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BELLSOUTH TELECOMMUNICATIONS, INC.
SUPPLEMENTAL TESTIMONY OF ALPHONSO J. VARNER
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 960833- TP
AUGUST 23, 1996

Q. PLEASE STATE YOUR NAME, ADDRESS AND POSITION WITH
BELLSOUTH TELECOMMUNICATIONS, INC. (HEREINAFTER
REFERRED TO AS "BST" OR "THE COMPANY").

A. My name is Alphonso J. Varner. I am employed by BST as Senior Director for
Regulatory Policy and Planning for the nine state BellSouth region. My
business address is 675 West Peachtree Street, Atlanta, Georgia, 30375.

Q. ARE YOU THE SAME ALPHONSO J. VARNER WHO FILED DIRECT
TESTIMONY IN THIS DOCKET ON AUGUST 12, 1996?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY
BEING FILED TODAY?

A. My testimony provides BST's current assessment of the impact of the FCC's
First Report and Order in CC Docket No. 96-98 ("Order") on the issues

1 identified in this docket and BST's position on those issues. BST's assessment
2 is based on the presumption that the FCC's Order remains in effect as issued
3 and is not subsequently modified. Since BST has not completed its analysis of
4 the Order, nor have we determined if all of the provisions of the Order are
5 consistent with the Telecommunications Act of 1996 ("the Act"), we have not
6 decided what, if any, legal actions we will take concerning the Order.

7

8 Q. WHAT IS BELLSOUTH'S GENERAL ASSESSMENT OF THE ORDER?

9

10 A. As I stated in my testimony filed in Docket No. 960757 - TP, the Order appears
11 to be regulatory micromanagement of the telecommunications industry which
12 is inconsistent with the Act. Congress clearly intended less regulation and
13 rapid opening of markets. BST has attempted to help reach this goal by
14 negotiating interconnection agreements with many of its potential competitors
15 and opening its network to competition. The FCC's approach may be the
16 biggest barrier to the development of facilities based competition that results
17 from the implementation of the Act and surely was not the intended result of
18 Congress.

19

20 Q. WHAT IN THE FCC'S APPROACH PRESENTS A BARRIER TO THE
21 DEVELOPMENT OF FACILITIES BASED COMPETITION?

22

23 A. The best example lies in the pricing of unbundled network components which
24 BST must provide to competitors. If the FCC's methodology of pricing these

1 elements on the basis of forward-looking, incremental costs (plus a portion of
2 forward looking joint and common costs) stands, by definition, no other carrier
3 will be able to provide its own network any cheaper than it can obtain access to
4 the existing one. In fact, in light of BST's economies of scale which no other
5 carrier may want to, or be able to, duplicate, it may be that no other carrier can
6 provide its own facilities as cheaply as they could buy them from BST.

7 Despite claims that network control issues may motivate carriers to build-out
8 their own network, simple economics - the real basis for investment decisions -
9 says otherwise.

10

11 Q. WHAT IS THE AFFECT OF THE ORDER ON THE ROLE AND
12 JURISDICTION OF THE STATE COMMISSIONS?

13

14 A. BST has always believed the states would play a critical role in implementing
15 the Act. BST has and is working with each of the state commissions to meet
16 their specific needs in fulfilling those responsibilities. BST is concerned that
17 this important function will be undermined by many of the provisions of this
18 Order. State commissions have a better view than the FCC of how to promote
19 competition in the states. The FCC's dictating such fundamental things as
20 resale discounts, particularly in a manner that is inconsistent on its face with
21 the Act, simply eviscerates the role of the state commissions. While the FCC's
22 recent statements refer to a close association with the states and reliance on

1 decisions reached at the state level, the Rules in this Order appear to
2 significantly restrict state commission latitude.

3

4 Q. DOES THE FCC'S ORDER HAVE ANY AFFECT ON THE CONDUCT OF
5 STATE PROCEEDINGS?

6

7 A. Yes. BST is concerned that, although the Act established discretion and
8 flexibility for the state commissions to exercise, the FCC's Order appears to
9 limit, excessively and inappropriately, this role. BST's initial assessment of
10 the Order finds little left to the true discretion of the states. Indeed, the only
11 thing left, not surprisingly, to the sole discretion of the states, is the amount
12 ratepayers can be charged for basic local service. The FCC has issued Rules, in
13 excruciating detail, which appear to substantially limit a state's ability to carry
14 out its role established by the Act. In addition to the resale discount mentioned
15 above, a few examples of areas where the state's role has been diminished, if
16 not essentially eliminated, are:

17

18 -The states' ability to encourage facilities-based local competition;

19

-Setting prices of unbundled elements;

20

-The states' regulation of intrastate access;

21

-The states' ability to allow a local exchange carrier (LEC) to assess CMRS
22 providers for LEC originated traffic; and

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-The states' ability to determine pricing rules for the transport and

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termination of traffic.

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No doubt, given the general tenor of the Rules, there are significant other areas in which state commissions have traditionally had authority which is now lost to them.

Q. WHAT ARE THE IMPLICATIONS OF THE FCC'S PRICING MODEL FOR RATEPAYERS?

A. The most obvious is that while some ratepayers may benefit from reduced rates, not everyone will. BST ultimately must recover its costs of doing business--its real costs, not only its forward looking incremental costs. It will not recover its investment from intermediary services or network elements provided to competitors. Its retail rates in urban and, perhaps to a lesser extent, in suburban areas, will be disciplined by competition. So, it is the rural ratepayer who will bear the brunt of BST's need to recover its true costs.

Q. HAS BST CHANGED ANY OF ITS POSITIONS AS A RESULT OF THE ORDER?

A. We have not, although in the absence of a court or FCC order to the contrary, we and this Commission may be forced to accept different results than those we have proposed. I would also note that, as has been previously stated, a full assessment of the impact of the FCC's Order and Rules is not complete. It may

1 well be that, after a more complete review is accomplished and decisions about
2 the legal appropriateness of the Order and Rules are decided, it may be
3 appropriate to change our positions. We are simply not in a position to do so
4 now. I can say now, however, that it is clear that there are major conflicts
5 between the Order and Rules and the Act.

6

7 Q. CAN YOU GIVE EXAMPLES WHERE, IN YOUR OPINION, THE RULES
8 DO NOT COMPORT WITH THE ACT?

9

10 A. Yes. Two examples of where the FCC's Rules appear not to be consistent with
11 the Act are the identification of vertical services as unbundled network
12 elements and the development of the wholesale discount rate.

13

14 In the first example, the FCC has defined vertical services as unbundled
15 network elements. They have done this by including the vertical services as a
16 part of the unbundled local switching capability and specified that these
17 services should be priced at very low levels. It appears that BST will be unable
18 to recover even the costs of providing some of these features through the rates
19 allowed by the FCC. Not recovering the costs of providing an unbundled
20 element is not consistent with the Act. In addition, the states are given no
21 capability to manage any revenue loss caused by this Rule.

22

23 In the second example, the FCC has established the methodology to determine
24 the avoided costs associated with the resale process. In its methodology the

1 FCC uses costs that it considers reasonably avoidable in the development of the
2 wholesale discount rate. This appears to be inconsistent in two ways. First,
3 although the FCC gives its rationale for establishing national rules on this
4 issue, Section 252(d)(3) of the Act states, "a State commission shall determine
5 wholesale rates..." In addition, the Act, in the same section, goes on to say that
6 the wholesale rates will be determined on the basis of retail rates charged to
7 subscribers excluding costs that will be avoided by the local exchange carrier.
8 The FCC itself, in the discussion portion of the Order, recognizes that costs
9 that are reasonably avoidable and indeed different than costs that will be
10 avoided.

11
12 Q. ARE THERE ISSUES THAT BST BELIEVES WERE RAISED BY AT&T
13 IN THIS ARBITRATION PROCEEDING THAT ARE NOT ADDRESSED
14 BY THE FCC'S RULES?

15
16 A. Yes. The Order appears to be silent on Issues 3(b), 5, 12, 19, 20, 23, and 24 as
17 set forth in the issues list dated 8/2/96. Since the Order has no impact on these
18 issues and therefore will not affect the FPSC's process, the FPSC can accept
19 BST's position on these issues without regard to any consequences from the
20 FCC Order. A brief discussion of these issues is included in my testimony for
21 completeness.

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23 Q. HOW IS THE REMAINDER OF YOUR TESTIMONY ORGANIZED?

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A. The remainder of my testimony addresses the specific issues identified in this docket. The testimony is divided into four sections:

- A: Resale,
- B: Interconnection,
- C: Unbundled Network Elements, and
- D: Additional Interconnection Requirements and Issues.

In each section, each issue is stated as it is in the proposed list of issues, dated 8-2-96; the BST position is stated briefly; and BST's preliminary assessment of the impact of the Order is given for each issue. I have also attached Section 51 of the Final Rules as Exhibit AJV-1.

Again, though, while we are attempting to identify the impact of the FCC's Order and Rules on these matters, we are not conceding that the FCC's position is correct or should be adopted in this proceeding. The Order and Rules will likely be attacked in various ways and through all available channels.

BellSouth believes that its positions should be sustained in the meanwhile.

A: RESALE

Issue 1: WHAT SERVICES PROVIDED BY BELLSOUTH, IF ANY, SHOULD BE EXCLUDED FROM RESALE?

BellSouth Position: In accordance with Section 251(c)(4)(A) of the Act, BellSouth must "offer for resale at wholesale rates any telecommunications

1 service that the carrier provides at retail to subscribers who are not
2 telecommunications carriers....” Certain options or service offerings which are
3 not retail services or have other special characteristics should be excluded from
4 resale. These include contract service arrangements, promotions,
5 grandfathered or obsoleted services, LifeLine assistance programs, N11
6 service, and E911/911 services.
7

8 Assessment of Order: Section 51.605 of the Final Rules says that an
9 incumbent LEC cannot impose restrictions on the resale of telecommunications
10 services offered by the incumbent LEC except as provided in Section 51.613.
11 Section 51.615 refers to the withdrawal of services and states, “[w]hen an
12 incumbent LEC makes a telecommunications service available only to a
13 limited group of customers that have purchased such a service in the past, the
14 incumbent LEC must also make such a service available at wholesale rates to
15 requesting carriers to offer on a resale basis to the same limited group of
16 customers that have purchased such a service in the past.” Sub-paragraph (a)
17 of Section 51.613 states that specific restrictions regarding cross-class selling
18 may be permitted by the state commission and that short term promotions are
19 exempt from the wholesale rate. Section 51.613 (b) goes on to state, “[w]ith
20 respect to any restrictions on resale not permitted under paragraph (a), an
21 incumbent LEC may impose a restriction only if it proves to the state
22 commission that the restriction is reasonable and nondiscriminatory.”
23

1 As a preliminary conclusion, BST believes that all of our proposed service
2 restrictions are permissible under paragraph 51.613(b) of the Rules. Based on
3 the discussion presented in Mr. Scheye's direct testimony in this proceeding,
4 BST believes that the restrictions that it proposes are narrowly tailored,
5 reasonable, and nondiscriminatory and, therefore, are permitted by the Order.
6 BST's position is consistent with the FCC's Order and we urge this
7 Commission to approve our proposal.

8

9 **Issue 2: WHAT TERMS AND CONDITIONS, INCLUDING USE AND USER**
10 **RESTRICTIONS, IF ANY, SHOULD BE APPLIED TO RESALE OF**
11 **BELLSOUTH SERVICES?**

12

13 **BellSouth Position:** Any use or user restrictions or terms and conditions found
14 in the relevant tariff of the service being resold should apply. Use and user
15 restrictions as well as terms and conditions are integral components of the retail
16 service that is being resold. These terms and conditions do not impose
17 unreasonable or discriminatory conditions on the resale of these services and
18 may be reflected in the rates being charged, and hence should be carried
19 through with the discount. Elimination of the terms and conditions may affect
20 the pricing or even the general availability of the service. An example of a
21 service with this type limitation is Saver Service, which is a discounted toll
22 service, priced based on the use of the retail end user. If it can be used by
23 multiple end users and the usage aggregated, then change in demand could

1 certainly impact its pricing.

2

3 Assessment of Order: Our assessment of the Order here is the same as it is for
4 Issue 1. Section 51.613(b) allows an incumbent LEC to impose restrictions if
5 it proves to the state commission that they are reasonable and
6 nondiscriminatory. Based on our preliminary analysis, we believe the terms
7 and conditions limitations requested by BST and discussed in Mr. Scheye's
8 direct testimony, are reasonable and nondiscriminatory, permitted by the Rules,
9 and should be allowed by this Commission.

