it will actually avoid in the short term. AT&T states that BellSouth has misinterpreted the Act in developing the cost study upon which it bases its proposed discounts. AT&T also argues that BellSouth's cost methodology has already been rejected by the state commissions of Georgia, Kentucky and Louisiana. AT&T alleges that Georgia found BellSouth's methodology a "narrow, constrained view of the avoided cost approach." AT&T also states that the Kentucky Commission found that BellSouth's approach is "too simplistic and has insufficient detail." AT&T further asserts that the Louisiana Commission also rejected BellSouth's methodology.

MCI also argues that BellSouth's approach is inconsistent with the Act. Witness Price states that BellSouth seeks to determine costs that will no longer be incurred by BellSouth. MCI agrees that BellSouth will continue to be a retail provider of telecommunications services and that it will incur retailing costs. However, in looking only at the costs that BellSouth will no longer incur, Witness Price suggests that the resulting discount could overstate the wholesale rates, place BellSouth in an unfair competitive position in the retail market, and deny end users the benefits that resale competition could otherwise bring. MCI

asserts that by failing to take into account all of BellSouth's retailing costs in calculating the discount, the resulting wholesale rates will burden BellSouth's wholesale customers with recovery of the portion of BellSouth's retail costs that were ignored in the calculation of the discount.

MCI's witness Price also argues that BellSouth's analysis ignored retailing costs that BellSouth believes are non-volume sensitive, retailing costs that BellSouth believes it will continue to incur, costs of functions supporting BellSouth's retailing activities (i.e., indirect costs), and costs associated with call completion and number services functions. MCI suggests that omitting "non-volume sensitive" costs, such as advertising, would result in BellSouth's retail competitors paying a portion of BellSouth's advertising costs or any other costs considered to be "non-volume sensitive." Witness Price also contends that BellSouth has omitted from retail rates the costs associated with retailing. He argues that this approach would place BellSouth's retail competitors in the position of having to pay for a portion of BellSouth's retailing costs.

Furthermore, MCI's witness Price argues that BellSouth incurs overhead costs which support all other functions, including those that are associated with its retail operations. By ignoring such indirect costs, Witness Price argues that BellSouth's retail competitors would be forced to pay a portion of BellSouth's overhead costs. Witness Price also contends that this would give BellSouth a competitive advantage, because its competitors will have to recover their own overheads to compete in the retail market, while being required to pay a portion of BellSouth's.

MCI supports AT&T's argument that it is incorrect for BellSouth to ignore costs associated with call completion and number services. MCI's witness Price contends that call completion and number services will either be provided by the other provider or the subject of a separate contract. MCI argues that to include those costs in the calculation of the wholesale discount would require BellSouth's retail competitors to pay twice for those functions.

We agree with BellSouth that all other resale studies filed in this docket have presented wholesale discounts that have been calculated based on the FCC's assumption that BellSouth will operate in a hypothetical world, only as a wholesale provider of services. We also agree with BellSouth that since it will provide both retail and wholesale services, it is unreasonable to assume that it only performs wholesale functions. Therefore, we reject AT&T and MCI's basic methodology. Furthermore, we agree that it

is appropriate to set two separate discount rates for residential and business customers. Since the revenues and costs vary between these customer types, separate discount levels would more accurately reflect this relationship.

We also recognize that AT&T and MCI have concerns regarding BellSouth's treatment of the product management, advertising, number services (directory assistance), call completion (operator services), and customer services accounts. However, other than noting that these accounts are presumed to be avoided under the FCC Order, we do not find that AT&T and MCI have provided convincing evidence that these costs should be 100% avoided.

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

Based on the evidence and arguments presented, we find that BellSouth's study is in compliance with the Act. We note that we agree with BellSouth's use of those costs that it will actually avoid. Although the FCC's Order considers account 6621 (Call Completion) and 6622 (Number Services) as presumptively avoidable, the Order also indicates that this is a rebuttable presumption. We find that BellSouth has adequately supported its claim that it will continue to incur these costs. Accordingly, we believe these costs should not be treated as avoidable. While we believe that BellSouth's treatment of key accounts is appropriate, we also believe that certain additional adjustments need to be made. We address these adjustments in our following determination of the discount.

Wholesale Discount

To arrive at the appropriate discount, we divide the total avoided costs by the revenues for the service subject to discount. BellSouth did not include non-recurring, contract service arrangements, and grandfathered services revenues, because it did

not believe these services should be resold. We include these revenues since we find that these services are subject to resale. The impact of this adjustment decreases the discount percentage.

For the purpose of accounts 6612 (Sales) and 6623 (Customer Service), BellSouth's analysis only includes expenses directly charged to accounts 6612 and 6623. Its supporting work papers indicate, however, that certain indirect expenses are also charged to these accounts. We have adjusted BellSouth's study to include both kinds of expenses booked to these two accounts. While this adjustment has essentially no impact on residential discount percentages, it increases the business discount slightly.

Since we are setting permanent discounts, we have determined that over time certain general overhead expenses should decline. Specifically, we have allocated a portion of the overhead accounts (accounts 6711-6712, 6721-6728) and general support accounts (accounts 6121-6124) based on the ratio of the costs we identified as directly avoided to total expenses. These overheads and general support accounts are identical to those reflected in BellSouth's alternative proposal sponsored by Witness Reid. However, while uncollectibles (account 5301) were allocated in BellSouth's alternative proposal, our analysis incorporates the directly identified amounts provided by BellSouth.

These three adjustments yield a residential discount of 21.83% and a business discount of 16.81%. We find these discounts to be appropriate. They comply with the intent of the Act that wholesale rates exclude those portions of retail costs "that will be avoided" by BellSouth. They are based on the actual retail costs that BellSouth can reasonably avoid in the provision of wholesale service.

D. Resold Services Terms and Conditions

Section 251(c)(4)(A) of the Act states that it is the duty of the incumbent local exchange carrier to offer for resale any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Section 251(c)(4)(B) also states that it is the duty of the incumbent LEC:

> . . . not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission 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 FCC's rules, 47 C.F.R. § 51.613, elaborate that restrictions may be imposed on cross-class selling and short term promotions. Regarding cross-class selling, Section 51.613(a)(1) provides that:

> A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.

We also note that the FCC has found that resale restrictions are presumptively unreasonable. Specifically, Paragraph 939 of the Order provides:

> 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 conditions and limitations contained in the incumbent LEC's underlying tariff. . . . Given the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and therefore in violation of section 251(c)(4). . . .

Thus, the FCC concludes that resale restrictions, including those in the LECs' tariffs, are presumptively unreasonable.

BellSouth asserts that any use or user restrictions in its relevant tariffs should apply. BellSouth's witness Scheye argues that a retail service is comprised of the stated rates, terms and conditions in the tariff. The rate for a particular offering varies based on the terms and conditions of the service. If the terms and conditions were different, the price would likely be different, or that particular retail service might not even be offered. Witness Scheye asserts that terms and conditions are an integral part of the service. Witness Scheye states that any use and user restrictions or terms and conditions found in the relevant tariff of the service being resold should apply.

BellSouth also contends that use and user restrictions are basically class of service restrictions. As such, BellSouth asserts that the Act specifically permits us to apply such class of service or use and user restrictions. BellSouth argues that if cross-class selling restrictions were eliminated, an ALEC could undermine the rate structure and rate levels for business services by purchasing basic residence service and reselling it as basic service. BellSouth argues that the Act does not limit the cross-class of service restriction to just flat rate services.

Witness Scheye argues that the Act requires the resale of a service, not just the picking and choosing of various pieces. Thus, BellSouth argues that terms, conditions and use and user restrictions do not pose any unreasonable or discriminatory condition on AT&T, MCI or any other reseller. Witness Scheye contends that resellers will be able to offer the same service under the same conditions that BellSouth offers the service to its own customers. If AT&T or MCI wish to provide a service with different terms and conditions than BellSouth's offering, or with different or no use or user restrictions, either can do so by leasing unbundled features and combining them with its own capabilities to provide the service.

BellSouth states that AT&T witness Sather affirmed, in summation, that AT&T does not advocate an elimination of the cross-selling restriction. Witness Sather stated that "[W]e agree that services that are purchased wholesale, residential services should not be available for--resold to business customers." BellSouth also asserts that MCI's witness Price acknowledged that "resale of flat rate residential service could be limited to residential customers."

AT&T's witness Sather testified that in order for competition to fully develop and for customers to benefit from increased choice, lower prices, and new technology, the new entrants must be able to distinguish themselves from BellSouth by repackaging services in order to offer consumers new services or existing services at different prices. When a new entrant is prohibited from making creative offerings because the ILEC has imposed restrictions on the resale of specific services, the development of competition will be impeded and customer benefits will be realized more slowly. Witness Sather further contends that this anti-competitive result is why the Act requires IILECs not to prohibit and not to impose unreasonable or discriminatory conditions on the resale of telecommunications services.

In addition, Witness Sather states that BellSouth's proposed restrictions are unreasonable and discriminatory because they

prohibit innovation, which impedes competition. The witness argues that the restrictions are unreasonable because they require resellers to provide services to their customers in the exact same way that BellSouth provides these services to its customers. As such, Witness Sather contends that the use of resale restrictions by IILECs may be more appropriately termed the abuse of resale restrictions. Currently, resale restrictions permit IILECs to discriminate by extracting different levels of revenue from different customers who receive similar services. According to Witness Sather, the removal of resale restrictions will, therefore, promote competition.

MCI's witness Price agrees that certain cross-class selling restrictions are appropriate; in particular, those which limit resale of grandfathered service, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Witness Price states that any other usage or user restriction, or other limitation, would impede MCI's ability to compete through service resale.

MCI's witness Price argues that, except for volume discounts for Saver Service, BellSouth has failed to identify any tariff limitations which it believes must be continued. Thus, Witness Price asserts, BellSouth has failed to show that its proposed restrictions are "narrowly tailored", or to otherwise rebut the presumption that such restrictions are unreasonable.

MCI also disagrees with the apparent suggestion of BellSouth's witness Scheye that resale of Saver Service be limited to situations in which a reseller's end user meets the volume requirements in BellSouth's tariff. MCI argues that this flies in the face of the FCC Order, which held that:

> 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. Order 96-325 at ¶ 953.

MCI also asserts that BellSouth's position regarding Saver Service is at odds with the practice in the interexchange arena, where many resellers purchase volume-discounted services from AT&T or MCI and resell them to a collection of end users, none of whom could individually qualify for the volume discount.

Upon consideration, we believe that certain cross-class selling restrictions are appropriate. In particular, we find appropriate restrictions that would limit resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth. Thus, based on the evidence and arguments presented, we find that no restrictions on the resale of services shall be allowed, except for restrictions applicable to the resale of grandfathered services, residential services, and Lifeline/LinkUp services to end users who are eligible to purchase such service directly from BellSouth.

E. Notice Requirements

Neither the Act nor the FCC rules and order explicitly require IILECs to provide notice to wholesale customers of changes to ILEC services. We believe it is appropriate to establish notice requirements in this proceeding.

AT&T's witness Shurter states that AT&T has asked BellSouth to advise AT&T of any changes in BellSouth's service offerings by providing 45 days' notice prior to the effective date of the change, or concurrent with BellSouth's internal notification process, whichever is earlier. Witness Shurter contends that receiving advance notice of changes in service offerings promotes parity. Without reasonable advance notice of changes in a particular service, new entrants, like AT&T, cannot make the necessary preparations to resell service offerings that BellSouth intends to change by the effective date of the proposed changes. As a result, Witness Shurter argues, BellSouth gives itself an unfair competitive advantage, because BellSouth will always be the first carrier to make the changed service offerings available to Florida consumers. Likewise, MCI contends in its brief that unless it receives notice 45 days prior to the effective date of the change, it will be unable to notify its customers and customer service personnel of the change in a timely manner.

BellSouth's witness Scheye responds that in this rapidly fluctuating competitive environment, it would be impractical to provide advance notice to the extent AT&T has requested. Also, such advance notice might subject BellSouth to complaints or other obligations should BellSouth change its plans to introduce the new service or to change the price. BellSouth plans to notify all resellers of these changes at the same time BellSouth files public notice of the changes. Furthermore, based on BellSouth's understanding, the type of parity that AT&T is requesting of BellSouth is not provided by AT&T to resellers of its services.

Upon consideration, we do not believe that AT&T and MCI would receive adequate notice under BellSouth's plan. Therefore, we find that BellSouth shall provide 45 days' notice to its wholesale customers. If BellSouth provides such notice less than 45 days in advance of the change, wholesale customers shall be noticed concurrently with BellSouth's internal notification process.

BellSouth's witness Scheye testified that BellSouth would be willing to accept the 45 day's notice request, if the parties would agree not to hold BellSouth liable if for some reason the service did not go into effect. In its brief, AT&T states that it has proposed language that would relieve BellSouth of all responsibility if a proposed change is rescinded. If BellSouth were to agree to that language, AT&T asserts the issue will be resolved. Similarly, MCI states in its brief that "[s]o long as MCI is protected against the possibility of BellSouth providing intentional misinformation, it would appear 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."

We find BellSouth's argument on this point to be persuasive; therefore, we shall require the parties to enter into agreements, whereby BellSouth will not be held liable if, after announcement of a new or modified service, BellSouth modifies or withdraws that service before it goes into effect. BellSouth, however, must notify the resellers of such changes at the earliest possible time.

F. Branding of Resold Operator Services and Directory Service Calls

<u>In general</u>

The FCC's rules state that:

> <u>Branding</u>. Where 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.
>
> (2) For the purposes of this subpart, unbranding or rebranding shall mean that operator, call completion, or directory assistance services are offered in such a manner that an incumbent LEC's brand name or other identifying information is not identified to subscribers, or that such services are offered in such a manner that identifies to subscribers the requesting carrier's brand name or other identifying information. 47 C.F.R. § 51.613(c).

Witness Scheye asserts that BellSouth cannot offer branding on resold services because BellSouth is not able to distinguish between calls from lines AT&T is reselling, calls from other local resellers, or from BellSouth. Without customized routing, BellSouth's witness Milner states, BellSouth cannot provide the type of branding that AT&T has requested. BellSouth maintains that customized routing is not technically feasible because the routing functions within the switch are a finite resource and would only be available to a limited number of carriers. Witness Scheye further suggests that, "AT&T could easily provide access and branding for its own operator or repair services to create the discrete recognition of the AT&T brand by providing its customers with another designated number to call."

With respect to customized routing, the FCC determined the following:

> We conclude that customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. FCC Order 96-325 at ¶ 418.

The FCC states that brand identification is critical to reseller attempts to compete with incumbent LECs and will minimize

consumer confusion. Incumbent LECs are given an advantage when the reseller's end users are told that the service is being provided by the reseller's primary competitor. See FCC Order 96-325 at ¶ 971. MCI's witness Price agrees and adds that customers may conclude that they were "slammed" if they are greeted with the name of their old telephone company when making an operator service or directory assistance call. AT&T asserts that BellSouth's operators should be required to answer incoming calls with the new entrant's name. AT&T's witness Shurter explains that since the incumbent LEC is acting on behalf of the new entrant and is being paid for the service, the calls should be branded.

Upon consideration of the arguments presented, we will require BellSouth to provide branding or unbranding for AT&T and MCI customers of BellSouth's resold services. BellSouth has not sufficiently demonstrated that it cannot brand or unbrand its operator service or directory assistance service. Thus, BellSouth must provide branding or unbranding for operator service and directory service calls for AT&T and MCI.

Specific Branding Requirements

AT&T and MCI request that BellSouth personnel be required to 1) advise customers that they are representing AT&T or MCI; 2) provide customers with AT&T or MCI supplied "leave behind" cards; and, 3) refrain from marketing BellSouth directly or indirectly to AT&T or MCI customers.

BellSouth has agreed to the first and third conditions, but has not agreed to provide customers with AT&T or MCI supplied "leave behind" cards. Witness Scheye suggests that instead, BellSouth could leave behind generic cards so that the technician can write in the name of the particular carrier. Witness Scheye states, however, that when BellSouth visits a BellSouth customer for repair purposes, the BellSouth personnel will leave behind a BellSouth specific document.

AT&T's witness Shurter argues that this is a question of branding parity. AT&T's witness Carroll states that generic materials, with the AT&T name handwritten, do not meet AT&T's standards for quality and professionalism. Witness Shurter points out that BellSouth will use printed materials carrying the BellSouth brand. AT&T and MCI believe that it is reasonable for BellSouth to use AT&T and MCI supplied materials.

BellSouth states that its concern is basically administrative. Witness Scheye explains that he does not know how many resellers might operate in a given area. Witness Scheye maintains that

asking BellSouth's technicians to carry a supply of uniquely produced cards for every carrier and asking them to leave behind the correct one is outside the scope of the technicians' jobs.

Based on the arguments and evidence presented, we find it appropriate to require BellSouth to distribute AT&T and MCI supplied "leave behind cards" to AT&T and MCI customers. BellSouth's proposal to use generic cards for ALEC customers and BellSouth specific cards for BellSouth customers is not, in our opinion, parity. We are not convinced that requiring BellSouth's technicians to use ALEC specific "leave behind cards" is any more burdensome than BellSouth's proposal to have the technician write in the correct ALEC name on a generic card. Therefore, we find that when representing AT&T or MCI, BellSouth personnel must: 1) advise customers that they are representing AT&T or MCI; 2) provide customers with AT&T or MCI supplied "leave behind" cards; and, 3) refrain from marketing BellSouth directly, or indirectly, to AT&T or MCI customers. If, however, the technician does not have a company specific card available, the BellSouth technician shall use a generic card.

IV. TRANSPORT AND TERMINATION: COMPENSATION FOR EXCHANGE OF LOCAL TRAFFIC BETWEEN AT&T AND BELLSOUTH

Section 251(b)(5) of the Act requires the incumbent LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications. The pertinent portions of the FCC Rules are stayed pending appeal.

BellSouth's position is that the local interconnection rate should be based on intrastate switched access rates. Witness Scheye states that BellSouth has negotiated interconnection rates based on these charges exclusive of the residual interconnection charge (RIC) and carrier common line (CCL) charge with a 105% cap applied on usage. He argues that the Act does not authorize a state commission to require a party to accept bill and keep as the method of compensation for exchange of local traffic, since bill and keep would preclude full cost recovery.

Witness Scheye asserts that the components of local interconnection and toll access are functionally equivalent, and therefore, the rate structure should be similar. He states that this issue seems to be accepted by AT&T and BellSouth. Basing the local interconnection rate on the switched access rate will facilitate the transition of all interconnection types to a single interconnection rate. BellSouth contends that with technology changes, increased competition, and interconnection types (e.g.,

local, toll, independent, cellular/wireless) becoming more integrated, a transition to a single interconnection rate is imperative.

Witness Scheye suggests that since BellSouth has reached agreements with other parties that include a local interconnection rate based on the current switched access rate minus any non-traffic sensitive rate elements, the reciprocal compensation rate of $.01 in those agreements is appropriate in this proceeding. He contends that this rate meets the pricing standards of the Act, pointing out that the terms and conditions for reciprocal compensation are considered just and reasonable when:

> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls. 47 USC 252(d)(2)(A).

Witness Scheye contends that BellSouth's average local interconnection rate of $.01 per minute meets that standard. The reasonableness of BellSouth's rate is further demonstrated by agreements that BellSouth has reached with other facilities-based carriers. Time Warner, Intermedia Communications Inc., and others have found BellSouth's rate to be reasonable, allowing them a fair opportunity to compete for local exchange customers.

AT&T's position is that we should order that interconnection be priced at TELRIC and that we should order BellSouth to develop TELRIC cost studies as promptly as possible. AT&T also proposes that we adopt bill-and-keep as an interim mutual compensation mechanism for intercompany traffic termination, or in the alternative, establish mutual compensation using network element costs derived by application of the Hatfield Model.

AT&T contends that section 251(b)(5) of the Act provides that each LEC has the duty to "establish reciprocal arrangements for the transport and termination of telecommunications." AT&T observes that section 252(d)(2)(A) of the Act requires that the pricing for transport and termination provide for the recovery by each carrier of "costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network

facilities of the other carrier." AT&T notes that section 252(d)(2)(B)(i) of the Act specifically identifies bill-and-keep as an acceptable compensation arrangement to the extent that each carrier recovers the costs of transport and termination.

AT&T states that the FCC Order provides that transport and termination should be priced at TELRIC, while noting it also provides that a proxy default range of 0.2-0.4 cents per minute could be used where a state commission does not have complete TELRIC studies before it. AT&T notes that the FCC Order at paragraph 1113 provides that the states may impose bill-and-keep arrangements if traffic is roughly balanced between the carriers and neither carrier has rebutted the presumption of symmetrical rates.

AT&T witness Ellison states that since BellSouth has not provided adequate cost studies, AT&T proposes interim use of a bill-and-keep system for transport and termination of traffic, as provided by the Act. He also contends that BellSouth's tariffed access rates are inappropriate under the Act for interconnection because the rates do not reflect economic costs.

If we do not wish to set the interim prices for transport and termination within the proxy range set by the FCC Order, AT&T recommends that we implement an interim bill-and-keep arrangement like the "mutual traffic exchange" arrangement we established in Docket No. 950985-TL. In Order No. PSC-96-0668-FOF-TP in that docket, we rejected BellSouth's proposal that rates for local interconnection be based on intrastate switched access charges, minus RIC and CCL. In that order, we also rejected BellSouth's proposal of full switched access rates, excluding RIC and CCL. We reasoned that BellSouth's proposals could create a price squeeze and unnecessary barriers to competition, while inappropriately including contribution towards universal service obligations.

BellSouth and AT&T disagree whether we have the authority to require the companies to compensate each other for the exchange of local traffic by bill-and-keep. Section 252(d)(2)(A) of the Act provides the general rule that governs state commission approval of reciprocal compensation arrangements. This section states:

> (A) IN GENERAL. - For purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless -

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of reasonable approximation of additional costs of terminating such calls.

Section 252(d)(2)(B) of the Act provides as follows:

(B) *RULES OF CONSTRUCTION.* - *This paragraph shall not be* construed -

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements).

We find that, while Section 252(d)(2)(B)(i) does not require a state commission to adopt mutual traffic exchange, it permits it to do so. The Act recognizes that offsetting reciprocal obligations, whether through bill-and-keep or mutual traffic exchange, is a permissible method of cost recovery. We disagree with BellSouth that we are not authorized under the Act to establish bill-and-keep in arbitrated agreements. We find no provision in the Act that would limit bill-and-keep to negotiated agreements. We conclude that we have the authority to order bill-and-keep, or mutual traffic exchange, on either a temporary or a permanent basis.

We note that BellSouth did not file specific cost studies addressing this issue in this proceeding. However, BellSouth's LRIC cost study filed in Docket No. 950985-TP is part of this proceeding's record. We find that the LRIC cost study is sufficient to establish rates for tandem switching, including transport, and end office termination.

BellSouth witness Caldwell defines 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 as costs that include both the product specific volume sensitive and volume insensitive costs. Strictly speaking, very few costs are completely insensitive to volume. When the demand increment is defined as the total service, there is often no appreciable difference between LRIC and TSLRIC.

We find it appropriate to establish separate rates for tandem and end office switching, because the ALECs may use one or both switches to terminate a call. A call terminated at an access tandem may require more switching and transport than a call terminated at an end office. The tandem rate only includes the costs to terminate at the tandem. Therefore, if an ALEC terminates a call through both a tandem and end office switch, BellSouth will charge both a tandem and end office rate.

Upon consideration, we find that BellSouth and AT&T should compensate each other for transport and termination of calls on each other's network facilities at rates of $.00125 per minute for tandem switching and $.002 for end office termination. In so doing, we find that these rates, based on LRIC, are sufficient to cover the greater of TSLRIC or LRIC in addition to providing some contribution to common costs.

V. IMPLEMENTATION MATTERS

A. Resold Local Exchange Service and Unbundled Local Switching Customized Routing

Section 251(b)(3) obligates all local exchange providers to provide the following:

> DIALING PARITY. - The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll 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.

In its Order, the FCC interprets "nondiscriminatory access to operator services" to mean that a telephone service customer, regardless of the identity of his or her local service provider, must be able to connect to a local operator by dialing "0" or "0+" the desired telephone number. FCC Order 96-325 at ¶ 114. The FCC interprets "nondiscriminatory access to directory assistance services" to mean that customers of all telecommunications service providers should be able to access each LEC's directory assistance services without regard to the requesting customer's local service provider. FCC Order 96-325 at ¶ 151. In addition, the FCC has concluded that permitting nondiscriminatory access to 411 and 555-1212 dialing arrangements is technically feasible.

AT&T and MCI request that their customers' operator service, directory assistance and repair calls be routed to AT&T and MCI, respectively, using the same dialing arrangements that BellSouth provides for its customers. AT&T's and MCI's witnesses assert that this can be accomplished through customized routing. The FCC addressed customized routing this way:

> [C]ustomized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches. Customized routing will enable a competitor to direct particular classes of calls to particular outgoing trunks, which will permit a new entrant to self-provide, or select among other providers of, interoffice facilities, operator services, and directory assistance. Order 96-325, ¶ 418.

AT&T's witness Tamplin and MCI's witness Caplan stated that one way to provide customized routing is through the use of line attributes or line class codes. Witness Caplan explained that both are used as a routing mechanism within the switch. The type of switch dictates which nomenclature is used.

BellSouth's witness Milner stated that with the exception of the 1AESS and 2BESS switches, its switches are capable of customized routing using line class codes. Witness Milner maintains however, that customized routing is not technically feasible, because line class codes are a finite resource and would only be available to a limited number of carriers. BellSouth bases its position on a BellSouth analysis that assumes each new entrant would use the same number of line class codes as BellSouth. Witness Milner stated that BellSouth uses between 300 to 350 line class codes in its DMS-100 switches. In addition, BellSouth mentioned that the Industry Carriers Compatibility Forum (ICCF) is working on a national solution for customized routing. BellSouth points out that AT&T and BellSouth are co-chairing the ICCF work group addressing customized routing. BellSouth recommends that we deny AT&T and MCI's request until the ICCF develops a permanent solution.