10

11 **Issue 2 Unresolved: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE**
12 **REAL-TIME AND INTERACTIVE ACCESS VIA ELECTRONIC**
13 **INTERFACES TO PERFORM THE FOLLOWING: PRE-SERVICE**
14 **ORDERING, SERVICE TROUBLE REPORTING, SERVICE ORDER**
15 **PROCESSING AND PROVISIONING, CUSTOMER USAGE DATA**
16 **TRANSFER, LOCAL ACCOUNT MAINTENANCE? IF SO, FOR**
17 **WHAT PROCESSES AND IN WHAT TIME FRAME SHOULD THEY**
18 **BE DEPLOYED? WHAT SHOULD BE THE METHODS AND**
19 **PROCEDURES FOR DELIVERY OF OPERATIONAL INTERFACES?**

20

21 BellSouth Position: BellSouth has made available or has under active
22 development electronic interfaces for ordering and provisioning, pre-ordering,
23 trouble reporting and billing data. For ordering and trouble reporting with

1 regard to unbundled elements, BellSouth is providing functionality similar to
2 the processes that have worked effectively in the exchange access world.
3 BellSouth has established interfaces to allow ALECs to obtain pre-ordering
4 information electronically. BellSouth has also provided electronic customer
5 usage data transfer and is modifying its original design to accommodate
6 AT&T's requests. The details of these interfaces and other work efforts were
7 contained in the direct testimony of Ms. Calhoun filed on August 12, 1996.

8
9 Assessment of Order: Paragraph 51.313 (c) of the Rules states that as a just,
10 reasonable and nondiscriminatory term and condition for the provision of
11 unbundled network elements, "[a]n incumbent LEC must provide a carrier
12 purchasing access to unbundled network elements with the pre-ordering,
13 ordering, provisioning, maintenance and repair, and billing functions of the
14 incumbent LEC's operations support systems." Paragraphs 517 and 518 of the
15 Order discuss that nondiscriminatory access to operations support systems
16 functions could be viewed as a "term and condition" of unbundling other
17 network elements under section 251(c)(3), or resale under section 251(c)(4) of
18 the Act. Paragraph 51.603 provides that "[a] LEC shall make its
19 telecommunications services available for resale to requesting
20 telecommunications carriers on terms and conditions that are reasonable and
21 non-discriminatory."

22

1 The FCC also concludes in its Order that providing nondiscriminatory access
2 to operations support systems functions is technically feasible and that all
3 incumbent LECs that currently do not comply with this requirement must do so
4 as expeditiously as possible, but in any event no later than January 1, 1997.

5
6 The FCC appears to be in favor of the use of national standards so that all
7 transactions between telecommunications companies may be processed via
8 nationally standardized electronic gateways. The FCC proposes to monitor
9 closely the progress of industry organizations as they implement the rules
10 adopted in this proceeding.

11
12 As discussed in Ms. Calhoun's direct testimony, BST has already made
13 available or has under accelerated development electronic operational
14 interfaces for ordering and provisioning, pre-ordering, trouble reporting, and
15 billing data and is in overall compliance with the FCC Order. BST believes
16 that January 1, 1997 is an unrealistic date to require completion of this project.
17 Should the FCC Order stand as it is, BST would have to provide all of the
18 electronic operational interfaces identified in this issue by January 1, 1997 to
19 be in compliance.

20
21 BST believes that its existing electronic interfaces to support ALECs, as well
22 as those under development, are in overall compliance with the precepts
23 described in the FCC Order and in compliance with national standards, where

1 they exist. Where new standards will be required as a result of the FCC's
2 Order, BST will continue its active role in the appropriate industry committees
3 to develop such standards.

4
5 Contrary to the general compliance with the Order on this issue, however, the
6 Company does believe that the FCC's requirement to provide electronic access
7 to all operational support functionality by January 1, 1997 is unrealistic. The
8 implementation timeline for each electronic interface is based on the
9 complexity of the requirements associated with that specific functionality.
10 BST has provided a realistic, firm schedule based on the actual work to be
11 done, as identified in the analysis and design phase of system development.
12 Even the Georgia Public Service Commission, in amending its initial
13 implementation date, recognized the fact that timing can only be determined on
14 the basis of a detailed analysis and design of each electronic interface.

15
16 **Issue 3(a): WHEN AT&T RESELLS BELLSOUTH'S SERVICES, IS IT**
17 **TECHNICALLY FEASIBLE OR OTHERWISE APPROPRIATE TO**
18 **BRAND OPERATOR SERVICES AND DIRECTORY SERVICES**
19 **CALLS THAT ARE INITIATED FROM THOSE RESOLD SERVICES?**

20
21 **BellSouth Position:** Branding is not required by the Act and is not required to
22 promote competition. BST cannot offer branding for AT&T or other resellers
23 when providing resold local exchange service because BST will not be able to

1 distinguish calls of AT&T resold customers from calls of customers of other
2 local resellers, or from BST. Mr. Milner's direct testimony in this docket
3 describes a significant problem with AT&T's request in that it is not
4 technically feasible.

5
6 Assessment of Order: Paragraph 877 of the Order states, "section 251(c)(4)
7 does not impose on incumbent LECs the obligation to disaggregate a retail
8 service into more discrete retail services. The 1996 Act merely requires that
9 any retail services offered to customers be made available for resale."
10 Paragraph 51.613 (c) of the Rules then states, inconsistently, that the failure by
11 an incumbent LEC to comply with reseller unbranding or rebranding requests
12 is a restriction on resale. The paragraph does goes on, however, to state that an
13 incumbent LEC may impose such a restriction if it proves to the state
14 commission that the restriction is reasonable and nondiscriminatory, such as by
15 proving to a state commission that the incumbent LEC lacks the capability to
16 comply with unbranding or rebranding requests.

17
18 The direct testimony of Mr. Keith Milner shows that AT&T's request is not
19 technically feasible and, therefore, BST lacks the capability to comply with the
20 request even if it were otherwise appropriate. BST's position on this issue is,
21 therefore, consistent with the FCC Rules and should be adopted by this
22 Commission.

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Issue 4: WHEN AT&T RESELLS BELLSOUTH'S LOCAL EXCHANGE SERVICE, IS IT TECHNICALLY FEASIBLE OR OTHERWISE APPROPRIATE TO ROUTE 0+ AND 0- CALLS TO AN OPERATOR OTHER THAN BELLSOUTH'S, TO ROUTE 411 AND 555-1212 DIRECTORY ASSISTANCE CALLS TO AN OPERATOR OTHER THAN BELLSOUTH'S, OR TO ROUTE 611 REPAIR CALLS TO A REPAIR CENTER OTHER THAN BELLSOUTH'S?

BellSouth Position: BellSouth will route calls to AT&T's requested service if AT&T provides the appropriate unique dialing arrangements. BellSouth's retail service includes access via specified 0, 411, and 611 dialing arrangements to BellSouth's operator, directory assistance, and repair service. Therefore, the resold services include the same functionalities. As stated, routing of calls to various operator providers through the same dialing arrangements is not technically feasible or otherwise appropriate. Call routing was described in detail in Mr. Milner's direct testimony.

Assessment of Order: The actual issue here appears to be whether or not BST can offer selective routing of calls that are made by customers of AT&T when using a resold BST service. The assessment of this issue is the same as the assessment on Issue 3(a). BST has shown, in compliance with the Rules, that

1 providing what is being requested by AT&T is not technically feasible and,
2 therefore, does not have to be, and indeed cannot be, provided.

3

4 **Issue 3(b): WHEN BELLSOUTH'S EMPLOYEES OR AGENTS INTERACT**
5 **WITH AT&T'S CUSTOMERS WITH RESPECT TO A SERVICE**
6 **PROVIDED BY BELLSOUTH ON BEHALF OF AT&T, WHAT TYPE**
7 **OF BRANDING REQUIREMENTS ARE TECHNICALLY FEASIBLE**
8 **OR OTHERWISE APPROPRIATE?**

9

10 **BellSouth Position:** When BellSouth service technicians provide material, they
11 will not provide customer information provided by AT&T, but generic access
12 cards with the appropriate provider's name (AT&T). BellSouth personnel,
13 when providing services on behalf of AT&T, will not market directly or
14 indirectly to AT&T customers.

15

16 **Assessment of Order:** The Rules address branding. It is, however, limited to
17 the areas of operator, call completion, and directory assistance services. It does
18 not appear to consider what AT&T is requesting in this issue as branding and,
19 therefore, is not covered by the Rules. This should not be surprising because
20 what AT&T wants goes well beyond any requirements in the Act. BST's
21 position put forth in its direct testimony can, and therefore should be, allowed
22 by this Commission.

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Issue 6: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE NOTICE TO ITS WHOLESALE CUSTOMERS OF CHANGES TO BELLSOUTH'S SERVICES? IF SO, IN WHAT MANNER AND IN WHAT TIME FRAME?

BellSouth Position: BellSouth will provide notice to wholesale customers of changes in services offered for resale at the time BellSouth notifies its retail customers of such changes.

Assessment of Order: BST initially concludes that the Resale section of the Rules does not address this issue specifically and no reference is found in the Order. The Rules do state in Paragraph 51.603(b), “[a] LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, **subject to the same conditions, and provided within the same provisioning time intervals** (emphasis added) that the LEC provides these services to others, including end users.” If addressed at all, it appears that the Order confirms BST’s position and, therefore, should be adopted by this Commission.

Issue 7: SHOULD PIC CHANGES RECEIVED FROM IXC'S BE TREATED DIFFERENTLY FOR A BELLSOUTH EXCHANGE SERVICE BEING RESOLD BY AT&T THAN FOR A BELLSOUTH RETAIL

1 **EXCHANGE SERVICE?**

2

3 **BellSouth Position:** BellSouth plans to handle Primary Interexchange Carrier
4 (PIC) requests for all resellers under the same guidelines and framework used
5 to handle PIC requests today for IXCs.

6

7 **Assessment of Order:** The Rules do not specifically address the PIC.

8 Paragraph 51.603 (a), however, states that services must be made available for
9 resale on terms and conditions that are reasonable and non-discriminatory.

10 Further, Paragraph 51.603(b) states, “[a] LEC must provide services to
11 requesting telecommunications carriers for resale that are equal in quality,
12 subject to the same conditions, and provided within the same provisioning time
13 intervals that the LEC provides these services to others, including end users.”

14 Acceptance of AT&T’s position, that BST not process long distance carrier
15 designation changes sent to BST for AT&T customers served by resold
16 services, certainly would not appear to be in compliance with the
17 nondiscriminatory language of the Rules, and would appear to, in fact, give
18 AT&T an unfair competitive advantage.

19

20 BST’s proposed terms and conditions are both reasonable and
21 nondiscriminatory towards all competitors, not just AT&T, and should be
22 adopted by this Commission. Based on these preliminary observations, BST’s
23 position is consistent with the Order on this issue.

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Issue 8: WHAT ARE THE APPROPRIATE WHOLESALe RATES FOR BELLSouth TO CHARGE WHEN AT&T PURCHASES BELLSouth'S RETAIL SERVICES FOR RESALE?

BellSouth Position: The Act requires that rates for resold services shall be based on retail rates minus the costs that will be avoided due to resale.

BellSouth proposes a discount to be applied to both residential and business services based on avoided cost studies.

Assessment of Order: Wholesale pricing is addressed in Paragraphs 51.605 through 51.611 of the FCC's Rules. The Rules allow wholesale rates that are, at the election of the state commission, either consistent with the avoided cost methodology described in the Rules, or are interim wholesale rates, pursuant to the Rules.

The avoided cost methodology set forth in the Rules is different than the methodology used by BST in its original study submitted to this Commission and turns the pricing principle in the Act on its head. The Act clearly dictates the use of a "top down" approach to developing wholesale rates, and thus, the calculation begins with the retail rate and works down to the wholesale rate by deducting avoided costs. This is the only fair and logical approach, in light of the fact that BST's rates are not necessarily cost-based and reflect social

1 pricing considerations and a different competitive environment.

2

3 The FCC's approach, in essence, begins from the bottom and works up based
4 on costs that a pure wholesaler would incur (though disguised in terms of
5 reducing the retail rate by all costs that a pure wholesaler would not incur). As
6 discussed earlier, this is clearly inconsistent with the Act.

7

8 It should be noted, however, that the rates originally submitted by BST are
9 much closer to being consistent with the guidelines set forth in the Rules than
10 those submitted by AT&T. Paragraph 914 of the Order says that a study may
11 not calculate avoided costs based on non-cost factors or policy arguments nor
12 can it make disallowances for reasons not provided in the Pricing Standards
13 section of the Act. The Order specifically rejects several of AT&T's
14 arguments for items that should be included in a discount.

15

16 The Rules also refer to one discount that applies to all retail services. The FCC
17 does not, however, prohibit or require the development and state approval of
18 other than a single, uniform discount rate for all services, as has been presented
19 by BST.

20

21 BST believes that its original study is in compliance with the Federal Act. If
22 the Order stands as issued on this subject, a new avoided cost study will be
23 necessary. Included as Exhibit WSR-3 in the supplemental testimony, filed in

1 this docket by Mr. Walter Reid, BST submits a cost study performed based on
2 the guidelines set forth in the Rules. BST does not propose to change
3 wholesale discounts in accordance with this study. BST submits this study for
4 information purposes only.

5

6 **B. INTERCONNECTION**

7

8 **Issue 9: WHAT ARE THE APPROPRIATE TRUNKING ARRANGEMENTS**
9 **BETWEEN AT&T AND BELL SOUTH FOR LOCAL**
10 **INTERCONNECTION?**

11

12 **BellSouth Position:** Each interconnecting party should have the right to
13 determine the most efficient trunking arrangements for its network. Parties
14 should be free to work together and establish two-way arrangements if both
15 parties agree; however, such arrangements should not be mandated. Mr.
16 Atherton addressed this issue in detail in his direct testimony.

17

18 **Assessment of Order:** As an initial assessment of Paragraph 51.305 (f) of the
19 Rules, if technically feasible, BST must provide two-way trunking upon
20 request.