AT&T's witness Tamplin claimed that AT&T will not use the same number of line class codes that BellSouth uses in its switches. Witness Tamplin asserted that AT&T is requesting that 80 to 100 line class codes be made available per switch.

MCI's witness Caplan stated that MCI would probably request on average 10 to 12 line class codes per switch, with a worst case of 75. Witness Caplan pointed out that the DMS-100, 5ESS, and Siemens EWSD switches have 1,024, 4,096 and 4,096 line class codes, respectively. He added that NorTel has committed to two expansions: the first one to 2,048 line class codes and the second one to 4,096. MCI is not certain of the timing of the expansions.

The FCC recognized that customized routing may not be possible in all switches deployed by the incumbent LEC. The FCC mentioned evidence that the 1AESS switch may have problems accommodating customized routing requests from competitive carriers. The FCC concluded:

> We recognize that the ability of an incumbent LEC to provide customized routing to a requesting carrier will depend on the capability of the particular switch in question. Thus, our requirement that incumbent LECs provide customized routing as part of the "functionality" of the local switching element applies, by definition, only to those switches that are capable of performing customized routing. An incumbent LEC must prove to the state commission that customized routing in a particular switch is not technically feasible. FCC Order 96-325 at ¶ 418.

We conclude that it is technically feasible for BellSouth to provide customized routing to AT&T and MCI. Accordingly, we require that BellSouth provide customized routing using line class codes. We recognize that line class codes are a finite resource. Hence, we require that customized routing be provided on a first-come, first-served basis. While we find it appropriate that BellSouth reserve to itself a number of line class codes, we do not find record support to set that number.

B. Resold Services and Network Elements Service Standards

AT&T's witness Shurter argues that in order to compete with BellSouth, it must be able to offer at least the same quality of service that BellSouth provides its customers. He stated that we should require BellSouth to meet Direct Measures of Quality (DMOQs) and submit monthly management reports to AT&T that measure BellSouth's performance. He claimed that using DMOQs will eliminate the need for AT&T or other new entrants to bring complaints to the Commission on the quality of BellSouth's service.

According to witness Shurter, DMOQs would provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against entrants by providing inferior service.

AT&T sets forth specific performance standards in its proposed interconnection agreement with BellSouth. For example, AT&T's proposed interconnection agreement sets out the following:

> AT&T will specify on each order its Desired Due Date (DDD) for completion of that particular order. Standard intervals do not apply to orders under this Agreement. BellSouth will not complete the order prior to DDD or later than DDD unless authorized by AT&T.
>
> Within two (2) business hours after a request from AT&T for an expedited order, BellSouth shall notify AT&T of BellSouth's confirmation to complete, or not complete, the order within the expedited interval. A Business Hour is any hour occurring on a business day between 8 a.m. and 8 p.m. within each respective continental U.S. time zone.
>
> BellSouth shall satisfy the following Direct Measures of Quality: (i) at least 90% of all orders must be completed by DDD; (ii) at least 98% of all orders must be completed by Committed Due Date; and (iii) at least 99% of all orders will be completed without error.

MCI's witness Martinez asserts that in order to compete with BellSouth it must be able to offer at least the same level of quality that BellSouth provides its own customers. He states that we must specifically reject any ILEC assertions that the only standards of quality to which they should be held are those standards that are currently in place via Commission service quality rules or state statutes. Witness Martinez claims that those standards, some of which may be outdated, were developed to enforce minimum requirements for retail services. He argues that the services in question here are either unbundled elements or resold services, and that it is for this purpose that the FCC's standard of "parity" is critical. Allowing IILECs to provide service to MCI at lower levels of quality would either reduce the quality of MCI's service or force MCI to incur unnecessary costs in order to provide a competitive product.

Witness Martinez states that in order to ensure service quality parity between IILECs and ALECs, parity needs to be measured in terms of detailed technical standards, interfaces, and performance measures such as installation intervals and maintenance and repair times. He contends that these parity issues are better addressed in mediated negotiations or industry forums than in contested hearings, but, nevertheless, must now be resolved in this arbitration proceeding. He argues that BellSouth should be required to meet objective measures of service quality and to provide periodic reports to MCI on the level of service quality.

MCI provided a number of measurements of quality and associated reporting requirements in this proceeding. For example, MCI's proposed interconnection agreement sets out the following:

Cycle Time Measurements

> Excepting expedited due date requests, the following order intervals shall constitute the basis for measuring ILEC Service Order performance under this Agreement. MCI may, at its discretion, modify such measurements from time to time:
>
> ILEC shall provide and acknowledge each and every MCI service order within one (1) hour of receipt by ILEC.
>
> ILEC shall process MCI service orders and provide either Firm Order Confirmation (FOC) of a correct service order or notification of a rejected order and the detail of the errors contained within any data element(s) fields contained in such order, within four (4) hours of Local Service Request (LSR) from MCI.

BellSouth's witness Scheye states that BellSouth will provide the same quality for services provided to AT&T and MCI that BellSouth provides to its own customers for comparable services. Witness Scheye contends that we currently have service quality rules in place, which have complaint and monitoring procedures. He argues that BellSouth should not be required to implement ALEC-specific measurements, but, rather, assist in developing a set of industry-wide measurements.

Witness Scheye proposes the following procedures for MCI and AT&T:

> The parties agree that within 180 days of the approval of this Agreement, they will develop mutually agreeable specific quality measurements concerning ordering, installation and repair items included in this agreement, including but not limited to interconnection facilities, 911/E911 access, provision of requested unbundled elements and access to databases. The parties will also develop mutually agreeable incentives for maintaining compliance with the quality measurements. If the parties cannot reach agreement on the requirements of this section, either party may seek mediation or relief from this Commission.

The Act and the FCC's Rules require incumbent LECS to provide access and unbundled elements that are at least equal in quality to what the incumbent LECs provide themselves. The FCC's Order explains:

> We conclude that service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users. Practices to the contrary violate the 1996 Act's prohibition of discriminatory restrictions, limitations, or prohibitions on resale. This requirement includes differences imperceptible to end users because such differences may still provide incumbent LECs with advantages in the marketplace. Additionally, we conclude that incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's subsidiaries, affiliates, or other parties to whom the carrier directly provides the service, such as end users. FCC Order 96-325 at ¶ 970.

Upon consideration, we do not find it appropriate to arbitrate the specific performance standards and penalties proposed by the parties at this time. We find that it is appropriate for us only to require that BellSouth provide to AT&T and MCI

telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates. We therefore direct the parties to continue negotiations concerning detailed standards of performance. These standards will be incorporated into the proposed interconnection agreements to be submitted to us for our approval pursuant to section 252(e) of the Act.

Liquidated Damages

AT&T's witness Shurter argues that BellSouth should be required to be financially responsible in the event it fails to provide the necessary quality of service. Witness Shurter states that BellSouth should pay liquidated damages to AT&T in terms of credits if BellSouth does not meet the standards. These credits would be for delays in provisioning of service, due dates not met, and billing. AT&T asserts that these are important to new entrants in order to insure that the new entrants get the same level of service that BellSouth provides itself. Witness Shurter states, "the credits that we have suggested in our interconnection agreement are suggested here as a financial incentive to insure that substandard service is not provided to new entrants."
MCI does not specifically address the issue of financial penalties, but its proposed interconnection agreement contains credits and penalties for failure to meet performance standards that are similar to AT&T's. MCI also argues that adherence to appropriate measurements of quality should be enforced through a system of credits for failures to meet the applicable performance standards.

BellSouth witness Scheye asserts that the issue of financial penalties and other liquidated damages is not subject to arbitration under Section 251 of the Act, and to the extent that AT&T or MCI attempts to include penalties in its request for arbitration of service standards, we should dismiss that portion of the issue. BellSouth states that Florida law and Commission procedures are adequate to handle a breach of contract, should one arise.

We conclude that we should limit our consideration in this arbitration proceeding to the items enumerated to be arbitrated in Sections 251 and 252 of the Act, and matters necessary to implement those items. A liquidated damages provision does not meet that standard. The Act does not require parties to include in their agreements any particular method to resolve disputes. Further, it is not appropriate for us to arbitrate a liquidated damages provision under state law. If we did, we would be, in effect, awarding damages to one party for a breach of contract. We lack the authority to award money damages. Southern Bell Telephone and

Telegraph Company v. Mobile America Corporation, 291 So.2d 199, 202 (Fla. 1974). If we cannot award money damages directly, we cannot do so indirectly by imposing a liquidated damages arrangement on the parties.

C. Process and Data Quality Certification for Carrier Billing, Data Transfer and Account Maintenance

The positions of the parties on this issue are the same as their positions with respect to resold services and network elements. AT&T again proposes the performance standards in its proposed interconnection agreement. MCI also proposes measures of quality standards for information exchange and interfaces in its proposed interconnection agreement.

As before, we do not find it appropriate to arbitrate the specific performance standards and penalties proposed by the parties at this time. We find again that it is appropriate for us only to require that BellSouth provide to AT&T and MCI telecommunications services for resale and access to unbundled network elements using the same performance standards that are used to provide comparable services to itself. We again direct the parties to continue negotiations concerning detailed standards of performance to be incorporated in the proposed interconnection agreements to be submitted to us for our approval pursuant to section 252(e) of the Act.

D. General Contractual Terms

For the general terms and conditions in the final arbitrated agreement between BellSouth and AT&T, AT&T proposes that we authorize the language contained in its proposed interconnection agreement. MCI makes a similar proposal for its agreement with BellSouth. BellSouth argues that these terms and conditions are not subject to arbitration.

We conclude that it is inappropriate for us to order contractual provisions regarding, for example, dispute resolution and treatment of confidential information. Therefore, we decline to arbitrate the general contractual terms and conditions that will govern arbitration agreements. As we have stated above, our authority to arbitrate disputed issues under the Act is limited to those items enumerated in Sections 251 and 252 and matters necessary to implement those items. General contractual terms and conditions do not fall within the scope of arbitration. We expect the parties to establish general terms and conditions through negotiation.

E. Operational Support Systems for Resold Services and Network Elements

1. Introduction

AT&T asks that we require BellSouth to provide AT&T, with electronic, real-time, interactive operational interfaces for unbundled network elements by a date certain. AT&T's witness Shurter states that BellSouth should provide the interface for all five of the following functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing. Witness Shurter states that these electronic interfaces must be provided by BellSouth in order to achieve parity. Witness Shurter also states that the operations support systems functions identified in the FCC's Order correspond exactly to the functions requested by AT&T, except for data transfer and local account maintenance.

MCI's witness Martinez argues that 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 BellSouth's various operations support systems. Witness Martinez states that in order to comply with the Act and the FCC Order, we should direct BellSouth to file a schedule detailing its plans for developing real-time, interactive electronic interfaces. Witness Martinez adds that if BellSouth cannot meet a January 1, 1997, deadline, it should file a report with us outlining when it will be able to comply.

MCI's witness Martinez further asserts that BellSouth proposes to use electronic data interchange (EDI) on an interim basis for pre-ordering and the other interfaces required to support local service. Witness Martinez states, however, that this method of data interchange is neither real-time nor interactive. Witness Martinez claims that BellSouth has no incentive to develop these interfaces on its own. Thus, MCI seeks the development of a plan that will lead to the implementation of real-time interactive interfaces at a date certain.

AT&T's witness Shurter states that there are actually two issues involving operational interfaces: operational interfaces with respect to resale services and operational interfaces with respect to unbundled network elements. BellSouth and AT&T have agreed to the operational interfaces with respect to resale services. Although MCI and BellSouth have not reached any interim agreements, MCI's witness Martinez did state that there are not any significant differences in the positions of AT&T and MCI on electronic operational interfaces. Witness Shurter testified that AT&T and BellSouth are in agreement, "in contract language," on the

specifics of the electronic interface platform structure and a certain schedule by which the operational interfaces for total service resale would be available. Witness Shurter states that this agreement would allow AT&T to meet its requirement for this interface to be available to support total service resale by March 1, 1997.

AT&T's witness Shurter states that the agreed upon electronic interactive interfaces for total service resale should be extended to support unbundled network elements, both in the purchase of unbundled elements as a single item, and in the multiple combinations of elements on a single order. Witness Shurter asserts that since AT&T and BellSouth have not agreed on the definition of unbundled elements and how these elements can be combined, there have been no negotiations on the electronic interfaces.

BellSouth's witness Calhoun asserts, however, that BellSouth has made available, or has under development, appropriate interfaces for each function. Ordering interfaces should be consistent with industry standards. Witness Calhoun states that the interfaces and enhancements not already developed will be available by April, 1997, if not sooner. BellSouth also states that it has developed operational interfaces, processes and procedures for both resellers and facilities-based competitors. Witness Calhoun asserts that these operational systems are in compliance with the requirement of the FCC Order that electronic access be provided to all operational support functionalities. Witness Calhoun further asserts that BellSouth has agreed with AT&T on the specific interfaces required for resale. Witness Calhoun also asserts that these same functions can be used for interconnection and unbundled network elements. Witness Calhoun notes that MCI has made substantially the same request as AT&T.

2. Operational Interfaces for Each Function

Pre-Service Ordering

BellSouth's witness Calhoun explains that pre-ordering information allows a reseller to determine the availability of features and services, assign a telephone number, advise the customer of a due date, and validate a street address for service order purposes. Witness Calhoun states that four capabilities are currently available for pre-service ordering:

(1) real-time access via an electronic interface to information that identifies the serving central office for a

particular street address, and that validates the address for service order purposes;

(2) access through a data transmission line to a data file containing service and feature availability for each serving central office. Together with (1) above, the ALEC can use this information to advise its customer of the feature and service availability with its customer on the line, without consulting BellSouth;

(3) access through a computer diskette file to a pool of telephone numbers reserved for the ALEC in each central office requested by the ALEC; and

(4) access to installation intervals through interval guidelines developed by BellSouth. This information can be used by the ALEC to quote a due date to its customer without consulting BellSouth.

BellSouth's witness Calhoun states that BellSouth began the development of Phase Two pre-ordering operational interfaces in May of 1996. Witness Calhoun states that Phase Two will provide the following:

(1) real-time access to the information that identifies the serving central office for a particular street address, validates the address for service order purposes, and provides the availability of facilities at a particular location;

(2) real-time access for information on service and feature availability;

(3) real-time access to telephone number reservation information; and

(4) real-time access to the information BellSouth uses to calculate due dates.

Witness Calhoun asserts that implementation of Phase Two is scheduled for completion by April 1, 1997. BellSouth estimates the cost of Phase Two as $5 to $6 million.

AT&T's witness Shurter asserts that BellSouth's proposed electronic interfaces for these functions might satisfy AT&T's requirements, if they were implemented as described in BellSouth witness Calhoun's testimony. However, Witness Shurter states that BellSouth's description of the interfaces are conceptual and not very detailed.

In addition, MCI's witness Martinez asserts that pre-ordering and ordering processes involve the exchange of information between LECs about current or proposed customer products and services, or unbundled network elements, or some combination. Witness Martinez further asserts that intercompany procedures must be developed to support the pre-ordering.

Based on the arguments and evidence presented, we find that access to pre-ordering information is necessary. Operational interfaces which are real-time and interactive shall be developed to support pre-ordering.

Access to Customer Service Records

MCI and AT&T have also requested that BellSouth provide current customer service records (CSRs) as a part of the pre-ordering. BellSouth's witness Calhoun argues that AT&T and MCI do not need this information to compete effectively. Witness Calhoun argues that BellSouth will provide such data only if the customer specifically authorizes the release of his or her records to MCI or AT&T. Witness Calhoun adds that BellSouth will also provide the CSRs after the customer has actually switched to the ALEC.

MCI responds by stating that the inability to check a customer's account data, with the customer's permission, will adversely affect MCI's ability to provide competitive services to its customers. MCI's witness Martinez states that to verify orders and avoid rejection by BellSouth, MCI must have accurate information about the details of the customer's account. In addition, such information must be made available in a timely manner. Witness Martinez asserts that without on-line, real-time access to this information, MCI would not be able to know what services a customer used prior to changing service providers. Witness Martinez argues that this will jeopardize the customer's quality of service by increasing the likelihood of loss of feature functionality when the customer makes a change.

MCI indicates that it understands the need to protect the privacy of customer service records. MCI's witness Martinez states that MCI will provide a blanket letter of authorization to BellSouth stating that MCI will access such information only with the customer's permission. Witness Martinez also asserts that MCI would support the development of a system that prohibits "roaming" through customer records. Also, MCI asserts 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 federal nor state law requires that such authorization be in writing.

AT&T's witness Shurter states that AT&T also would like access to the CSRs through interfaces that would allow an AT&T customer service representative to determine which features and services are desired by and available to the customer while the customer is on the line.

BellSouth's witness Calhoun argues that if BellSouth were to do what MCI and AT&T are asking, BellSouth would be in violation of Section 364.24(2), Florida Statutes, which states:

> Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or otherwise allowed by law. Any person who violates any provision of this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Nothing herein precludes disclosure of customers' names, addresses, or telephone numbers to the extent they are otherwise publicly available.

BellSouth's witness Calhoun states that it is highly unlikely that customers will expect a new competitor already to have access to all the details of their existing service. Witness Calhoun asserts that it is more likely that the customers would consider such access an invasion of their privacy. Witness Calhoun states further that BellSouth's pre-ordering interface will provide necessary information on what services are available to a customer, and that it is up to MCI or AT&T to determine which services and features are desired by the customer.

The FCC's Order discusses the issue of access to customer proprietary network information:

> We also conclude that access to call-related databases as discussed above, and access to the service management system discussed below, must be provided to, and obtained by, requesting carriers in a manner that complies with section 222 of the Act. Section 222, which was effective upon adoption, sets out requirements for privacy of customer information. Section 222(a) provides that all telecommunications carriers have a duty to

> protect the confidentiality of proprietary information of other carriers, including resellers, equipment manufacturers, and customers. Section 222(b) requires that telecommunications carriers that use proprietary information obtained from another telecommunications carrier in providing any telecommunications service "shall use that information only for such purpose, and shall not use such information for its own marketing purposes." Sections 222(c) and (d) provide protection for, and limitations on the use of, and access to, customer proprietary network information (CPNI). FCC Order 96-325 at ¶ 492.

We note that the FCC has initiated a proceeding to clarify the obligations of carriers with regard to section 222(c) and (d).

Section 222 of the Act and Section 364.24(2), Florida Statutes, protect the privacy of customer proprietary network information. We find, however, that requiring the ALECs to obtain prior written authorization from the customers before being permitted CSR access would be cumbersome. We note that both §222(c)(1) of the Act and 364.24(2), Florida Statutes, impose on all carriers the obligation to use customer account information responsibly. IILECs are not the sole guardians of the customer's privacy. ALECs have that duty as well. As such, we agree with MCI's method of issuing a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing the CSRs. Furthermore, BellSouth, MCI and AT&T shall be required to develop an interface which discourages "roaming" through customer information. Access must only be allowed to gather the information necessary to provide telecommunications service.

Thus, based on the evidence and arguments presented, MCI and AT&T shall not be required to present prior written authorization from each customer to BellSouth before BellSouth allows access to CSRs. MCI and AT&T shall issue a blanket letter of authorization to BellSouth which states that they will obtain the customer's permission before accessing the CSRs. BellSouth shall develop a real-time operational interface to deliver CSRs to ALECs, which shall provide only the customer information necessary for MCI and AT&T to provide telecommunications services.

Service Trouble Reporting

BellSouth's witness Calhoun states that BellSouth has offered the same electronic interface for trouble reporting that is now available for IXCs for access services. Witness Calhoun states that the service trouble reporting interface allows the ALEC to enter a trouble report, obtain the same appointment interval that would be given to a BellSouth end-user customer, then add information to the report itself, check for trouble completion, cancel the trouble report, if necessary, and perform other trouble administrative functions. In response to trouble reported through the gateway, Witness Calhoun states that BellSouth will test and initiate repair to the service.

Witness Calhoun also states that this electronic interface can be used for monitoring troubles with the unbundled loops and interconnection trunking, and is based on national standards. Further, BellSouth asserts that it is currently developing an enhancement to the interface that will provide ALECs with access to the same interactive testing capabilities BellSouth uses to screen trouble reports. Witness Calhoun states that this enhancement is scheduled for completion in March 1997 and estimates that it will cost $3.5 million.

MCI's witness Martinez responds that the lack of real-time, interactive electronic interfaces will adversely affect the timeliness of repairs. Thus, witness Martinez asserts that MCI will have to place telephone calls to BellSouth to report customer trouble. AT&T's witness Shurter adds that trouble reporting, maintenance, and repair are the means by which a carrier arranges for responses to service requests from customers. Witness Shurter asserts that electronic interfaces would minimize the impact on consumers of service disruptions by allowing AT&T's customers to schedule a repair appointment in the same conversation in which a service problem is reported.

Based on the arguments presented, we agree that a real-time interactive operational interface for trouble reporting is necessary. Thus, BellSouth shall be required to provide such an interface.

Service Order Processing

BellSouth's witness Calhoun proposes that facilities-based ALECs will order interconnection trunking and most unbundled elements through the Interexchange Carrier Service Center (ICSC). Witness Calhoun states that this center will accept orders 24 hours per day, seven days a week, but will process these orders during

normal hours of operation. Witness Calhoun explains that BellSouth has produced a handbook for use by facilities-based ALECs to explain the ordering process for these services.

Orders for interconnection trunking and unbundled elements are received and processed through the same mechanized ordering system presently used by IXCs to submit Access Service Requests (ASRs) for access services. This process facilitates the request of most ALECs for firm order confirmations and design layout records. This system, Exchange Access Control and Tracking (EXACT), was put into place in 1984 to provide mechanized order communications between BellSouth and IXCs. BellSouth's witness Calhoun states that EXACT operates in accordance with industry standards developed by the Ordering and Billing Forum (OBF). Witness Calhoun asserts that the OBF has endorsed the ASR method for processing local interconnection trunking orders.

Witness Calhoun asserts that BellSouth created a new center that will serve as the contact point for ordering and billing matters for resold services and certain unbundled elements. The new center is called the Local Carrier Service Center (LCSC). Witness Calhoun states that this center will accept orders 24 hours per day, seven days per week, but will process those orders during normal business hours. Witness Calhoun also states that BellSouth has created a handbook for use by the resellers to describe the ordering process for resold services. Witness Calhoun states that the LCSC also will handle orders for certain unbundled elements not supported via the ASR process, such as listings for facilities-based ALECs, interim number portability, and unbundled ports.

BellSouth's witness Calhoun further states that the Ordering and Provisioning Committee of OBF has recommended standards for resale order communications based on an arrangement know as Electronic Data Interchange (EDI). Witness Calhoun states that the EDI interface will allow the reseller to submit a Local Service Request (LSR) electronically. In addition, Witness Calhoun states that by December 31, 1996, BellSouth will have mechanized the order generation process on BellSouth's side of the EDI interface for several types of orders, including switch as is, new connects for residence and single line business and disconnects. Witness Calhoun states that the initial cost estimates for the EDI are between $300,000 and $500,000, but the costs have not been finalized. BellSouth asserts that as detailed OBF standards are adopted throughout 1997 and 1998, some associated costs may occur in order to ensure that the interface complies with the final standards.

Witness Calhoun states that AT&T has also requested the ability to use the EDI ordering interface for ordering unbundled network elements in combination. However, BellSouth stated that it was not aware that AT&T had made this request until the week before the hearing. Witness Calhoun states that no additional ordering interface is necessary to accomplish the ordering of combinations of unbundled elements.

We note here that, based on the testimony at the hearing, we do not understand AT&T to be requesting a different ordering interface for this function. It appears, rather, that AT&T wants us to order the implementation of a plan to extend the EDI so that it can support the ordering of unbundled elements in combination.

AT&T's witness Shurter states that the service order processing and provisioning is the means by which a carrier initiates an order and establishes service. Witness Shurter states that electronic interfaces would provide AT&T and its customers with quick and accurate performance of a number of services, including, but not limited to, the provisioning of service within BellSouth's network, installation at the customer's premises, updating of directory listings, and updating of the customer information for the 911 data base. MCI's witness Martinez adds that if MCI is forced to use ordering procedures and interfaces that are inferior to that which the ILEC provides itself, then MCI will not be able to provide its customers an equivalent service. Witness Martinez also states that a mechanism is needed to enable MCI to transfer customers from IILECs quickly and easily.

From the evidence presented, we find that electronic interfaces for ordering processes are important for the ALEC and for the end-user customer. It appears that BellSouth is currently developing electronic interfaces for this process. Therefore, we shall require BellSouth to continue to develop the electronic interfaces for order processes.

<u>Provisioning</u>

Witness Calhoun asserts that BellSouth has developed procedures to convert existing loops, wherever possible, to an unbundled loop without complete reprovisioning. BellSouth states that the ALEC will notify BellSouth to issue a disconnect order to free the loop, and a new connect order for the unbundled loop. BellSouth will then schedule a technician to do the physical disconnection and cross connection of the loop to the ALEC's loop transport facilities. Witness Calhoun asserts that these activities will have to be coordinated with the ALEC. For these reasons, Witness Calhoun states that BellSouth cannot guarantee

that provisioning for the conversions of unbundled loops will occur in precisely the same time interval as provided on a bundled service.

BellSouth proposes to establish intervals for unbundled loops on a Customer Desired Due Date (CDDD) basis. Under the CDDD process, BellSouth would provide service on the requested due date, or if the request could not be met, on the earliest available installation date thereafter. BellSouth's witness Calhoun states that BellSouth will give ALEC orders the same priority it gives its own end-user customers.