21

1 **Issue 10: WHAT SHOULD BE THE COMPENSATION MECHANISM FOR**
2 **THE EXCHANGE OF LOCAL TRAFFIC BETWEEN AT&T AND**
3 **BELLSOUTH?**

4
5 **BellSouth Position:** The rate for the transport and termination of traffic should
6 be set with recognition of the intrastate switched access rate. BellSouth has
7 proposed interconnection rates based on these charges exclusive of the residual
8 interconnection charge (RIC) and carrier common line (CCL) charge with a
9 105% cap applied on usage. BellSouth believes that the Act does not authorize
10 a commission to mandate that a party accept bill and keep as the method of
11 interconnection, eliminating the right to recover its costs.

12
13 **Assessment of Order:** Paragraph 51.705 of the Rules says that rates for
14 transport and termination of local telecommunications traffic are to be
15 established, at the election of the state commission, on the basis of: 1) the
16 forward-looking economic costs of such offerings, using a cost study pursuant
17 to the Rules; 2) default proxies as provided in the Rules; or 3) a bill-and-keep
18 arrangement. Paragraph 51.503 provides the general pricing standard for
19 interconnection. It states that rates are to be established , at the election of the
20 state commission, pursuant to the forward looking economic cost-based
21 methodology set forth in the Rules, or consistent with the proxy ceilings and
22 ranges set forth in the Rules.

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The rules for the forward-looking economic cost-based studies referred to in these sections are the same as those provided for unbundled network elements. Paragraph 51.713 of the Rules also gives the state commission the option to impose a bill-and-keep arrangement for reciprocal compensation if the commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the traffic flowing in the opposite direction, and is expected to remain so, and there has been no showing that rates should be asymmetrical.

If the state commission determines that the cost information available to it with respect to interconnection and transport and termination does not support adoption of rates that are consistent with the cost study procedures set forth in the Rules, it may establish rates for interconnection consistent with proxies specified in Paragraph 51.513 of the Rules or rates for transport and termination consistent with proxies specified in Paragraph 51.707 of the Rules. Any rate established in this manner is superseded once the state commission establishes rates based on an appropriate study or on a bill-and-keep arrangement for transport and termination.

If the Order stands as issued, our preliminary analysis concludes that BST will have to perform and submit cost studies to support its proposed rates, pursuant to the guidelines set forth in the Rules. No such cost studies are currently

1 available.

2

3 Until such time as cost studies are submitted and approved, the Commission
4 may set rates based on the default proxies provided in the Rules. The rates
5 proposed by BST are different than the default proxies provided in Paragraphs
6 51.513 and 51.707 of the Rules. Before using these, or any proxies, the FPSC
7 should determine whether or not these proxies are consistent with the Act.

8

9 In addition, the Rules give the Commission the option of ordering a bill-and-
10 keep arrangement with regard to transport and termination. As BST has
11 repeatedly stated and demonstrated, bill-and-keep is not an appropriate cost
12 recovery arrangement. BST does not believe that the Act permits bill-and-keep
13 to be mandated. Certainly if mandating bill-and-keep is not authorized by the
14 Act, it is not appropriate for the FCC's Order to allow state commissions to
15 mandate such arrangements.

16

17 **Issue 16: DO THE PROVISIONS OF SECTIONS 251 AND 252 APPLY TO**
18 **THE PRICE OF EXCHANGE ACCESS? IF SO, WHAT IS THE**
19 **APPROPRIATE RATE FOR EXCHANGE ACCESS?**

20

21 **BellSouth Position:** Sections 251 and 252 of the Act do not apply to the price
22 of exchange access. Therefore, BellSouth does not believe that the
23 Commission can arbitrate this issue and it should be dismissed.

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Assessment of Order: Our initial review concludes that the Order is very clear on this issue and leaves nothing to debate. In support of BST's position, Paragraph 51.305(b) of the Rules states, "[a] carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act."

C. UNBUNDLED NETWORK ELEMENTS

Issue 11(a): ARE THE FOLLOWING ITEMS CONSIDERED TO BE NETWORK ELEMENTS, CAPABILITIES, OR FUNCTIONS? IF SO, IS IT TECHNICALLY FEASIBLE FOR BELLSOUTH TO PROVIDE AT&T WITH THESE ELEMENTS? (NETWORK INTERFACE DEVICE, LOOP DISTRIBUTION, LOOP CONCENTRATOR/MULTIPLEXER, LOOP FEEDER, LOCAL SWITCHING, OPERATOR SYSTEMS, DEDICATED TRANSPORT, COMMON TRANSPORT, TANDEM SWITCHING, SIGNALING LINK TRANSPORT, SIGNAL TRANSFER POINTS, SERVICE CONTROL POINTS/DATA BASES)

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BellSouth Position: BellSouth and AT&T have agreed on the definitions and capabilities for four elements requested by AT&T -- tandem switching, signaling link transport, signal transfer points, and service control points/data bases. BellSouth has also agreed to provide unbundled loop facilities, unbundled local switching, operator systems, and dedicated transport, however, what BellSouth perceives as the definition of these elements is different than AT&T's perception. AT&T has requested that additional capabilities, i.e., sub-loop unbundling, be included in the definition of these unbundled elements. As discussed in Mr. Milner's direct testimony, these additional capabilities are not technically feasible.

Assessment of Order: Section D of the Rules discusses unbundling of network elements. It specifies that where technically feasible, access to unbundled network elements must be provided at just, reasonable and nondiscriminatory terms. Paragraph 51.319 provides a list of specific network elements that are to be offered on an unbundled basis. Those items are 1) local loop (without sub loop unbundling); 2) network interface device; 3) switching capability; 4) interoffice transmission facilities; 5) signaling networks (access to service control points through the unbundled STP) and call-related databases; 6) operation support systems functions; and 7) operator services and directory assistance. Our initial assessment concludes that these seven elements must be provided on an unbundled basis. Not included in this list are the sub loop

1 elements, i.e., loop distribution, loop concentrator/multiplexers, and loop
2 feeder, and the service control points requested by AT&T.

3
4 Paragraph 51.317 establishes the standards for the states to follow to identify
5 what additional network elements must be made available. Based on our initial
6 analysis of the Rules and the discussions put forth in BST's direct testimony, it
7 does not appear that AT&T's request for the unbundling of elements not
8 included in Paragraph 51.319 meet the criteria specified in Paragraph 51.317
9 and should, therefore, not be required by this Commission.

10

11 **Issue 13: SHOULD AT&T BE ALLOWED TO COMBINE BELLSOUTH'S**
12 **UNBUNDLED NETWORK ELEMENTS TO RECREATE EXISTING**
13 **BELLSOUTH SERVICES?**

14

15 **BellSouth Position:** ALECs should be able to combine BellSouth provided
16 elements with their own capabilities to create a unique service. However, they
17 should not be able to use only BellSouth's unbundled elements to create the
18 same functionality as a BellSouth existing service, i.e., it is not appropriate to
19 combine BST's loop and port to create basic local exchange service.

20

21 **Assessment of Order:** Paragraph 51.315 of the Rules states that an incumbent
22 LEC shall provide network elements in a manner that allows requesting
23 telecommunications carriers to combine such network elements in order to

1 provide a telecommunications service. An incumbent LEC that denies a
2 request to combine elements must prove to the state commission that the
3 requested combination is not technically feasible or that the requested
4 combination would impair the ability of other carriers to obtain access to
5 unbundled network elements or to interconnect with the incumbent LEC's
6 network.

7
8 Adoption of the FCC's Rules would clearly have a dramatic impact on, not
9 only the resale of BST's services but also on, the development of facilities
10 based competition. After our initial analysis, it appears clear that if the FCC's
11 Rules are adopted as issued, BST's position on this issue will need to change.

12

13 **Issue 11(b): WHAT SHOULD BE THE PRICE OF EACH OF THE ITEMS**
14 **CONSIDERED TO BE NETWORK ELEMENTS, CAPABILITIES, OR**
15 **FUNCTIONS?**

16

17 **BellSouth Position:** The price of unbundled network elements according to the
18 Act must be based on cost and may include a reasonable profit. Tariffed prices
19 for existing, unbundled tariffed services meet this requirement and are the
20 appropriate prices for these unbundled elements. The price for a new
21 unbundled service should be set to recover its costs, provide contribution to
22 shared and common costs and provide a reasonable profit.

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Assessment of Order: The general pricing standards for elements is discussed in Paragraph 51.503 of the Rules. Elements must be offered at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. The rates for each element an incumbent LEC offers shall comply with the rate structure set forth in the Rules. One significant requirement of the general rate structure standard included in Paragraph 51.507 is that, “[s]tate commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.” Rates shall be established pursuant to the forward - looking economic cost pricing methodology set forth in the Rules, or consistent with the proxy ceilings and ranges in the Rules.

Based on our initial review and if the Order stands, BST must submit cost studies performed based on the guidelines set forth in the FCC’s Rules. In addition, rates must be deaveraged for at least three geographic areas as determined by the state commission.

The Rules provide that until such time as cost studies are submitted and approved, the Commission may set rates based on default proxies that are provided in Paragraph 51.513. The rates proposed by BST are different than the default proxies provided in the Rules. As mentioned in the discussion of

1 Issue 10, before using these proxies, the FPSC should determine whether or not
2 they are consistent with the Act.

3

4 **Issue 12: DO THE PROVISIONS OF SECTIONS 251 AND 252 APPLY TO**
5 **ACCESS TO UNUSED TRANSMISSION MEDIA (E.G., DARK FIBER)?**
6 **IF SO, WHAT ARE THE APPROPRIATE RATES, TERMS, AND**
7 **CONDITIONS?**

8

9 **BellSouth Position:** BellSouth believes that AT&T is referring to dark or dry
10 fiber only and knows of no other example of unused transmission facilities.

11 Sections 251 and 252 do not apply to unused transmission media. Dry fiber is
12 neither an unbundled network element, nor is it a retail telecommunications
13 service to be resold. If it is not a network element and it is not a retail service,
14 there is no other standard under the Act for its provision.

15

16 To be a retail service it must be currently available as a tariffed (or comparable)
17 service offering. Dry fiber is not. To be an unbundled network element, it
18 must contain some functionality inherent in BellSouth's network. Dry fiber is
19 no more a network element than the four walls surrounding a switch are an
20 unbundled element.

21

22 **Assessment of Order:** The Rules do not address dry fiber as an unbundled
23 network element and, therefore, have no affect on BST's position.

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Issue 15: WHAT ARE THE APPROPRIATE STANDARDS, IF ANY, FOR PERFORMANCE METRICS, SERVICE RESTORATION, AND QUALITY ASSURANCE RELATED TO SERVICE PROVIDED BY BELLSOUTH FOR RESALE AND FOR NETWORK ELEMENTS PROVIDED TO AT&T BY BELLSOUTH?

Issue 20: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE PROCESS AND DATA QUALITY CERTIFICATION FOR CARRIER BILLING, DATA TRANSFER, AND ACCOUNT MAINTENANCE?

BellSouth Position: BellSouth will provide the same quality for services provided to AT&T and other ALECs that it provides to its own customers for comparable services. The current Commission rules for service quality and monitoring procedures should be used to address any concerns. It is premature to specify DMOQs until adequate experience is available. It is appropriate, however, to jointly develop quality measurements. Liquidated damages are not subject to arbitration.

Assessment of Order: BST preliminarily concludes that its position on Issue 15 appears to be consistent with the FCC's Order and Rules. Provisioning of unbundled network elements is covered in Paragraph 51.311 of the Rules. It states that the quality of unbundled network elements, as well as the quality of

1 the access, that an incumbent LEC provides to a requesting carrier shall be the
2 same for all telecommunications carriers requesting access to that network
3 element. It goes on to say that, to the extent technically feasible, the quality of
4 the access to unbundled network elements must be at least equal in quality to
5 that which the incumbent LEC provides to itself. Also, to the extent
6 technically feasible, the quality of an unbundled network element as well as the
7 quality of the access to the element, upon request, shall be superior to that
8 which the incumbent LEC provides to itself.

9
10 Paragraph 311 of the Order discusses reporting requirements. The FCC
11 believes that the record is insufficient at this time to adopt requirements. They
12 do, however, encourage the states to adopt reporting requirements. In addition,
13 in Paragraphs 124 - 129, the FCC discusses several options that parties have for
14 seeking relief if they believe that a carrier has violated the standards under
15 Section 251 or 252. These include bringing action in federal district court;
16 using the section 208 complaint process; and seeking relief under the antitrust
17 laws, other statutes, or common law.

18
19 On Issue 20, the Order appears to be silent on data quality certification. It does
20 not appear that BST's position, that it will provide the same quality for services
21 provided to its competitors that it provides to its own end users, needs to
22 change.

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D. ADDITIONAL INTERCONNECTION REQUIREMENTS AND ISSUES

Issue 14: IS IT APPROPRIATE FOR BELLSOUTH TO PROVIDE COPIES OF ENGINEERING RECORDS THAT INCLUDE CUSTOMER SPECIFIC INFORMATION WITH REGARD TO BELLSOUTH'S POLES, DUCTS, AND CONDUITS? HOW MUCH CAPACITY IS APPROPRIATE FOR BELLSOUTH TO RESERVE WITH REGARD TO ITS POLES, DUCTS AND CONDUITS?