MCI's witness Martinez explains that provisioning involves the exchange of information between LECs in which one executes a request for a set of products and services or unbundled network elements from another with attendant acknowledgements and status reports. Witness Martinez asserts that service parity requires that when MCI initiates an order, it is processed through the same provisioning and installation systems as orders initiated by the ILEC. Witness Martinez also states that to ensure that the provisioning and installation intervals are the same, we should require the ILEC to report regularly the intervals for ALECs and the ILEC itself.

Based on the evidence and the arguments presented, BellSouth shall be required to have the same intervals for provisioning and installation for ALECs that it has for itself, whenever possible. We address the standards for such intervals later in this Order.

<u>Customer Usage Data Transfer</u>

Customer Usage Data Transfer provides detail for billable usage, such as directory assistance or toll calls associated with a resold line or a ported telephone number. BellSouth's witness Calhoun explains that the usage option allows the ALEC to bill end users at their discretion, rather than on BellSouth's billing cycles. It also allows ALECs to establish toll limits, detect fraudulent calling, or analyze its customer usage patterns. Witness Calhoun states that BellSouth already has the capacity available to electronically provide customer usage detail to ALECs.

AT&T's witness Shurter states that customer usage data transfer is the means by which the customer's usage data is collected and transmitted by a carrier for billing purposes. Witness Shurter asserts that electronic interfaces would enable AT&T customers to receive timely and accurate bills.

Based on the evidence and the arguments presented, we find that the exchange of this information is vital for ALECs to be able to effectively compete. Since BellSouth already has the capability to do so, we find that BellSouth must develop an electronic interface for customer usage data transfer, as soon as possible.

Local Account Maintenance

BellSouth's witness Calhoun states that AT&T defines local account maintenance in its petition as the means by which BellSouth can update information regarding a particular customer, such as a change in the customer's features or services. Witness Calhoun also states that changes to a customer's features or services will be initiated by AT&T, and therefore, will be handled through the normal service order processes. Witness Calhoun states that there are exceptions to this when an end user customer switches from one ALEC to another and the resold service is a BellSouth service. Witness Calhoun adds that AT&T has requested electronic notification of these changes on a daily basis, which BellSouth has agreed to provide.

Witness Calhoun states that another exception is that AT&T has requested the capability to initiate PIC changes on resold lines through a local service request. Witness Calhoun states that BellSouth has agreed to accept these orders, and is currently evaluating the data elements necessary to include them in an EDI ordering interface.

In addition, AT&T explains that local account maintenance is the means by which a carrier can update information regarding a particular customer, such as a change in the customer's long distance carrier. AT&T's witness Shurter asserts that electronic interfaces would allow AT&T customers to have their accounts updated promptly and accurately.

Based on the arguments and evidence presented, we find that BellSouth shall be required to develop electronic interfaces for local account maintenance. Such interfaces shall be developed as soon as possible.

3. Cost Recovery

MCI's witness Martinez states that each party should bear its own costs of implementing necessary electronic interfaces. Witness Martinez further asserts that MCI has a tremendous cost to bear with respect to putting those systems in place. In its brief, AT&T also asserts that the costs associated with implementing electronic

interfaces should be shared equitably among all parties who benefit from those interfaces, including BellSouth.

BellSouth's witness Scheye argues that AT&T has ignored the significant costs associated with the development of such interfaces. Witness Scheye states that once these costs are finalized, BellSouth will propose a cost recovery mechanism designed to recover all the costs related to the provisioning of electronic interfaces.

While the costs of implementing these electronic interfaces have not been completely identified, BellSouth did provide some cost estimates and some initial costs of developing such systems. Based on the evidence, we find that these operations support systems are necessary for competition in the local market to be successful. We believe that both the new entrants and the incumbent LECs will benefit from having efficient operational support systems. Thus, all parties shall be responsible for the costs to develop and implement such systems. We note that this is the stance the FCC has recently taken with cost recovery for number portability. However, where a carrier negotiates for the development of a system or process that is exclusively for that carrier, we do not believe all carriers should be responsible for the recovery of those costs.

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

F. Poles, Ducts and Conduits

Section 251(b)(4) of the Act deals with access to rights-of-way by requiring that all local exchange carriers have the following duty:

> (4) ACCESS TO RIGHTS-OF-WAY. - The duty to afford access to poles, ducts, conduits, and rights-of way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with section 224.

The section referred to therein, Section 224, is titled REGULATION OF POLE ATTACHMENTS and addresses the regulation of poles, ducts, conduit and rights-of-way.

1. Access to Engineering Records

MCI and AT&T ask that BellSouth provide copies of its engineering records dealing with poles, ducts and conduits. MCI's witness Price asserts that in order to obtain nondiscriminatory access to poles, ducts, conduit and rights-of-way in a timely manner, BellSouth must provide information on the location and availability of access to such facilities. Witness Price states that this information should be provided within 20 business days of a request. AT&T's witness Tamplin states that the FCC order sets forth an expectation that BellSouth will make its engineering records available for inspection and copying, subject to reasonable protection of proprietary information, upon a legitimate request for access to its facilities or property. Specifically, witness Tamplin refers to the following:

> A complaint will not be dismissed if a petitioner is unable to obtain a utility's written response, or if a petitioner is denied any other relevant information by the utility needed to establish a prima facie case. Thus, we expect a utility that receives a legitimate inquiry regarding access to its facilities or property to make its maps, plats, and other relevant data available for inspection and copying by the requesting party, subject to reasonable conditions to protect proprietary information. This provision eliminates the need for costly discovery in pursuing a claim of improper denial of access, allowing attaching parties, including small entities with limited resources, to seek redress of such denials. FCC Order 96-325 at ¶ 1223.

BellSouth maintains that the Act does not require it to provide copies of engineering records to its competitors. BellSouth's witness Milner does state, however, that BellSouth will provide structure occupancy information within a reasonable time. In addition, BellSouth agrees to allow AT&T personnel, or agents, to examine engineering records or drawings that BellSouth determines would be necessary to complete a job.

We believe that witness Tamplin's interpretation of the FCC's order is broader than the Order's intended purpose. It is our understanding that the FCC is only providing for an expedited and less expensive process for handling complaints. In addition, we are not persuaded by AT&T and MCI's arguments that BellSouth should be required to provide AT&T and MCI with copies of its engineering

records or drawings. Neither the Act, nor the Order and Rules, provides express instruction or guidance. However, for planning purposes, we find that BellSouth should allow AT&T and MCI access to its engineering records and drawings as they pertain to poles, ducts, conduit and rights-of-way, owned or controlled by BellSouth. Such access shall be provided within a reasonable time. Furthermore, the appropriate proprietary provisions shall apply.

2. Reservation of Capacity

BellSouth's witness Milner states that BellSouth is entitled to reserve five years worth of capacity with regard to poles, ducts and conduit. Witness Milner explains that BellSouth's planning and construction is forecast for five years for budgeting, growth and construction program planning. Witness Milner asserts that a five-year planning window is an industry standard that pre-dates the 1984 Divestiture. Witness Milner proposes that BellSouth will provide AT&T and MCI with "equal and non-discriminatory access" to poles, duct, conduit (excluding maintenance spares), entrance facilities and rights-of-way under BellSouth control. Witness Milner maintains that access will only be provided to those facilities outside BellSouth's five year forecast.

AT&T's witness Tamplin states that the FCC Order prohibits BellSouth from favoring itself and discriminating against AT&T by reserving capacity at the expense of AT&T's current needs. Specifically, witness Tamplin refers to the following passage:

> Section 224(f)(1) requires nondiscriminatory treatment of all providers of such services and does not contain an exception for the benefit of such a provider on account of its ownership or control of the facility or right-of-way. Congress seemed to perceive such ownership and control as a threat to the development of competition in these areas, thus leading to the enactment of the provision in question. Allowing the pole or conduit owner to favor itself or its affiliate with respect to the provision of telecommunications or video services would nullify, to a great extent, the nondiscrimination that Congress required. Permitting an incumbent LEC, for example, to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the incumbent LEC over the current needs of the new LEC.

> Section 224(f)(1) prohibits such discrimination among telecommunications carriers. FCC Order 96-325 at ¶ 1170.

Section 224(f)(1) of the Act requires a utility to provide nondiscriminatory access to any pole, duct, conduit or right-of-way that it owns or controls.

BellSouth's witness Milner takes exception to the FCC's Order, stating that it can only lead to one of two unacceptable conclusions. First, no reservations would be made by either BellSouth or the ALECs. Space would be allocated on a first-come, first-served basis in which no one would be able to plan for network growth. Second, reservations would have to be accepted by any party for whatever time frame is desired. If the reserving party were not required to pay for the space used plus the space reserved, the result would inefficient use of the network. Witness Milner states that BellSouth does not have a proposal on reserving capacity because " [t]he choices, if the FCC's Order stands, are so inefficient that it is difficult to accept either one."

Based on the evidence and the arguments presented, we find that BellSouth may reserve capacity in order to meet future needs. To the extent that it does, BellSouth must permit AT&T and MCI to do the same. Furthermore, BellSouth shall not reserve space for local exchange service to a degree that would favor BellSouth's future needs over the present needs of AT&T or MCI. We emphasize, however, that we have concerns regarding the incumbent LEC's ability to provide wholesale and retail services without being able to reserve capacity in excess of that provided to the ALEC. Nevertheless, in light of the FCC Order, we shall require BellSouth to allow AT&T and MCI to reserve capacity under the same time periods, terms and conditions BellSouth affords itself.

G. PIC Change Requests

Neither the Act, nor the FCC's Rules, specifically address PIC change requests; but the Act, the FCC's implementing orders stress the need for parity between the incumbent LECs and new entrants.

Although AT&T and MCI raised PIC change requests as a disputed issue, neither party provided sufficient support for its position. The only support for this issue is the briefs submitted to the Commission and the testimony of AT&T witness Shurter, where he identified PIC change requests in a list of other parity issues. The parties believe BellSouth should not accept a PIC change directly from an IXC other than AT&T or MCI for an AT&T or MCI local customer.

BellSouth witness Scheye states that the existing tariffed processes, procedures, and charges provide the framework for changes of intraLATA or interLATA presubscription for customers of record of ALECs operating as resellers. Witness Scheye states that when AT&T is a reseller of BellSouth's local service for the provision of local service to its end user customers, AT&T becomes BellSouth's customer of record for that line. BellSouth will accept PIC changes from AT&T as the customer of record, or from other IXCs. All applicable charges associated with intraLATA or interLATA PIC changes would apply.

BellSouth witness Scheye identifies various reasons for refusing to reject all PIC changes initiated by other IXCs for AT&T's resale customers. First, BellSouth believes AT&T is asking for different treatment, which raises the issue of parity among the IXCs. Second, BellSouth believes implementation of AT&T's proposal hinders a customer's ability to choose a preferred interexchange carrier. Third, BellSouth believes complying with AT&T's request would place BellSouth in the position of refusing properly processed PIC change requests from its other IXC customers.

BellSouth proposes to continue to handle the PIC changes as it does today, without regard to the provider of local exchange service to the end user. The manner in which BellSouth proposes to handle PIC changes does not take into consideration the move toward a competitive local exchange market. The process being proposed by AT&T and MCI will provide parity in the handling of PIC change requests and represents a more appropriate procedure than to have a local exchange company that has no relationship with an end user affecting the overall service provided by another local exchange company. Under AT&T and MCI's proposal, all PIC changes (including those by AT&T and MCI long distance companies) will be required to be sent to the provider of local exchange service, just as it is today.

BellSouth's witness states that a proposal of this type would hinder the ability of an end user to select a preferred IXC. There is no evidence in the record to support BellSouth's claim. In addition, the essence of a competitive environment is the ability of end users to change carriers if they are dissatisfied with the service being provided. There is no reason why this should not apply in a local competitive market.

As for BellSouth's claim that it would be required to refuse properly processed PIC change requests from its other IXC customers, the process BellSouth is referring to is inappropriate in a competitive local exchange market. Allowing BellSouth to process these PIC changes when it has no relationship with the

customer would essentially be allowing BellSouth to affect the service being provided by the AT&T and MCI local exchange companies. If the situation were reversed, BellSouth likely would not want AT&T or MCI changing the service it provides its customer without some prior approval of the change.

Upon consideration, we find it appropriate to prohibit BellSouth from processing any PIC change request for a customer that receives its local exchange service from a local exchange carrier other than BellSouth. BellSouth should direct the request of the customer to the customer's local exchange carrier and provide the customer with a contact number for the customer's local carrier.