BellSouth Position: BellSouth will provide structure occupancy information regarding conduits, poles, and other rights-of-way requested by AT&T and will allow designated AT&T personnel or agents to examine engineering records or drawings pertaining to such requests. It is reasonable for BellSouth to reserve in advance five years of capacity in a given facility. Mr. Milner provides additional detail on this issue in his direct testimony.

Assessment of Order: The Order does not appear to address the provision of engineering records. BST's position on this portion of the issue does not appear to be affected.

The Order does not appear to change existing portions of Section 224(f)(1), addressing reserve capacity. On this portion of the issue, it is unclear at this

1 time what the affect will be on BST's position. The FCC's Order addresses
2 reserving capacity in Paragraph 1170. It states that section 224(f)(1) requires
3 nondiscriminatory treatment of all providers of telecommunications or video
4 services and does not contain an exception for the benefit of such a provider on
5 account of its ownership or control of the facility or right - of - way. Paragraph
6 1170 goes on to say that permitting an incumbent LEC to, for example, reserve
7 space for local exchange service, to the detriment of a would-be entrant into the
8 local exchange business, would favor the future needs of the incumbent over
9 the current needs of the new entrant. Section 224(f)(1) prohibits such
10 discrimination among telecommunications carriers.

11

12 **Issue 5: WHAT RATES SHOULD APPLY TO COLLECT, THIRD PARTY,**
13 **INTRALATA AND INFORMATION SERVICE PROVIDER CALLS?**

14

15 **BellSouth Position:** BST believes that this issue addresses AT&T's request for
16 a uniform regional system for the processing of intraLATA collect and third
17 number type calls in addition to information services calls. As BST
18 understands, the regional system AT&T envisions would be uniform across
19 states, call types and incumbent LECs. Although such a system may simplify
20 matters for AT&T in processing these types of calls, such a uniform system for
21 rating of calls for LECs, Independent Companies and other providers does not
22 currently exist. Current systems are more state specific. BellSouth is
23 investigating the feasibility of a uniform system. BST has no obligation,

1 however, to develop and implement a new system simply to meet AT&T's
2 desire for uniformity.

3
4 Assessment of Order: This does not appear to be an interconnection issue and
5 the Order does not appear to address it. It does not involve unbundled access
6 to existing elements or resale of a retail service. BST has said that it will work
7 with AT&T on its request and has no reason to change its position on this
8 issue.

9
10 **Issue 12 Unresolved: SHOULD BELLSOUTH BE REQUIRED TO**
11 **PROVIDE COPIES OF ALL INTERCONNECTION AGREEMENTS**
12 **ENTERED INTO BETWEEN BELLSOUTH AND OTHER CARRIERS?**

13
14 BellSouth Position: The Act does not require that all previous interconnection
15 agreements be filed with the Commission. The Act deals specifically with
16 agreements resulting from a request for interconnection pursuant to Section
17 251. BellSouth will provide all agreements that have been negotiated pursuant
18 to Section 251 once they become public.

19
20 Assessment of Order: Paragraph 51.303 addresses preexisting agreements. It
21 states that, "[a]ll interconnection agreements between an incumbent LEC and a
22 telecommunications carrier, including those negotiated before February 8,
23 1996, shall be submitted by the parties to the appropriate state commission for

1 approval pursuant to section 252(e) of the Act.” It goes on in, sub-paragraph
2 (b), to state that the interconnection agreements negotiated before February 8,
3 1996, between Class A carriers, shall be filed with the state commissions no
4 later than June 30, 1997, or earlier if the state commission requires.

5
6 Our preliminary assessment concludes that BST will be required to file all
7 negotiated interconnection agreements with the state commission if this portion
8 of the Order stands. As previously stated, however, we do not believe that this
9 is required by the Act.

10
11 **Issue 19: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE CARRIER**
12 **BILLING USING INDUSTRY STANDARDS?**

13
14 **BellSouth Position:** There is no industry standard requiring billing for services
15 sold to resellers through the Carrier Access Billing System (CABS), nor is one
16 imminent. Billing through the Customer Record Information System (CRIS)
17 contains the necessary infrastructure to provide the line level detail associated
18 with resold services. Ms. Calhoun addresses this issue and BellSouth’s
19 position in her direct testimony.

20
21 **Assessment of Order:** The Order and Rules do not cover this specific issue
22 when addressing resale. In as much as this can be construed as a question or
23 issue regarding provisioning, Paragraph 51.603(b) states, “[a] LEC must

1 provide services to requesting telecommunications carriers for resale that are
2 equal in quality, subject to the same conditions, and provided within the same
3 provisioning time intervals that the LEC provides these services to others,
4 including end users.” BST provides billing to its end users through CRIS.

5 BST’s position is certainly consistent with this portion of the Rules and should,
6 therefore, be approved by the FPSC.

7

8 **Issue 23: SHOULD BELLSOUTH BE REQUIRED TO PROVIDE INTERIM**
9 **NUMBER PORTABILITY SOLUTIONS IN ADDITION TO REMOTE**
10 **CALL FORWARDING?**

11

12 **BellSouth Position:** BellSouth offers Remote Call Forwarding and Direct
13 Inward Dialing as interim number portability solutions. In addition, Mr.
14 Atherton’s testimony addresses the Local Exchange Routing (LERG) solution
15 requested by AT&T. He also discusses AT&T’s request for a five minute
16 conversion.

17

18 **Assessment of Order:** The rules governing number portability, according to
19 Paragraph 51.203 of the Rules, are set forth in part 52, subpart C, of the FCC’s
20 Rules. The First Report and Order does not modify part 52 and, therefore, has
21 no affect on BST’s position.

22

1 **Issue 24: WHAT ARE APPROPRIATE GENERAL TERMS AND**
2 **CONDITIONS THAT SHOULD GOVERN THE ARBITRATION**
3 **AGREEMENT (e.g. RESOLUTION OF DISPUTES, PERFORMANCE**
4 **REQUIREMENTS, AND TREATMENT OF CONFIDENTIAL**
5 **INFORMATION)?**

6
7 **BellSouth Position:** Issues regarding the process, terms and conditions,
8 confidentiality, or any other arbitration procedure should be resolved in a
9 separate proceeding, preferably prior to the initiation of an arbitration request.
10 This issue should not be included in this arbitration proceeding.

11
12 **Assessment of Order:** Our initial review revealed no mention of any specific
13 conditions concerning the arbitration procedure. There appears to be no reason
14 for BST's position on this issue to change, particularly as I stated in my direct
15 testimony, since the Commission is addressing this issue as a separate
16 undertaking.

17
18 **Issue 25: SHOULD AT&T RECEIVE, FOR ITS CUSTOMERS,**
19 **NONDISCRIMINATORY ACCESS TO WHITE AND YELLOW PAGE**
20 **DIRECTORY LISTINGS?**

21
22 **BellSouth Position:** Because AT&T has reached agreement with BellSouth's
23 directory publishing affiliate, BAPCO, on all issues covered under the Act,

1 BellSouth considers this issue moot. The Act requires inclusion of subscriber
2 listings in White Pages directories as a checklist item. BellSouth has already
3 agreed to ensure that AT&T and other ALEC subscribers' listings are included
4 in the White Pages directories and BAPCO has contracted directly with AT&T
5 to accomplish this purpose. Any Commission action beyond this agreed upon
6 provision would affect the interests of BAPCO, as publisher, which is not a
7 party to this proceeding.

8
9 BellSouth believes that the issue of placing a logo on a directory cover is not
10 subject to arbitration under Section 251 of the Act, and is neither a
11 telecommunications principle nor subject to the Commission's jurisdiction in
12 this matter and, therefore, requests that the Commission not arbitrate this issue.
13 AT&T should, as they have previously, attempt to negotiate this issue with
14 BAPCO.

15
16 Assessment of Order: Although the Rules do address a white page directory
17 listing in Paragraph 51.319(c), it is my understanding that, as stated above,
18 based on an agreement reached between AT&T and BAPCO, all directory
19 issues, except the one concerning logos, have been resolved. With respect to
20 logos, neither the Order nor the Act create any rights or jurisdiction over this
21 request by AT&T. BST's position should be accepted.

22

1 Q. WOULD YOU PLEASE SUMMARIZE YOUR TESTIMONY?

2

3 A. Yes. BST has completed its initial analysis of the FCC's First Report and
4 Order issued in CC Docket No. 96-98. While more conclusive responses
5 would obviously have been more helpful, the FCC's Order is extremely
6 comprehensive and detailed. My testimony has provided BST's preliminary
7 assessment on each of the issues established in this docket. Based on that
8 assessment, our positions on Issues 1, 2, 3(a), 4, 6, 7, 11(a), 15, 16, and 25
9 appear to be consistent with the Order as it has been issued. BST urges this
10 Commission to accept the Company's position on these issues, as well as the
11 positions on those issues referred to earlier in my testimony that do not appear
12 to be addressed by the Order.

13

14 This testimony, in general, has not attempted to identify the extent to which the
15 Order comports with the Act. This is, however, one of the most important
16 considerations to be made with regard to the Order and Rules.

17

18 My testimony has made the point on several issues of "if the Order stands as
19 issued". Many significant changes may be seen in the Order and Rules before
20 they are final. BST is not suggesting that the Order be ignored, however, the
21 FPSC must continue to exercise its authority in carrying out what it judges to
22 be its responsibilities in the implementation of the Act.

1

2 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

3

4 A. Yes.

PART 51 -- INTERCONNECTION

Subpart A - General information

Sec.

51.1

Basis and purpose.

51.3

Applicability to negotiated agreements.

51.5

Terms and definitions.

Subpart B - Telecommunications carriers

51.100

General duty.

Subpart C - Obligations of all local exchange carriers

- 51.201 Resale.
- 51.203 Number portability.
- 51.219 Access to rights of way.
- 51.221 Reciprocal compensation.
- 51.223 Application of additional requirements.

Subpart D - Additional obligations of incumbent local exchange carriers

- 51.301 Duty to negotiate.
- 51.303 Preexisting agreements.
- 51.305 Interconnection.
- 51.307 Duty to provide access on an unbundled basis to network elements.
- 51.309 Use of unbundled network elements.
- 51.311 Nondiscriminatory access to unbundled network elements.
- 51.313 Just, reasonable and nondiscriminatory terms and conditions for the provision of unbundled network elements.
- 51.315 Combination of unbundled network elements.
- 51.317 Standards for identifying network elements to be made available.
- 51.319 Specific unbundling requirements.
- 51.321 Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.
- 51.323 Standards for physical collocation and virtual collocation.

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- 51.401 State authority.
- 51.403 Carriers eligible for suspension or modification under section 251(f)(2) of the Act.
- 51.405 Burden of proof.

Subpart F - Pricing of interconnection and unbundled elements

- 51.501 Scope.
- 51.503 General pricing standard.
- 51.505 Forward-looking economic cost.
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Subpart G - Resale

- 51.601 Scope of resale rules.
- 51.603 Resale obligation of all local exchange carriers.
- 51.605 Additional obligations of incumbent local exchange carriers.
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- 51.611 Interim wholesale rates.
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- 51.615 Withdrawal of services.
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Subpart H - Reciprocal compensation for transport and termination of local telecommunications traffic

- 51.701 Scope of transport and termination pricing rules.
- 51.703 Reciprocal compensation obligation of LECs.
- 51.705 Incumbent LECs' rates for transport and termination.
- 51.707 Default proxies for incumbent LECs' transport and termination rates.
- 51.709 Rate structure for transport and termination.
- 51.711 Symmetrical reciprocal compensation.
- 51.713 Bill-and-keep arrangements for reciprocal compensation.
- 51.715 Interim transport and termination pricing.
- 51.717 Renegotiation of existing non-reciprocal arrangements.

Subpart I - Procedures for implementation of section 252 of the Act.

- 51.801 Commission action upon a state commission's failure to act to carry out its responsibility under section 252 of the Act.
- 51.803 Procedures for Commission notification of a state commission's failure to act.
- 51.805 The Commission's authority over proceedings and matters.
- 51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.
- 51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

AUTHORITY: Sections 1-5, 7, 201-05, 218, 225-27, 251-54, 271, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151-55, 157, 201-05, 218, 225-27, 251-54, 271, unless otherwise noted.

Subpart A - General Information.

§ 51.1 Basis and purpose.

(a) ***Basis.*** These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) ***Purpose.*** The purpose of these rules is to implement sections 251 and 252 of the Communications Act of 1934, as amended, 47 U.S.C. 251 and 252.

§ 51.3 Applicability to negotiated agreements.

To the extent provided in section 252(e)(2)(A) of the Act, a state commission shall have authority to approve an interconnection agreement adopted by negotiation even if the terms of the agreement do not comply with the requirements of this part.

§ 51.5 Terms and definitions.

Terms used in this part have the following meanings:

Act. The Communications Act of 1934, as amended.

Advanced intelligent network. "Advanced Intelligent Network" is a telecommunications network architecture in which call processing, call routing, and network management are provided by means of centralized databases located at points in an incumbent local exchange carrier's network.

Arbitration, final offer. "Final offer arbitration" is a procedure under which each party submits a final offer concerning the issues subject to arbitration, and the arbitrator selects, without modification, one of the final offers by the parties to the arbitration or portions of both such offers. "Entire package final offer arbitration," is a procedure under which the arbitrator must select, without modification, the entire proposal submitted by one of the parties to the arbitration. "Issue-by-issue final offer arbitration," is a procedure under which the arbitrator must select, without modification, on an issue-by-issue basis, one of the proposals submitted by the parties to the arbitration.

Billing. "Billing" involves the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgements and status reports. It also involves the exchange of information between telecommunications carriers to process claims and adjustments.

Commercial Mobile Radio Service (CMRS). "CMRS" has the same meaning as that term is defined in § 20.3 of this chapter.

Commission. "Commission" refers to the Federal Communications Commission.

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

Directory listings. "Directory listings" are any information: (1) identifying the listed names of subscribers of a telecommunications carrier and such subscriber's telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses or classifications; and (2) that the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Downstream database. A "downstream database" is a database owned and operated by an individual carrier for the purpose of providing number portability in conjunction with other functions and services.

Equipment necessary for interconnection or access to unbundled network elements. For purposes of section 251(c)(2) of the Act, the equipment used to interconnect with an incumbent local exchange carrier's network for the transmission and routing of telephone exchange service, exchange access service, or both. For the purposes of section 251(c)(3) of the Act, the equipment used to gain access to an incumbent local exchange carrier's unbundled network elements for the provision of a telecommunications service.

Incumbent Local Exchange Carrier (Incumbent LEC). With respect to an area, the local exchange carrier that: (1) on February 8, 1996, provided telephone exchange service in such area; and (2) (i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b) of this chapter; or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i) of this paragraph.

Interconnection. "Interconnection" is the linking of two networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic.

Local Exchange Carrier (LEC). A "LEC" is any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of the Act, except to the extent that the Commission finds that such service should be included in the definition of the such term.

Maintenance and repair. "Maintenance and repair" involves the exchange of information between telecommunications carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combination thereof from the other with attendant acknowledgements and status reports.

Meet point. A "meet point" is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.

Meet point interconnection arrangement. A "meet point interconnection arrangement" is an arrangement by which each telecommunications carrier builds and maintains its network to a meet point.

Network element. A "network element" is a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

Operator services. "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.

Physical collocation. "Physical collocation" is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

- (1) place its own equipment to be used for interconnection or access to unbundled network elements within or upon an incumbent LEC's premises;
- (2) use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or to gain access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service;
- (3) enter those premises, subject to reasonable terms and conditions, to install, maintain, and repair equipment necessary for interconnection or access to unbundled elements; and
- (4) obtain reasonable amounts of space in an incumbent LEC's premises, as provided in this part, for the equipment necessary for interconnection or access to unbundled elements, allocated on a first-come, first-served basis.

Premises. "Premises" refers to an incumbent LEC's central offices and serving wire centers, as well as all buildings or similar structures owned or leased by an incumbent LEC that house its network facilities, and all structures that house incumbent LEC facilities on public rights-of-way, including but not limited to vaults containing loop concentrators or similar structures.

Pre-ordering and ordering. "Pre-ordering and ordering" includes the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof.

Provisioning. "Provisioning" involves the exchange of information between telecommunications carriers where one executes a request for a set of products and services or unbundled network elements or combination thereof from the other with attendant acknowledgements and status reports.

Rural telephone company. A "rural telephone company" is a LEC operating entity to the extent that such entity:

(1) provides common carrier service to any local exchange carrier study area that does not include either:

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(4) has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996.

Service control point. A "service control point" is a computer database in the public switched network which contains information and call processing instructions needed to process and complete a telephone call.

Service creation environment. A "service creation environment" is a computer containing generic call processing software that can be programmed to create new advanced intelligent network call processing services.

Signal transfer point. A "signal transfer point" is a packet switch that acts as a routing hub for a signaling network and transfers messages between various points in and among signaling networks.

State commission. A "state commission" means the commission, board, or official (by whatever name designated) which under the laws of any State has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this part, this term may include the Commission if it assumes the responsibility of the state commission, pursuant to section 252(e)(5) of the Act. This term shall also include any person or persons to whom the state commission has delegated its authority under section 251 and 252 of the Act.

State proceeding. A "state proceeding" is any administrative proceeding in which a state commission may approve or prescribe rates, terms, and conditions including, but not limited to, compulsory arbitration pursuant to section 252(b) of the Act, review of a Bell operating company statement of generally available terms pursuant section 252(f) of the Act,

and a proceeding to determine whether to approve or reject an agreement adopted by arbitration pursuant to section 252(e) of the Act.

Technically feasible. Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.

Telecommunications carrier. A "telecommunications carrier" is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of the Act). A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. This definition includes CMRS providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private Mobile Radio Service providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

Virtual collocation. "Virtual collocation" is an offering by an incumbent LEC that enables a requesting telecommunications carrier to:

(1) designate or specify equipment to be used for interconnection or access to unbundled network elements to be located within or upon an incumbent LEC's premises, and dedicated to such telecommunications carrier's use;

(2) use such equipment to interconnect with an incumbent LEC's network facilities for the transmission and routing of telephone exchange service, exchange access service, or both, or for access to an incumbent LEC's unbundled network elements for the provision of a telecommunications service; and

(3) electronically monitor and control its communications channels terminating in such equipment.

Subpart B - Telecommunications Carriers.

§ 51.100 General duty.

(a) Each telecommunications carrier has the duty:

(1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers; and

(2) to not install network features, functions, or capabilities that do not comply with the guidelines and standards as provided in the Commission's rules or section 255 or 256 of the Act.

(b) A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

Subpart C - Obligations of All Local Exchange Carriers.

§ 51.201 Resale.

The rules governing resale of services by an incumbent LEC are set forth in subpart G of this part.

§ 51.203 Number portability.

The rules governing number portability are set forth in part 52, subpart C of this chapter.

§ 51.219 Access to rights of way.

The rules governing access to rights of way are set forth in part 1, subpart J of this chapter.

§ 51.221 Reciprocal compensation.

The rules governing reciprocal compensation are set forth in subpart H of this part.

§ 51.223 Application of additional requirements.

(a) A state may not impose the obligations set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs.

(b) A state commission, or any other interested party, may request that the Commission issue an order declaring that a particular LEC be treated as an incumbent LEC, or that a class or category of LECs be treated as incumbent LECs, pursuant to section 251(h)(2) of the Act.

Subpart D - Additional Obligations of Incumbent Local Exchange Carriers.

§ 51.301 Duty to negotiate.

(a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251(b) and (c) of the Act.

(b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(1) demanding that another party sign a nondisclosure agreement that precludes such party from providing information requested by the Commission, or a state commission, or in support of a request for arbitration under section 252(b)(2)(B) of the Act;

(2) demanding that a requesting telecommunications carrier attest that an agreement complies with all provisions of the Act, federal regulations, or state law;

(3) refusing to include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules;

(4) conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications;

(5) intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;

(6) intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and

(8) refusing to provide information necessary to reach agreement. Such refusal includes, but is not limited to:

(i) refusal by an incumbent LEC to furnish information about its network that a requesting telecommunications carrier reasonably requires to identify the network elements that it needs in order to serve a particular customer; and

(ii) refusal by a requesting telecommunications carrier to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

§ 51.303 Preexisting agreements.

(a) All interconnection agreements between an incumbent LEC and a telecommunications carrier, including those negotiated before February 8, 1996, shall be submitted by the parties to the appropriate state commission for approval pursuant to section 252(e) of the Act.

(b) Interconnection agreements negotiated before February 8, 1996, between Class A carriers, as defined by § 32.11(a)(1) of this chapter, shall be filed by the parties with the appropriate state commission no later than June 30, 1997, or such earlier date as the state commission may require.

(c) If a state commission approves a preexisting agreement, it shall be made available to other parties in accordance with section 252(i) of the Act and § 51.809 of this part. A state commission may reject a preexisting agreement on the grounds that it is inconsistent with the public interest, or for other reasons set forth in section 252(e)(2)(A) of the Act.

§ 51.305 Interconnection.

(a) An incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network:

(1) for the transmission and routing of telephone exchange traffic, exchange access traffic, or both;

(2) at any technically feasible point within the incumbent LEC's network including, at a minimum:

(i) the line-side of a local switch;

(ii) the trunk-side of a local switch;

(iii) the trunk interconnection points for a tandem switch;

(iv) central office cross-connect points;

(v) out-of-band signaling transfer-points necessary to exchange traffic at these points and access call-related databases; and

(vi) the points of access to unbundled network elements as described in § 51.319 of this part;

(3) that is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party, except as provided in paragraph (4) of this section. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier;

(4) that, if so requested by a telecommunications carrier and to the extent technically feasible, is superior in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the incumbent LEC provides interconnection. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier; and

(5) on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules including, but not limited to, offering such terms and conditions equally to all requesting telecommunications carriers, and offering such terms and conditions that are no less favorable than the terms and conditions the incumbent LEC provides such interconnection to itself. This includes, but is not limited to, the time within which the incumbent LEC provides such interconnection.

(b) A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange service, exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c)(2) of the Act.

(c) Previous successful interconnection at a particular point in a network, using particular facilities, constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(d) Previous successful interconnection at a particular point in a network at a particular level of quality constitutes substantial evidence that interconnection is technically feasible at that point, or at substantially similar points, at that level of quality.

(e) An incumbent LEC that denies a request for interconnection at a particular point must prove to the state commission that interconnection at that point is not technically feasible.

(f) If technically feasible, an incumbent LEC shall provide two-way trunking upon request.

§ 51.307 Duty to provide access on an unbundled basis to network elements.

(a) An incumbent LEC shall provide, to a 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 terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement, the requirements of sections 251 and 252 of the Act, and the Commission's rules.

(b) The duty to provide access to unbundled network elements pursuant to section 251(c)(3) of the Act includes a duty to provide a connection to an unbundled network element independent of any duty to provide interconnection pursuant to this part and section 251(c)(2) of the Act.

(c) 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.

(d) An incumbent LEC shall provide a requesting telecommunications carrier access to the facility or functionality of a requested network element separate from access to the facility or functionality of other network elements, for a separate charge.

§ 51.309 Use of unbundled network elements.

(a) 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 the requesting telecommunications carrier intends.

(b) A telecommunications carrier purchasing access to an unbundled network element may use such network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

(c) A telecommunications carrier purchasing access to an unbundled network facility is entitled to exclusive use of that facility for a period of time, or when purchasing access to a feature, function, or capability of a facility, a telecommunications carrier is entitled to use of that feature, function, or capability for a period of time. A telecommunications carrier's purchase of access to an unbundled network element does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element.

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element, except as provided in paragraph (c) of this section.

(b) Except as provided in paragraph (c) of this section, to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

(c) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall, upon request, be superior in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element or access to such unbundled network element at the requested level of quality that is superior to that which the incumbent LEC provides to itself. Nothing in this section prohibits an incumbent LEC from providing interconnection that is lesser in quality at the sole request of the requesting telecommunications carrier.

(d) Previous successful access to an unbundled element at a particular point in a network, using particular facilities, is substantial evidence that access is technically feasible at that point, or at substantially similar points, in networks employing substantially similar facilities. Adherence to the same interface or protocol standards shall constitute evidence of the substantial similarity of network facilities.

(e) Previous successful provision of access to an unbundled element at a particular point in a network at a particular level of quality is substantial evidence that access is technically feasible at that point, or at substantially similar points, at that level of quality.

§ 51.313 Just, reasonable and nondiscriminatory terms and conditions for the provision of unbundled network elements.

(a) The terms and conditions pursuant to which an incumbent LEC provides access to unbundled network elements shall be offered equally to all requesting telecommunications carriers.

(b) Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements, shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself.

(c) An incumbent LEC must provide a carrier purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support systems.

§ 51.315 Combination of unbundled network elements.

(a) An incumbent LEC shall provide unbundled network elements in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service.

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

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, 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.

(d) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the requesting telecommunications carrier in any technically feasible manner.

(e) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(1) or paragraph (d) of this section must prove to the state commission that the requested combination is not technically feasible.

(f) An incumbent LEC that denies a request to combine elements pursuant to paragraph (c)(2) of this section must prove to the state commission that the requested combination would impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

§ 51.317 Standards for identifying network elements to be made available.

(a) In determining what network elements should be made available for purposes of section 251(c)(3) of the Act beyond those identified in § 51.319 of this part, a state commission shall first determine whether it is technically feasible for the incumbent LEC to provide access to a network element on an unbundled basis.

(b) If the state commission determines that it is technically feasible for the incumbent LEC to provide access to the network element on an unbundled basis, the state commission may decline to require unbundling of the network element only if:

(1) the state commission concludes that:

(i) the network element is proprietary, or contains proprietary information that will be revealed if the network element is provided on an unbundled basis; and

(ii) a requesting telecommunications carrier could offer the same proposed telecommunications service through the use of other, nonproprietary unbundled network elements within the incumbent LEC's network; or

(2) the state commission concludes that the failure of the incumbent LEC to provide access to the network element would not decrease the quality of, and would not increase the financial or administrative cost of, the telecommunications service a requesting telecommunications carrier seeks to offer, compared with providing that service over other unbundled network elements in the incumbent LEC's network.

§ 51.319 Specific unbundling requirements.