H. Application of Centralized Message Distribution System to Local and intraLATA calls

AT&T and MCI request that BellSouth utilize its Centralized Message Distribution (CMDS) system to process local and intraLATA collect, third-party and calling card calls in the same way that similar interLATA calls are processed today. Under the CMDS process, the "originating" local service provider's rates are applied to collect, third-party and calling card calls. According to AT&T, the CMDS process has served to prevent disputes over which carrier's rates should apply, and it has simplified the billing procedure for interLATA calls. AT&T witness Shurter also states that, although the industry has not yet generally adopted CMDS for intraLATA calls, there is a need for a uniform system, and he believes that CMDS will ultimately be used. AT&T and MCI therefore request that intraLATA collect, third-party and calling card calls be priced in accordance with CMDS.

BellSouth witness Scheye argues that no "regional" system currently exists, and that it has no obligation to develop a system to meet the parties' desire for uniformity. BellSouth also states, however, that it can and will provide the capabilities that MCI and AT&T are requesting, but because the current systems are state specific, they will not be uniform. In his testimony, BellSouth witness Scheye acknowledges that BellSouth has been "examining the feasibility of systems modification ... which could create national uniformity."

There is no substantive conflict on this issue between the parties. BellSouth states that it can and will provide CMDS for intraLATA collect, third-party and calling card calls, but that the way in which this is done may vary from state to state, at least for the present. Neither AT&T nor MCI appear to oppose this. AT&T's and MCI's testimony focus on the application of CMDS to

intraLATA calls, whereas BellSouth merely states that it currently cannot do it "uniformly" across all nine states.

Upon consideration of the evidence, we find that AT&T's and MCI's proposal to utilize the CMDS process for intraLATA collect, third-party and calling card calls shall be adopted. We understand that this order only applies to services in Florida.

I. Rates, Terms and Conditions of Information Services Traffic

AT&T and MCI propose a specific treatment for the rating and billing of end user calls to Information Services Providers (ISPs). The LEC provides tariffed access to information services, through which an end user can dial a code or a number to be connected to the ISP's network. For such calls, the LEC bills the end user a prearranged charge and remits the amount to the ISP less an agreed fee for billing and collection. The end user charge and the billing and collection fee are specified in a contract between the ISP and the LEC.

AT&T's witness Carroll proposes an arrangement to be used if one of AT&T's customers calls an ISP that has a contract with BellSouth but not with AT&T. He proposes that AT&T send the call details to BellSouth, which will rate the calls according to its contract with the ISP, and bill and collect on behalf of AT&T until AT&T is in a position to do so itself. AT&T witness Carroll states that AT&T requests these arrangements on a transitional basis. AT&T expects to take over billing by June 1997. Witness Carroll believes that this is a reasonable and nondiscriminatory position that would facilitate the market transition "in a way that is convenient without confusion." AT&T proposes to compensate BellSouth for any incremental cost incurred in the billing process. AT&T expects to be paid by the ISPs, but it did not propose a specific arrangement.

BellSouth opposes AT&T's proposal and suggests that AT&T be required to negotiate its own contracts with ISPs now, and rate and bill its own customers' ISP calls.

AT&T states that, from an end user's perspective, a seamless network is to be preferred. We agree. As we move into a more competitive market, with multiple providers serving a single local area, we believe we should promote cooperation among these providers to provide the services that end users want with minimal delays and blockages.

We approve AT&T's proposal as an interim process, with the exception that AT&T shall not be paid in connection with any call

by its customer to an ISP until AT&T negotiates its own contract with that ISP, containing the appropriate rates, terms and conditions. In this proceeding, AT&T requests that BellSouth perform all the required functions under BellSouth's own contract with the ISP, i.e., rating, billing, collecting, and remitting to the ISP. BellSouth will be handling these calls as though AT&T's customers were its own, and, therefore, we believe BellSouth will be compensated under its own contract with the ISP. It may not be necessary for AT&T to pay an additional charge for BellSouth's rating the call or billing the customer, depending on BellSouth's contract with the ISP. However, if BellSouth does incur additional costs as a result of handling ISP traffic on AT&T's behalf, which are not covered under its contract with the ISP, nothing in our decision precludes BellSouth from recovering those costs through incremental charges to AT&T.

MCI concurs with AT&T's position on this issue except that MCI wishes to bill its own customers. MCI does not indicate whether it views this arrangement to be temporary or otherwise. We find it appropriate for our decision with respect to AT&T on this matter to apply to MCI as well.

J. Billing System and Format For Services and Elements

AT&T requests that we require BellSouth to provide information for billing and usage recording through an electronic interface compatible with BellSouth's CABS. AT&T's witness Shurter states that the CABS billing system is the most effective and efficient method of conducting business in the local and intraLATA markets. CABS is designed to render bills from BellSouth to AT&T and other carriers for access services.

AT&T's witness also states that CABS represents the industry standard billing system used by all interexchange carriers. AT&T states that BellSouth should provide a single billing system, like BellSouth currently employs for itself for rendering bills to its customers, which is based upon the familiar CABS. AT&T requests that we require BellSouth to provide CABS billing within one year after execution of an agreement or when billing standards are adopted, whichever is sooner.

MCI's witness Martinez states that for ILEC and ALEC billing, a CABS or CABS-like billing system should be used for charges related to interconnection, unbundled elements, and resale. While MCI acknowledges that CABS may require some modifications to be able to bill these elements, it notes that CABS is a system familiar to both IILECs and ALECs and has been the foundation for intercompany billing since access charges began. MCI also states

that a CABS-like system would be cost effective because a standardized format would be used for all carriers, rather than a format unique to each LEC.

MCI's witness also states that the Ordering and Billing Forum (OBF) has established a CABS data format, which provides a uniform, nationwide format for the provision of billing information for access services. In addition, MCI states that in August 1996, the OBF approved specifications for CABS-formatted billing for unbundled network elements and resold services. MCI states that BellSouth, however, proposes to use the CRIS for resold services. Witness Martinez states that the CRIS is a proprietary system that, if approved, would create a significant barrier to entry for MCI and other ALECs by requiring them to adapt to multiple bill formats.

Witness Martinez testified that MCI recognizes that BellSouth may still use its CRIS billing system to collect the relevant billing information. Witness Martinez argues that BellSouth should be required to translate the output from the CRIS into a CABS-format before forwarding it to MCI. MCI points out that another Regional Bell Operating Company (RBOC), NYNEX, plans to produce bills for resold services in CABS format effective October 1, 1996. MCI states that NYNEX will take output from its CRIS and reformat it to the CABS billing data format for resold services. MCI also states that Pacific Bell is using the CABS data format today for some services and is moving towards full implementation of the CABS format for resold services.

BellSouth states that neither the Act nor the FCC's Order addresses this issue. BellSouth requests that the Commission support CRIS billing and the CRIS format for resold services. BellSouth's witness Calhoun explained that it currently uses two billing systems in connection with its services: CABS and CRIS. BellSouth states that AT&T has agreed to use CRIS billing for resold services as an interim solution, but that MCI has not.

Witness Calhoun argued that, contrary to MCI's claim that the OBF requires CABS, the OBF did not agree on a mechanized CABS format for resale billing. Witness Calhoun states that the OBF did agree on the minimum number of items of information that should appear on a resale bill, but it did not specify a billing system or format.

BellSouth argues that the CRIS should be used for billing resold retail services because the CRIS contains the necessary infrastructure to provide the line level-detail resellers need, while the CABS, which is generally geared towards access services,

does not. AT&T disagrees with BellSouth that CRIS is superior to CABS because it gives more detailed customer information. AT&T states that customer detail is not needed for billing and is available through usage data that is received outside the billing context.

MCI argues that there are a number of requirements for billing resold services contained in the CABS format that are not provided in CRIS billing. First, there is not an adjustments section on the CRIS bill that can be utilized to correct for a misbilling. MCI asserts that this is important, because as disputes are resolved, the resolutions can be tracked in this way. Second, the CRIS only lists the products and services to which the customer has subscribed on the initial customer bill. MCI states that this information is critical for MCI to insure it is paying only for services it purchases. MCI asserts that features and functions must be broken out on a monthly basis. Third, the CRIS format does not have jurisdictional indicators (intrastate versus interstate) or provide total minutes of use.

We find that billing between BellSouth and AT&T and MCI must transition to CABS-formatted billing for resold services. MCI and AT&T do not want BellSouth necessarily to use the CABS; they merely want their bills in a CABS-like format. Requiring BellSouth to provide CABS formatted bills is appropriate because it will allow the ALECs to receive their bills in a familiar format for both resold and unbundled elements. BellSouth will be able to translate its CRIS output into CABS format as NYNEX and Pacific Bell are doing. However, billing formats should be consistent with industry guidelines to the extent they exist or are developed.

Therefore, we find that BellSouth shall provide CABS-formatted billing for both resale and unbundled elements within 120 days of the issuance of our order in this proceeding. BellSouth can continue to use its CRIS billing, but the CRIS data shall be translated into CABS format.

K. White and Yellow Page Directory Cover Appearance

AT&T's witness states that the Act requires BellSouth to provide parity and precludes BellSouth from imposing unreasonable and discriminatory conditions on AT&T. Witness Shurter maintains that BellSouth puts its logo on the cover of white and yellow page directories. To achieve parity, AT&T requests that we require BellSouth to include AT&T's logo on the directories.

MCI contends that directories could be delivered to the ALECs instead of its subscribers, and the ALECs could place their own

covers on the directories. MCI argues that "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 argues that the issue of placing a logo on a directory cover is not subject to arbitration under Section 251 of the Act. BellSouth states that the Act only requires the inclusion of subscriber listings in the white page directories, which BellSouth has agreed to do. BellSouth's witness Scheye explains that BellSouth's directories are published by a separate affiliate, BAPCO. Any Commission decision on this issue would affect the interests of BAPCO, which is not a party to these proceedings. BellSouth asserts that where directory publishing is concerned, AT&T and MCI should negotiate with BAPCO, not BellSouth.

BellSouth further argues that Section 251(b)(3) charges it with a duty, in respect to dialing parity, only to provide competitive LECS with nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing. In addition, BellSouth argues that Section 271 of the Act requires it to provide to other telecommunications carriers access and interconnection that includes "[w]hite pages directory listings for customers of the other carriers' telephone exchange service," in order to enter the interLATA market. BellSouth notes that Section 271 does not include logo appearances on directory covers.

AT&T's witness Shurter concedes that the FCC's Order addresses branding in the context of operator services and directory assistance services, but does not address directly the branding and unbranding of other customer services.

We find that the obligation of BellSouth to provide interconnection with its network, unbundled access to network elements, or to offer telecommunications services for resale to the competitive LECs does not embrace an obligation to provide a logo appearance on its directory covers. In the absence of any express or implied language in either the Act or the rules to impose such an obligation we will not grant ATT's and MCI's requests on this issue. Therefore, we find it appropriate that it be left for AT&T and MCI to negotiate with the directory publisher for an appearance on the cover of the white page and yellow page directories.

L. Interim Number Portability Solutions and Cost Recovery

Section 251(b)(2) of the Act requires all local exchange companies to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the

Commission. The Act at section 3(30) defines the term "number portability" to mean the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

On July 2, 1996, in the FCC's First Report and Order on Telephone Number Portability, 96-833, the FCC interpreted the requirements of the Act to require local exchange companies to offer currently available methods of number portability, such as remote call forwarding (RCF) and direct inward dialing (DID). The FCC has labeled these methods of providing number portability as "temporary" number portability methods. The FCC required the LECs to offer number portability through RCF, DID, and other comparable methods, because they are the only methods that currently are technically feasible. Order 96-833 ¶ 110.

AT&T requests that we require BellSouth to provide the following interim number portability solutions: 1) remote callforwarding; 2) direct inward dialing; 3) route index portability hub; and 4) local exchange routing guide reassignment at the NXX level. (LERG)

BellSouth agrees to provide all of these temporary number portability options. However, BellSouth expects the ALECs to reciprocate these capabilities. AT&T argues that the FCC order does not require new entrants to provide interim number portability. However, we point out that section 251(b)(2) of the Act, as well as paragraph 110 of Order 96-833, does require all local exchange companies, including ALECs, to provide number portability. Therefore, we conclude that the ALECS shall provide the same temporary number portability methods as they request BellSouth to provide.

Section 251(e)(2) of the Act requires that all carriers bear the costs of establishing number portability. The FCC established criteria to determine an appropriate cost recovery method. First, the FCC proposed that the recovery method should not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer. The FCC interprets this to mean that the incremental payment made by a new entrant for winning a customer that ports his number cannot put the new entrant at an appreciable cost disadvantage relative to any other carrier that could serve that customer. See Order 96-833 ¶ 132. Second, the FCC determined that an acceptable cost recovery method should not have a disparate effect on the ability of competing service

providers to earn normal returns on their investments. See Order 96-833 ¶ 135.

The FCC order identifies various methods of cost recovery that meet these criteria. The first method is to allocate number portability costs based on a carrier's number of active telephone numbers relative to the total number of active telephone numbers in a service area. A second method is to allocate the costs of currently available measures between all telecommunications carriers and the incumbent LECs based on each carrier's gross telecommunications revenues net of charges to other carriers. A third competitively neutral cost recovery method would be to assess a uniform percentage assessment on a carrier's gross revenues less charges paid to other carriers. We find that all three of these methods produce essentially the same result relative to the distribution of costs between carriers. The final method, that the FCC believes would meet its criteria is to require each carrier to pay for its own costs of currently available number portability measures.

Our existing policy on cost recovery of temporary number portability requires that only the new entrants pay for temporary number portability solutions. The FCC's order clearly prohibits this method of cost recovery. The FCC requires costs to be recovered from all carriers. In Docket No. 950737-TP, we will address the cost recovery issue as it relates to the provision of temporary number portability. All carriers, of course, are not represented in the instant proceeding. Moreover, we believe the cost recovery issue should be resolved in a generic investigation. Nevertheless, we determine that we should establish an interim cost recovery method until the proceeding in Docket No. 950737-TP is complete. Thus, because the parties in this proceeding have not provided any cost information for most of the temporary number portability methods, we find it appropriate to order that each carrier pay its own costs in the provision of temporary number portability. Further, we order all telecommunications carriers in this proceeding to track their costs of providing temporary number portability with sufficient detail to verify the costs, in order to facilitate our consideration of recovery of these costs in Docket No. 950737-TP.

M. The Pricing of Switched Access

This issue concerns whether the provisions of Sections 251 and 252 of the Act apply to switched access. AT&T argues that both switched access charges must be priced according to Section 251(d)(1) at economic cost. If AT&T is correct, it would mean that the rates that BellSouth charges for switched access would fall

under the same pricing requirements as the rates for the transport and termination of local interconnection traffic. AT&T witness Gillan asserts that efficient competition requires that both local access and long distance access be priced at cost.

BellSouth witness Scheye opposes AT&T's position, arguing that if Congress had intended "to change the pricing or structure for switched access, it would have explicitly identified these requirements in the Act. No such requirements are included in the Act." Witness Scheye argues that the Act states clearly that incumbent LECs must continue to meet their obligation to provide access to IXCs consistent with regulatory requirements. Finally, witness Scheye points out that with so much specificity on access issues, surely Congress would have spelled it out if it intended that access rates be negotiated.

We agree with BellSouth on this issue. The Act does not require that switched access be negotiated or priced under Sections 251 and 252. Thus, we determine that no action is required in this proceeding with respect to switched access prices. AT&T apparently relies on Section 252(d)(1) of the Act, which, in addressing pricing standards, relates back to section 251(c)(2)(A), setting forth the requirement that the LEC provide interconnection for the routing of exchange service and exchange access. AT&T argues that this language means that exchange access and switched access must be priced at cost. We cannot agree with AT&T's construction.

We would observe, however, that to the extent transport and termination rates for local interconnection are priced at economic cost, it will be very difficult for ILECs to sustain the existing price differential for switched access. The incentives to use local interconnection to terminate toll traffic will be great. The ILECs will incur substantial expense to monitor local and toll traffic in order to determine the appropriate charges. It is precisely this problem that has led the FCC to initiate access reform proceedings. This Commission will be involved in both state and federal proceedings addressing switched access reform and universal service in the near future.

N. Intrastate Access Charges

Section 51.515 of the FCC's rules holds that carriers who purchase unbundled local switching will, for a finite period, also be required to pay the CCL charge plus 75% of the RIC. The FCC instituted this charge in the belief that ILECs would experience a substantial revenue impact when carriers are able to purchase and use the unbundled local switching element to switch all their traffic, both local and toll. This is allowed under the Order, and

would presumably occur because the local switching rate in the switched access tariff would be so much higher than the unbundled local switching rate. By adding on the "support" for a period of time, the FCC sought to mitigate the potential revenue impact on the ILECs.

The Eighth Circuit, however, stayed that provision of the FCC rules. Therefore, we find that assessment of the CCL and 75% of the RIC is not mandated at this time, and we will, therefore, apply Florida law. Section 364.16(3)(a), Florida Statutes, unlike the FCC Order, does not allow carriers to deliver toll traffic through local interconnection facilities without paying the appropriate access charges. Thus, BellSouth and MCI will have to be sure that local and toll traffic are separately identified, and that the appropriate charges are assessed to each.

We conclude that no additional charges shall be assessed for unbundled local switching over and above those already approved in this Order (see Section III.B.4) as applied to local interconnection traffic. However, with respect to toll traffic, Florida law does not allow carriers to bypass switched access charges. Therefore, under this Commission's toll default policy established in Order No. PSC-96-1231-FOF-TP in Docket No. 950985-TP, the company terminating a toll call shall receive terminating switched access from the originating company unless the originating company can prove that the call is local. We find authority for this ruling in Section 261(b) of the Act, which provides that state laws and regulations are not to be superseded by the Act if they are not inconsistent with the requirements of the Act.

O. Rates, Terms and Conditions of Physical and Virtual Collocation

As previously stated, the FCC's rules on pricing, section 51.501 through section 51.515, are stayed pending appeal. BellSouth has not provided TSLRIC or TELRIC cost studies for physical and virtual collocation. However, BellSouth provides proposed rates for physical collocation and recommends that current tariffed rates be used for virtual collocation. We have no information on the methodology used for the proposed physical collocation rates. Therefore, we require that BellSouth file a TSLRIC cost study for physical and virtual collocation within 60 days of the date of this Order. The cost study should comply with section 51.323 of the FCC's rules, which provides the appropriate standards for collocation, and with the expanded interconnection guidelines set out in the FCC's Order.

We find it appropriate to grant MCI the following modifications to the expanded interconnection guidelines, because they comply with the provisions of Section 251(c)(6) of the Act:

1) To interconnect with other collocators that are interconnected with BellSouth in the same central office.

2) To purchase unbundled dedicated transport from BellSouth between the collocation facility and MCI's network.

3) To collocate subscriber loop electronics in a BellSouth central office.

4) To collocate via physical or virtual facilities.

In its discussion of collocation in paragraph 565 of the Order, the FCC concludes that it should adopt the existing expanded interconnection requirements, with some modifications. The FCC discusses the necessity of the above modifications, which are addressed in section §51.323 of the FCC's rules, in the Order in paragraphs 594, 590, 580 and 565, respectively.

MCI is concerned with the time period for establishing collocation. MCI witness Caplan recommends three months for physical and two months for virtual collocation as the maximum time period. BellSouth witness Scheye testifies that time frames for establishing physical collocation will vary based on office type, due to the need for rearrangement of equipment in a particular office. Witness Scheye also states that the length of time necessary to complete the work depends on whether MCI requests a cage be built to protect their equipment. Witness Scheye estimates that the entire construction process could take from 60 days in an ordinary case to six months in an extreme case.

Witness Scheye also states that the establishment of virtual collocation is fairly immediate and that two months is probably reasonable. However, he claims that BellSouth has little experience in establishing physical collocation and cannot agree to completing an average collocation configuration in three months.

Upon consideration we conclude that maximum time periods for the establishment of physical collocation of three months and virtual collocation of two months are reasonable for ordinary conditions. If MCI and BellSouth cannot agree to the required time for a particular collocation request, BellSouth must demonstrate why additional time is necessary.

P. Rates, Terms and Conditions For Local Traffic Dialing Parity

MCI raises concerns about the provision of dialing parity on local calls by BellSouth to MCI customers when MCI resells BellSouth's local service or purchases unbundled local switching. In both cases, the MCI customer is served by a BellSouth switch just like a BellSouth customer and dialing parity is automatic. The only difference is that a BellSouth customer is billed the retail rate for the service, while, for a MCI customer, BellSouth bills MCI the wholesale rate and MCI bills its customer the MCI retail rate. There is no difference in how a call is handled, only in how it is billed.

Section 251(b)(3) of the Act establishes the following dialing parity requirements for all local exchange companies:

> Each telecommunications carrier has 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.

In addition, Section 3 of the Act defines dialing parity as follows:

> The term 'dialing parity' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications service provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).

The FCC's Second Report and Order at paragraph 29 finds that "each LEC must insure that its customers within a defined local calling area be able to dial the same number of digits to make a local telephone call notwithstanding the identity of the calling party's or called party's local telephone service provider."

MCI's witness maintains that its 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 that call processing times for MCI calls within BellSouth's network must be equivalent to those experienced by BellSouth. BellSouth does not contend that local telephone calls, intra-exchange and flat rate EAS calls would

be handled differently for MCI and BellSouth customers. We find this to be the case since a local call is going to the same location whether the number is dialed by a MCI customer or a BellSouth customer. As long as the dialed digits route the call to the same location, local dialing parity is inherent in the network.

MCI also requests that 0-, 411 and 611 calls be routed to MCI operators when dialed by a MCI subscriber. We have already determined that customized routing is technically feasible and have ordered that BellSouth provide customized routing using line codes on a first-come, first-served basis (see section VI.A).

We conclude that dialing parity is inherent in the network. Thus, we do not find that there are any additional costs associated with local dialing parity. Therefore, we find it unnecessary to establish any additional requirements or cost recovery mechanisms.

VI. MISCELLANEOUS

A. Arbitrated Agreement Approval Standard

Section 252 sets forth the procedures for negotiation, arbitration and approval of agreements. Specifically, Sections 252(a)(1)and 252(a)(2) address the procedures for agreements arrived at through negotiation and Section 252(b) addresses the procedure for agreements arrived at through compulsory arbitration.

Under Section 252(e)(1), any agreement adopted by negotiation or arbitration shall be submitted for approval by this Commission. We may only reject the agreements for specific reasons. Specifically, Section 252(e)(2) states that this Commission may only reject

> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that -
>
> > (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
> >
> > (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
>
> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) if it finds that the agreement does not meet the requirements of section 251,

> including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section.

Thus, the Act establishes different standards for approval depending on whether the agreement is arrived at through negotiation or arbitration.

BellSouth takes the position that the resolution of any negotiated issues should be approved under the standards in Section 252(e)(2)(A) and arbitrated issues under 252(e)(2)(B). Specifically, BellSouth applies the different standards to the issues rather than to the agreement itself.

MCI, however, 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).

AT&T states that the agreement should be filed under Section 252(e) of the Act. However, AT&T does not specify whether the agreement should be approved pursuant to Section 252(e)(2)(A) or Section 252(e)(2)(B).

The Act contemplates different mechanisms under which the parties can submit agreements. Under Section 252(a)(1), the parties may negotiate and enter into a binding agreement which shall be submitted to the State for approval. Under Section 252(b), the parties may petition the State commission to arbitrate any open issues. Section 252(b) contemplates that there will be resolved issues as well as unresolved issues. In fact, this section requires the petitioner to provide all relevant documentation concerning "any other issue discussed and resolved by the parties."

Although BellSouth asserts that the standards in subsections 252(e)(2)(A) and (B) apply not only to complete agreements, but also to "any portion thereof" adopted through negotiation or arbitration, we believe the phrase allows the Commission to reject a portion of a submitted agreement rather than rejecting the entire agreement itself. In addition, BellSouth's interpretation is inconsistent with the schedule for state action in Section 252(e)(4). That section states that if the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation under subsection (a), or within 30 days after submission by the parties of an agreement adopted by arbitration under subsection (b), the agreement shall be deemed approved. Under BellSouth's

interpretation, the negotiated provisions would have to be approved within 90 days and the arbitrated provisions within 30 days.

We find that since the agreements will result from an arbitration proceeding pursuant to Section 252(b), the agreements should be approved under the standards in Section 252(e)(2)(B). The arbitrated agreements should consist of our decision regarding the unresolved issues and the issues resolved by the parties.

B. Post-Hearing Procedures

In Order No. PSC-96-1107-PCO-TP, the Prehearing Officer ruled that the Commission will act on the major issues identified by the parties to this proceeding, but will not resolve all of the subsidiary issues to produce a final arbitrated agreement. The Prehearing Officer proposed a post-decision procedure under which the parties would be given 30 days to submit a comprehensive arbitrated agreement that incorporates the Commission's decisions on the major issues. If the parties are unable to reach an agreement, 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 the best comports with its decision.

BellSouth states that the first step is to determine whether the parties must negotiate a comprehensive agreement once this Commission has resolved the unresolved issues identified in this proceeding. The Order will provide a basis for AT&T and MCI to enter the market. BellSouth states that if, however, a comprehensive agreement is necessary, the Commission should determine how long the parties will have to negotiate.

BellSouth proposes that the parties submit agreements incorporating the Commission's decision within 60 days after the Order is issued. BellSouth requests 60 days to address the fine points of many technical and operational issues, even if these issues are covered in a general sense. Given the "hundreds" of issues that AT&T believes exist and the numerous open issues between MCI and BellSouth, BellSouth believes it is not reasonable to believe that all of these issues can be resolved in 14 days. BellSouth argues that the Act does not allow parties to submit individual agreements from which the Commission may choose if there is no agreement; instead, a neutral independent third party should mediate any unresolved disputes.

BellSouth contends that the Prehearing Officer's suggestion is not supported by the authority granted to this Commission in Section 252. Specifically, BellSouth argues that there is nothing

in Section 252 that suggests that this Commission can select a contract unilaterally submitted by one party when there is, in fact, no agreement. BellSouth proposes that if the parties are unable to reach an agreement, then the differences should be mediated. Failing this, the parties should seek clarification on any issue that has been the subject of arbitration, but on which there is still no agreement. Any items that cannot be agreed upon and which have not been arbitrated, must be submitted for arbitration.