An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 of this part and section 251(c)(3) of the Act to the following network elements on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service:

(a) Local Loop. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises;

(b) Network Interface Device.

(1) The network interface device network element is defined as a cross-connect device used to connect loop facilities to inside wiring.

(2) An incumbent LEC shall permit a requesting telecommunications carrier to connect its own local loops to the inside wiring of premises through the incumbent LEC's network interface device. The requesting telecommunications carrier shall establish this

connection through an adjoining network interface device deployed by such telecommunications carrier;

(c) Switching Capability.

(1) Local Switching Capability.

(i) The local switching capability network element is defined as:

(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 switch 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, and 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 signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch.

(ii) An incumbent LEC shall transfer a customer's local service to a competing carrier within a time period no greater than the interval within which the incumbent LEC currently transfers end users between interexchange carriers, if such transfer requires only a change in the incumbent LEC's software;

(2) Tandem Switching Capability. The tandem switching capability network element is defined 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 signaling conversion features;

(d) Interoffice Transmission Facilities.

(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.

(2) The incumbent LEC shall:

(i) provide a requesting telecommunications carrier exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or use of the features, functions, and capabilities of interoffice transmission facilities shared by more than one customer or carrier;

(ii) provide all technically feasible transmission facilities, features, functions, and capabilities that the requesting telecommunications carrier could use to provide telecommunications services;

(iii) permit, to the extent technically feasible, a requesting telecommunications carrier to connect such interoffice facilities to equipment designated by the requesting telecommunications carrier, including, but not limited to, the requesting telecommunications carrier's collocated facilities; and

(iv) permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the functionality provided by the incumbent LEC's digital cross-connect systems in the same manner that the incumbent LEC provides such functionality to interexchange carriers;

(e) Signaling Networks and Call-Related Databases.

(1) Signaling Networks.

(i) Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(ii) When a requesting telecommunications carrier purchases unbundled switching capability from an incumbent LEC, the incumbent LEC shall provide access to its signaling network from that switch in the same manner in which it obtains such access itself.

(iii) An incumbent LEC shall provide a requesting telecommunications carrier with its own switching facilities access to the incumbent LEC's signaling network for each of the requesting telecommunications carrier's switches. This connection shall be made

in the same manner as an incumbent LEC connects one of its own switches to a signal transfer point.

(iv) Under this paragraph, an incumbent LEC is not required to unbundle those signaling links that connect service control points to switching transfer points or to permit a requesting telecommunications carrier to link its own signal transfer points directly to the incumbent LEC's switch or call-related databases;

(2) Call-Related Databases.

(i) Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service.

(ii) For purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including, but not limited to, the Line Information Database, Toll Free Calling database, downstream number portability databases, and Advanced Intelligent Network databases, by means of physical access at the signaling transfer point linked to the unbundled database.

(iii) An incumbent LEC shall allow a requesting telecommunications carrier that has purchased an incumbent LEC's local switching capability to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(iv) An incumbent LEC shall allow a requesting telecommunications carrier that has deployed its own switch, and has linked that switch to an incumbent LEC's signaling system, to gain access to the incumbent LEC's service control point in a manner that allows the requesting carrier to provide any call-related, database-supported services to customers served by the requesting telecommunications carrier's switch.

(v) A state commission shall consider whether mechanisms mediating access to an incumbent LEC's Advanced Intelligent Network service control points are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(vi) An incumbent LEC shall provide a requesting telecommunications carrier with access to call-related databases in a manner that complies with section 222 of the Act;

(3) Service Management Systems.

(A) A service management system is defined as a computer database or system not part of the public switched network that, among other things:

(1) interconnects to the service control point and sends to that service control point the information and call processing instructions needed for a network switch to process and complete a telephone call; and

(2) provides telecommunications carriers with the capability of entering and storing data regarding the processing and completing of a telephone call.

(B) An incumbent LEC shall provide a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the particular incumbent LEC service management system.

(C) An incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy Advanced Intelligent Network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(D) A state commission shall consider whether mechanisms mediating access to Advanced Intelligent Network service management systems and service creation environments are necessary, and if so, whether they will adequately safeguard against intentional or unintentional misuse of the incumbent LEC's Advanced Intelligent Network facilities.

(E) An incumbent LEC shall provide a requesting telecommunications carrier access to service management systems in a manner that complies with section 222 of the Act;

(f) Operations Support Systems Functions.

(1) Operations support systems functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information.

(2) An incumbent LEC that does not currently comply with this requirement shall do so as expeditiously as possible, but, in any event, no later than January 1, 1997; and

(g) Operator Services and Directory Assistance. An incumbent LEC shall provide access to operator service and directory assistance facilities where technically feasible.

§ 51.321 **Methods of obtaining interconnection and access to unbundled elements under section 251 of the Act.**

(a) Except as provided in paragraph (e) of this section, an incumbent LEC shall provide, on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of this part, any technically feasible method of obtaining

interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier.

(b) Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to:

(1) physical collocation and virtual collocation at the premises of an incumbent LEC; and

(2) meet point interconnection arrangements.

(c) A previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on an incumbent LEC's network is substantial evidence that such method is technically feasible in the case of substantially similar network premises or points.

(d) An incumbent LEC that denies a request for a particular method of obtaining interconnection or access to unbundled network elements on the incumbent LEC's network must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible.

(e) An incumbent LEC shall not be required to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the incumbent LEC's premises if it demonstrates to the state commission that physical collocation is not practical for technical reasons or because of space limitations. In such cases, the incumbent LEC shall be required to provide virtual collocation, except at points where the incumbent LEC proves to the state commission that virtual collocation is not technically feasible. If virtual collocation is not technically feasible, the incumbent LEC shall provide other methods of interconnection and access to unbundled network elements to the extent technically feasible.

(f) An incumbent LEC shall submit to the state commission detailed floor plans or diagrams of any premises where the incumbent LEC claims that physical collocation is not practical because of space limitations.

(g) An incumbent LEC that is classified as a Class A company under § 32.11 of this chapter and that is not a National Exchange Carrier Association interstate tariff participant as provided in part 69, subpart G, shall continue to provide expanded interconnection service pursuant to interstate tariff in accordance with §§ 64.1401, 64.1402, 69.121 of this chapter, and the Commission's other requirements.

§ 51.323 Standards for physical collocation and virtual collocation.

(a) An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunications carriers.

(b) An incumbent LEC shall permit the collocation of any type of equipment used for interconnection or access to unbundled network elements. Whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC must prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. Equipment used for interconnection and access to unbundled network elements includes, but is not limited to:

(1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and

(2) equipment being collocated to terminate basic transmission facilities pursuant to §§ 64.1401 and 64.1402 of this chapter as of August 1, 1996.

(c) Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services.

(d) When an incumbent LEC provides physical collocation, virtual collocation, or both, the incumbent LEC shall:

(1) provide an interconnection point or points, physically accessible by both the incumbent LEC and the collocating telecommunications carrier, at which the fiber optic cable carrying an interconnector's circuits can enter the incumbent LEC's premises, provided that the incumbent LEC shall designate interconnection points as close as reasonably possible to its premises;

(2) provide at least two such interconnection points at each incumbent LEC premises at which there are at least two entry points for the incumbent LEC's cable facilities, and at which space is available for new facilities in at least two of those entry points;

(3) permit interconnection of copper or coaxial cable if such interconnection is first approved by the state commission; and

(4) permit physical collocation of microwave transmission facilities except where such collocation is not practical for technical reasons or because of space limitations, in which case virtual collocation of such facilities is required where technically feasible.

(e) When providing virtual collocation, an incumbent LEC shall, at a minimum, install, maintain, and repair collocated equipment identified in paragraph (b) of this section within the same time periods and with failure rates that are no greater than those that apply to the performance of similar functions for comparable equipment of the incumbent LEC itself.

(f) An incumbent LEC shall allocate space for the collocation of the equipment identified in paragraph (b) of this section in accordance with the following requirements:

(1) an incumbent LEC shall make space available within or on its premises to requesting telecommunications carriers on a first-come, first-served basis, provided, however, that the incumbent LEC shall not be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted;

(2) to the extent possible, an incumbent LEC shall make contiguous space available to requesting telecommunications carriers that seek to expand their existing collocation space;

(3) when planning renovations of existing facilities or constructing or leasing new facilities, an incumbent LEC shall take into account projected demand for collocation of equipment;

(4) an incumbent LEC may retain a limited amount of floor space for its own specific future uses, provided, however, that the incumbent LEC may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own future use;

(5) an incumbent LEC shall relinquish any space held for future use before denying a request for virtual collocation on the grounds of space limitations, unless the incumbent LEC proves to the state commission that virtual collocation at that point is not technically feasible; and

(6) an incumbent LEC may impose reasonable restrictions on the warehousing of unused space by collocating telecommunications carriers, provided, however, that the incumbent LEC shall not set maximum space limitations applicable to such carriers unless the incumbent LEC proves to the state commission that space constraints make such restrictions necessary.

(g) An incumbent LEC shall permit collocating telecommunications carriers to collocate equipment and connect such equipment to unbundled network transmission elements obtained from the incumbent LEC, and shall not require such telecommunications carriers to bring their own transmission facilities to the incumbent LEC's premises in which they seek to collocate equipment.

(h) An incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements.

(1) An incumbent LEC shall provide the connection between the equipment in the collocated spaces of two or more telecommunications carriers, unless the incumbent LEC permits one or more of the collocating parties to provide this connection for themselves; and

(2) An incumbent LEC is not required to permit collocating telecommunications carriers to place their own connecting transmission facilities within the incumbent LEC's premises outside of the actual physical collocation space.

(i) An incumbent LEC may require reasonable security arrangements to separate a collocating telecommunications carrier's space from the incumbent LEC's facilities.

(j) An incumbent LEC shall permit a collocating telecommunications carrier to subcontract the construction of physical collocation arrangements with contractors approved by

the incumbent LEC, provided, however, that the incumbent LEC shall not unreasonably withhold approval of contractors. Approval by an incumbent LEC shall be based on the same criteria it uses in approving contractors for its own purposes.

Subpart E - Exemptions, Suspensions, and Modifications of Requirements of Section 251 of the Act.

§ 51.401 State authority.

A state commission shall determine whether a telephone company is entitled, pursuant to section 251(f) of the Act, to exemption from, or suspension or modification of, the requirements of section 251 of the Act. Such determinations shall be made on a case-by-case basis.

§ 51.403 Carriers eligible for suspension or modification under section 251(f)(2) of the Act.

A LEC is not eligible for a suspension or modification of the requirements of section 251(b) or section 251(c) of the Act pursuant to section 251(f)(2) of the Act if such LEC, at the holding company level, has two percent or more of the subscriber lines installed in the aggregate nationwide.

§ 51.405 Burden of proof.

(a) Upon receipt of a bona fide request for interconnection, services, or access to unbundled network elements, a rural telephone company must prove to the state commission that the rural telephone company should be entitled, pursuant to section 251(f)(1) of the Act, to continued exemption from the requirements of section 251(c) of the Act.

(b) A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.

(c) In order to justify continued exemption under section 251(f)(1) of the Act once a bona fide request has been made, an incumbent LEC must offer evidence that the application of the requirements of section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

(d) In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act

would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

Subpart F - Pricing of Elements.

§ 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled elements, including physical collocation and virtual collocation.

(b) As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining interconnection and access to unbundled elements.

§ 51.503 General pricing standard.

(a) An incumbent LEC shall offer elements to requesting telecommunications carriers at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

(b) An incumbent LEC's rates for each element it offers shall comply with the rate structure rules set forth in §§ 51.507 and 51.509 of this part, and shall be established, at the election of the state commission--

(1) pursuant to the forward-looking economic cost-based pricing methodology set forth in §§ 51.505 and 51.511 of this part; or

(2) consistent with the proxy ceilings and ranges set forth in § 51.513 of this part.

(c) The rates that an incumbent LEC assesses for elements shall not vary on the basis of the class of customers served by the requesting carrier, or on the type of services that the requesting carrier purchasing such elements uses them to provide.

§ 51.505 Forward-looking economic cost.

(a) In general. The forward-looking economic cost of an element equals the sum of:

(1) the total element long-run incremental cost of the element, as described in paragraph (b); and

(2) a reasonable allocation of forward-looking common costs, as described in paragraph (c).

(b) Total element long-run incremental cost. The total element long-run incremental cost of an element is the forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as

incremental to, such element, calculated taking as a given the incumbent LEC's provision of other elements.

(1) Efficient network configuration. The total element long-run incremental cost of an element should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers.

(2) Forward-looking cost of capital. The forward-looking cost of capital shall be used in calculating the total element long-run incremental cost of an element.

(3) Depreciation rates. The depreciation rates used in calculating forward-looking economic costs of elements shall be economic depreciation rates.

(c) Reasonable allocation of forward-looking common costs.

(1) Forward-looking common costs. Forward-looking common costs are economic costs efficiently incurred in providing a group of elements or services (which may include all elements or services provided by the incumbent LEC) that cannot be attributed directly to individual elements or services.

(2) Reasonable allocation.

(A) The sum of a reasonable allocation of forward-looking common costs and the total element long-run incremental cost of an element shall not exceed the stand-alone costs associated with the element. In this context, stand-alone costs are the total forward-looking costs, including corporate costs, that would be incurred to produce a given element if that element were provided by an efficient firm that produced nothing but the given element.