AT&T proposes that the deadline for filing an agreement should be 14 days from the date of the issuance of the Order reflecting the Commission's decisions on the issues in this proceeding. If no agreement is reached, AT&T proposes that the parties should file their respective proposed contractual language for each issue that remains unresolved within 20 days after the issuance of the Order. The Commission should then adopt on an issue-by-issue basis the proposed contractual language that best reflects the Commission's determinations in its Order.

MCI's proposal is very similar to AT&T's except that if the parties are unable to reach an agreement in 14 days, each party would submit its own version of a proposed agreement in 20 days. MCI adds that the Commission should retain the flexibility to accept the entire proposed agreement submitted by either party or to accept, on an issue-by-issue basis, parts of the proposed agreements offered by either party. MCI points out that 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)

Upon consideration of the arguments presented, we find that the Act gives us dual roles under the provisions of Sections 252(b),(c),(d) and (e) to arbitrate the unresolved issues and to 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 state commissions considerable flexibility to fashion arbitration procedures that will be compatible with the commissions' processes and accomplish the policy purposes of the Act.

Accordingly, we find that the parties shall submit a written agreement memorializing and implementing our decision within 30 days of issuance of the arbitration order. Further we will review the agreements pursuant to the standards in Section 252(e)(2)(B) within 30 days after they are submitted. If the parties cannot agree to the language of the agreement, each party shall submit its version of the agreement within 30 days after issuance of the arbitration order. We will choose the language that best incorporates the substance of our arbitration decision.

C. MCI's and AT&T's motions to strike BellSouth's Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief

On October 17, 1996, BellSouth filed a pleading entitled "Notice of Order of the Eighth Circuit Court of Appeal's Order Granting Stay Pending Judicial Review and Request for Relief." Therein BellSouth asked the Commission to take official notice of the Eighth Circuit's October 8, 1996 Order. BellSouth then argued the effect of that order on this arbitration proceeding and other pending and future arbitration proceedings.

On October 23, 1996 and October 29, 1996, MCI and AT&T filed Responses and Motions to strike BellSouth's pleading, in which they agreed that the Commission should take official notice of the Eighth Circuit's Order, but urged that the remainder of the pleading was procedurally inappropriate and should be stricken. BellSouth responded to the motions to strike on October 30, 1996 and November 5, 1996. BellSouth argued that the motions to strike should not be granted because the parties did not allege any harm and their procedural objections represented a "hypertechnical approach to the rules."

Upon consideration, we agree with AT&T and MCI that Commission rules and the prehearing order in this case do not contemplate an additional post-hearing filing like BellSouth's. By Order No. PSC-96-1238-PHO-TP, issued October 7, 1996, the prehearing officer established the appropriate post-hearing procedures to be followed. That procedure did not contemplate any post-hearing filings other than the post-hearing statements and briefs described in the prehearing order. BellSouth did file a post-hearing brief pursuant to the directions of the prehearing order and our procedural rules.

A notice of supplemental authority calling the Commission's attention to the Eighth Circuit stay order is appropriate. However, an additional 14 page brief arguing the issues in the case is not. Accordingly, AT&T's and MCI's Motions to Strike are

granted. We will take official recognition of the Eighth Circuit's Order.

VII. 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, the provisions of the FCC's implementing Rules that have not been stayed pending appeal, and the applicable provisions of Chapter 364, Florida Statutes.

It is, therefore,

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

ORDERED that the issues submitted for arbitration by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation and MCI Metro Transmission Services, Inc. are resolved as set forth in the body of this order. It is further

ORDERED that the cost recovery mechanism for the interim number portability solutions BellSouth has agreed to provide MCI and AT&T shall be determined in Docket No. 950737-TP. BellSouth, AT&T and MCI shall track their costs of providing interim number portability as discussed in the body of this Order. It is further

ORDERED that BellSouth shall file a TSLRIC cost study for physical and virtual collocation within 60 days of the issuance date of this Order. It is further

ORDERED that BellSouth BellSouth shall provide TSLRIC cost studies for network elements for which we are setting interim rates within 60 days from the issuance of the Order as discussed in the body of this Order. It is further

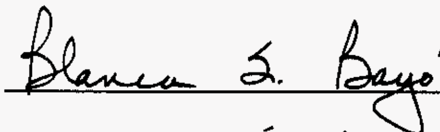
ORDERED that the parties, BellSouth and AT&T and BellSouth and MCI, shall submit a written agreement memorializing and implementing our decision within thirty (30) days of the issuance of this Arbitration Order. It is further

ORDERED that the agreements shall be submitted for approval pursuant to the standards set forth in Section 252(e)(2)(B) of the Telecommunications Act of 1996. It is further

ORDERED that MCI's and AT&T's Motions to Strike BellSouth's Notice of Order of the Eight Circuit Court of Appeals Order Granting Stay Pending Judicial Review and Request for Relief is granted. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 31st day of December, 1996.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MMB/MBC/CJP/WPC/MCB

DISSENTS

Commissioner Deason dissents, without comment, from the decision contained herein on the issue identified in Prehearing Order as Issue 2 and 14(b), based on the concerns raised in the body of this Order. Commissioner Deason dissents, with comment, from the decision contained herein on the issues identified in Prehearing Order as Issues 3 and 5.

Commissioner Johnson dissents, without comment, from the decision contained herein on the issue identified in Prehearing Order as Issue 8(b).

Commissioner Garcia dissents, with comment, from the decision contained herein on the issue identified in Prehearing Order as Issue 8(b).

Commissioner Deason

I am concerned with the effects that our decisions in the following areas will have on the development of a competitive marketplace. As with my concerns regarding the joint marketing

restrictions and the unbundling and rebundling of network elements, I have reservations whether the FCC's decision regarding these services will result in fair competition. I have more confidence that our own interpretation and application of the provisions of the Act itself would yield a more balanced result. I respect the majority decision on these issues. A valid argument can be made for the rigidity of the federal mandate. Nevertheless, I believe that the application of some level of discretion must be reserved to the state Commission to tailor the development of competition to specific circumstances.

Grandfathering

First off, a distinction must be made between existing grandfathered services and services that are grandfathered prospectively. Our past decisions to allow services to be grandfathered were premised on a different set of circumstances than those we will face in the future. Clearly Congress and the FCC were concerned about ILECs inhibiting competition by grandfathering services and locking up customers. The simplest cure for that is to require services so grandfathered to be resold. As I read the Act and the FCC's decision, the intent seems to be to apply the resale obligation to the services that would be grandfathered after the advent of competition, rather than those grandfathered for the historical reasons such as technological obsolescence or unprofitability. The most logical basis for requiring all grandfathered services to be resold would be to negate any incentive to act in an anti-competitive manner. This seems to be too broad a solution for the narrow problem at hand.

As such, I do not believe we should require services grandfathered prior to the initiation of the arbitration process to be resold. If a competitor wants to serve customers who are currently subscribing to an existing grandfathered service, then that competitor's option is to structure a competitive alternative to the grandfathered service. Certainly BellSouth should be required to resell services that are grandfathered from here on out. Otherwise, BellSouth could grandfather services as a means of retaining those customers the company fears it may lose to competition. This use of grandfathering would be detrimental to competition.

CSAs

I also believe that it is illogical to require the ILEC to resell CSAs. To do so would eliminate any incentive the ILEC has to negotiate a customer-specific contract to meet a customer's needs, since as soon as the contract has been finalized, the

customer can go to a competitor for the same arrangement on a resold basis. True competition would be better served if real competitive options were provided to customers rather than an ALEC merely offering to resell the same service that the incumbent offered. It is not unreasonable to expect the ALEC to compete for special-needs customers by structuring their own CSAs.

Lifeline and LinkUp Services

Additionally, I do not believe that the ILEC should have to retain the administrative burden and expense associated with Lifeline and LinkUp Services. Fairness in the competitive marketplace does not require these services to be resold. This is especially so since the ALEC will get the benefit of serving the customers, but BellSouth will have to track the customers' status and collect the subsidy revenues. In my opinion it would be more appropriate to sell the residential service to the ALEC and let the competitor make application on the customers' behalf for these services.

Resale Restrictions

Finally, I am concerned that our decision on resale restrictions will unduly hinder BellSouth's ability to compete. If the ILEC's tariff restrictions do not follow a service when it is resold, the company will be hindered in competing with resellers of its services for some customers -- unless of course they modify their tariff. I believe this is an unnecessary burden on BellSouth, and is not conducive to a competitive environment.

Commissioner Garcia

I disagree with the majority on the proper branding requirements concerning the interaction of LEC employees with the customers of its competitors, when the LEC provides services on behalf of the competitor. I am concerned that the trivial subject of the character and substance of "leave-behind" cards is not one which this Commission needs to resolve. This is an example of the minutiae which will drown the deregulatory process when given a chance.

That said, I recognize that in our efforts to promote competition in a fair and just manner, we will need to pay attention to issues which, without more, may result in unfair competition. Assuming for the moment that our decision is necessary on this issue, in furtherance of those efforts, I believe the Commission should have adopted the competitively neutral proposal offered by the LEC on this issue. The majority's method

could prove vulnerable in the future, when the number of competitors increases as our efforts succeed.

Furthermore, though it does not seem to be an issue in this arbitration, the content, size, and other attributes of the cards may soon be at issue. And again, a bad situation can only get worse as the number of competitors increases. The majority's decision places on the LEC the burden of sorting through any number of cards of different shapes and sizes for an as yet undetermined and ever-changing number of competitors. This Commission had an opportunity to avert a common pitfall of deregulation -- reregulation.

For these reasons, I believe the use of a generic card, where information can be entered as required, to be more appropriate under the circumstances.

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

Table 1: COMMISSION APPROVED RECURRING RATES FOR UNBUNDLED NETWORK ELEMENTS

Network Element	Commission Approved Recurring Rates for Unbundled Network Elements
Network Interface Device	*$0.76
Loops	
2-wire analog	$17.00
4-wire analog	$30.00
2-wire ISDN	$40.00
4-wire DS1	$80.00
Loop Distribution	*$7.00
End Office Switching:	
Ports	
2-wire analog	$2.00
4-wire analog	*$10.00
2-wire ISDN	$13.00
4-wire DS1	$125.00
Usage	
initial min.	$0.0175
add'l min.	$0.005
Signaling	
Link	$5.00
Termination	$113.00
Usage	
-call setup msg	$0.00001
-TCAP message	$0.00004
Usage surrogate	$64.00
Channelization System	
- per system	$480.00
- Central Office Channel interface - voice	$1.50
Common Transport	$0.000012

Network Element	Commission Approved Recurring Rates for Unbundled Network Elements
Dedicated Transport	
per mile	$1.60
per term.	$0.0005
per fac. term.	$59.75
Tandem Switching	$0.00029
Operator Systems	
Operator Call Handling	$1.00
Automated Call Handling	$0.10
Busy Line Verif.	$0.80
Emergency Inter.	$1.00
Numbering Service Intercept	
-per query	$0.01
Directory Assistance (DA)	$0.25
DA Database	
-per listing	$0.001
-monthly	$100.00
Direct Access to DA Service	
-monthly	$5000.00
-per query	$0.01
DA Call Completion	$0.03
DA Transport	
-Switched Local Channel	*$133.81
-Switched Dedicated transport DS1 level	
-per mile	*$16.75
-per facility term.	*$59.75
-SW Comm./DA call	$0.0003
-SW Comm./DA call/mile	$0.00001
-Tandem SW/DA call	$0.00055

* Interim Rates

Table 2: COMMISSION APPROVED NONRECURRING RATES FOR UNBUNDLED NETWORK ELEMENTS

Network Element	**Commission Approved Nonrecurring Rates for Unbundled Network Elements**
Network Interface Device	No NRC proposed
Unbundled Loop	
2-wire analog	
First	$140.00
Additional	$42.00
4-wire analog	
First	$141.00
Additional	$43.00
2-wire ISDN	
First	$306.00
Additional	$283.00
4-wire DS1	
First	$540.00
Additional	$465.00
Loop Distribution	No NRC proposed
End Office Switching:	
Port	
2-wire analog	
First	$38.00
Additional	$15.00
4-wire analog	
First	*$38.00
Additional	*$15.00
2-wire ISDN	
First	$88.00
Additional	$66.00
4-wire DS1	
First	$112.00
Additional	$91.00
Signaling Link	$400.00

Network Element	**Commission Approved Nonrecurring Rates for Unbundled Network Elements**
Channelization System -Per system First Additional -Central Office Channel First Additional	 $350.00 $90.00 $5.75 $5.50
Dedicated Transport per facility termination	 *$100.49
Operator Systems Direct Access to DA Service -service establishment charge DA Transport Switched Local Channel -First -Additional Switched Dedicated Transport -per facility termination	 $820.00 *$866.97 *$486.83 *$100.49

* Interim Rates