(B) The sum of the allocation of forward-looking common costs for all elements and services shall equal the total forward-looking common costs, exclusive of retail costs, attributable to operating the incumbent LEC's total network, so as to provide all the elements and services offered.

(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts.

(2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609 of this part.

(3) Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carrier that purchase elements.

(4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

(e) Cost study requirements. An incumbent LEC must prove to the state commission that the rates for each element it offers do not exceed the forward-looking economic cost per

unit of providing the element, using a cost study that complies with the methodology set forth in this section and § 51.511 of this part.

(1) A state commission may set a rate outside the proxy ranges or above the proxy ceilings described in § 51.513 of this part only if that commission has given full and fair effect to the economic cost based pricing methodology described in this section and § 51.511 of this part in a state proceeding that meets the requirements of paragraph (e)(2) of this section.

(2) Any state proceeding conducted pursuant to this section shall provide notice and an opportunity for comment to affected parties and shall result in the creation of a written factual record that is sufficient for purposes of review. The record of any state proceeding in which a state commission considers a cost study for purposes of establishing rates under this section shall include any such cost study.

§ 51.507 General rate structure standard.

(a) Element rates shall be structured consistently with the manner in which the costs of providing the elements are incurred.

(b) The costs of dedicated facilities shall be recovered through flat-rated charges.

(c) The costs of shared facilities shall be recovered in a manner that efficiently apportions costs among users. Costs of shared facilities may be apportioned either through usage-sensitive charges or capacity-based flat-rated charges, if the state commission finds that such rates reasonably reflect the costs imposed by the various users.

(d) Recurring costs shall be recovered through recurring charges, unless an incumbent LEC proves to a state commission that such recurring costs are de minimis. Recurring costs shall be considered de minimis when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs.

(e) State commissions may, where reasonable, require incumbent LECs to recover nonrecurring costs through recurring charges over a reasonable period of time. Nonrecurring charges shall be allocated efficiently among requesting telecommunications carriers, and shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element.

(f) State commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences.

(1) To establish geographically-deaveraged rates, state commissions may use existing density-related zone pricing plans described in § 69.123 of this chapter, or other such cost-related zone plans established pursuant to state law.

(2) In states not using such existing plans, state commissions must create a minimum of three cost-related rate zones.

§ 51.509 Rate structure standards for specific elements.

In addition to the general rules set forth in § 51.507 of this part, rates for specific elements shall comply with the following rate structure rules.

- (a) **Local loops.** Loop costs shall be recovered through flat-rated charges.
- (b) **Local switching.** Local switching costs shall be recovered through a combination of a flat-rated charge for line ports and one or more flat-rated or per-minute usage charges for the switching matrix and for trunk ports.
- (c) **Dedicated transmission links.** Dedicated transmission link costs shall be recovered through flat-rated charges.
- (d) **Shared transmission facilities between tandem switches and end offices.** The costs of shared transmission facilities between tandem switches and end offices may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.
- (e) **Tandem switching.** Tandem switching costs may be recovered through usage-sensitive charges, or in another manner consistent with the manner that the incumbent LEC incurs those costs.
- (f) **Signaling and call-related database services.** Signaling and call-related database service costs shall be usage-sensitive, based on either the number of queries or the number of messages, with the exception of the dedicated circuits known as signaling links, the cost of which shall be recovered through flat-rated charges.
- (g) **Collocation.** Collocation costs shall be recovered consistent with the rate structure policies established in the *Expanded Interconnection* proceeding, CC Docket No. 91-141.

§ 51.511 Forward-looking economic cost per unit.

- (a) The forward-looking economic cost per unit of an element equals the forward-looking economic cost of the element, as defined in § 51.505 of this part, divided by a reasonable projection of the sum of the total number of units of the element that the incumbent LEC is likely to provide to requesting telecommunications carriers and the total number of units of the element that the incumbent LEC is likely to use in offering its own services, during a reasonable measuring period.
- (b) (1) With respect to elements that an incumbent LEC offers on a flat-rate basis, the number of units is defined as the discrete number of elements (*e.g.*, local loops or local switch ports) that the incumbent LEC uses or provides.

(2) With respect to elements that an incumbent LEC offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g., minutes of use or call-related database queries) of the element.

§ 51.513 Proxies for forward-looking economic cost.

(a) A state commission may determine that the cost information available to it with respect to one or more elements does not support the adoption of a rate or rates that are consistent with the requirements set forth in §§ 51.505 and 51.511 of this part. In that event, the state commission may establish a rate for an element that is consistent with the proxies specified in this section, provided that:

(1) any rate established through use of such proxies shall be superseded once the state commission has completed review of a cost study that complies with the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511 of this part, and has concluded that such study is a reasonable basis for establishing element rates; and

(2) the state commission sets forth in writing a reasonable basis for its selection of a particular rate for the element.

(b) The constraints on proxy-based rates described in this section apply on a geographically averaged basis. For purposes of determining whether geographically deaveraged rates for elements comply with the provisions of this section, a geographically averaged proxy-based rate shall be computed based on the weighted average of the actual, geographically deaveraged rates that apply in separate geographic areas in a state.

(c) Proxies for specific elements.

(1) Local loops. For each state listed below, the proxy-based monthly rate for unbundled local loops, on a statewide weighted average basis, shall be no greater than the figures listed in the table below. (The Commission has not established a default proxy ceiling for loop rates in Alaska).

TABLE A

State	Proxy Ceiling	State	Proxy Ceiling
Alabama	\$17.25	Nebraska	\$18.05
Arizona	\$12.85	Nevada	\$18.95
Arkansas	\$21.18	New Hampshire	\$16.00
California	\$11.10	New Jersey	\$12.47
Colorado	\$14.97	New Mexico	\$18.66
Connecticut	\$13.23	New York	\$11.75
Delaware	\$13.24	North Carolina	\$16.71
District of Columbia	\$10.81	North Dakota	\$25.36
Florida	\$13.68	Ohio	\$15.73
Georgia	\$16.09	Oklahoma	\$17.63
Hawaii	\$15.27	Oregon	\$15.44
Idaho	\$20.16	Pennsylvania	\$12.30
Illinois	\$13.12	Puerto Rico	\$12.47
Indiana	\$13.29	Rhode Island	\$11.48
Iowa	\$15.94	South Carolina	\$17.07
Kansas	\$19.85	South Dakota	\$25.33
Kentucky	\$16.70	Tennessee	\$17.41
Louisiana	\$16.98	Texas	\$15.49
Maine	\$18.69	Utah	\$15.12
Maryland	\$13.36	Vermont	\$20.13
Massachusetts	\$9.83	Virginia	\$14.13
Michigan	\$15.27	Washington	\$13.37
Minnesota	\$14.81	West Virginia	\$19.25
Mississippi	\$21.97	Wisconsin	\$15.94
Missouri	\$18.32	Wyoming	\$25.11
Montana	\$25.18		

(2) **Local switching.** The blended proxy-based rate for unbundled local switching shall be no greater than 0.4 cents (\$0.004) per minute, and no less than 0.2 cents (\$0.002) per minute, except that, where a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents (\$0.005) per minute, that rate may be retained pending completion of a forward-looking economic cost study. The blended rate for unbundled local switching shall be calculated as the sum of the following:

(A) the applicable flat-rated charges for subelements associated with unbundled local switching, such as line ports, divided by the projected average minutes of use per flat-rated subelement; and

(B) the applicable usage-sensitive charges for subelements associated with unbundled local switching, such as switching and trunk ports. A weighted average of such charges shall be used in appropriate circumstances, such as when peak and off-peak charges are used.

(3) Dedicated transmission links. The proxy-based rates for dedicated transmission links shall be no greater than the incumbent LEC's tariffed interstate charges for comparable entrance facilities or direct-trunked transport offerings, as described in §§ 69.110 and 69.112 of this chapter.

(4) Shared transmission facilities between tandem switches and end offices. The proxy-based rates for shared transmission facilities between tandem switches and end offices shall be no greater than the weighted per-minute equivalent of DS1 and DS3 interoffice dedicated transmission link rates that reflects the relative number of DS1 and DS3 circuits used in the tandem to end office links (or a surrogate based on the proportion of copper and fiber facilities in the interoffice network), calculated using a loading factor of 9,000 minutes per month per voice-grade circuit, as described in § 69.112 of this chapter.

(5) Tandem switching. The proxy-based rate for tandem switching shall be no greater than 0.15 cents (\$0.0015) per minute of use.

(6) Collocation. To the extent that the incumbent LEC offers a comparable form of collocation in its interstate expanded interconnection tariffs, as described in §§ 64.1401 and 69.121 of this chapter, the proxy-based rates for collocation shall be no greater than the effective rates for equivalent services in the interstate expanded interconnection tariff. To the extent that the incumbent LEC does not offer a comparable form of collocation in its interstate expanded interconnection tariffs, a state commission may, in its discretion, establish a proxy-based rate, provided that the state commission sets forth in writing a reasonable basis for concluding that its rate would approximate the result of a forward-looking economic cost study, as described in § 51.505 of this part.

(7) Signaling, call-related database, and other elements. To the extent that the incumbent LEC has established rates for offerings comparable to other elements in its interstate access tariffs, and has provided cost support for those rates pursuant to § 61.49(h) of this chapter, the proxy-based rates for those elements shall be no greater than the effective rates for equivalent services in the interstate access tariffs. In other cases, the proxy-based rate shall be no greater than a rate based on direct costs plus a reasonable allocation of overhead loadings, pursuant to § 61.49(h) of this chapter.

§ 51.515 Application of access charges.

(a) Neither the interstate access charges described in part 69 nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchasers of elements that offer telephone exchange or exchange access services.

(b) Notwithstanding §§ 51.505, 51.511, and 51.513(d)(2) of this part and paragraph (a) of this section, an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in § 51.319(c)(1) of this part, for interstate minutes of use traversing such unbundled local switching elements, the carrier

common line charge described in § 69.105 of this chapter, and a charge equal to 75% of the interconnection charge described in § 69.124 of this chapter, only until the earliest of the following, and not thereafter:

(1) June 30, 1997;

(2) the later of the effective date of a final Commission decision in CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, or the effective date of a final Commission decision in a proceeding to consider reform of the interstate access charges described in part 69; or

(3) with respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in a state pursuant to section 271 of the Act. The end date for Bell operating companies that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the Bell operating company is authorized to offer such service.

(c) Notwithstanding §§ 51.505, 51.511, and 51.513(d)(2) of this part and paragraph (a) of this section, an incumbent LEC may assess upon telecommunications carriers that purchase unbundled local switching elements, as described in § 51.319(c)(1) of this part, for intrastate toll minutes of use traversing such unbundled local switching elements, intrastate access charges comparable to those listed in paragraph (b) and any explicit intrastate universal service mechanism based on access charges, only until the earliest of the following, and not thereafter:

(1) June 30, 1997;

(2) the effective date of a state commission decision that an incumbent LEC may not assess such charges; or

(3) with respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in the state pursuant to section 271 of the Act. The end date for Bell operating companies that are authorized to offer interLATA service shall apply only to the recovery of access charges in those states in which the Bell operating company is authorized to offer such service.

Subpart G - Resale.

§ 51.601 Scope of resale rules.

The provisions of this subpart govern the terms and conditions under which LECs offer telecommunications services to requesting telecommunications carriers for resale.

§ 51.603 Resale obligation of all local exchange carriers.

(a) A LEC shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.

(b) A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.

§ 51.605 Additional obligations of incumbent local exchange carriers.

(a) An incumbent LEC shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates that are at the election of the state commission--

- (1) consistent with the avoided cost methodology described in §§ 51.607 and 51.609 of this part; or
- (2) interim wholesale rates, pursuant to § 51.611 of this part,

(b) Except as provided in § 51.613 of this part, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.

§ 51.607 Wholesale pricing standard.

(a) The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the incumbent LEC's existing retail rate for the telecommunications service, less avoided retail costs, as described in § 51.609 of this part.

(b) For purposes of this subpart, exchange access services, as defined in section 3 of the Act, shall not be considered to be telecommunications services that incumbent LECs must make available for resale at wholesale rates to requesting telecommunications carriers.

§ 51.609 Determination of avoided retail costs.

(a) Except as provided in § 51.611 of this part, the amount of avoided retail costs shall be determined on the basis of a cost study that complies with the requirements of this section.

(b) Avoided retail costs shall be those costs that reasonably can be avoided when an incumbent LEC provides a telecommunications service for resale at wholesale rates to a requesting carrier.

(c) For incumbent LECs that are designated as Class A companies under § 32.11 of this chapter, except as provided in paragraph (d), avoided retail costs shall:

- (1) include, as direct costs, the costs recorded in USOA accounts 6611 (product management), 6612 (sales), 6613 (product advertising), 6621 (call completion services), 6622

(number services), and 6623 (customer services) (§§ 32.6611, 32.6612, 32.6613, 32.6621, 32.6622, and 32.6623);

(2) include, as indirect costs, a portion of the costs recorded in USOA accounts 6121-6124 (general support expenses: 6612, 6711, 6721-6728 (corporate operations expenses), and 5301 (telecommunications uncollectibles) (§§ 32.6121-32.6124, 32.6612, 32.6711, 32.6721-32.6728, and 32.5301); and

(3) not include plant-specific expenses and plant non-specific expenses, other than general support expenses (§§ 32.6110-32.6116, 32.6210-32.6565).

(d) Costs included in accounts 6611-6613 and 6621-6623 described in paragraph (c) (§§ 32.6611-32.6613 and 32.6621-32.6623) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6110-6116 and 6210-6565 described in paragraph (c) (§§ 32.6110-32.6116, 32.6210-32.6565) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

(e) For incumbent LECs that are designated as Class B companies under § 32.11 of this chapter and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of the specific USOA accounts listed in paragraphs (c) and (d).

§ 51.611 Interim wholesale rates.

(a) If a state commission cannot, based on the information available to it, establish a wholesale rate using the methodology prescribed in § 51.609 of this part, then the state commission may elect to establish an interim wholesale rate as described in paragraph (b) of this section.

(b) The state commission may establish interim wholesale rates that are at least 17 percent, and no more than 25 percent, below the incumbent LEC's existing retail rates, and shall articulate the basis for selecting a particular discount rate. The same discount percentage rate shall be used to establish interim wholesale rates for each telecommunications service.

(c) A state commission that establishes interim wholesale rates shall, within a reasonable period of time thereafter, establish wholesale rates on the basis of an avoided retail cost study that complies with § 51.609 of this part.

§ 51.613 Restrictions on resale.

(a) Notwithstanding § 51.605(b) of this part, the following types of restrictions on resale may be imposed:

(1) *Cross-class selling.* 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.

(2) *Short term promotions.* An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

(A) such promotions involve rates that will be in effect for no more than 90 days; and

(B) the incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.

(b) With respect to any restrictions on resale not permitted under paragraph (a), an incumbent LEC may impose a restriction only if it proves to the state commission that the restriction is reasonable and nondiscriminatory.

(c) *Branding.* 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 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.

§ 51.615 Withdrawal of services.

When an incumbent LEC makes a telecommunications service available only to a limited group of customers that have purchased such a service in the past, the incumbent LEC 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.

§ 51.617 Assessment of end user common line charge on resellers.

(a) Notwithstanding the provision in § 69.104(a) of this chapter that the end user common line charge be assessed upon end users, an incumbent LEC shall assess this charge, and the charge for changing the designated primary interexchange carrier, upon requesting carriers that purchase telephone exchange service for resale. The specific end user common line charge to be assessed will depend upon the identity of the end user served by the requesting carrier.

(b) When an incumbent LEC provides telephone exchange service to a requesting carrier at wholesale rates for resale, the incumbent LEC shall continue to assess the interstate access charges provided in part 69, other than the end user common line charge, upon interexchange carriers that use the incumbent LEC's facilities to provide interstate or international telecommunications services to the interexchange carriers' subscribers.

Subpart H - Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic.

§ 51.701 Scope of transport and termination pricing rules.

(a) The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

(b) Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:

(1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

(2) telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.

(c) Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) ***Termination.*** For purposes of this subpart, termination is the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) ***Reciprocal compensation.*** For purposes of this subpart, a reciprocal compensation arrangement between two carriers is one in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

§ 51.703 Reciprocal compensation obligation of LECs.

(a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of local telecommunications traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

§ 51.705 Incumbent LECs' rates for transport and termination.

(a) An incumbent LEC's rates for transport and termination of local telecommunications traffic shall be established, at the election of the state commission, on the basis of:

- (1) the forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511 of this part;
- (2) default proxies, as provided in § 51.707 of this part; or
- (3) a bill-and-keep arrangement, as provided in § 51.713 of this part.

(b) In cases where both carriers in a reciprocal compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711 of this part.

§ 51.707 Default proxies for incumbent LECs' transport and termination rates.

(a) A state commission may determine that the cost information available to it with respect to transport and termination of local telecommunications traffic does not support the adoption of a rate or rates for an incumbent LEC that are consistent with the requirements of §§ 51.505 and 51.511 of this part. In that event, the state commission may establish rates for transport and termination of local telecommunications traffic, or for specific components included therein, that are consistent with the proxies specified in this section, provided that:

- (1) any rate established through use of such proxies is superseded once that state commission establishes rates for transport and termination pursuant to §§ 51.705(a)(1) or 51.705(a)(3) of this part; and

(2) the state commission sets forth in writing a reasonable basis for its selection of a particular proxy for transport and termination of local telecommunications traffic, or for specific components included within transport and termination.

(b) If a state commission establishes rates for transport and termination of local telecommunications traffic on the basis of default proxies, such rates must meet the following requirements:

(1) Termination. The incumbent LEC's rates for the termination of local telecommunications traffic shall be no greater than 0.4 cents (\$0.004) per minute, and no less than 0.2 cents (\$0.002) per minute, except that, if a state commission has, before August 8, 1996, established a rate less than or equal to 0.5 cents (\$0.005) per minute for such calls, that rate may be retained pending completion of a forward-looking economic cost study.

(2) Transport. The incumbent LEC's rates for the transport of local telecommunications traffic, under this section, shall comply with the proxies described in § 51.513(d)(3), (4), and (5) of this part that apply to the analogous unbundled network elements used in transporting a call to the end office that serves the called party.

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, a state commission shall establish rates for the transport and termination of local telecommunications traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in §§ 51.507 and 51.509 of this part.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

§ 51.711 Symmetrical reciprocal compensation.

(a) Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c).

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

(2) In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.

(b) A state commission may establish asymmetrical rates for transport and termination of local telecommunications traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511 of this part, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

(c) Pending further proceedings before the Commission, a state commission shall establish the rates that licensees in the Paging and Radiotelephone Service (defined in part 22, subpart E of this chapter), Narrowband Personal Communications Services (defined in part 24, subpart D of this chapter), and Paging Operations in the Private Land Mobile Radio Services (defined in part 90, subpart P of this chapter) may assess upon other carriers for the transport and termination of local telecommunications traffic based on the forward-looking costs that such licensees incur in providing such services, pursuant to §§ 51.505 and 51.511 of this part. Such licensees' rates shall not be set based on the default proxies described in § 51.707 of this part.

§ 51.713 Bill-and-keep arrangements for reciprocal compensation.

(a) For purposes of this subpart, bill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other carrier's network.

(b) A state commission may impose bill-and-keep arrangements if the state commission determines that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction, and is expected to remain so, and no showing has been made pursuant to § 51.711(b) of this part.

(c) Nothing in this section precludes a state commission from presuming that the amount of local telecommunications traffic from one network to the other is roughly balanced with the amount of local telecommunications traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of local telecommunications traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of local telecommunications traffic by the incumbent LEC.

(2) A telecommunications carrier may take advantage of such an interim arrangement only after it has requested negotiation with the incumbent LEC pursuant to § 51.301 of this part.

(b) Upon receipt of a request as described in paragraph (a), an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of local telecommunications traffic at symmetrical rates.

(1) In a state in which the state commission has established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall use these state-determined rates as interim transport and termination rates.

(2) In a state in which the state commission has established transport and termination rates consistent with the default price ranges and ceilings described in § 51.707 of this part, an incumbent LEC shall use these state-determined rates as interim rates.

(3) In a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in § 51.707 of this part, an incumbent LEC shall set interim transport and termination rates at the default ceilings for end-office switching (0.4 cents per minute of use), tandem switching (0.15 cents per minute of use), and transport (as described in § 51.707(b)(2) of this part).

(c) An interim arrangement shall cease to be in effect when one of the following occurs with respect to rates for transport and termination of local telecommunications traffic subject to the interim arrangement:

(1) a voluntary agreement has been negotiated and approved by a state commission;

(2) an agreement has been arbitrated and approved by a state commission; or

(3) the period for requesting arbitration has passed with no such request.

(d) If the rates for transport and termination of local telecommunications traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705 of this part, the state commission shall require carriers to make adjustments to past compensation. Such adjustments to past compensation shall allow each carrier to receive the level of compensation it would have received had the rates in the interim arrangement equalled the rates later established by the state commission pursuant to § 51.705 of this part.

§ 51.717 Renegotiation of existing non-reciprocal arrangements.

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

Subpart I - Procedures for Implementation of Section 252 of the Act.

§ 51.801 Commission action upon a state commission's failure to act to carry out its responsibility under section 252 of the Act.

(a) If a state commission fails to act to carry out its responsibility under section 252 of the Act in any proceeding or other matter under section 252 of the Act, the Commission shall issue an order preempting the state commission's jurisdiction of that proceeding or matter within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter and shall act for the state commission.

(b) For purposes of this part, a state commission fails to act if the state commission fails to respond, within a reasonable time, to a request for mediation, as provided for in section 252(a)(2) of the Act, or for a request for arbitration, as provided for in section 252(b) of the Act, or fails to complete an arbitration within the time limits established in section 252(b)(4)(C) of the Act.

(c) A state shall not be deemed to have failed to act for purposes of section 252(e)(5) of the Act if an agreement is deemed approved under section 252(e)(4) of the Act.

§ 51.803 Procedures for Commission notification of a state commission's failure to act.

(a) Any party seeking preemption of a state commission's jurisdiction, based on the state commission's failure to act, shall notify the Commission in accordance with following procedures:

(1) such party shall file with the Secretary of the Commission a petition, supported by an affidavit, that states with specificity the basis for the petition and any information that supports the claim that the state has failed to act, including, but not limited to, the applicable provisions of the Act and the factual circumstances supporting a finding that the state commission has failed to act;

(2) such party shall ensure that the state commission and the other parties to the proceeding or matter for which preemption is sought are served with the petition required in paragraph (a)(1) of this section on the same date that the petitioning party serves the petition on the Commission; and

(3) within fifteen days from the date of service of the petition required in paragraph (a)(1) of this section, the applicable state commission and parties to the proceeding may file with the Commission a response to the petition.

(b) The party seeking preemption must prove that the state has failed to act to carry out its responsibilities under section 252 of the Act.

(c) The Commission, pursuant to section 252(e)(5) of the Act, may take notice upon its own motion that a state commission has failed to act. In such a case, the Commission shall issue a public notice that the Commission has taken notice of a state commission's failure to act. The applicable state commission and the parties to a proceeding or matter in which the Commission has taken notice of the state commission's failure to act may file, within fifteen days of the issuance of the public notice, comments on whether the Commission is required to assume the responsibility of the state commission under section 252 of the Act with respect to the proceeding or matter.

(d) The Commission shall issue an order determining whether it is required to preempt the state commission's jurisdiction of a proceeding or matter within 90 days after being notified under paragraph (a) of this section or taking notice under paragraph (c) of this section of a state commission's failure to carry out its responsibilities under section 252 of the Act.

§ 51.805 The Commission's authority over proceedings and matters.

(a) If the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, the Commission shall retain jurisdiction over such proceeding or matter. At a minimum, the Commission shall approve or reject any interconnection agreement adopted by negotiation, mediation or arbitration for which the Commission, pursuant to section 252(e)(5) of the Act, has assumed the state's commission's responsibilities.

(b) Agreements reached pursuant to mediation or arbitration by the Commission pursuant to section 252(e)(5) of the Act are not required to be submitted to the state commission for approval or rejection.

§ 51.807 Arbitration and mediation of agreements by the Commission pursuant to section 252(e)(5) of the Act.

(a) The rules established in this section shall apply only to instances in which the Commission assumes jurisdiction under section 252(e)(5) of the Act.

(b) When the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, it shall not be bound by state laws and standards that would have applied to the state commission in such proceeding or matter.

(c) In resolving, by arbitration under section 252(b) of the Act, any open issues and in imposing conditions upon the parties to the agreement, the Commission shall:

(1) ensure that such resolution and conditions meet the requirements of section 251 of the Act, including the rules prescribed by the Commission pursuant to that section;

(2) establish any rates for interconnection, services, or network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) An arbitrator, acting pursuant to the Commission's authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(1) at the discretion of the arbitrator, final offer arbitration may take the form of either entire package final offer arbitration or issue-by-issue final offer arbitration.

(2) negotiations among the parties may continue, with or without the assistance of the arbitrator, after final arbitration offers are submitted. Parties may submit subsequent final offers following such negotiations.

(3) to provide an opportunity for final post-offer negotiations, the arbitrator will not issue a decision for at least fifteen days after submission to the arbitrator of the final offers by the parties.

(e) Final offers submitted by the parties to the arbitrator shall be consistent with section 251 of the Act, including the rules prescribed by the Commission pursuant to that section.

(f) Each final offer shall:

(1) meet the requirements of section 251, including the rules prescribed by the Commission pursuant to that section;

(2) establish rates for interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the Commission pursuant to that section; and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. If a final offer submitted by one or more parties fails to comply with the requirements of this section, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the Commission pursuant to that section.

(g) Participation in the arbitration proceeding will be limited to the requesting telecommunications carrier and the incumbent LEC, except that the Commission will consider requests by third parties to file written pleadings.

(h) Absent mutual consent of the parties to change any terms and conditions adopted by the arbitrator, the decision of the arbitrator shall be binding on the parties.

§ 51.809 Availability of provisions of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any individual interconnection, service, or network element only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) the costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) the provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

(c) Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act.

14. Part 90 of Title 47 of the Code of Federal Regulations (C.F.R.) is amended as follows: