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AT&T

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October 22, 1996

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. [redacted]3-TP;
Petition by AT&T Communications of the Southern States, Inc. for arbitration against BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996.

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket are an original and fifteen (15) copies of AT&T's Post-Hearing Brief. Copies of said brief have been served on the parties of record in accordance with the attached Certificate of Service.

Very truly yours,

Tracy Hatch

Tracy Hatch

Enclosures

cc: All Parties of Record

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AFA ____
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Interconnection Agreement Negotiations Between AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., and BELLSOUTH TELECOMMUNICATIONS, INC., Pursuant to 47 U.S.C.A. § 252	))))))))))	DOCKET NO. 960833-TP FILED: October 22, 1996

AT&T'S POST-HEARING BRIEF

AT&T Communications of the Southern States, Inc. ("AT&T") hereby submits its Post-hearing Brief in the above-captioned docket.

INTRODUCTION

This Commission has an historic opportunity to structure local telephone exchange competition in the BellSouth region of Florida -- to provide consumers with choices that heretofore did not exist. Congress this year passed the Telecommunications Act of 1996, (the Act) AT&T and other new market entrants are asking the Commission to set the rates, terms and conditions by which companies like AT&T will compete directly against incumbent local exchange companies like BellSouth Telecommunications, Inc. ("BellSouth"). The Commission should define the playing field so that the laws of fair competition control the choices available to consumers. Congress' rationale in passing the Act is the same as AT&T's in this arbitration: Florida consumers will benefit from increased choices, lower costs, increased value and earlier introduction of new technologies that competition will bring to the local exchange market.

The Act creates the foundation for effective competition by requiring incumbent local exchange carriers ("LECs") such as BellSouth to make available the tools which new market entrants need to participate in a competitive marketplace. See 47 U.S.C.A. §§ 251(c), (h), 252(j) (West Supp. May 1996). In particular, the Act requires incumbent LECs: (1) to provide facilities, equipment and services for interconnection at any technically feasible point, in a manner equal to that which the incumbent LEC provides to itself, and at prices based on cost; (2) to provide access to unbundled network elements of the incumbent LEC's local network at prices based on cost without reference to rate of return; and (3) to provide for resale, at wholesale rates, any telecommunications service the incumbent LEC provides to its retail customers. Id. § 251(c). The Act also requires that BellSouth provide each of these at "rates, terms and conditions" that are "just, reasonable, and nondiscriminatory." Id.

To accomplish these objectives, the Act places a duty on incumbent LECs to negotiate in good faith with other telecommunication carriers seeking to enter the local market. 47 U.S.C.A. §§ 251(c)(1), 252(a)-(b). If the incumbent LEC and the other carrier seeking entry are unable to reach a negotiated agreement, either party may petition the respective state utility commission to conduct a compulsory arbitration of the open and disputed issues. Id. § 252(b). The final agreement must be approved by the state commission. Id. § 252(e)(1).

Certain portions of the Act also require the FCC to participate in the Act's implementation. See, e.g., 47 U.S.C.A. §§ 251(b)(2), (d)(1), (e), 252(e)(5). On August 8, 1996, based on an extensive set of comments, the FCC released its First Report and Order. See FCC First Report and Order No. 96-235 ("FCC Order"). The FCC Order addresses many of the Act's requirements, including: interconnection; access to unbundled network elements; methods of obtaining interconnection and access to unbundled network elements; pricing of interconnection and unbundled elements; and resale of local services.

This Commission, BellSouth, and several other incumbent LECs and state commissions challenged the FCC Order. On October 16, 1996, the Eighth Circuit issued a temporary partial stay of the FCC Order. The temporary stay was limited to the FCC Order's pricing provisions, and the "pick and choose" rule. See Iowa Util. Bd. v. Federal Communications Comm'n, 1996 WL 589204 (8th Cir. Oct. 15, 1996). The court did not stay any other provisions of the FCC's Order which, therefore, remain in force.

Within this framework, AT&T is seeking to compete in the Florida local exchange market. By letter dated March 4, 1996, AT&T requested that BellSouth commence good faith interconnection negotiations with AT&T. Unfortunately, despite AT&T's best efforts to negotiate in good faith with BellSouth, these negotiations did not yield an interconnection agreement with BellSouth. On July 17, 1996, AT&T therefore filed its request for arbitration under the Act. The Commission held the arbitration hearing during October 9-11, 1996.

During negotiations and at the arbitration hearing, BellSouth has maintained a consistent position of seeking to protect its monopoly, and denying AT&T and other new entrants the tools they need to compete in Florida's local exchange market. In short, BellSouth's actions indicate it is quite happy with business as usual.

First, BellSouth is not willing to provide AT&T access to unbundled elements of BellSouth's local network at any technically feasible point. If AT&T is to have a chance at competing effectively with BellSouth, AT&T must have the ability to purchase unbundled elements from BellSouth's network and recombine them in any manner. Further, BellSouth must provide the unbundled elements with all of their features and functionalities. Unbundling will greatly enhance the choice of services available to Florida consumers. Unbundling also will allow AT&T and other new entrants to enter the market much more quickly than would be the case if they had to build their own facilities.

Second, BellSouth refuses to provide certain retail services for resale to AT&T. Such refusal is a clear violation of the Act. All services must be available for resale, or BellSouth will have an unfair advantage of being able to offer more choices than AT&T and other new entrants. Additionally, by reselling these services, AT&T and other new entrants could enter the market more quickly.

Third, BellSouth refuses to provide services and network elements to AT&T at fair and reasonable rates. With regard to interconnection and unbundled network element costs, BellSouth's proposal is not in compliance with the Act and otherwise not justified. With regard to wholesale rates, BellSouth relies upon a plainly incorrect reading of the Act in arguing that only costs that it chooses to avoid should be excluded under the Act.

Finally, from the outset of negotiations, BellSouth has insisted on various unfair, unreasonable, or discriminatory terms and conditions of interconnection, access to unbundled network elements, and resale. The Act requires BellSouth to provide these at parity with what BellSouth provides itself for its customers. If BellSouth is permitted to offer interconnection, access to unbundled elements or resale at levels of quality below parity, then competition surely will suffer to the detriment of Florida consumers.

The Act made available to new market entrants the tools they need in order to compete with BellSouth. BellSouth, however, is seeking to keep these tools out of the hands of its competitors. Each of BellSouth's arguments, including its technical arguments, should be viewed as what they really are: an attempt to suppress competition. Congress passed the Act with the goal of benefiting consumers by the earliest possible introduction of competition into the LEC market. Therefore, the Act mandates that incumbent LECs make their services and network elements available to new entrants. The Commission should rebuff BellSouth's every attempt to deny Florida consumers the benefits that only true competition can bring them -- increased choices, lower costs, increased value, increased choice and earlier introduction of new technologies.

POSITION ON THE ISSUES

ISSUE 1(a): Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for BellSouth to provide AT&T, MCI, or ACSI with these elements?

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

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AT&T: Position 1a: Each of the items listed are network elements and are technically feasible for BellSouth to provide on an unbundled basis. However, AT&T seeks only the following unbundled elements at this time: Network Interface Device, Local Loop Facility, Operator Systems, Dedicated and Common Transport, AIN Services and Operations Support Systems. AT&T has withdrawn its request for subloop unbundling from the instant arbitration request

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The Commission should order BellSouth to unbundle the following network elements, including all the features, functions and capabilities of each element: Network Interface Device, Local Loop Facility, Local Switching, Operator Systems, Dedicated Transport, Common Transport, Tandem Switching, Signaling Systems including the Advanced Intelligent Network ("AIN"), and Operations Support Systems. The Act requires BellSouth to provide access to unbundled network elements where technically feasible. 47 U.S.C.A. § 251(c)(3). BellSouth refuses to provide these elements on an unbundled basis. Unbundling refers to the offering of discrete elements of the incumbent LECs network as generic functionalities rather than as retail services. (Gillan, Tr. 76.) Accordingly, the Commission should order the unbundling of network elements in a manner that satisfies AT&T's requirements even in circumstances where BellSouth may have to make changes to its existing services. If adopted, the net effect of BellSouth's position, if adopted, is to delay the onset of competition through the use of unbundled network elements.

The Act defines a network element as "a facility or equipment used in the provision of a telecommunications service," including the "features, functions, and capabilities that are provided by means of such facility or equipment, including 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." 47 U.S.C.A. § 153(29).

When a customer picks up a phone and dials a number, a signal is passed into the Local Loop Facility. This network element is the transmission pathway between the subscriber's residence or business and his or her local switch. The Local Loop Facility consists of four sub-loop elements. First, the signal enters the Network Interface Device ("NID") attached to the customer's premises, where it connects with the second sub-loop element, the Loop Distribution wire. The Loop Distribution wire then carries the call between the NID and either the Feeder Distribution Interface ("FDI") or the Loop Concentrator/Multiplexer, depending upon the configuration of the particular loop. The FDI is a device that simply connects the Loop Distribution to the Loop Feeder.

The third subloop element, the Loop Concentrator/Multiplexer, provides several functions, including conversion of signals from analog to digital, and concentration of lines and signals. After passing through the Loop Concentrator/Multiplexer or the FDI, the call continues to the last of the four subloop elements, the Loop Feeder. The Loop Feeder connects customer lines from the Concentrator/Multiplexer on the FDI to the Local Switch, thus completing the transmission to the incumbent LEC's central office, where the Local Switch is located.

The Local Switch is the network element that provides many key features, including provision of dial-tone; proper routing of a call; access to Advanced Intelligent Network ("AIN") triggers; and compilation of data required for billing. The Local Switch also provides access to other network elements, including Operator Systems, Transport Elements, and the Signaling System.

Operator Systems include operator and automated call handling and billing, special services such as directory assistance, and optional call completion services. When a customer has dialed one of these services, the Local Switch has the capability to route the call to the operator platform belonging either to the incumbent LEC or the new entrant.

The main function of the Local Switch is to feed a call into the appropriate transport element to carry it to its destination. Dedicated and Common Transport provide interoffice transmission between designated locations. Dedicated Transport carries the traffic of one provider exclusively, while Common Transport carries the traffic of various providers. Tandem Switching is utilized to establish a communications path between two switching offices through a third switching office, where it is either impractical or uneconomical to connect multiple end offices and/or long distance carriers' points of presence directly to one another.

The Signaling System passes information on the routing and billing of calls within a carrier's network and between carriers. They also enable carriers to create and provide AIN services that permit access to a variety of innovative and competitive advanced features. Network signaling is provided through three separate network elements. First, Signaling Links are dedicated transmission paths that carry signaling messages between carriers' switches and signaling networks. Second, the Signal Transfer Point interconnects Signaling Links to route signaling messages between switches and databases. Third, a Service Control Point is a database containing customer and/or carrier-specific routing, billing, or service instructions.

Finally, a network may employ electronic interfaces. These are additional network elements that permit real time, interactive access between a new entrant's and the incumbent LEC's operations support systems to facilitate pre-ordering, ordering, provisioning, maintenance/repair and billing.

The Act requires BellSouth to provide nondiscriminatory access to all unbundled network elements that AT&T requests if technically feasible at any technically feasible point. 47 U.S.C.A. § 251 (c)(3).[1/] Once a network element has been unbundled from the local exchange network, it can be combined with other elements in such a way as to provide service offerings. (Tamplin, Tr. 280.) As the Commission will recall, Mr. Gillan likened unbundled network elements to the ingredients in the kitchen of a Chinese restaurant. (Gillan, Tr. 76.) The menu provided to the customer has a long list of choices, yet the ingredients in the kitchen are fairly basic. The chef merely combines the ingredients in many variations to create different dishes. Likewise, AT&T intends to provide Florida customers with an extensive menu of service

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1/ The FCC Order requires BellSouth to provide a minimum of seven unbundled network element categories and allows this Commission to require additional unbundling, unless BellSouth proves that unbundling is not technically feasible. 47 C.F.R. §§ 51.319, 51.317 (1996); FCC Order No. 96-325 ¶¶ 244, 366. All of the network elements requested by AT&T fit into the seven categories of elements identified by the FCC.

As was noted above, the court stayed only the pricing provisions and "pick and choose" rule. Unless otherwise indicated, provisions of the FCC Order relied upon by AT&T have not been stayed.

packages. But in order to be able to offer these variations, the network elements must be unbundled so that AT&T can combine these ingredients into its own services.

Unbundling of network elements will promote competition and benefit Florida consumers in a number of ways. First, unbundling enables new entrants to become competitive more quickly than otherwise would be possible. (Gillan, Tr. 77) Unbundling allows a carrier to establish services and attract consumers almost immediately while developing a better understanding of these elements. It plainly will take time for any new entrant to develop its own facilities and to understand the nuances of how the network elements work together. Thus, unbundling allows competition to develop more rapidly than would be the case if each new entrant had to develop its own facilities prior to entering the market. (Id.) Additionally, it promotes the development of new and improved facilities-based competition, not just competition based on duplication of existing facilities.

Second, unbundling network elements into a menu of generic ingredients allows new entrants to put together service packages not currently offered by BellSouth. (Gillan, Tr. 77.) Consumers will benefit directly because they have more service choices, and a new entrant can become immediately competitive by differentiating itself from other providers. In this way, unbundling provides consumers benefits that cannot be developed from the mere resale of existing BellSouth services, where the new entrant has little opportunity to change the basic structure of resold services.

Third, unbundling will result in greater consumer choices over the long run. New entrants will be able to expend their capital on developing new services and applications, rather than having to use their capital for the development of network facilities that essentially replicate the existing facilities of the incumbent LECs. (Gillan, Tr. 77-78.)

BellSouth refuses to unbundle all of the network elements that AT&T has requested. BellSouth argues it is not technically feasible to provide such access or that unbundling is not required for the elements requested. As explained below, each of the elements which AT&T has requested is an element which the Act requires to be unbundled, and it is technically feasible to provide the elements AT&T has requested. Thus, BellSouth is adopting a position that is aimed at stifling and not promoting competition. The reasons for this stifling approach are obvious: BellSouth, like all the other incumbent LECs, knows full well how expensive, and how long it will take, for AT&T and others to build duplicative networks and, therefore, how long before AT&T can compete effectively for BellSouth's customers.

The FCC Order discusses the appropriate definition of "technical feasibility" at some length. Order No. 96-325 at ¶¶ 192-206. First, the FCC concluded that "technically feasible" refers solely to technical or operational concerns and *not to economic, space or site considerations.* 47 C.F.R. § 51.5; FCC Order No. 96-325 ¶ 199. Congress' intent is clear. It dropped the explicit language "economically reasonable" from the final version of the bill, for the simple reason that such language may result in certain elements not being made available. H. Rep. 104-204, 71 (1995). Second, the FCC interpreted the Act to impose an obligation to modify the existing facilities of the incumbent LEC where necessary to accommodate access to unbundled network elements. FCC Order No. 96-325 ¶ 202. Third, the FCC found that a pre-existing access at a particular point was evidence of the feasibility of access at any substantially similar point. FCC Order No. 96-325 ¶ 204. Thus, where BellSouth already is providing tariffed services or facilities, this provides evidence that unbundling is technically feasible. Finally, the FCC placed upon the incumbent provider the burden of proving that unbundling is not technically feasible. FCC Order No. 96-325, ¶ 198. BellSouth has failed to meet this burden with respect to the unbundled network elements that AT&T has requested.

AT&T initially requested BellSouth to unbundle twelve of its network elements. The parties' ongoing negotiations have reduced the number of open issues. Each of remaining issues are discussed below.[2/]

A. **Network Interface Device**

The Network Interface Device ("NID") is the physical point of connection between the incumbent LEC and the end-user customer. (Tamplin, Tr. 282.) In the residential context, the NID is a box on the side of the customer's premises containing chambers in which the wire from the incumbent LEC and the wire from the customer's premises are connected. Some NID's have several connection slots. When this is the case, there is "excess" capacity in the NID. (Tamplin, Tr. 282-83.) BellSouth's evidence includes a schematic of a "typical" NID and shows the typical NID having excess capacity

2/ Two issues relating to the Local Loop facility remain the subject of this arbitration: (1) BellSouth refuses to grant access to the unbundled NID in the manner requested by AT&T, and (2) BellSouth refuses to unbundle the Local Loop where BellSouth facilities utilize Integrated Digital Loop Carriers ("IDLC's") in a manner that provides AT&T with access to all of BellSouth's customers as proposed by AT&T. AT&T originally requested access to four separate network elements within the Local Loop Facility: Network Interface Device, Loop Distribution, Loop Concentrator/Multiplexer and Loop Feeder. As to three subloop elements -- Loop Distribution, Loop Concentrator/Multiplexer and Loop Feeder--the parties have negotiated an agreement on a "Bona Fide Request Process" to be used when AT&T requests new services or elements or a change to any services or elements provided pursuant to the Interconnection Agreement. Requests to unbundle these three elements at a later date will be handled by the Bona Fide Request Process.

to which AT&T and other providers could connect directly. (Milner, Tr. 2732-33.) The Commission should require BellSouth to allow AT&T to attach its wire directly to the existing NID, either by utilizing excess capacity in the NID, or if no excess capacity exists, by disconnecting and grounding the BellSouth wire and attaching the AT&T wire.

BellSouth has refused to allow AT&T to connect its wire directly to BellSouth's NID, and insists that AT&T must install its own NID on the customer's premises. Simply put, BellSouth wants to impose an anti-competitive market barrier: each new entrant utilizing its own loop would be required to install its own NID on the customer's premises. (Tamplin, Tr. 282-83.) BellSouth's refusal will result in increased costs and could result in service problems. The exposed wires connecting one NID to another NID have the potential to increase service outages for the customer because the exposed wires are susceptible to damage from the weather, or could be inadvertently broken. (Tamplin, Tr. 326.)

BellSouth tries to use "wiring concerns" to erect a road block to competition. BellSouth argues that, if AT&T service personnel were to disconnect BellSouth's wire in order for AT&T to attach AT&T's wire to BellSouth's NID, then BellSouth's wire might not be properly grounded, thus creating an electrical hazard. (Milner, Tr. 2621.) Mr. Milner admitted, however, that if AT&T connected to spare capacity, the BellSouth wire would be grounded. He also admitted that AT&T technicians could otherwise ground the BellSouth loop if it were disconnected to make room for AT&T to attach to the customer's wiring in the existing NID. (Ex. 92 at 14-15; Tamplin, Tr. 327.) BellSouth's position on the NID should be evaluated for what it really is: a smoke screen argument offered simply to make it more difficult for new entrants to compete against BellSouth.

BellSouth admits it is technically feasible to allow AT&T access the customer's wire, but claims the FCC order does not require it to provide access directly to BellSouth's NID. (Milner, Tr. 2726, 2733.) Although the FCC Order assumes that a new entrant will install its own NID, it recognizes that a competitor may benefit by connecting its loops to the incumbent LEC's NID, and therefore provides that state commissions may determine, in the context of specific requests, whether a direct connection between the new entrant's local loop and the incumbent LEC's NID is technically feasible. 47 C.F.R. § 51.319(a); FCC Order No. 96-325 ¶ 396. AT&T has set forth the reasonable and safe manner in which it is prepared to connect its wire to the existing NID and acknowledged the need for safety precautions. (Tamplin, Tr. 327.) Therefore, the Commission should permit AT&T to connect its wire directly to BellSouth's NID.

B. Local Loop Facility

The Local Loop Facility provides a transmission pathway between the NID local subscriber's residence or business and his or her local switch. (Tamplin, Tr. 282.) BellSouth generally has agreed to provide access to the Local Loop. But it refuses to provide access to those Local Loops using Integrated Digital Loop Carriers ("IDLC's") except in limited circumstances. The Commission should order BellSouth to unbundle all of its Local Loop Facilities, including those using IDLC's.

BellSouth's refusal to provide unbundled access to any loop serviced by IDLC's again reflects BellSouth's attempt to deny choices in local markets a significant number of Florida consumers the choice of local exchange carrier.. If the Commission adopts BellSouth's position, only those customers served by facilities *not* employing IDLC's would benefit from competition; all the rest would remain relegated to BellSouth's ongoing attempts to continue its monopoly position. BellSouth's refusal will pose even greater problems in the long run because all new loops will make use of IDLC's. (Ellison, Tr. 387.) Therefore, denying new entrants access to IDLC-delivered loops will deny an ever increasing number of consumers the benefits of competition.

BellSouth argues it is not technically feasible to allow AT&T to utilize unbundled loops that are integrated in IDLC arrangements unlike other types of digital loop carriers, the IDLC-delivered loop is connected directly to the switch rather than being separated outside the switch and therefore, it would be costly to provide an unbundled loop through IDLC's. (Milner, Tr. 2633-35.) The FCC Order specifically provides that it is technically feasible to unbundle IDLC-delivered loops. 47 C.F.R. § 51.319(a); FCC Order No. 96-325 ¶¶ 377-96; FCC Order No. 96-325 ¶ 384. AT&T has proposed four alternate and technically feasible ways to unbundle the IDLC-delivered loops. (Tamplin, Tr. 299.) In addition, BellSouth has admitted that Next Generation Digital Loop Carrier, a new form currently available for installation, can be unbundled. (Ex. 92). This Commission should order BellSouth to unbundled all IDLC delivered loops and direct the parties to determine the technically feasible mechanism for doing so in each instance. Any other result will allow BellSouth to prevent AT&T from reaching a significant group of Florida consumers. Id.

C. Local Switching

The Commission should require BellSouth to unbundle its local switching from all other network elements. Local Switching provides dial tone for each line; features such as call waiting and call forwarding; proper routing of a call; access to AIN triggers to customize call processing; and creation of data necessary for customer billing. Local Switching also provides the functionality to connect the appropriate originating lines or trunks wired to a desired terminating line, platform or trunk. In addition to voice transmission capability, Local Switching also provides a second capability -- data switching. Thus, access to unbundled Local Switching includes the ability to buy either voice or data switching. (Tamplin, Tr. 286.)[3/]

Local Switching is critical to widespread local competition for a number of reasons. First, using unbundled Local Switching allows customers easily to change among local carriers who are using the unbundled Local Switching. If each carrier were forced to use its own switch, customers' lines would need to be reconfigured to a different switch for service, which would deter consumers from changing carriers. (Gillan, Tr. 86-87.) Second, access to the unbundled Local Switching element will allow new entrants to enter a market quickly, certainly more quickly than would be the case if new entrants had to build their own facilities. Third, AT&T and other new entrants could combine the unbundled Local Switch with other unbundled network elements, its own services and facilities, and/or the services and facilities of third parties. This would allow new entrants to provide innovations in services and differentiate themselves from competitors by offering a variety of service choices not currently available. (Gillan, Tr. 88-89; Tamplin, Tr. 286-7.)

BellSouth refuses to unbundle Local Switching. BellSouth's first "justification" for its refusal rests on an incorrect and misleading definition of the unbundled Local Switching. According to BellSouth, the Local Switching includes not just the switch, but also BellSouth operator services, directory assistance, repair service and inter-office transport. (This is BellSouth's so-called "port" offering). (Milner, Tr. 2644-45.) Local Switching, however, is an independent network element that is separate from these other elements. (Tamplin, Tr. 300.) Local Switching, as well as, each of these other elements all independently meet the Act's definition of a "network element" because they are features, functions or capabilities of facilities or equipment used in providing telecommunication services, and as such, must be separately offered to AT&T and other new entrants. 47 U.S.C.A. § 153(29). In fact, the Act explicitly requires that Local

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3/ The FCC Order requires BellSouth to provide access to "Switching Capability," including "any-technically feasible customized routing functions" and other functionalities requested by AT&T. 47 C.F.R. § 51.319(c); FCC Order No. 96-325 ¶¶ 410-427. The Order does not mandate the unbundling of Data Switching because the FCC stated it did not have sufficient information; however, the state commissions are free to make their own decision to unbundle this network element.

Switching be unbundled from "transport, local loop transmission or other services." 47 U.S.C.A. § 271(c)(2)(B)(vi). BellSouth therefore is wrong in insisting that its definition of local switching include its bundled offerings.

Despite the clear requirements of the Act, BellSouth insists that AT&T and other new entrants may not purchase just Local Switching, but also must purchase all the elements that comprise its port offering. Because AT&T already has developed some of these systems and facilities, such as operator services, BellSouth is urging this Commission to bless its efforts at forcing AT&T to purchase more than it actually needs. (Tamplin, Tr. 300-01.) . This increases AT&T's costs needlessly, provides BellSouth with additional revenues, and puts AT&T in an unfairly disadvantaged position.

Highlighting the extent to which it wants to stifle competition, BellSouth also would require AT&T to purchase separately several features and capabilities which are included in BellSouth's Local Switching, such as call forwarding, call waiting, or caller ID. These features and capabilities are provided by software that is resident in Local Switching and thus, are a part of the functionality of Local Switching. (Tamplin, Tr. p. 300.) AT&T should not be required to purchase these features and capabilities separately when it is already paying to access the switch.

BellSouth's second "justification" for requiring competitors to purchase its entire port offering and not just the Local Switching is that it is not technically feasible for Local Switching to route calls to AT&T operator systems, transport facilities, and other AT&T facilities. According to BellSouth, its switches cannot perform "customized routing," which is the switch's ability to distinguish between customers for various purposes. (Milner, Tr. 2643-45; Tamplin, Tr. 323.)[4/] By contrast to BellSouth, a number of incumbent LEC's, including Ameritech, NYNEX, Pacific Bell, SNET and GTE, have agreed that customized routing is technically feasible. (Tamplin Tr. 324.) Bell Atlantic in Pennsylvania has agreed to provide customized routing using AIN.

Although BellSouth asserts that customized routing is not technically feasible, BellSouth admits its switches are "capable" of routing calls to AT&T operator systems, transport facilities and other AT&T provided facilities. (Milner, Tr. 2735.) Thus, what BellSouth really claims is that its switches would need to be modified in order to accomplish customized routing. The FCC anticipated that some modification to an incumbent's LECs facilities would be necessary, and explicitly stated that use of the term "feasible" in the Act "implies that interconnecting or providing access to a LEC

4/ Customized routing is sometimes also referred to as "selective routing," "direct routing," or "routing of operator and directory service requests to AT&T's platform."

network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to incumbent LEC equipment." FCC Order No. 96-325 ¶ 202. The cost of any required modification is irrelevant to a determination of technical feasibility. FCC Order No. 96-325, ¶ 199. Therefore, despite the fact that BellSouth may be forced to upgrade its equipment, customized routing is technically feasible as defined by the Act.

More specifiaclly, BellSouth's position is that its switches lack the *capacity* to perform customized routing, and not that its switches lack the *capability*. Even its capacity argument is wrong, however, because BellSouth overstates the facts. Customized routing may be accomplished on an interim basis with Line Class Codes ("LCCs"). These are software indicators that provide information to route a particular customer's calls. (Miller, Tr. 301.) For example, one LCC might be associated with all customers having basic dial-tone service plus call waiting, while another might be associated with all customers having basic dial-tone service plus call forwarding. (Tamplin, Tr. 2737-2738.) BellSouth asserts that, on average, each of its switches uses 350 LCCs, reflecting 350 different types of services offered by BellSouth. Because the existing capacity of the Nortel DMS-100 switch is 1,024 LCCs, BellSouth simplistically claims that each new provider also would need 350 LCCs, and this quickly would exhaust the switch's capacity. (Milner, Tr. 2736-37.)

Even assuming for argument's sake that BellSouth is correct, BellSouth takes the incredulous position of wanting to continue using all the LCCs it needs, while barring its competitors from using any. In other words, BellSouth asserts a "capacity" shortfall in order to put its competitors at an overwhelming disadvantage.

BellSouth is wrong that a capacity problem exists. As BellSouth well knows, its DMS-100 switches will be upgraded to 2,048 LCCs in 1996, and 4,096 LCCs in early 1997. (Price Tr. 954) Its Lucent sTechnologies switches will be upgraded from 1,024 LCCs to 6,000. In addition to these upgrades, studies have verified that many unused LCCs exist in BellSouth's network. Moreover, in the spirit of cooperation, AT&T has proposed an interim solution that would allow for conservation of LCCs. (Tamplin, Tr. 301.) Because LCCs are only an interim solution, these upgrades and other approaches will eliminate any capacity issue, assuming one even exists. Indeed, BellSouth agreed that, if a competitor did not want 350 LCCs, then the capacity issue would be diminished, if not eliminated. (Milner, Tr. 2737) This is virtually certain to be the case, because some number of LCC's reflect services no longer offered by BellSouth, meaning its competitors clearly need less than 350 LCCs.

The FCC order places the burden on BellSouth to establish that customized routing in a particular switch is not technically feasible. (FCC Order No. 96-325 **¶ 418.)** Even assuming that BellSouth's capacity argument is a technical feasibility agreement, AT&T repeatedly has attempted to confirm BellSouth's assertions that its average switch uses 350 LCC's. During negotiations, at AT&T's arbitration hearing with BellSouth before the North Carolina Public Utilities Commission, and at the arbitration hearing before this Commission, AT&T requested that BellSouth describe with particularity how its switches utilize 350 LCC's. (See Late-filed Ex 94.)

Additionaly, use of LCCs for customized routing is only an interim solution. AT&T has proposed a long term solution that would upgrade the software for local switches to provide an additional capacity for customized, carrier-specific routing. (Tamplin, Tr. 301, 324.) This long term solution could be available in about two years. (Tamplin, Tr. 301.) Additionally, AT&T has suggested other possible solutions to the supposed capacity problem, including the use of AIN. (Tamplin, Tr. 355.) Self-servingly, BellSouth seeks to portray itself as cooperatively working towards a long range solution, pointing out it is co-chairing with AT&T, a work group seeking a permanent solution to this issue in the Industry Carriers Compatibility Forum ("ICCF"), a national industry forum. (Milner, Tr. 2728.) BellSouth admitted, however, that the ICCF has set no timetable for completion of this effort. (Milner, Tr. 2734.) Given BellSouth's consistent efforts to stifle competition, the Commission should not assume BellSouth will work for timely completion of this effort. Rather, this Commission should direct BellSouth to provide customized routing immediately, using any technically feasible solution, and further direct BellSouth to work efficiently with the industry to develop a long term solution by a date certain.

D. <u>Operator Systems</u>

Because the evidence shows that customized routing is technically feasible, the Commission should require BellSouth to unbundle Operator and Directory Systems from Local Switching. Operator and Directory Systems provide customers with operator and automated call handling and billing, special services, customer telephone listings and optional call completion services. (Tamplin, Tr. 286-287.) Florida consumers will benefit from unbundling of Operator/Directory Systems because AT&T will be able to combine its world class operator services platform with BellSouth's switches to create new services. For example, Florida customers, who have diverse multi-cultural and language characteristics, could receive immediate access to AT&T's foreign language dependent services and innovations based on voice recognition. (Tamplin, Tr. 287.) These are services Florida consumers do not currently receive.

BellSouth's refusal to unbundle its Operator/Direcroy Systems is yet another example of putting BellSouth first, and consumers last. AT&T needs to have this element unbundled because it wants to use its own operator services, and not BellSouth's.[5/] By not unbundling this element, BellSouth would deprive consumers of new and enhanced operator systems features AT&T and other new entrants could provide. (Tamplin, Tr. 287.) BellSouth also would be forcing all new entrants to pay for this feature whether they want it or not. Additionally, if BellSouth succeeds in stifling competition in the area of operator and directory assistance services, then BellSouth will have no incentive to enhance its own operator/directory services.

Operator Systems clearly meet the definition of a network element as these services are "capabilities" used in the transmission, routing or other provision of a telecommunications system. 47 U.S.C.A. § 153 (29). (Tamplin, Tr. 302.) The FCC Order requires that BellSouth unbundled Operator/Directory Systems. 47 C.F.R. § 51.319(g) (to be codified); FCC Order No. 96-325 ¶¶ 534-540.

Finally, as explained above, customized routing to AT&T's operator services platform is technically feasible. Nonetheless, BellSouth proposes that instead of customized routing, customers of new entrants should reach their provider's operators by "simply" dialing additional digits. It is a axiomatic that convenient access to operator/directory assistance will be necessary to enhance competition. (Tamplin, Tr. 287-288.) BellSouth knows full well that customers enjoy and demand the convenience of familiar dialing patterns, such as "0" for operator, or "411" for directory assistance. BellSouth therefore refuses to let its competitors use these numbers, anticipating that difficult dialing patterns will make it less likely that new entrants will be able to attract customers. (Gillan, Tr. 112-113.)

E. Transport Elements

Transport elements provide the functionality to connect one location to another. These permits subscribers to reach each other, even if they are not served by the same local switch or the same carrier. (Tamplin, Tr. 288.) Dedicated Transport is an interoffice transmission path used exclusively by a single carrier for the transmission of its traffic. (Id.) Common Transport is an interoffice transmission path that links together unbundled network elements and carries the traffic of more than one carrier. (Id.) Tandem Switching is the network element that establishes a communications path between two central offices through a third central office (the Tandem Switch). This path lasts only for the duration of the

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5/ AT&T might need to purchase this element where customized call routing is unavailable, meaning those limited occasions when AT&T's customers may not be able to reach AT&T operator services platform.

connection. Tandem Switching is used when it is either impractical or uneconomical to connect multiple central offices and/or Points of Presence directly to each other. (Tamplin Tr. 289.) The Commission should require BellSouth to provide unbundled access to Dedicated and Common Transport and Tandem Switching as required by the Act..[6/]

By requiring BellSouth to unbundle transport elements, the Commission will facilitate competition by allowing new entrants to invest in network interconnections and facilities needed for exchange of traffic with other carriers in a way that makes sound economic sense. (Tamplin, Tr. 289.) For example, AT&T's initial traffic volumes might not justify the capital investment needed for AT&T to develop its own Dedicated Transport facilities. As a result, it should be able to purchase this network element from BellSouth and begin competing immediately, until it becomes practical for AT&T to invest in developing its own Dedicated Transport facilities. (Id.) Thus, unbundling these network elements will permit Florida consumers to enjoy the benefits of competition sooner than if new entrants are forced to build their own Dedicated Transport.

As a matter of law, BellSouth's position is wrong because the Act specifically requires that Local Switching be unbundled from Transport. 47 U.S.C.A. § 271(c)(2)(B)(vi). Therefore, these Transport elements must be provided to AT&T and other new entrants on an unbundled basis.

Although BellSouth has agreed to provide AT&T with Dedicated and Common Transport and Tandem Switching as part of its port offering, it refuses to unbundle that offering so as to provide AT&T with access that will allow routing to AT&T's Operator/Directory Systems. BellSouth also insists AT&T purchase dedicated transport from the existing tariff.

BellSouth concedes its switches are capable of customized routing that will permit it to distinguish between customers so that it can route calls from the switch to a specific transport element but claims it has insufficient capacity to perform customized routing. (Milner, Tr. 2665-68.) The only barrier BellSouth raises is the customized routing capacity issue dismissed above. As explained above, customized routing is technically feasible, notwithstanding BellSouth's capacity argument.

6/ Although BellSouth will provide AT&T access to Tandem Switching, BellSouth refuses to provide AT&T with unmediated access to associated AIN and to route to AT&T.

F. Signaling Network Elements/AIN Services

Signaling is part of the call set-up process that passes information on the routing and billing of calls within a carrier's network and among carriers. For example, Signaling Systems provide validation for calling cards and other operator services calls. Signaling Systems also route 800 number calls to the correct carrier and end user. Signaling Systems enable carriers to create and provide AIN services efficiently, which will add calling features and increase choices for Florida consumers. One issue pertaining to Signaling Systems elements remains. BellSouth refuses to unbundle access to its AIN, in a way that will permit AT&T to achieve parity in the creation and offering of AIN based services. (Tamplin, Tr. 303.) The Commission should require BellSouth to unbundle access to its AIN triggers for AT&T in the same manner in which BellSouth uses AIN triggers for services to its own customers.

AIN will allow a new entrant to offer a wide variety of innovative, competitive advanced features and services to Florida consumers. For example, access to AIN would allow AT&T to offer Florida consumers its voice recognition dialing, a feature Florida consumers currently do not enjoy. (Tamplin, Tr. 303, 340.) Because access to BellSouth's AIN triggers also will allow AT&T to customize offerings to consumers without duplicating BellSouth's network, AT&T will be better able to provide competing services to Florida consumers now and in the future. (Id.)

BellSouth proposes to provide access to AIN through its "service creation environment," which is a tariffed service. (Tamplin, Tr. 303-304) The service creation environment is where an incumbent LEC creates applications that will eventually be placed in a Service Control Point or database which is part of the signaling network. If AT&T wants to use its own service creation environment to create services that cannot be developed in BellSouth's environment, BellSouth proposes to provide AT&T access to BellSouth's network via a "gateway" or mediation device. (Milner, Tr. 2657-61.) Although BellSouth insists that AT&T and other new entrants must use this device, BellSouth will not use mediation for calls of its own customers.

The use of a mediation device will cause AT&T customers to experience an increase in post dial delay of approximately 20% over that of a similar call made by a BellSouth customer. (Tamplin, Tr. 304.) Post dial delay is the amount of time after entering the last digit of a telephone number before hearing a valid audible network response. A mediation device also will insert additional points of potential network failure, as well as increasing the cost and time of implementing services to customers. (Id.) Because BellSouth will not interpose a mediation device on its own network, allowing it to impose a mediation requirement on new entrants will give BellSouth an unfair competitive advantage.

What makes BellSouth's position truly anti-competitive is that this additional inconvenience to Florida consumers is not necessary. AT&T and BellSouth have conducted tests on AIN interconnection which demonstrate that unmeditated access to the AIN through the Signaling System is technically feasible, and that there will be no impact on network reliability and security without this mediation. (See Ex. 8; Tamplin, Tr. 330.) Therefore, Florida consumers should not be forced to accept inferior services in order to obtain services from BellSouth's competitors. However, if the Commission decides that mediation is required, it must be done on a nondiscriminatory basis, which means BellSouth also should impose this requirement on its own customers' calls.[7/]

G. Operations Support Systems

The Commission should require BellSouth to provide AT&T with electronic interfaces to its Operations Support Systems in all situations, including those where AT&T is purchasing unbundled network elements, combining them, and selling its own services to Florida consumers. Real-time and interactive access to Operations Support Systems via electronic interfaces will permit AT&T to respond to customer requests or inquiries on the spot. Without this access, Florida consumers who select AT&T will not enjoy the same quality of services that BellSouth offers its customers, thus hindering AT&T's ability to compete.[8/]

During negotiations, AT&T requested access to electronic interfaces in all situations as a matter of parity. Due to efforts made by AT&T, the Georgia Public Service Commission ordered BellSouth in May 1996 to provide electronic interfaces when AT&T resells BellSouth's services in Georgia. The parties since have agreed on access to electronic interfaces with regard to the resale of local services in Florida, although AT&T recently learned that the method of such access appears to remain in dispute..

7/ The FCC Order concluded that access to AIN Service Control Points is technically feasible, but noted that such access may present a need for mediation mechanisms. FCC Order No. 96-325 ¶ 488. The FCC increases the burden of proof where an LEC raises reliability or security issues. BellSouth must prove by clear and convincing evidence that unbundling will have a specific and significant adverse effect on the network. FCC Order No. 96-325 ¶ 203. BellSouth did not meet this burden because the existing signaling network can maintain network integrity, thus eliminating the need for the gateway device. (Tamplin, Tr. 304.)

8/ The FCC order requires BellSouth to provide access to its Operations Support Systems. 47 C.F.R. § 51.319(f); FCC Order No. 96-325 ¶¶ 516-528.

But BellSouth continues to refuse to provide such access where AT&T is purchasing unbundled network elements as opposed to a resale offering. AT&T's need for access to these interfaces is no less when providing services through unbundled network elements. AT&T requires such access through a gateway solution that allows for real time, machine to machine, not human access. Anything less would be contrary to the Act's parity requirements.

BellSouth does not claim that providing these interfaces is not technically feasible. Rather, BellSouth's refusal to grant access to electronic interfaces where AT&T is utilizing unbundled network elements stems from its contention that it may prohibit AT&T from ordering unbundled network elements and then combining them in such a way as to replicate existing BellSouth services available for resale. This anti-competitive approach clearly is not permitted under the Act as explained under Issue 2 below.

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

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AT&T: The price of unbundled elements should be based on the forward-looking, long-run economic costs, calculated in accordance with TELRIC principles, that a wholesale-only incumbent LEC would incur to produce the entire range of unbundled network elements. These costs are calculated by the Hatfield Model, and the appropriate prices are set forth in the testimony of Mr. Wood.

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AT&T requests that the Commission establish unbundled network element prices at the rates generated by the Hatfield Model as set forth in Exhibit 30, and adopted by AT&T witness, Wayne Ellison, on cross examination. (Ellison, Tr. 429-30; see also Ex. 30, DJW-3 (Attachment 1).) AT&T's proposed rates are reasonable because they result from a verifiable methodology that measures economic costs, including an appropriate share of joint and common costs, and a reasonable profit as the Act requires. 47 U.S.C.A. § 252(c)(3) and (d)(1). The rates proposed by AT&T are based on a methodology which has been open to public scrutiny and debate and which has received validation from numerous sources. (Ellison, Tr. 422.) The rates derived by this model should be adopted until Total Element Long Run Incremental Cost ("TELRIC") studies are accomplished by BellSouth and validated by independent sources. BellSouth has not to date provided cost-based rates which either satisfy the Act or provide competitive opportunities for Florida consumers. (Id. at 422.) Instead, it proposed rates equal its tariff rates contrary to the requirements of the Act. To the extent, BellSouth has attempted to support some of these rates, the support is in the form of proprietary cost studies that are deeply flawed.

A. Pricing of Unbundled Network Elements At TELRIC Promotes Efficient Competition And Comports With The Act

The Act requires that rates charged to new entrants be just and reasonable. 47 U.S.C.A. § 252(c)(3) and (d)(1). The Act defines just and reasonable rates by requiring that rates for unbundled network elements "shall be based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element and may include profit." 47 U.S.C.A. § 252(d)(1)(A)(i).

As this Commission has recognized, the Act requires that rates for unbundled network elements purchased by new entrants are to reflect economic costs plus a reasonable profit, when profit is appropriate. (Florida Public Utilities Commission, Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, June 24, 1996) ("June 24, 1996 Order.") Setting unbundled network element rates at economic cost plus profit serves the stated intent of the Act to "promote competition . . . in order to secure lower prices and higher quality services for American telecommunications consumers." See Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56, 56 (introductory note). Meaningful competition requires that the price of unbundled network elements be based on forward-looking incremental costs, because both buyers and sellers in a competitive market make economic decisions based on these types of costs. (Kaserman, Tr. 483-85.)

In a competitive market, the price Florida consumers will pay for a service relates directly to the incremental cost of producing that service. (Id. at 482-83.) Thus, new entrants will be unable to enter the market using unbundled network elements if the price new entrants must pay BellSouth is not reflected in BellSouth's incremental, economic costs. Similarly, knowledge of economic costs is critical to the decisions of potential entrants, because these costs determine whether unbundled network elements is a viable form of market entry, along with resale-based or facilities-based entry. (Id. at 489-90.) This Commission, in Order No. PSC-96-0811-FOF-TP, dated June 24, 1996, already has recognized the propriety, and pro-competitive effect of, pricing unbundled network elements at TSLRIC rather than providing absolute revenue protection to the incumbent LEC. Competitive risk is to be borne by all providers of local services, including the incumbent. (Order 96-0811 at p. 17.)

The Commission should adopt AT&T's position that unbundled network element rates be set at TELRIC, plus a reasonable allocation of forward-looking joint and common costs. TELRIC is a widely accepted methodology for measuring economic costs. It is identical to the TSLRIC ("Total Services Long Run Incremental Cost") methodology which this Commission adopted in Order No. 96-0811, except that TELRIC focuses on the incremental costs of a network element rather than the costs of a service. (Kaserman, Tr. 524.) Both TELRIC and TSLRIC measure the relevant universe of costs by focusing on: costs that are forward-looking and not embedded; long run, as opposed to short run; most efficient, that is, reflective of technology that is not outdated; and relating costs to their true causal factor. (Kaserman, Tr. 485-86, 523-25.) Importantly, both TELRIC and TSLRIC include profit. (Id. at 486, 523.) The ultimate difference between TELRIC and TSLRIC is that TELRIC includes the incremental costs of shared facilities and operations assignable to a particular network element. (Id. at 524.)

In addition to economic cost (inclusive of economic profit) developed under TELRIC, AT&T proposes that unbundled network element prices include a reasonable proportion of joint and common costs not included with TELRIC costs. These costs should represent economic costs measured as described above and allocated to all unbundled network elements on a reasonable basis. However, proper application of the TELRIC methodology should result in a minimal amount of joint and common costs. (Kaserman, Tr. 524.) In summary, AT&T's proposed rates are appropriate under the Act and sound economics. Most importantly, these rates result in pro-competitive prices for local telephone services in Florida.

B. BellSouth's Proposed Rates Do Not Promote Efficient Competition And Should Not Be Adopted by the Commission

BellSouth has proposed tariffed rates for unbundled network elements for which tariffs have been established by this Commission. (Scheye, Tr. 1659.) This is contrary to the requirements of the Act which expressly require that rates not be determined with reference to rate-based proceedings. 47 U.S.C.A. § 252(d)(1)(A)(i). Because these tariff-based rates are not based on economic costs, pricing unbundled network elements using tariffed rates guarantees that new market entrants will be *unable* to provide competitive prices and innovative services to Florida consumers.

Although BellSouth in this proceeding proposes a tariffed rate approach, BellSouth previously has taken just the opposite position elsewhere-- explaining why BellSouth's tariff-based unbundled network element rate plans were anti-competitive and not representative of competitive market prices.[9/] Just last year, BellSouth argued to the North Carolina

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9/ BellSouth was asked by the North Carolina Utilities Commission in 1995 to respond to criticisms of its rates, earning and costs. Response of BellSouth Telecommunications, Inc., in Opposition to "Emergency" Petition of AT&T, Ans, and Motion to Dismiss, May 22, 1995.

Utilities Commission that the Commission should make no corrections in BellSouth's North Carolina tariff-based rates because:

> Competition will purge the market, and Southern Bell's rates, of any inequities . . . . Southern Bell believes, however, that the application of rate of return and rate-base regulation to Southern Bell, to AT&T, and to other competitors would be antithetical to the competitive regime envisioned by the General Assembly when it enacted House Bill 161, as well as to the principles of competition and market economics that underpin that legislation. (Response of BellSouth Telecommunications, Inc., in Opposition to "Emergency" Petition of AT&T, Answer, and Motion to Dismiss, May 22, 1995, at 57.) (Ex. 50).

At best, BellSouth is acting inconsistently -- contrary to its earlier position in North Carolina that inefficiencies should be resolved by the competitive marketplace. More likely, BellSouth's current position simply highlights once again the extreme steps it is prepared to take in order to avoid a competitive market in Florida. Accordingly, the Commission should not price unbundled network element at tariff-based rates reflective only of BellSouth's historic costs.

C. <u>Bell South's Cost Studies Demonstrate That Bell South's Proposed Rates Are Not Based On Economic Costs Which Promote Competition</u>

The Commission should establish unbundled network element prices based on economic costs as set forth in AT&T's proposal. In an effort to support its tariff rates, BellSouth has submitted a number of cost studies to this Commission. For the reasons discussed below, these studies are flawed and are not appropriate pricing methodologies.

For this Commission to have a sound basis in establishing prices for unbundled network elements, BellSouth must furnish sufficient cost data. Because incumbent LECs have disproportionate access to data pertaining to their economic costs, the Commission should require that BellSouth bear the burden of proving that its proposed prices comply with the Act and promote efficient competition. In addition, to the extent BellSouth seeks to assign any significant amount of joint or common costs to the prices of its unbundled network elements, the Commission should require that BellSouth provide studies accurately identifying its efficient forward-looking common costs and directly attributable forward-looking costs for all elements and services. (Ellison, Tr. 383.) Without this data, this Commission has no means to properly evaluate BellSouth's position and its impact on Florida consumers.

If BellSouth does not produce to the Commission -- as it has not to date -- properly completed studies required for accurate assessment of its TELRIC, the Commission should, consistent with the express terms of the Act, adopt AT&T's proposed prices as just and reasonable interim rates. 47 U.S.C.A. § 252(d)(1) and (d)(2). Not only are AT&T's proposed rates consistent with the terms of the Act, but AT&T's proposed prices are consistent also with the interim proxy ranges established by the FCC Order. (FCC Order No. 96-325 ¶ 932.) While the pricing provisions of FCC Order have been stayed, this Commission is not prohibited from adopting similar prices based on the record in this proceeding. Moreover, these ranges reasonably reflect the forward-looking costs typically incurred by carriers when placing network elements in service, and were established after consideration of data from multiple participants in the telecommunications industry. (Ellison, Tr. 383.)

BellSouth's cost studies are not appropriate for pricing purposes for several reasons:

- For many network elements, BellSouth has provided no forward-looking studies to validate its proposed costs. (Caldwell, Tr. 2244; Ellison, Tr. 383.) Without such studies, the Commission should not accept BellSouth's proposed costs.[10/]

- Much of the cost information contained in the cost studies which BellSouth has provided is not supported by adequate documentation and so cannot be audited. (Ellison, Tr. 383.) An essential characteristic of any cost study is the degree to which its assumptions, calculations and input values can be subject to independent scrutiny and evaluation. (Wood, Tr. 1050.) Without adequate documentation, it is impossible for the Commission to assess the reasonableness of BellSouth's cost estimates.[11/] (Id. at 1049-50.)

10/ BellSouth has provided no cost studies for network interface devices, loop distribution, loop concentrator/multiplexer functions, loop feeders, the data switching facet of local switching element, complete operator service systems costs (although BellSouth did provide a limited initial cost study of operator function costs), and many of the point/database (SCP) capabilities (although BellSouth did provide some cost data reflecting costs for its line information database). (Ellison, Tr. 392-98.)

11/ BellSouth provided LRIC or TSLRIC studies for two-wire loop costs, four-wire loops, two-wire ISDN loops, DS1 carrier loops, voice service local switching, operator function costs, common and dedicated transport, tandem switching and signal link transport. Just a few days before this arbitration hearing, BellSouth produced a so-called TELRIC unbundled loop cost study. (Caldwell, Tr. 2154.)

- Even the most complete studies which BellSouth provides do not demonstrate that BellSouth's proposed rates reflect TELRIC, plus a portion of joint and common costs. (Ellison, Tr. 384-385.) Specifically, these "complete" studies do not adequately reflect TELRIC because the studies do not reflect least-cost, forward-looking technologies; include unrealistic assumptions; and/or otherwise overstate costs.

AT&T was able to evaluate in a limited way BellSouth's proposed pricing for loops, voice local switching, operator system functions, common and dedicated transport, tandem switching, signaling links, signal transfer points, and various database functions based on BellSouth's studies. (Ellison, Tr. 385.) AT&T's analysis concluded that virtually all the prices proposed by BellSouth for these elements required adjustments to reflect more reasonable rates of return requirements, and reduced nonrecurring cost estimates and operator expenses, pending the receipt of additional cost support, as indicated in Exhibit 10. (Id.) In addition, AT&T's analysis revealed significant deficiencies in BellSouth's loop cost studies.

In developing prices for Florida consumers, this Commission should rely on cost studies which are open, subject to independent evaluation and supportable by detail. BellSouth has acknowledged that in many cases it had not provided the detailed cost data necessary for this Commission to generate just and reasonable, pro-competitive prices for Florida consumers.[12/] It is readily apparent that AT&T's proposed rates, with its supporting data -- verifiable by all parties -- should be adopted, pending further review of BellSouth proposed costs.

Generally, BellSouth's loop cost studies are deficient because they do not reflect least-cost, forward-looking technologies. (Ellison, Tr. 386.) One area which is illustrative of the deficiencies in BellSouth's data is its assessment of loop costs. BellSouth has offered an incremental cost study of two-wire loop costs. (Id.) In addition, BellSouth has provided a second two-wire loop study submitted to this Commission, as well as two-wire loop studies submitted to other state commissions. (Id.) However, these studies utilize many assumptions which do not reflect BellSouth's current or prospective network facilities. Examples of these discrepancies include:

Universal v. Integrated Digital Loop Carriers: BellSouth's cost studies assume that all digital loop carriers will be non-integrated digital loop carriers. (Caldwell, Tr. 2253-54.) BellSouth made this assumption because, as was

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12/ (See Caldwell, Tr. 2227, 2308 (regarding submission of cost documentation as late-filed exhibits.))

discussed above, it has refused to provide unbundled loops using the more efficient, less costly, and currently available integrated digital loop carriers ("IDLC"). (Ellison, Tr. 387.) Even BellSouth concedes that the use of non-integrated digital loop carriers is a declining technology within its own system and is not likely to continue. (Id.) More importantly, IDLC is a much less costly technology. (Ellison, Tr. 387.)

Nevertheless, BellSouth increases its projected "costs" by assuming that *no* digital loops sold to AT&T would be integrated. (Caldwell, Tr. 2253-54.) Ms. Caldwell testified that BellSouth deliberately redefined all existing IDLCs in its already-suspect sample population as non-integrated digital loop carriers. (Caldwell, Tr. 2253.) BellSouth's assumption presumably proceeded from its refusal to permit unbundling of the IDLC as required by the Act. (Id. at 2254.) This assumption is contrary to the BellSouth announced plans, which is to replace the UDLC technology with IDLC as rapidly as possible. (Ex. 61.)

Certainly at a minimum, BellSouth's cost estimates should reflect its prospective network facilities plans. (See Order No. 96-0811dated June 24, 1996.) The opening of the local exchange market should not be predicated on the erroneous assumption that BellSouth will continue to use inefficient technologies or inappropriate cost parameters.

Sampling Defects: BellSouth produced yet another two-wire loop cost study to AT&T shortly before the deposition of Ms. Caldwell. This "TELRIC" study is subject to a number of flaws which requires it to be corrected or redone. Most basically, BellSouth used a sampling approach which is hardly representative of BellSouth's Florida network. For example, it considered only 350 loops, even though BellSouth has about four million loops in Florida. (Caldwell, Tr. 2249.) For those 350 loops, BellSouth provided data illustrative of only a single loop.

BellSouth also did not consider the individual characteristics of loops in developing its sample. For example, BellSouth did not determine whether the longest loop in Florida was included in the sample, and it did not develop its sample based on census block groups. (Caldwell, Tr. 2250.) BellSouth also unreasonably excluded from its two-wire analog loop study all multi-line businesses, and considered only single-line business. (Caldwell, Tr. 2303.) Ms. Caldwell, however, could not testify to what percentage of Florida businesses were only single-line. (Id.) Late-filed Ex. No. 73 indicates that 89.76% of business loops in the sample were multiline in nature.

Fill/Utilization Factors: Ms. Caldwell testified the BellSouth study assumed, fill factors of 38.8% for the distribution component of all loops. The distribution component is the highest cost component of the loop. (Caldwell, Tr. 2278.) While it is not uncommon for BellSouth to provide excess spare capacity, BellSouth does so only for future customers. Either these future customers should bear their fair share of costs *or* BellSouth should level its charges to present and future customers. BellSouth's fill factors are unreasonably low, increase the projected costs of the related loops, and require that initial customers on a given distribution loop to bear loop costs as much as 2.5 times in excess of actual costs. (Caldwell, Tr. 2258-60.) Under BellSouth's pricing proposal, all future Florida customers also will bear these inflated costs. Obviously, the only beneficiaries of this methodology are BellSouth's shareholders.

Ms. Caldwell's testimony also reveals that BellSouth's study overstates loop costs in other significant ways as well. For example, she admitted the BellSouth study included the costs of connectors/protectors in both the costs of the loop, and then again in the costs of the port. (Caldwell, Tr. 2281.) Ms. Caldwell stated that both the loop and the port must access a connector/protector to interconnect with other elements. (Id.) This, however, does not alter the fact that only one connector/protector is necessary when the two elements interconnect with each other.

Ms. Caldwell also testified that the BellSouth model loaded every loop with services costs applicable to "special access" loops even though, as indicated by other witnesses, not all new entrants would require these services. (Caldwell, Tr. 2297-2301.) When asked to explain significant differences between nonrecurring "special access" loop costs, and nonrecurring basic service loop costs for the loops BellSouth installs for its own customers, BellSouth witnesses identified creation of a "design layout record" as a "significant distinction" between the two loops. (Scheye, Tr. 1958.) These design layouts are produced by BellSouth's engineering organization. (Id. at 1959.) However, BellSouth could not justify the difference in the nonrecurring costs, given that all engineering costs apparently account for only 3.5% of the total nonrecurring costs. (Id.)

Joint and Common Costs: Although BellSouth very recently has added joint and common costs to its studies provided to this Commission, it has provided no justification or explanation for the quantification of this data. (Caldwell, Tr. at 2308.) If properly calculated, these costs should be a small amount. (Kaserman, Tr. 524 (proper calculation of TELRIC significantly reduces joint and common costs).) This Commission should not accept inflated estimates of joint and common costs without further examination -- costs which may include company inefficiencies, costs of expanded business ventures and past costs rejected by this Commission.

Independent Verification: Foremost, BellSouth's cost studies have been uniformly devoid of explanation, support and independent verification. (Ellison, Tr. 383, 424-25.) Unlike the Hatfield Model offered by AT&T, the BellSouth methodology, inputs, and factors have been shrouded in "proprietary" mystery. No outsider, including

BellSouth's own economist, Dr. Emerson, has examined and verified BellSouth's data. (Caldwell Deposition, Ex. 69, at 50.) In fact, BellSouth did not even produce for this Commission by the date of the arbitration hearing, information which was essential to judging a substantial portion of its costs (the so-called joint and common costs). Accordingly, BellSouth has failed to provide the data needed for a Commission determination.[13/]

The above are only illustrative reasons why BellSouth's "TELRIC" loop cost study cannot be used to justify BellSouth's proposed prices, and why the audited and open Hatfield Model data provided by AT&T represent a more sound foundation for pricing of unbundled network elements for Florida consumers.

D. <u>The Commission Should Adopt AT&T's Recommended Rates For Unbundled Network Elements</u>

As indicated above, the Commission should establish unbundled network element prices at the rates proposed by AT&T in the cross-examination of Mr. Ellison and Mr. Wood as set forth in Exhibit 30. These rates are based on the forward-looking incremental costs of unbundled network elements and promote the efficient competition envisioned by the Act. AT&T used Version 2.2, Release 2 of the Hatfield Model to generate its proposed rates. This revision specifically contained the capability to estimate costs for unbundled network elements, as well as universal service components. (Wood, Tr. 1048.)

The Hatfield Model produces rates compliant with the Act and this Commission's June 24, 1996 Order, because it calculates the price of unbundled network elements using the forward-looking incremental costs of these elements. Specifically, the Hatfield Model assumes long run incremental costs. (Wood, Tr. 1051-52.) The Hatfield Model is also forward-looking, utilizing existing wire locations in conjunction with the most efficient, currently available technologies

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13/ Confirmation of the need to independently validate BellSouth's data can easily be seen in the recent audit by this Commission's Staff. (Florida Public Service Commission, Southern Bell Telephone Company Essx Audit, Docket No. 950813-TL, Audit Control No. 95-184-1-2, Feb. 15, 1996.) **[was this an exhibit?]** In this study, BellSouth's costs for Essx loops were audited to be as follows: Loop, $5.68; Intercom, $3.07; Features, $0.79; Marketing, $0.10. (<u>Id.</u> at 5.) BellSouth admitted that no material difference existed between Essx loops and residential single-line loops. (Milner, Tr. 2730.) Clearly, then, BellSouth's loop cost are far below the costs BellSouth is requesting in this proceeding. At a minimum, in its prehearing Order BellSouth requested $17.00 for two-wire loop costs and $1.40 for nonrecurring charges. BellSouth has subsequently indicated its TELRIC costs will exceed these amounts. As a result, BellSouth's cost studies must be scrutinized and independently validated.

for the provision of loop facilities, switching, interoffice transport and signaling. (Id. at 1052.) Additionally, the Hatfield Model includes a forward-looking cost of capital in the cost being calculated. (Id.) Finally, the Hatfield Model attributes incremental costs of shared facilities and operations to specific network elements to the greatest extent possible. (Id. at 1055.)[14/]

Consistent with the Act and this Commission's June 24, 1996 Order, the Hatfield Model does not include embedded costs. (Wood, Tr. 1052-53.) Neither does the Model include universal service subsidies. (Id. at 1053.) As indicated by this Commission's June 24, 1996 Order, these subsidies are properly addressed through Florida's universal service subsidy provisions. (See June 24, 1996 Order, at 22-23.)

In direct contrast to BellSouth's cost studies, the Hatfield Model and its results may be subject to direct and straight-forward scrutiny. (Wood, Tr. 1050.) Complete and detailed documentation is available, including documentation of Model algorithms, inputs, and assumptions. (Id.) Moreover, the Hatfield Model is publicly available and interactive. (Id.) Accordingly, all participants in these proceedings, and the industry as a whole, can access the Hatfield Model, vary its inputs, ascertain its sensitivity of the Model to input changes, and validate the accuracy of the Model. (Id.) All of these characteristics are essential to any determination of the validity of a cost study, and the Hatfield Model has these characteristics.

BellSouth tries to attack the Hatfield Model on several grounds. First, BellSouth it complains the Model is based on a "theoretical" network. Specifically, it complains the Hatfield Model does not calculate the costs of unbundled network elements based on "the actual network used to provide service." (Varner, Tr. 1496.) BellSouth conveniently forgets that it did not use "actual networks" as the basis for its own cost study. Rather, BellSouth selected a sample of 350 loops from a population of four million loops in the State of Florida and used this cost data to project the average loop cost of a theoretical "model" loop. (Caldwell, Tr. 2246, 2249-50.) Moreover, while AT&T either has or can produce

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14/ For example, the Model attributes in reasonable proportions the cost of conduits shared by both transport and local loops, and the costs of central office facilities shared by both local and switched and tandem switching. (Id.) Those costs are not joint and common at costs that must be allocated among the unbundled network elements.

documentation for every aspect of its network model, BellSouth has produced no documentation demonstrating the proprietary of its statistical sampling techniques.

As BellSouth well knows, nothing is inherently wrong with use of modeling or a statistical sample; the validity of such estimating techniques is dependent upon, among other things, the quality and verifiability of a model's inputs and the way in which the model relates to these inputs. The Hatfield Model uses seven categories of input data which permit reasonable estimates of unbundled network element costs. These input data include: Census Block Group ("CBG") data, business employee data, cable and installation cost data, wire center data, traffic data, expense data, and ARMIS-reported data on the number of residence and business lines. **[cite]**

As BellSouth also well knows, the ARMIS data utilized by the Hatfield Model as well as the CBG, business, and geologic data, is data specific to BellSouth Florida which BellSouth, itself, has provided to the public. **[cite]** Use of this data produces results that are highly tailored to Florida's specific telecommunications environment. Moreover, unlike BellSouth's cost studies, the Hatfield Model uses Florida CBG data which take into account not only the actual number of households in each CBG, but the actual CBG land area, the actual CBG position relative to the nearest wire center, and the actual geological factors relevant to that CBG. (Wood, Tr. 1060.) Accordingly, the Hatfield Model is capable of producing, and has in this instance produced, geographically deaveraged loop prices -- something which BellSouth has been either unwilling or unable to do -- which are highly tailored not only to Florida, but also to specific geographic regions within Florida.

Clearly the objective analysis of all parties is welcome. This is in stark contrast to the proprietary and closely guarded Model of BellSouth. BellSouth has generated several criticisms of the Hatfield Model which the record demonstrates to be unwarranted:

Cable Lengths Within Census Block Group ("CBG"): BellSouth makes much of the fact of its belief that AT&T's cable length assumptions within the Model assume insufficient cable to reach, in the real world, certain geographical areas. BellSouth, however, fails to understand the concept of "model." The Hatfield Model estimates unbundled network element costs. It is not a planning tool for cable distribution. (Wood, Tr. 1105.) The Hatfield Model uses simple geometric squares to model CBGs which are predominately "cloud" shaped. (Id. at 1109.) Mr. Wood testified that this Model for the "absolute vast majority of these very discrete geographic units is extremely accurate." (Id.) BellSouth fails to acknowledge that the random existence of a small percentage of highly elongated CBGs requiring more cable, or the existence of CBG configurations requiring less cable, is entirely irrelevant both to the validity of the Model results and the physical act of planning and laying cable.[15] In any event, Mr. Wood testified, given the typical CBG configuration, use of a square model would overstate, slightly, the amount of cable required. (Wood, Tr. 1109.) Moreover, unlike BellSouth, AT&T has produced the model and documentation, and BellSouth is free to try to prove this is incorrect.

Model Improvements: BellSouth complains that the Hatfield Model has "varied over time." (Varner, Tr. 1497.) BellSouth is correct in that the Model originally was used to produce TSLRIC-based estimates of local exchange service costs. (Wood, Tr. 1047.) The Hatfield Model included elements which satisfy the August 8, 1996 FCC directives to compensate incumbent exchange providers for a reasonable share of forward-looking joint and common costs. Improvements in the Hatfield Model have been incorporated into Version 2.2, Release 2, which was used to generate AT&T's proposed unbundled network element prices. (Id. at 1047-48.) Far from suggesting that AT&T's proposed unbundled network element prices are somehow deficient, these improvements impart a higher degree of certainty to the results of the Model. Accordingly, BellSouth should welcome these changes.[16]

"Unusually Low" Joint And Common Costs: BellSouth complains that the Hatfield Model includes estimates of joint and common costs which are "unusually low." (Wood, Tr. 1073.) As previously indicated, the Hatfield Model includes estimates of forward-looking joint and common costs. These costs should be lower than the historic, inefficient embedded costs of BellSouth. Inclusion of embedded joint and common costs in the price of unbundled network elements is inconsistent with the spirit and the letter of the Act. Moreover, the Hatfield Model would be expected to identify directly attributable costs, leaving only a small portion of costs that would be considered joint and common.

Moreover, as indicated in the testimony of Dr. Kaserman, commentary on the subject of efficient pricing unequivocally supports the position that departures from TSLRIC/TELRIC be held to an absolute minimum. (Kaserman,

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15/ Inconsistently, BellSouth proclaims the adequacy of its own statistical model even though Ms. Caldwell testified that she was unaware of whether the BellSouth cost study sample of 350 loops captured the longest loop in Florida or what that loop length might be. (Caldwell, Tr. 2249-50.)

16/ The validity of the Hatfield Model as an estimating tool is demonstrated by the consistency of the model results with the results of AT&T's more traditional analysis.

Tr. 534.) In this context, and consistent with goals of the Act, it is inclusion of these embedded joint and common costs which must be said to be "unusual." In any event, because BellSouth is privy to the actual costs of its unbundled network elements, it should feel free to demonstrate that its forward-looking joint and common costs exceed those captured by the Hatfield Model. To date it has not done so.[17/]

"Overly High" Plant Utilization Factor: BellSouth complains that the Hatfield uses an "overly high plant utilization factor." Actually, the Hatfield Model uses different utilization factors, depending on the type of facility being used and the characteristics of the area in which it is placed. (Wood, Tr. 1075.) These factors are conservative in the context of a forward-looking cost study. (Id.) BellSouth is correct however that the Hatfield Model's utilization rates stand in stark contrast to the levels of network "fill" in BellSouth's embedded network. (Id.) As discussed previously, one of the significant flaws in BellSouth's cost study is that its utilization factors are unreasonably low.

Future Efficiency Factor: BellSouth apparently objects to application of a Forward-Looking Network Operations Factor in the Hatfield Model calculations. This factor attempts to account for differences between historic or current costs and forward-looking costs. (Wood, Tr. 1112.) Where forward-looking data are available, these data are used to generate the factor. (Id.) Where such data is not available, the factor has been generated using projections on BellSouth's own historical ARMIS data. (Id.) The factor applied in the Hatfield Model is consistent with the expectation of incumbent industry participants that network operations expenses will decline over time. (Id.) Estimates of 30% and 50% reductions have been mentioned with regard to New Hampshire and Pacific Bell, respectively. (Id.) BellSouth itself is well aware of this trend. (See Ex. 55, BellSouth Notice of 1996 Annual Meeting, at A-14 (price regulation enhancing ability to "benefit from productivity enhancements").)

17/ True to form, BellSouth has produced insufficient documentation to assess what it asserts are its "usual" joint and common costs.

BellSouth predictably objects to any calculation that has the effect of reducing the price of unbundled network elements from their present tariffed levels. Despite access to the Model and underlying documentation, BellSouth, however, offers no principled rationale for its objection. Because costs must go up, go down, or stay the same, some factor must be applied in order to calculate forward-looking costs. The Hatfield factor is reasonable in the context of industry developments and BellSouth's own expectations for the future.

Reasonableness Of Drop Wire Assumptions: BellSouth complains that the Hatfield Model utilized assumptions pertaining to the costs of drop wire, the network interface device and the terminal splicer, which were drawn from a New Hampshire study. (Wood, Tr. 1093.) However, as indicated by Mr. Wood on cross examination, the New Hampshire incremental cost study contained the best available data. (Id.) BellSouth provides no data to support any price for these elements, even though its proposed unbundled network element prices theoretically should account for these costs. In any event, as is the case with the other model assumptions to which BellSouth objects, this assumption errs on the side of higher unbundled network element prices. If anything, due to weather and economic conditions, costs of installation in New England are apt to be higher than they are in Florida. The use of this data favors BellSouth.

E. The TELRIC Methodology Will Not Result In a "Taking"

BellSouth contends that the pricing rules adopted by the FCC constitute a taking under the Fifth Amendment of the Constitution. In particular, it complains that a TELRIC pricing methodology precludes it from recovering all of its costs, especially its embedded costs. This argument is nothing more than yet another attempt by BellSouth to achieve a pricing result which which will stifle competition.

This Commission already has considered and rejected this argument, which was raised by GTE Florida. Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, issued June 24, 1996. In rejecting GTE's takings argument, this Commission stated:

> Implicit in GTEFL's arguments is the notion that this Commission owes GTEFL an increase in local rates to replace the company's potential losses of expected contribution and profit. GTEFL is asking that we look at potential revenue losses, albeit under the disguise of alleged constitutional violations. Even if it could be predicted with certainty that there would be major losses GTEFL does not have a per se statutory right that it must recover profit and contribution as a result of unbundling and reselling services. Even under the rate-base regulation regime in Chapter 364, GTEFL was merely afforded the opportunity to earn a fair return on its investment, not a guarantee of a return. Further, under the new, price-regulated regime in Chapter 364 that GTEFL has elected, GTEFL is not guaranteed a specific return in this competitive environment. Moreover, even if the losses come to

fruition, such losses, if necessary, can be addressed through appropriate Commission proceedings.

Id. at 21-22. This Commission correctly concluded that the arguments raised by GTE in that proceeding were invalid, and similarly should rule that such arguments raised by BellSouth in this proceeding are equally invalid.

As an initial matter, no taking claim can arise from the mere use of the TELRIC approach. It is the result of a methodology, and not the methodology itself, which could be the possible basis for a takings claim. As the Supreme Court explained in FPC v. Hope Natural Gas Co., 320 U.S. 591 (1944), "it is not theory but the impact of the rate order which counts." Id. at 602. Rather, it is only necessary that the "end result" be just and reasonable." Id. at 603.

In considering the "end result," BellSouth ultimately must prove deep financial hardship of the type that threatens its continued operation or existence. The mere "fact that the value [of the utility's property] is reduced does not mean that the [rate] regulation is invalid. Hope, 320 U.S. at 601. No constitutional claim can be made unless the agency's chosen rate-making methodology produces rates as a whole which are so low that they "jeopardize the financial integrity of the [regulated] companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital." Duquesne Light Co. v. Barasch, 488 U.S. 299, 312 (1989). The Supreme Court also has stated that the end result is to be measured against the company's performance as a whole. The fact that a particular element of the company's business has become unprofitable does not establish a takings claim. Baltimore & Ohio Railroad Co. v. United States, 345 U.S. 146 (1953); Fort Smith Light & Traction Co. v. Bourland, 267 U.S. 330, 332 (1925) (construing Brooks-Scanlon Co. v. Railroad Commission of Louisiana, 251 U.S. 396 (1920) as meaning that a "railway may be compelled to continue the service of a branch or a line, although the operation involves a loss.")

In trying to prove this serious financial impact, BellSouth must establish that it is the Commission's order imposing a TELRIC methodology, and not other events, which causes the serious loss that could be remedied by a takings claim. In this context, it is established that economic losses resulting from the introduction of competition do not give rise to a takings claim. The takings clause "has not and cannot be applied to insure values of to restore values that have been lost by the operation of economic forces." Market St. Ry. Co. v. Railroad Comm'n of State of California, 324 U.S. 548, 567 (1945). The fact that the government exercises its power to aid the development of a claimant's competitors, and thus indirectly diminishes the claimant's value, does not affect the analysis. Id. at 567 (rate order reflecting diminished value of railroad resulting from competition with a municipal railway line does not give rise to a takings claim).

BellSouth also must show a serious economic loss based on the current value of its facilities, and not some historical value of its facilities. "[T]he due process clause never has been held . . . to require a commission to fix rates . . . on the historical valuation of property whose history and current financial statements showed the value no longer to exist." Market Street, 324 U.S. at 567. That is true even if the new methodology results in substantial revenue losses and unprofitability, because a "regulated utility has no constitutional right to a profit. . . and a company that is unable to survive without charging exploitative rates has no entitlement to such rates." Jersey Central Power & Light Co., 810 F.2d 1168, 1180-81 (D.C. Cir. 1987). As a result, BellSouth would have to take into account its recent actions in writing off assets in anticipation of competition. In 1993, for example, BellSouth wrote off $1.1 billion to restructure its telephone operations in order to "redesign, consolidate and streamline." (Ex. 55, BellSouth Notice of 1996 Annual Meeting, at A-10.)

Moreover, the Act compensates BellSouth to offset any reduction of revenues. In particular, the Act permits BellSouth to compete in other market areas. BellSouth has embraced the concept of competition, and its attendant financial risks, because of the prospects of enhanced revenues from other markets. For example, it has advised its investors as follows:

> Notwithstanding the risks associated with increased competition, BellSouth will have opportunities to benefit from entry into new business markets. . . . BellSouth believes that in order to remain competitive in the future, it must aggressively pursue a corporate strategy of expanding its offerings beyond its traditional businesses and markets. These offerings may include interLATA services, information services and video and electronic commerce services.

(Id. at A-15.) This type of regulatory scheme cannot effect a taking because it provides BellSouth the opportunity to earn a fair return on its business overall. See Hope, 320 U.S. at 602. See also Ruckelshaus v. Monsanto, 467 U.S. 986 (1984) (pesticide applicant's submission of data, ultimately released by government, in exchange for the economic advantages of a pesticide registration not a taking where investors were aware of the risks); Colorado Springs Production Credit Association v. Farm Credit Administration, 967 F.2d 648 (D.C. Cir. 1992) (forced contribution to assist crisis in Farm Credit System not a taking where association received substantial corresponding benefits from terms of Act, including expanded merger power).

Thus, the only constitutional question is whether a TELRIC approach jeopardizes BellSouth's financial integrity and ability to continue to attract capital. It is difficult, if not impossible, to conceive of a situation where this could happen. By definition, the TELRIC approach provides BellSouth the opportunity to recover all of its forward-looking costs, including the costs of attracting capital. For that reason, any disparities between TELRIC revenues and an incumbent LEC's more optimistic expectations based on the continuing existence of ratemaking approaches superseded by the 1996 Act, are simply irrelevant for constitutional purposes.

In Duquesne, for example, the Supreme Court rejected a utility's constitutional challenge to a change in rate methodology that prevented it from recovering more than $35 million in prudent expenditures that were recoverable under the methodology in place when those expenditures were made. Recognizing that the "partly public, partly private status of utility property creates its own set of questions under the Takings Clause," the Court reasoned that regulators "must be free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and conflicting interests," including consumer interests. Duquesne, 488 U.S. at 307, 313-4 (quoting Permian Basin Area Rate Cases, 390 U.S. 747, 767 (1968)).

Even if revenues generated by a different methodology could be used to assess a possible takings claim, the revenue "shortfalls" of the types at issue here are wholly unobjectionable. As noted above, a TELRIC methodology focuses on the incumbent LEC's true economic costs of providing network elements. By contrast, the FCC's Part 69 revenue requirement rules reflect a backward-looking, fully distributed cost, rate-of-return rate methodology. As the FCC has recognized, rates based on such historical costs have "no claim to economic rationality," because "current or anticipated costs and revenues are generally the relevant factors influencing business decisions to enter markets and price products." Further Notice of Proposed Rulemaking, Policy and Rules Concerning Rates for Dominant Carriers, 3 FCC Rcd. 3195, 3226-27 (1988).

Because rates based on historical costs lack economic rationality, TELRIC based rates properly exclude certain categories of "costs" that may appear in a rate-of-return revenue requirements. The Commission and the courts consistently have rejected takings claims premised on supposed rights to recover such costs, which the incumbent LECs were able to recover in past rates only by virtue of the their monopoly power. In Illinois Bell Tel. Co. v. FCC, 988 F.2d 1254, 1263 (D.C. Cir. 1993), for example, Ameritech challenged as confiscatory a rate order that served to "exclude part of [an] original investment from the rate base." Id. at 1263. The D.C. Circuit rejected the challenge, noting that, even if the exclusion resulted in a loss of revenues, "[t]here simply has been no demonstration that the FCC's rate base policy threatens the financial integrity of [ILECs] or otherwise impedes their ability to attract capital." Id. (Commission has no obligation "to include in the rate base all actual costs for investments prudent when made").[18/]

Even if a TELRIC-based pricing requirement would somehow cause BellSouth to suffer the deep financial hardship envisioned in Hope, this end result would not necessarily amount to a taking. That is because the Court in Hope held that determining whether rates are "just and reasonable" -- and hence constitutional -- "involves a balancing of the investor and consumer interests." Hope, 320 U.S. at 603 (emphasis added). More recently, the Court reaffirmed what it called "a truism of rate regulation: 'regulation may, consistently with the Constitution limit stringently the return recovered on investment, for investors' interests provide only one of the variables in the constitutional calculus of reasonableness.'" FPC v. Texaco, Inc., 417 U.S. 380, 392 (1974) (emphasis added). Thus, "even where the sort of deep financial hardship described in Hope is present, the utility is entitled only to an 'end result' hearing, and is not entitled to any greater return on its investments unless it shows both that the rate was unreasonable and that a higher return would not exploit consumers." Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168, 1182 n.3 (D.C. Cir. 1987) (emphasis added). Accordingly, adoption of TELRIC-based pricing might still not constitute a taking even if it causes BellSouth to fail, if the interests of consumers in breaking up the local exchange monopolies is deemed to outweigh BellSouth's interests in preserving its viability.

As should be apparent then, BellSouth's takings argument is simply a ploy to maintain the revenue approach used during the regulated rate era. It wants to recover its embedded costs, but cannot do so when prices are determined on a forward looking basis. BellSouth is well aware that competition is a fact, and has been organizing itself financially to

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18/ See also 3 FCC Rcd. at 3211 (1988) ("[a]ll of the Bell Operating Companies . . . agree that serious deficiencies in rate-of-return regulation necessitate consideration of an alternative regulatory system"); Farmers Union Cent. Exch., Inc. v. FERC, 734 F.2d 1485, 1503 (D.C. Cir. 1984) (utility has no entitlement to "creamy returns" that are the result of monopoly power); Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, 1996 FCC LEXIS 372, * 47 (January 26, 1996) (rejecting takings challenge because rates "should not include costs resulting from any expectation of monopoly profits"); Southwestern Bell Tel. Co., 7 FCC Rcd. at 2913 ("even under rate of return regulation there is no guarantee that rates can automatically be retargetted without an examination of costs").

adapt to this competitive era. Recognizing a takings claim would only send the local telephone exchange market backwards, and not forwards.

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

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> AT&T: Yes. Under the Act, AT&T may order unbundled network elements individually or in any combination it chooses. Any combinations will be pre-determined and identified to BellSouth so they can be ordered and provisioned and shall not require the enumeration of each network element with that combination on each provisioning order.

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The Commission should prohibit BellSouth from restricting AT&T's ability to combine BellSouth's unbundled network elements. The Act expressly requires BellSouth to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. § 251(c)(3). Notwithstanding this clear legal requirement, BellSouth refuses to provide AT&T with the unbundled Loop Facility and unbundled Local Switching, if AT&T plans to combine them and offer service to consumers using these elements. Instead, BellSouth maintains that AT&T's only "choice" is to buy BellSouth's existing port offering at a wholesale price and then resell it to AT&T's customers. (Varner, Tr. 1477.) BellSouth's refusal to allow AT&T to use unbundled elements as building blocks to create AT&T's own basic services is an attempt to retain its monopoly in providing these services, either directly to its customers or to other providers for resale. The result is not only to inhibit competition, but to remove the incentive for new providers to develop their own facilities.

The Act aims at promoting competition by requiring incumbents to unbundle their network elements and allowing new entrants to combine these elements. This is typically referred to as the "platform configuration," whereby the new entrant combines an unbundled switch and an unbundled loop to form a basic exchange platform for local exchange services (Gillan Tr. 87.) The new entrant then can market this basic platform, or combine it with its own network elements, such as Operator/Directory Assistance services.

The platform configuration promotes competition and benefits the consumer in any number of ways. The ability of a new entrant to create its own platform drives down prices through head-to-head competition, because when a new entrant combines unbundled network elements to create a platform, customers easily can shift between local providers while continuing to receive the same services. (Gillan, Tr. 87-88.) By contrast, if a new entrant has access only to BellSouth's unbundled loop, the loop to the customer must be reconfigured from BellSouth's local switch to a competitor's switch every time a customer changes local service providers. (Gillan, Tr. 86.) The platform configuration also solves the entry barrier problem of local number portability, because the new entrant's customers continue to be served by the incumbent's local switch. (Gillan, Tr. 88.) Finally, the platform configuration allows new entrants to offer new and different services or combinations of services. A consumer then may select the service provider which offers services most closely aligned with customer needs. (Tamplin, Tr. 293; Gillan, Tr. 88.)

As is apparent, BellSouth's refusal to sell unbundled loops and switches that will be combined to create a service is highly anti-competitive. It therefore makes perfectly good sense that the Act gives AT&T the legal right to purchase and then combine BellSouth's network elements. (Tamplin, Tr. 292-93.) The Act is very clear that BellSouth may not limit AT&T's right to combine unbundled network elements to provide telecommunications services. 47 U.S.C.A. § 251(c)(3).[19/]

Notwithstanding the explicit language in the Act and the FCC Order, BellSouth still asserts that AT&T and other new entrants may not "rebundle" the Local Loops and Switching. (Scheye, Tr. 1839.) BellSouth contends such rebundling would render meaningless the resale provisions of the Act, including its provisions on wholesale pricing for resold services. (Scheye, Tr. 1657-58.) The fundamental problem with BellSouth's position is that it is contrary to the Act's and FCC's explicit provisions which allow AT&T to purchase and then combine network elements. The debate over the legality of purchasing unbundled elements and then recombining them is over, because Congress has spoken on this issue.

Another problem with BellSouth's position is that BellSouth uses a misleading and incorrect definition of "local switch." The predicate for its argument is therefore wrong. As explained above, when BellSouth refers to a "switch," it means not just the switch, but also all the other network elements which comprise its "port" offering. (Milner, Tr. 2645.)

19/ The FCC Order states that an entrant may combine unbundled network elements in any way it chooses, including the recreation of existing services. 47 C.F.R. §§ 51.309(a), 51.315(c); FCC Order No. 96-325 ¶¶ 292, 296; (Gillan, Tr. 101.) BellSouth acknowledges that if the Commission adopts the FCC's position, it will have to provide AT&T with what AT&T has requested. (Varner, Tr. 1478.)

Only under BellSouth's misleading and incorrect definition can it argue that combining an unbundled loop and switch yields the same local service which BellSouth currently provides. If only a switch (as correctly defined by the Act) is combined with a loop, then calls cannot be completed unless the call is made to another party on the same local switch. If the other party is on a different local switch, or uses the switch of another carrier, then the call cannot be completed. Transport and signaling elements are required to carry the call to its destination. It therefore is apparent that purchasing a switch and loop (as correctly defined by the Act) as unbundled elements and combining them does not replicate a service available from BellSouth for resale.

ISSUE 3: **What services provided by BellSouth, if any, should be excluded from resale?**

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AT&T: The Act and the FCC Order require BellSouth to offer for resale at wholesale rates any telecommunications service that BellSouth provides at retail to non-telecommunications carriers. The Act and the FCC Order do not provide for any exceptions to BellSouth's obligation.

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The Commission should require BellSouth to offer for resale to AT&T and other new entrants all of BellSouth's retail telecommunications services. In other words, the Commission should ensure that all competitors achieve parity among themselves and with BellSouth by being able to offer all of the services BellSouth offers to its customers. By requiring BellSouth to provide all of its services for resale, the Commission will foster competition in the local exchange market, and in turn will secure numerous benefits for Florida consumers. (Sather, Tr. 586.) This also is an undisputed requirement of the Act, because the Act requires that BellSouth offer for resale to AT&T at wholesale rates all telecommunications services BellSouth provides at retail to non-carrier subscribers. 47 U.S.C.A. § 251(c)(4).

Reflecting its general anti-competitive philosophy, BellSouth contends the only "true" form of competition is facilities-based competition. (Varner, Tr. 1542.) BellSouth seeks to denigrate resale competition by claiming it is simply an unimportant "adjunct" to the "true facilities based" competition. (Id.) To make matters worse, BellSouth makes the incredible claim that competition through resale will not bring the benefits of true competition to consumers. (Id.) BellSouth's motive in denigrating resale competition is to stall competition so it can continue to enjoy the fruit of its monopolist position. It knows better than another company the significant capital investment which will be needed for facilities-based competition, as well as the significant time it will take to build facilities. By arguing that new entrants must rely solely on their own facilities, BellSouth buys lots of time before competition will develop, and may even have potential competitors forego the market entirely.

The time and costs needed for facilities-based competition is why resale is so important. Resale provides a quick method for competitors to enter the market. Indeed, the history of the interexchange market proves that a comprehensive resale requirement provided the quickest avenue through which new players entered into the interexchange market. (Sather, Tr. 586.) Competition in the interexchange market did not start with full-scale facilities-based competition -- it started with resale competition. It is undisputed that resale forced interexchange carriers, including AT&T, to drop prices, add new services, and deploy new technologies.

Because BellSouth wants to avoid the immediate competition that resale will create, BellSouth refuses to provide the following services for resale at wholesale rates: grandfathered or obsolete services; promotional offerings; Lifeline/Link up; contract service arrangements; 911/E911/N11 services; and state specific discount plans or services. (Sather, Tr. 587.) BellSouth may deny AT&T the right to purchase these services only if BellSouth can prove to this Commission that these withheld services are narrowly tailored, reasonable and non-discriminatory. FCC Order No. 96-325, ¶ 939 (Sather, Tr. 597-98.) BellSouth fails to meet this burden. Therefore, the Commission should order BellSouth to make each of these services available to AT&T and other entrants on a resale basis.

- Grandfathered and Obsolete Services -- These are services that BellSouth offers to existing retail customers, but not to new subscribers. BellSouth wants to withhold these services in order to stifle competition. These services are significant, because in some cases these discontinued services will continue for up to six years. (Scheye, Tr. 1874.) AT&T intends to provide these services only to customers receiving them from BellSouth at the time they switch to AT&T. AT&T is not seeking to offer these services to customers not currently receiving them. The Commission should order BellSouth to provide these services on a resale basis. Absent such an order, competition will be stifled, and ultimately, Florida consumers will suffer the consequences of reduced competition: higher prices and less quality or variety of services. (Sather, Tr. 587-90.)

BellSouth frankly admits it wants to prohibit the resale of these services. (Scheye, Tr. 1617.) It does not care that consumers will have fewer choices. According to BellSouth, the Act does not cover "withdrawn" services, on the theory such services are not offered to the general public. But the Act does include withdrawn services within the definition of telecommunication services because BellSouth offers withdrawn services "for a fee directly to the public."

47 U.S.C.A. § 153(46). The FCC considered and firmly rejected the position advanced by BellSouth, and ruled that incumbent LECs such as BellSouth must make withdrawn services available at wholesale rates to a requesting carrier. FCC Order No. 96-325 ¶ 968, 47 C.F.R. § 51.613(a)(2); (Sather, Tr. 598.)

- Promotions and Contract Service Arrangements -- Promotions involve offering a service at a special price. This could be the waiver of a non-recurring fee, the offer of services as a gift in return for purchasing other services, or the offer of limited free services. Contract service arrangements ("CSAs") are similar, in that a carrier offers a customer a discounted, off-tariff pricing arrangement. The Commission should require that BellSouth offer promotions and CSAs for resale.

Despite the anti-competitive nature of its position, BellSouth refuses to resell CSAs or promotions. Again, BellSouth relies upon a strained reading of the Act in an attempt to justify its position, this time contending that promotions and CSAs are not retail service offerings. The Act, however, mandates that incumbent LECs offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who are not telecommunications carriers . . . ." 47 U.S.C.A. § 251(c)(4)(A). CSAs and promotions clearly are covered by the Act because BellSouth provides them on a retail basis to subscribers who are not telecommunications carriers.

Currently, BellSouth has the ability and the incentive to manipulate promotions and CSAs as a means to avoid competition in the resale market. For instance, by entering into CSAs with a certain category of customers -- such as medium sized businesses -- BellSouth would retain its monopoly with regard to those customers. CSA customers would not want to switch from BellSouth to a new entrant if the new entrant could not offer the same CSAs to these customers in the resale market. The end result is another example of not establishing parity: BellSouth continues its entrenched position, and competition is delayed.[20/] Once again, the bottom line is BellSouth trying to avoid parity of services so as to avoid competition.

20/ The FCC Order provides that BellSouth must offer promotions for resale, except short-term promotional prices. FCC Order No. 96-325 ¶ 949, 47 C.F.R. § 51.613(a)(2) (to be codified). Like AT&T, the FCC is concerned that an incumbent LEC could use promotions anti-competitively to avoid its wholesale obligations by offering promotional plans that new entrants could not resell. FCC Order No. 96-325, ¶¶ 949-51. Even though the FCC has granted the state commissions the discretion to allow incumbent LECs to offer ninety day or less promotional packages for resale at standard retail rates, rather than wholesale rates, if this Commission
(Footnote continued on next page)

- LinkUp and Lifeline -- LinkUp and Lifeline are means-based subsidized retail residential services. They provide billing credits to help defray the cost of monthly recurring service and service installation charges for customers who qualify for financial assistance The Commission should require BellSouth to resell these or similar means-tested service offerings.

Consistent with its generally anti-competitive positions, BellSouth refuses to make LinkUp and Lifeline available for resale. BellSouth simply ignores the fact that the Act requires it to "offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who are not telecommunications carriers. . . ." 47 U.S.C.A. § 251(c)(4)(A). The recipients of the Lifeline and LinkUp telecommunications services are not telecommunication carriers -- they are financially disadvantaged residential customers -- thus establishing BellSouth's statutory duty to resell these services.

In effect, BellSouth wants to discriminate against this category of customers, and deny them the right to choose between BellSouth and another provider. This is a particularly cynical position to take with respect to these underprivileged subscribers, who need price competition perhaps more than any other customers. Instead, BellSouth argues that AT&T should resell basic residential service to eligible customers at appropriate rates, and apply for and receive certification and funding from the appropriate state agency. (Scheye, p. 6.) In other words, BellSouth wants new entrants to overcome additional regulatory burdens.

This Commission should permit AT&T and other new entrants to purchase Lifeline and LinkUp services for resale. This would help in achieving parity of the services offered by BellSouth and by new entrants to the market. BellSouth wants to avoid parity by insisting that its competitors comply with regulatory burdens. BellSouth knows this is an impediment to competition, and knows it will benefit from any such impediments. BellSouth will be compensated for its costs of processing the certificates and funding associated with these programs through the appropriate wholesale price.

- 911/E911 and N11 Services -- 911 service provides the facilities and equipment required to route emergency calls made in a particular geographic area to the appropriate Public Safety Answering Point. E911 provides more flexibility by using a database to route calls to the appropriate Public Safety Answering Point. N11 is a service

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decides to permit this practice, it should establish guidelines to ensure that BellSouth does not use this exception in an anti-competitive manner. (Sather, Tr. 598.)

offered to information service providers who, in turn, provide information services to consumers via three digit dialing. (Carroll, Tr. 711.) The Commission should order BellSouth to provide these services on a resale basis.

BellSouth provides these telecommunications services to customers who are not telecommunications carriers. The fact that the customer may be a municipality does not alter the retail character of these offerings. As a result, the Act is clear that BellSouth must offer these services for resale to AT&T and other new entrants. 47 U.S.C.A. § 251(c)(4)(A). The Commission should reject BellSouth's attempt to create broad exceptions to Act's resale requirement, especially because the Act provides no support for such an exception. Once again, BellSouth is trying to discriminate against these retail consumers by denying them the benefits of competition. It also is trying to avoid parity of services, by seeking to retain a monopoly over these services, while making it impossible for new entrants to provide these services.

<u>ISSUE 4</u>: **What are the appropriate wholesale rates for BellSouth to charge when AT&T or MCI purchases BellSouth's retail services for resale?**

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AT&T: The appropriate wholesale rate for services available for resell is the retail rates of BellSouth offered by BellSouth less 39.99%. This reduction in retail rates shall apply to all services, including both recurring and nonrecurring service charges.

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The Commission should adopt a permanent wholesale discount of 39.99%, applicable to all of BellSouth's retail, toll, and private line service rates. The Act requires wholesale rates to exclude the costs of "marketing, billing, collection and other costs that will be avoided." 47 U.S.C.A. § 252(d)(3). AT&T's cost study complies with the requirements of the Act, and identifies all retail costs that will be avoided by BellSouth. (Ex. 14, ALS-1; <u>See also</u> Lerma, Tr. 641, 653, 655.)

Although AT&T has attempted to negotiate reasonable wholesale rates with BellSouth, BellSouth has insisted on wholesale rates that would have AT&T paying the costs of BellSouth's retail activities, even though AT&T will not be purchasing those retail services from BellSouth. Obviously, if AT&T must pay BellSouth's retail costs, in addition to AT&T's own retail costs, AT&T can never hope to offer competitive prices to Florida's consumers. The end result would be Florida consumers never enjoying the benefits of price competition due to competition through resold services. Even if somehow AT&T managed to offer competitive retail prices, AT&T and other new market entrants still would be subsidizing BellSouth's retails costs. Thus, BellSouth would retain an unfair advantage so as to preclude efficient competition.

A. <u>The Commission Should Reject BellSouth's Cost Study Which Is Based On Actually Avoided Costs</u>

The Act imposes on all incumbent LECs the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C.A. § 251(c)(4). The Act further provides that state commissions "shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications services requested, *excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier.*" 47 U.S.C.A. § 252(d)(3) (emphasis added).

AT&T developed a cost study that fully complies with the Act because it removes only the direct and indirect costs which reasonably will be avoided by BellSouth when it sells its services on a wholesale basis. As also required by the Act, AT&T's cost study removes all other costs that BellSouth will avoid as a wholesaler. Accordingly, the Commission should adopt AT&T's proposed wholesale discount rate of 39.99%.[21/]

According to BellSouth, the Act requires a deduction of only those costs which it will actually avoid in the short term. (Reid, Tr. 2335.) BellSouth has applied this incorrect reading of the Act in developing the cost study upon which it

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21/ If the Commission determines that AT&T's proposed rate is not in accordance with the Act, the Commission should order an interim wholesale discount rate of 25%. This percentage is reasonable and within the temporary default range of 17%-25% suggested by the FCC Order 96-325 after consideration of input from multiple industry participants. Moreover, 25% is well within the range of proposals submitted in this hearing. This percentage would be a highly conservative estimate given the costs reflected in AT&T's Simplified Avoided Cost Study. (<u>See</u> Ex. 14, ALS-1.) In such a case, BellSouth also should be ordered to produce a detailed avoided cost study compliant with the Act, in order for the Commission to establish a permanent wholesale rate.

Although this portion of the FCC Order has been stayed, the Commission nonetheless is entitled to use the FCC Order as guidance, especially given the extensive data which the FCC developed and used in developing the default ranges. Similarly, AT&T believes it is appropriate for this Commission to use other provisions of the Order as guidance pertaining to resale pricing. Nothing in the Eighth Circuit's decision bars the Commission from doing so; it only prohibits the Commission from mandating the application of these provisions.

bases its proposed rates. (Ex. 75, WSR-1.) Because this cost study is based on an incorrect interpretation of the Act, the Commission should reject it as a matter of law.[22/]

Every state which has adjudicated the wholesale discount categorically has rejected BellSouth's argument that only costs that are "actually avoided" are to be included in the discount calculation. The state commissions of California, Illinois, Ohio and Colorado have interpreted the Act consistent with the AT&T's approach, and have rejected BellSouth's approach. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)).

Specifically as to BellSouth, the state commissions of Georgia, Kentucky and Louisiana have rejected the very same cost study methodology which BellSouth now proposes to this Commission. Georgia found BellSouth's methodology a "narrow, constrained view of the avoided cost approach." (Ex. 80.)[23/] Kentucky found that BellSouth's approach is "too simplistic and has insufficient detail." (Ex. 81.) Most recently, Louisiana also rejected BellSouth's methodology. (Ex. 82.)[24/] Again, no jurisdiction which has ruled on BellSouth's avoided cost methodology has adopted it.

Based upon state commission decisions, the FCC also rejected BellSouth's interpretation of the Act and interpreted the Act in the same way as the state commissions described above. The FCC Order calls for state commissions to determine which costs are "reasonably avoidable" when an incumbent LEC sells its services wholesale. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). The FCC Order specifically recognizes that wholesale prices which include retail costs are artificially high. Reflecting the Act's objectives of efficient, rapid entry into the local market, the FCC Order

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22/ BellSouth also prepared a cost study which it contends to be compliant with the FCC's Order. (See Ex. 76, WSR-3.) This other cost study produces larger discount rates, and therefore lower wholesale prices, than does BellSouth's cost study which applies the "actually" avoided subjective standard. As explained below, the Commission also should reject BellSouth's supposedly FCC compliant cost study because that study also contains inadequate or no justifications.

23/ The Superior Court of Fulton Country, Georgia recently rejected BellSouth's appeal of this decision on all fronts. (BellSouth Telecommunications, Inc. v. Georgia Public Service Commission, et al., Civil Action No. E-49835 (Oct. 8, 1996).)

24/ Recommendation of Administrative Law Judge, Oct. 9, 1996, Louisiana Public Services Commission, Docket No. U-22020, at 2. The Recommendation of the Administrative Law Judge was accepted by The Louisiana Commission in an open hearing on October 16, 1996.

requires that the wholesale discount exclude all costs that an incumbent LEC incurs in maintaining a retail, as opposed to a wholesale business. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). In rejecting the approach taken by BellSouth in this proceeding, the FCC stated: "We do not believe that Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable." (Id.)

Despite the consistent rejection of its position, BellSouth continues to advocate its "actually avoided" standard. BellSouth does so even though it admits that the phrase "actually avoided" does not appear in the Act. (Reid, Tr. 2429.)

BellSouth's underlying rationale is apparent: by calculating a discount rate based only those costs which BellSouth chooses to avoid, all of BellSouth's inefficiencies, losses and bad business decisions will remain in its wholesale prices and will be paid for by its competitors. Its competitors either will have to pass those costs on to their customers, or not enter the resale market and thus deprive Florida consumers of competition.

Therefore, this Commission should reject BellSouth's approach. Put most simply, BellSouth proposes no objective standard to determine whether a cost is avoided. Instead, it wants to use the purely subjective standard of whether BellSouth decides to stop incurring a particular cost. A subjective, rather than objective standard, leaves BellSouth in total control of the keys to market entrance through resale. It is a concept that clearly puts competition and Florida consumers at risk. As a result, if BellSouth chooses not to avoid these costs which are unrelated to its wholesale activities, then BellSouth should bear those costs; its competitors should not be forced to shoulder the burden of paying for BellSouth's business decisions.

Contrary to BellSouth's position (see Reid, Tr. 2419), the mere fact that a cost is not "volume sensitive" does not, by itself, mean the cost is not retail related. Many costs are not volume sensitive, but nonetheless are retail-related, and so will be avoided in a wholesale environment. For instance, television advertising that is intended to market retail products is clearly retail-related. These costs, however, are not volume sensitive because they do not necessarily decrease (and may even increase) as the number of BellSouth customers decreases. (Reid, Tr. 2338.) Failure to account for retail-related costs such as these will not produce the wholesale discount vital to the development of competition in the resale area.

As only could be done by an entrenched monopolist, BellSouth sees nothing wrong with AT&T and other new entrants subsidizing its advertising efforts to influence retail consumer choices. BellSouth tries to rationalize its position by saying that it does not intend to actually avoid advertising costs due to its sale of wholesale services to AT&T. (Reid, Tr. 2445.) Here again, BellSouth is applying its subjective judgment to determine whether it will stop incurring retail-related costs when it sells wholesale services.

By taking this position on avoided costs, BellSouth also misleads potential market entrants. Potential entrants must decide whether to enter the retail market through resale or through other possible avenues. In making this decision, a potential entrant will consider the wholesale discount rate. If that rate is small, because avoided costs improperly are understated, then the potential competitor is unlikely to enter the resale market. (See Kaserman, Tr. 499.) In other words, by understating the amount of avoided costs, BellSouth makes it less likely that Florida consumers will benefit from competition in the market of resold services.

B. AT&T'S Cost Study Is Justified While BellSouth's Supposedly FCC Compliant Study Is Not

As should be apparent, BellSouth's cost study, which simply applies BellSouth's subjective judgment, should be rejected as a matter of law. BellSouth claims its other cost study adheres to the interpretation of the Act as adopted by various state commissions and the FCC. (See Ex. 76, WSR-3.)

However, a comparison of AT&T's cost study with BellSouth's supposedly FCC compliant study shows that they differ in their respective treatment of a number of cost categories. AT&T maintains that all or portions of these costs will be avoided when BellSouth sells services on a wholesale basis, and has provided a rational basis for this conclusion. BellSouth maintains that it does not intend to avoid many of these costs, yet provides an inadequate justification, or in many instances, no justification, as to why it will not avoid these costs. The Commission should accept AT&T's cost study because it comports with the Act, is based on sound accounting principles, and offers a reasonable and logical rationale for its conclusions. A summary of AT&T's cost study, and the primary flaws in BellSouth's study, are discussed below.

1. Directly Avoided Costs

AT&T's cost study uses information BellSouth reported in its 1995 ARMIS Report Nos. 43-03, 43-04, and 43-08. (Lerma, Tr. 613-14.) AT&T deducted the costs in six USOA accounts because they are directly avoided retail costs which are unrelated to the provision of wholesale services. AT&T's identification of costs in these accounts as directly avoided complies with the requirement of the Act to identify all retail costs which will be avoided. BellSouth proposes to treat a lesser amount of these costs as avoided, but does not justify its position.

a. <u>6610 (marketing) and 6620 (service expenses)</u>

AT&T's cost study includes as directly avoided all of the costs in two USOA accounts:

- 6610 (marketing), which includes subsidiary USOA accounts 6611 (product management), 6612 (sales), and 6613 (product advertising)
- 6620 (service expenses), which includes subsidiary USOA accounts 6621 (call completion), 6622 (number services), and 6623 (customer services)

All of these are retail-related costs, and thus reasonably will be avoided when BellSouth provides wholesale services to AT&T. If BellSouth passes these retail costs on to AT&T, AT&T will not be able to offer competitive prices to Florida consumers, because AT&T necessarily must incur these same retail costs when conducting its own retail operations. The FCC Order presumed all of the costs in both accounts to be avoided. FCC Order 96-325 ¶ 917 (61 Fed. Reg. 45566 (¶ 607)).

BellSouth proposes to treat many of these costs as not avoided. For example, its supposedly FCC compliant cost study treats as avoided costs: 95.63% of BellSouth's product advertising costs; 86.06% of its sales costs; 19.93% of product management costs; and *none* of the number services costs. (<u>See</u> Lerma, Tr. 650.) All of these costs are retail-related, having been incurred in a nearly 100% retail context. Because it is logical that these costs will be reasonably avoided, the FCC Order presumed 100% of these costs will be avoided. BellSouth provides no documentation supporting its assertion that it would avoid less than 100% of these retail-related costs. As a result, BellSouth's supposedly FCC compliant study should not be accepted as to these costs.[25/]

BellSouth's "justifications" for the results of this cost study simply are missing. For example, in this study BellSouth treats only 65.56% of its customer service expenses as avoided. (Ex. 75, WRS-1.) As purported, BellSouth provides two worksheets supposedly evaluating customer service avoided costs by Job Function Code ("JFC"). (<u>See</u> Ex. 75, WRS-1, at 5-6 (Worksheets A & B).) However, these numbers, like BellSouth's other avoided cost figures, are nothing more than numbers on a spreadsheet. Exhibit 75 contains absolutely no explanation why these costs will not be

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25/ As was discussed above, BellSouth proposes a wholesale discount rate based on a separate cost study which it concedes does not even purport to follow the FCC Order. (Ex. 75, WSR-1.) This cost study provides an even more startling picture of BellSouth's intent to suppress competition. In this cost study, BellSouth treats as avoided: 4.51% of advertising costs, 66.72% of sales costs, and 0.00% product management costs. (<u>See</u> <u>Id.</u>)

avoided. Even worse, neither these worksheets, nor any other documentation provided by BellSouth, contain any information at all as to accounts 6621 (call completion) and 6622 (number services). Nevertheless, BellSouth alleges that none of the costs in these categories will be avoided.

Overall, the supporting worksheets in Exhibit 75 provide no insight into, no rationale for, no validation of, and no support for BellSouth's alleged JFC analysis. All BellSouth has done in its JFC analysis is look at a subset of the USOA cost accounts, and make unverifiable assertions as to whether or not BellSouth will avoid such costs. Thus, BellSouth again is applying a subjective standard, whereby it decides whether to avoid a cost, but this time does not even provides an explanation.

b. 6220 (operator systems)

AT&T deducted all of the costs in two additional cost accounts as directly avoided:

- 6220 (operator systems)
- 6560 (depreciation/amortization of operator systems)

BellSouth will avoid these costs because AT&T will provide its own operator services. (Lerma, Tr. 663.) The logic of this is clear: if AT&T provides (and pays for) its own operators when reselling services, then BellSouth will not have to provide (and pay for) its operators. The FCC Order used this same logic in deciding that accounts 6621 (call completion) and 6622 (number services) are presumed to be avoided, "because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties." FCC Order 96-325 ¶ 917 (61 Fed. Reg. 45566 (¶ 607). Likewise, because BellSouth avoids operator systems equipment costs, then it also avoids the depreciation expenses associated with that equipment (account 6560). (Lerma, Tr. 637.)

BellSouth opposes these two deductions. Once again, it relies upon its excessively broad definition of Local Switch to support its position. Here, BellSouth asserts operator services are a part of its "port" offering, which it will not unbundle, and it therefore does not avoid operator costs when it resells this port offering. (Reid, Tr. 2365.) BellSouth also argues that if AT&T provides such services to its customers, the result would be a competitive loss for BellSouth, because operator services provide it with a separate revenue stream. (Id.)

The basic problem with BellSouth's position, as was explained above, is that operator services is a network element and the Act requires BellSouth to unbundle this element. BellSouth's argument is irrelevant in any event, because BellSouth operator services are, by its own admission, solely retail functions and not related to the provision of wholesale services to AT&T. (Lerma, Tr. 648-49.) BellSouth's "revenue stream" argument is nothing more than another plea not to reduce BellSouth's revenues, even though resellers will provide their own operators.

BellSouth's position is anti-competitive, because AT&T would be paying the salaries of BellSouth operators and the cost of BellSouth operator equipment, even though it would not use these services. If the costs of operator services are not removed from the discount, resellers who provide their own operator services will pay for those services twice: once in the actual cost of providing these services themselves, and once again in the wholesale discount rate. As a result, BellSouth's position is contrary to the purpose of the Act because it causes an anti-competitive result for AT&T and other new market entrants who will be forced to subsidize BellSouth's retail costs.

c. **6533 (testing) and 6534 (plant administration)**

AT&T deducted 20% of the costs in two cost accounts as directly avoided:

- 6533 (testing)
- 6523 (plant administration)

As discussed in Issue 13, AT&T has requested electronic interfaces with BellSouth's Service Trouble Reporting database. AT&T needs these interfaces in order to perform both immediate and high quality initial trouble analysis for its retail customers. (Lerma, Tr. 638.) By using these interfaces, AT&T will be able to conduct trouble shooting in response to customer issues, instead of BellSouth having to do this.

In order to determine that portion of costs in these two accounts which are retail driven, AT&T used estimates of its own costs for testing and plant administration. This was the best information available in the absence of BellSouth data as to these costs. AT&T's experience is that approximately 50% of its own overall Testing and Plant Administration costs involve end-user testing and trouble-shooting. (Lerma, Tr. 638.) Accordingly, as much as 50% of BellSouth's Testing and Plant Administration costs are likely to be retail-type costs that BellSouth will avoid in a wholesale context.

This 50% estimate reflects that BellSouth will continue to incur some testing and plant administration costs even if BellSouth operates only as a wholesaler. But the estimate also reflects that, as a wholesaler, BellSouth will not interface with end user customers as much as it does today, and thus will avoid those testing and plant administration costs which involve end user customers who shift to another carrier. AT&T accounted for potential differences between its own costs and those of BellSouth, by discounting its own costs from 50% of the total to 20% of the total. (Lerma, Tr. 667-68.) BellSouth has provided no evidence that AT&T's estimates are incorrect.

The Plant Administration costs related to facilities that support retail customer testing functions are proportionally affected. Accordingly, BellSouth conservatively will avoid at least 20% of these costs as well. (Lerma, Tr. 638.)

In disputing AT&T's position, BellSouth once again sidesteps the question of whether these costs are avoided, claiming these services are inseparable from the "local services" packaged by BellSouth and therefore may not be provided by any carrier other than BellSouth. (Reid, Tr. 2371-72.) BellSouth should not be allowed to analyze the retail-related portion of its Testing and Plant Administration costs based on its subjective standard, and instead should analyze those costs on the basis of whether such costs may be readily avoided.

Moreover, even under BellSouth's interpretation of the Act, these expenses clearly will be avoided because BellSouth's need to provide retail testing services diminishes as AT&T provides these services. (Lerma, Tr. 648-50; see also Reid Tr. 2335-36) BellSouth's bottom line is that AT&T should pay twice for performing testing on behalf of its retail customers: Once when AT&T does the testing, and once again even though BellSouth does not perform testing.[26/]

2. Indirectly Avoided Costs

In its cost study, AT&T also excluded a portion of BellSouth's indirect costs. Indirect costs also are often referred to as overhead, or general and administrative costs. By definition, indirect costs are associated with direct costs. The cost of a human resources department, for example, is an indirect cost. That indirect cost is allocated to direct costs, to yield a total cost for a particular function. Thus, the total cost of operator services includes the direct costs of that function (salaries of operators), and the allocable indirect costs (such as a portion of the costs of a human resources department).

When a direct cost is reasonably avoided by BellSouth in its role as a wholesaler, it is logical, indeed necessary, to treat the allocable indirect costs as reasonably avoided. AT&T's avoided cost study indicates BellSouth will avoid 28%

26/ BellSouth argued that it should not have to unbundle "retail services," presumably categorizing repair and maintenance as bundled retail services. (Reid, Tr. 2364.) The FCC Order, however, specifically contemplates repair and maintenance by new market entrants in a resale context. FCC Order No. 96-324, ¶ 518. ("If competing carriers are unable to perform . . . maintenance and repair . . . for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing").

of its indirect costs. (Lerma, Tr. 640.) These indirect costs include costs associated with executive, planning, accounting, finance, human resources, legal, uncollectibles, furniture, artwork, and other similar items and functions. BellSouth's supposedly FCC-compliant cost study treats only 10.92% of its indirect costs as avoided. (See Ex. 76, WSR-3.)27/ The difference between AT&T's indirect cost factor and BellSouth's lies in the different methods of calculating the percentages. AT&T calculated its indirect cost avoidance factor by using the following equation: avoided direct costs ÷ total direct costs. (Lerma, Tr. 640.) Thus, AT&T's cost studies calculate avoided indirect costs *in proportion to the avoided direct costs.* FCC Order No. 96-325 ¶ 918 .

BellSouth, however, uses a different equation to calculate its indirect cost avoidance factor: avoided direct costs ÷ total direct and indirect costs. (See Ex. 76, WSR-3.) For obvious reasons, BellSouth has adopted a methodology which creates, for it, a more favorable rate. BellSouth's approach, however, makes no sense because it fails to allocate all relevant indirect costs. A simple example illustrates the fallacy of BellSouth's position:

> In a two-bedroom apartment, two roommates share rent of $800 per month and utilities of $400 per month. By AT&T's method of allocating indirect costs (in this case, the utilities) each roommate's share of the utilities would be determined based on the relationship his share of the rent has to total rent ($400/$800 = 50% which, multiplied by the $400 utility bill, equals a $200 share).
>
> Using BellSouth's method, each roommate's share would be based on the relationship his share of the rent has to the total household expenses -- or $400/$1200 = 33% which, when multiplied by the $400 utility bill, leaves each roommate with only a $133 share.

The fallacy of BellSouth's position derives from the fact that, in essence, BellSouth seeks to create a factor using the very data to which the factor is ultimately applied.

As indicated in the testimony of Mr. Lerma, even incumbent carriers acknowledge the correctness of AT&T's position: "I testified in a Texas Southwestern Bell case just last week. Southwestern Bell agreed that that was the

27/ BellSouth's non-FCC compliant cost study, on which its bases its proposed discount rate, is even worse because it treats no indirect costs as avoided. (See Ex. 75, WSR-1.)

appropriate calculation. It's my understanding that Ameritech has also agreed that that is the appropriate calculation."

(Lerma, Tr. 673.)[28]

AT&T's cost study applied this indirect cost factor to all of BellSouth's indirect costs. These included items such as depreciation, G&A and Executive & Planning. As to depreciation, for example, AT&T treats as avoided a portion of the depreciation costs (account 6560) related to general support assets. Id. These general support expenses include land, building, furniture, art work, office equipment and general purpose computers. BellSouth uses to support its retail services. Id. To the extent these assets are used to support BellSouth's retail business, they are not required in their entirety for the provision of wholesale services and must be considered avoided costs pursuant to the terms of the Act. Id.

Similarly, some portion of taxes and return on investment are avoided in a wholesale environment. For instance, return on investment in the retail sector of BellSouth's operations is included in the prices BellSouth charges its end user customers. To the extent this underlying, retail-related investment is avoided the return on that investment also is avoided and should not be included in the wholesale rates. (Lerma, Tr. 619-20.) It makes no sense for Florida consumers to pay higher prices to AT&T so that BellSouth can receive a profit on investment it has avoided. Likewise, taxes paid on BellSouth's retail-related revenues also are included in BellSouth's retail prices. To the extent BellSouth no longer receives retail revenue on a particular service, the taxes on this revenue are avoided and also should not be included in BellSouth's wholesale rates. (Lerma, Tr. 619-20.)

3. Uncollectibles

Finally, AT&T's calculation of its proposed permanent percentage reductions also deducts all uncollectibles costs (account 5301) as indirectly avoided costs. In a resale environment, the liability for all end-user uncollectibles transfers in total to the reseller. BellSouth's avoided cost study also treats uncollectibles as 100% avoided.

28/ BellSouth appears to use AT&T's method

in the allocation of joint and common costs. BellSouth witness D. Daonne Caldwell testified that joint and common costs were allocated by BellSouth according to a ratio of the direct cost of a single network element divided by the sum total of costs directly assigned to all network elements. (Caldwell, Tr. 2269.)

ISSUE 5: **What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth's services?**

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AT&T: The Act and the FCC Order require BellSouth not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. Resale restrictions are presumptively unreasonable and prohibited by the Act.

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The Commission should prevent BellSouth from restricting resale in any way. Precluding BellSouth from placing restrictions on the resale of its services to AT&T and other new entrants will help new entrants achieve parity of offerings. Use and user restrictions are anti-competitive on their face. Historically, BellSouth has imposed these restraints to maintain artificially low rates for local residential services, while artificially inflating rates for other classes of customers to maintain adequate revenues pursuant to rate of return regulation. In Florida, BellSouth is now subject to price regulation and is no longer subject to rate of return regulation. (Sather, Tr., 585.) Nevertheless, BellSouth is attempting to perpetuate these outdated pricing structures of the monopoly market that were brought about by use and user restrictions. (Sather, Tr. 583-85.)

Under rate of return regulation, BellSouth maintained low local residential services rates by offering these services below cost and then making up the difference in other classes of services, such as high toll rates for business customers. BellSouth then had to impose use and user restrictions to ensure that residential local exchange services could not be used by businesses. To mollify complaints by large volume business customers, BellSouth in turn created cut rate offerings such as WATs or Foreign Exchange Service. BellSouth then had to impose use and user restrictions to keep small volume business customers from taking advantage of these large volume business offerings. In the resulting scheme, residential and large volume business rates were kept low and small volume businesses made up the difference. (Id.)

Because BellSouth no longer is subject to rate of return regulation, this entire pricing scheme of use and user regulations is obsolete. Now, local residential services are no longer priced below cost and BellSouth receives adequate revenue from the sale of these services. (Id. at 585.) Accordingly, this Commission should prohibit BellSouth from perpetuating rate of return regulation in the competitive resale market. The Commission also should reject BellSouth's attempt to impose resale restrictions by referencing tariffs in the interconnection agreement terms and conditions.

It is clear that the foregoing restrictions constitute unreasonable and discriminatory conditions under the Act. 47 U.S.C.A. § 251(c)(4). The FCC Order also provided that restrictions on resale are presumptively unreasonable. FCC Order No. 96-325, ¶ 939, at 465. If allowed to continue, such restrictions only will inhibit the emergence of competition in BellSouth's current monopoly market. These restrictions also will artificially restrain the functioning of competitive market. On the other hand, if competitive market develops, it will drive prices for all classes of services offered to Florida consumers to lowest levels possible to benefit both residential and business consumers. In short, use and user restrictions are yet another tool BellSouth plans to use to prevent competition from flourishing in Florida. (Sather, Tr. 585.)

<u>ISSUE 6:</u> **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?**

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AT&T: Lack of advance notice of changes to BellSouth's resale services is an operational barrier to fair competition. Without advance notice that would allow a new entrant to implement the necessary administrative changes, BellSouth ensures it will be the first local exchange carrier in the market to offer changed services.

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The Commission should require BellSouth to notify resellers in advance of any services and network changes, at least 45 days prior to the effective date of the change, or concurrent with BellSouth's internal notification process, whichever is earlier. Without this advance notice, new entrants like AT&T cannot make the necessary preparations to resell services offerings which BellSouth intends to change by the effective date of BellSouth's proposed changes. As a result, BellSouth would have an unfair competitive advantage because BellSouth always will be the first carrier to make the changed service offerings available to Florida consumers. (Shurter, Tr. 190, 203.) Such a competitive advantage will help BellSouth preserve its monopoly and deny Florida consumers the benefits of full competition.

Despite the obvious anti-competitive ramifications of this position, BellSouth maintains that it will notify wholesale customers of service and network changes at the same time that it notifies BellSouth's retail customers. (Scheye, Tr. 1633.) BellSouth has no valid reason for its total refusal to provide advance notice. It claims a concern that a competitor might try to hold BellSouth responsible if a proposed change is rescinded before implementation. But it admits that it would be willing to provide advance notice if that concern could be addressed. (Scheye, Tr. 1915-16.)

AT&T has addressed BellSouth's concerns by proposing language that would relieve BellSouth of all responsibility if a proposed change is rescinded. If BellSouth agrees to AT&T's language on this issue, this issue will be resolved.

<u>ISSUE 7:</u> **What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to AT&T or MCI by BellSouth?**

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AT&T: The Act requires nondiscriminatory provision of service to new entrants. AT&T requests the establishment of processes and standards, including Direct Measures of Quality ("DMOQs"), and Service Assurance Warranties, to ensure that BellSouth provides services for resale, interconnection, and unbundled network elements which meet their obligations to provide nondiscriminatory levels of service.

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For AT&T to compete with BellSouth, it must be able to offer at least the same quality services that BellSouth provides its customers. Given the extremely high stakes involved, new entrants also must have a mechanism for ensuring that BellSouth provides them with this same level of quality, rather than merely relying upon BellSouth's "trust me" attitude. Therefore, this Commission should require BellSouth to meet Direct Measures of Quality ("DMOQ") and submit monthly management reports to AT&T that measure BellSouth's performance against DMOQs.

Because BellSouth is a monopoly and new entrants initially must rely on the BellSouth network to compete with BellSouth, BellSouth has a disincentive to provide AT&T and other new entrants with quality service. DMOQs with a meaningful enforcement mechanism will mitigate that disincentive. Using DMOQs also will eliminate the need for AT&T or other new entrants to bring complaints to this Commission on the quality of BellSouth's services. (Shurter, Tr. 188.) The FCC Order requires that BellSouth provide resold services, interconnection and unbundled network elements at a level of quality at least equal to the highest level of quality that BellSouth provides itself, any related entity or other party, including end users. FCC Order No. 96-325 ¶¶ 224, 314, 970; 47 C.F.R. §§ 51.305(a), 51.311(b). AT&T seeks a provision that will meaningfully implement this requirement, without simply relying upon the good faith of BellSouth.

Importantly, DMOQs would promote competition, thus benefiting Florida consumers in a variety of ways. For example, DMOQs would provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against new market entrants by providing inferior services. (Shurter, Tr. 188-89.) DMOQs also would protect the existing reputation of AT&T as a quality provider. (<u>Id.</u> at 189.) (Shurter, Tr. 189.) Like other arms-length negotiated customer-supplier agreements, BellSouth should be required to be financially responsible in the event it fails to achieve appropriate DMOQs. (Id.)

BellSouth also asserts that "until adequate experience is available, it is premature to specify DMOQs." (Varner, Tr. 1529.) What BellSouth is really arguing is that it wants to delay for at least another six months specifying what its performance obligations will be. It strains credulity to think that BellSouth itself would enter into a supplier agreement, say with Lucent Technology and Northern Telecom for the provisions of switches, and leave the performance obligations open for later determination. Yet that is what BellSouth is suggesting here. The Commission should require BellSouth to meet DMOQs now and to meaningful enforcement mechanisms, including certifications, to ensure that BellSouth satisfies its obligations under the Act. (Shurter, Tr. 193-94.)

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

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AT&T: Yes. Under the Act, AT&T may order unbundled network elements individually or in any combination it chooses. Any combinations will be pre-determined and identified to BellSouth so they can be ordered and provisioned and shall not require the enumeration of each network element with that combination on each provisioning order.

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The Commission should prohibit BellSouth from restricting AT&T's ability to combine BellSouth's unbundled network elements. The Act expressly requires BellSouth to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. § 251(c)(3). Notwithstanding this clear legal requirement, BellSouth refuses to provide AT&T with the unbundled Loop Facility and unbundled Local Switching, if AT&T plans to combine them and offer service to consumers using these elements. Instead, BellSouth maintains that AT&T's only "choice" is to buy BellSouth's existing port offering at a wholesale price and then resell it to AT&T's customers. (Varner, Tr. 1477.) BellSouth's refusal to allow AT&T to use unbundled elements as building blocks to create AT&T's own basic services is an attempt to retain its monopoly in providing these services, either directly to its customers or to other providers for resale. The result is not only to inhibit competition, but to remove the incentive for new providers to develop their own facilities.

The Act aims at promoting competition by requiring incumbents to unbundle their network elements and allowing new entrants to combine these elements. This is typically referred to as the "platform configuration," whereby the new entrant combines an unbundled switch and an unbundled loop to form a basic exchange platform for local exchange services (Gillan Tr. 87.) The new entrant then can market this basic platform, or combine it with its own network elements, such as Operator/Directory Assistance services.

The platform configuration promotes competition and benefits the consumer in any number of ways. The ability of a new entrant to create its own platform drives down prices through head-to-head competition, because when a new entrant combines unbundled network elements to create a platform, customers easily can shift between local providers while continuing to receive the same services. (Gillan, Tr. 87-88.) By contrast, if a new entrant has access only to BellSouth's unbundled loop, the loop to the customer must be reconfigured from BellSouth's local switch to a competitor's switch every time a customer changes local service providers. (Gillan, Tr. 86.) The platform configuration also solves the entry barrier problem of local number portability, because the new entrant's customers continue to be served by the incumbent's local switch. (Gillan, Tr. 88.) Finally, the platform configuration allows new entrants to offer new and different services or combinations of services. A consumer then may select the service provider which offers services most closely aligned with customer needs. (Tamplin, Tr. 293; Gillan, Tr. 88.)

As is apparent, BellSouth's refusal to sell unbundled loops and switches that will be combined to create a service is highly anti-competitive. It therefore makes perfectly good sense that the Act gives AT&T the legal right to purchase and then combine BellSouth's network elements. (Tamplin, Tr. 292-93.) The Act is very clear that BellSouth may not limit AT&T's right to combine unbundled network elements to provide telecommunications services. 47 U.S.C.A. § 251(c)(3).[29/]

Notwithstanding the explicit language in the Act and the FCC Order, BellSouth still asserts that AT&T and other new entrants may not "rebundle" the Local Loops and Switching. (Scheye, Tr. 1839.) BellSouth contends such

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29/ The FCC Order states that an entrant may combine unbundled network elements in any way it chooses, including the recreation of existing services. 47 C.F.R. §§ 51.309(a), 51.315(c); FCC Order No. 96-325 ¶¶ 292, 296; (Gillan, Tr. 101.) BellSouth acknowledges that if the Commission adopts the FCC's position, it will have to provide AT&T with what AT&T has requested. (Varner, Tr. 1478.)

rebundling would render meaningless the resale provisions of the Act, including its provisions on wholesale pricing for resold services. (Scheye, Tr. 1657-58.) The fundamental problem with BellSouth's position is that it is contrary to the Act's and FCC's explicit provisions which allow AT&T to purchase and then combine network elements. The debate over the legality of purchasing unbundled elements and then recombining them is over, because Congress has spoken on this issue.

Another problem with BellSouth's position is that BellSouth uses a misleading and incorrect definition of "local switch." The predicate for its argument is therefore wrong. As explained above, when BellSouth refers to a "switch," it means not just the switch, but also all the other network elements which comprise its "port" offering. (Milner, Tr. 2645.) Only under BellSouth's misleading and incorrect definition can it argue that combining an unbundled loop and switch yields the same local service which BellSouth currently provides. If only a switch (as correctly defined by the Act) is combined with a loop, then calls cannot be completed unless the call is made to another party on the same local switch. If the other party is on a different local switch, or uses the switch of another carrier, then the call cannot be completed. Transport and signaling elements are required to carry the call to its destination. It therefore is apparent that purchasing a switch and loop (as correctly defined by the Act) as unbundled elements and combining them does not replicate a service available from BellSouth for resale.

<u>ISSUE 3</u>: What services provided by BellSouth, if any, should be excluded from resale?

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> AT&T: The Act and the FCC Order require BellSouth to offer for resale at wholesale rates <u>any</u> telecommunications service that BellSouth provides at retail to non-telecommunications carriers. The Act and the FCC Order do not provide for any exceptions to BellSouth's obligation.

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The Commission should require BellSouth to offer for resale to AT&T and other new entrants all of BellSouth's retail telecommunications services. In other words, the Commission should ensure that all competitors achieve parity among themselves and with BellSouth by being able to offer all of the services BellSouth offers to its customers. By requiring BellSouth to provide all of its services for resale, the Commission will foster competition in the local exchange market, and in turn will secure numerous benefits for Florida consumers. (Sather, Tr. 586.) This also is an undisputed requirement of the Act, because the Act requires that BellSouth offer for resale to AT&T at wholesale rates all telecommunications services BellSouth provides at retail to non-carrier subscribers. 47 U.S.C.A. § 251(c)(4).

Reflecting its general anti-competitive philosophy, BellSouth contends the only "true" form of competition is facilities-based competition. (Varner, Tr. 1542.) BellSouth seeks to denigrate resale competition by claiming it is simply an unimportant "adjunct" to the "true facilities based" competition. (Id.) To make matters worse, BellSouth makes the incredible claim that competition through resale will not bring the benefits of true competition to consumers. (Id.) BellSouth's motive in denigrating resale competition is to stall competition so it can continue to enjoy the fruit of its monopolist position. It knows better than another company the significant capital investment which will be needed for facilities-based competition, as well as the significant time it will take to build facilities. By arguing that new entrants must rely solely on their own facilities, BellSouth buys lots of time before competition will develop, and may even have potential competitors forego the market entirely.

The time and costs needed for facilities-based competition is why resale is so important. Resale provides a quick method for competitors to enter the market. Indeed, the history of the interexchange market proves that a comprehensive resale requirement provided the quickest avenue through which new players entered into the interexchange market. (Sather, Tr. 586.) Competition in the interexchange market did not start with full-scale facilities-based competition -- it started with resale competition. It is undisputed that resale forced interexchange carriers, including AT&T, to drop prices, add new services, and deploy new technologies.

Because BellSouth wants to avoid the immediate competition that resale will create, BellSouth refuses to provide the following services for resale at wholesale rates: grandfathered or obsolete services; promotional offerings; Lifeline/Link up; contract service arrangements; 911/E911/N11 services; and state specific discount plans or services. (Sather, Tr. 587.) BellSouth may deny AT&T the right to purchase these services only if BellSouth can prove to this Commission that these withheld services are narrowly tailored, reasonable and non-discriminatory. FCC Order No. 96-325, ¶ 939 (Sather, Tr. 597-98.) BellSouth fails to meet this burden. Therefore, the Commission should order BellSouth to make each of these services available to AT&T and other entrants on a resale basis.

- Grandfathered and Obsolete Services -- These are services that BellSouth offers to existing retail customers, but not to new subscribers. BellSouth wants to withhold these services in order to stifle competition. These services are significant, because in some cases these discontinued services will continue for up to six years. (Scheye, Tr.

1874.) AT&T intends to provide these services only to customers receiving them from BellSouth at the time they switch to AT&T. AT&T is not seeking to offer these services to customers not currently receiving them. The Commission should order BellSouth to provide these services on a resale basis. Absent such an order, competition will be stifled, and ultimately, Florida consumers will suffer the consequences of reduced competition: higher prices and less quality or variety of services. (Sather, Tr. 587-90.)

BellSouth frankly admits it wants to prohibit the resale of these services. (Scheye, Tr. 1617.) It does not care that consumers will have fewer choices. According to BellSouth, the Act does not cover "withdrawn" services, on the theory such services are not offered to the general public. But the Act does include withdrawn services within the definition of telecommunication services because BellSouth offers withdrawn services "for a fee directly to the public." 47 U.S.C.A. § 153(46). The FCC considered and firmly rejected the position advanced by BellSouth, and ruled that incumbent LECs such as BellSouth must make withdrawn services available at wholesale rates to a requesting carrier. FCC Order No. 96-325 ¶ 968, 47 C.F.R. § 51.613(a)(2); (Sather, Tr. 598.)

- <u>Promotions and Contract Service Arrangements</u> -- Promotions involve offering a service at a special price. This could be the waiver of a non-recurring fee, the offer of services as a gift in return for purchasing other services, or the offer of limited free services. Contract service arrangements ("CSAs") are similar, in that a carrier offers a customer a discounted, off-tariff pricing arrangement. The Commission should require that BellSouth offer promotions and CSAs for resale.

Despite the anti-competitive nature of its position, BellSouth refuses to resell CSAs or promotions. Again, BellSouth relies upon a strained reading of the Act in an attempt to justify its position, this time contending that promotions and CSAs are not retail service offerings. The Act, however, mandates that incumbent LECs offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who are not telecommunications carriers . . . ." 47 U.S.C.A. § 251(c)(4)(A). CSAs and promotions clearly are covered by the Act because BellSouth provides them on a retail basis to subscribers who are not telecommunications carriers.

Currently, BellSouth has the ability and the incentive to manipulate promotions and CSAs as a means to avoid competition in the resale market. For instance, by entering into CSAs with a certain category of customers -- such as medium sized businesses -- BellSouth would retain its monopoly with regard to those customers. CSA customers would not want to switch from BellSouth to a new entrant if the new entrant could not offer the same CSAs to these customers in the resale market. The end result is another example of not establishing parity: BellSouth continues its entrenched position, and competition is delayed.[30/] Once again, the bottom line is BellSouth trying to avoid parity of services so as to avoid competition.

- <u>LinkUp and Lifeline</u> -- LinkUp and Lifeline are means-based subsidized retail residential services. They provide billing credits to help defray the cost of monthly recurring service and service installation charges for customers who qualify for financial assistance. The Commission should require BellSouth to resell these or similar means-tested service offerings.

Consistent with its generally anti-competitive positions, BellSouth refuses to make LinkUp and Lifeline available for resale. BellSouth simply ignores the fact that the Act requires it to "offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who are not telecommunications carriers. . . ." 47 U.S.C.A. § 251(c)(4)(A). The recipients of the Lifeline and LinkUp telecommunications services are not telecommunication carriers -- they are financially disadvantaged residential customers -- thus establishing BellSouth's statutory duty to resell these services.

In effect, BellSouth wants to discriminate against this category of customers, and deny them the right to choose between BellSouth and another provider. This is a particularly cynical position to take with respect to these underprivileged subscribers, who need price competition perhaps more than any other customers. Instead, BellSouth argues that AT&T should resell basic residential service to eligible customers at appropriate rates, and apply for and receive certification and funding from the appropriate state agency. (Scheye, p. 6.) In other words, BellSouth wants new entrants to overcome additional regulatory burdens.

30/ The FCC Order provides that BellSouth must offer promotions for resale, except short-term promotional prices. FCC Order No. 96-325 ¶ 949, 47 C.F.R. § 51.613(a)(2) (to be codified). Like AT&T, the FCC is concerned that an incumbent LEC could use promotions anti-competitively to avoid its wholesale obligations by offering promotional plans that new entrants could not resell. FCC Order No. 96-325, ¶¶ 949-51. Even though the FCC has granted the state commissions the discretion to allow incumbent LECs to offer ninety day or less promotional packages for resale at standard retail rates, rather than wholesale rates, if this Commission decides to permit this practice, it should establish guidelines to ensure that BellSouth does not use this exception in an anti-competitive manner. (Sather, Tr. 598.)

This Commission should permit AT&T and other new entrants to purchase Lifeline and LinkUp services for resale. This would help in achieving parity of the services offered by BellSouth and by new entrants to the market. BellSouth wants to avoid parity by insisting that its competitors comply with regulatory burdens. BellSouth knows this is an impediment to competition, and knows it will benefit from any such impediments. BellSouth will be compensated for its costs of processing the certificates and funding associated with these programs through the appropriate wholesale price.

- 911/E911 and N11 Services -- 911 service provides the facilities and equipment required to route emergency calls made in a particular geographic area to the appropriate Public Safety Answering Point. E911 provides more flexibility by using a database to route calls to the appropriate Public Safety Answering Point. N11 is a service offered to information service providers who, in turn, provide information services to consumers via three digit dialing. (Carroll, Tr. 711.) The Commission should order BellSouth to provide these services on a resale basis.

BellSouth provides these telecommunications services to customers who are not telecommunications carriers. The fact that the customer may be a municipality does not alter the retail character of these offerings. As a result, the Act is clear that BellSouth must offer these services for resale to AT&T and other new entrants. 47 U.S.C.A. § 251(c)(4)(A). The Commission should reject BellSouth's attempt to create broad exceptions to Act's resale requirement, especially because the Act provides no support for such an exception. Once again, BellSouth is trying to discriminate against these retail consumers by denying them the benefits of competition. It also is trying to avoid parity of services, by seeking to retain a monopoly over these services, while making it impossible for new entrants to provide these services.

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

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AT&T: The appropriate wholesale rate for services available for resell is the retail rates of BellSouth offered by BellSouth less 39.99%. This reduction in retail rates shall apply to all services, including both recurring and nonrecurring service charges.

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The Commission should adopt a permanent wholesale discount of 39.99%, applicable to all of BellSouth's retail, toll, and private line service rates. The Act requires wholesale rates to exclude the costs of "marketing, billing, collection and other costs that will be avoided." 47 U.S.C.A. § 252(d)(3). AT&T's cost study complies with the requirements of the Act, and identifies all retail costs that will be avoided by BellSouth. (Ex. 14, ALS-1; See also Lerma, Tr. 641, 653, 655.)

Although AT&T has attempted to negotiate reasonable wholesale rates with BellSouth, BellSouth has insisted on wholesale rates that would have AT&T paying the costs of BellSouth's retail activities, even though AT&T will not be purchasing those retail services from BellSouth. Obviously, if AT&T must pay BellSouth's retail costs, in addition to AT&T's own retail costs, AT&T can never hope to offer competitive prices to Florida's consumers. The end result would be Florida consumers never enjoying the benefits of price competition due to competition through resold services. Even if somehow AT&T managed to offer competitive retail prices, AT&T and other new market entrants still would be subsidizing BellSouth's retails costs. Thus, BellSouth would retain an unfair advantage so as to preclude efficient competition.

A. <u>The Commission Should Reject BellSouth's Cost Study Which Is Based On Actually Avoided Costs</u>

The Act imposes on all incumbent LECs the duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C.A. § 251(c)(4). The Act further provides that state commissions "shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications services requested, *excluding the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier.*" 47 U.S.C.A. § 252(d)(3) (emphasis added).

AT&T developed a cost study that fully complies with the Act because it removes only the direct and indirect costs which reasonably will be avoided by BellSouth when it sells its services on a wholesale basis. As also required by the Act, AT&T's cost study removes all other costs that BellSouth will avoid as a wholesaler. Accordingly, the Commission should adopt AT&T's proposed wholesale discount rate of 39.99%.[31/]

According to BellSouth, the Act requires a deduction of only those costs which it will actually avoid in the short term. (Reid, Tr. 2335.) BellSouth has applied this incorrect reading of the Act in developing the cost study upon which it bases its proposed rates. (Ex. 75, WSR-1.) Because this cost study is based on an incorrect interpretation of the Act, the Commission should reject it as a matter of law.[32/]

Every state which has adjudicated the wholesale discount categorically has rejected BellSouth's argument that only costs that are "actually avoided" are to be included in the discount calculation. The state commissions of California, Illinois, Ohio and Colorado have interpreted the Act consistent with the AT&T's approach, and have rejected BellSouth's approach. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)).

31/ If the Commission determines that AT&T's proposed rate is not in accordance with the Act, the Commission should order an interim wholesale discount rate of 25%. This percentage is reasonable and within the temporary default range of 17%-25% suggested by the FCC Order 96-325 after consideration of input from multiple industry participants. Moreover, 25% is well within the range of proposals submitted in this hearing. This percentage would be a highly conservative estimate given the costs reflected in AT&T's Simplified Avoided Cost Study. (See Ex. 14, ALS-1.) In such a case, BellSouth also should be ordered to produce a detailed avoided cost study compliant with the Act, in order for the Commission to establish a permanent wholesale rate.

Although this portion of the FCC Order has been stayed, the Commission nonetheless is entitled to use the FCC Order as guidance, especially given the extensive data which the FCC developed and used in developing the default ranges. Similarly, AT&T believes it is appropriate for this Commission to use other provisions of the Order as guidance pertaining to resale pricing. Nothing in the Eighth Circuit's decision bars the Commission from doing so; it only prohibits the Commission from mandating the application of these provisions.

32/ BellSouth also prepared a cost study which it contends to be compliant with the FCC's Order. (See Ex. 76, WSR-3.) This other cost study produces larger discount rates, and therefore lower wholesale prices, than does BellSouth's cost study which applies the "actually" avoided subjective standard. As explained below, the Commission also should reject BellSouth's supposedly FCC compliant cost study because that study also contains inadequate or no justifications.

Specifically as to BellSouth, the state commissions of Georgia, Kentucky and Louisiana have rejected the very same cost study methodology which BellSouth now proposes to this Commission. Georgia found BellSouth's methodology a "narrow, constrained view of the avoided cost approach." (Ex. 80.)[33/] Kentucky found that BellSouth's approach is "too simplistic and has insufficient detail." (Ex. 81.) Most recently, Louisiana also rejected BellSouth's methodology. (Ex. 82.)[34/] Again, no jurisdiction which has ruled on BellSouth's avoided cost methodology has adopted it.

Based upon state commission decisions, the FCC also rejected BellSouth's interpretation of the Act and interpreted the Act in the same way as the state commissions described above. The FCC Order calls for state commissions to determine which costs are "reasonably avoidable" when an incumbent LEC sells its services wholesale. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). The FCC Order specifically recognizes that wholesale prices which include retail costs are artificially high. Reflecting the Act's objectives of efficient, rapid entry into the local market, the FCC Order requires that the wholesale discount exclude all costs that an incumbent LEC incurs in maintaining a retail, as opposed to a wholesale business. FCC Order 96-325 ¶ 911 (61 Fed. Reg. 45565 (¶ 601)). In rejecting the approach taken by BellSouth in this proceeding, the FCC stated: "We do not believe that Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable." (Id.)

Despite the consistent rejection of its position, BellSouth continues to advocate its "actually avoided" standard. BellSouth does so even though it admits that the phrase "actually avoided" does not appear in the Act. (Reid, Tr. 2429.)

BellSouth's underlying rationale is apparent: by calculating a discount rate based only those costs which BellSouth chooses to avoid, all of BellSouth's inefficiencies, losses and bad business decisions will remain in its

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33/ The Superior Court of Fulton Country, Georgia recently rejected BellSouth's appeal of this decision on all fronts. (BellSouth Telecommunications, Inc. v. Georgia Public Service Commission, et al., Civil Action No. E-49835 (Oct. 8, 1996).)

34/ Recommendation of Administrative Law Judge, Oct. 9, 1996, Louisiana Public Services Commission, Docket No. U-22020, at 2. The Recommendation of the Administrative Law Judge was accepted by The Louisiana Commission in an open hearing on October 16, 1996.

wholesale prices and will be paid for by its competitors. Its competitors either will have to pass those costs on to their customers, or not enter the resale market and thus deprive Florida consumers of competition.

Therefore, this Commission should reject BellSouth's approach. Put most simply, BellSouth proposes no objective standard to determine whether a cost is avoided. Instead, it wants to use the purely subjective standard of whether BellSouth decides to stop incurring a particular cost. A subjective, rather than objective standard, leaves BellSouth in total control of the keys to market entrance through resale. It is a concept that clearly puts competition and Florida consumers at risk. As a result, if BellSouth chooses not to avoid these costs which are unrelated to its wholesale activities, then BellSouth should bear those costs; its competitors should not be forced to shoulder the burden of paying for BellSouth's business decisions.

Contrary to BellSouth's position (see Reid, Tr. 2419), the mere fact that a cost is not "volume sensitive" does not, by itself, mean the cost is not retail related. Many costs are not volume sensitive, but nonetheless are retail-related, and so will be avoided in a wholesale environment. For instance, television advertising that is intended to market retail products is clearly retail-related. These costs, however, are not volume sensitive because they do not necessarily decrease (and may even increase) as the number of BellSouth customers decreases. (Reid, Tr. 2338.) Failure to account for retail-related costs such as these will not produce the wholesale discount vital to the development of competition in the resale area.

As only could be done by an entrenched monopolist, BellSouth sees nothing wrong with AT&T and other new entrants subsidizing its advertising efforts to influence retail consumer choices. BellSouth tries to rationalize its position by saying that it does not intend to actually avoid advertising costs due to its sale of wholesale services to AT&T. (Reid, Tr. 2445.) Here again, BellSouth is applying its subjective judgment to determine whether it will stop incurring retail-related costs when it sells wholesale services.

By taking this position on avoided costs, BellSouth also misleads potential market entrants. Potential entrants must decide whether to enter the retail market through resale or through other possible avenues. In making this decision, a potential entrant will consider the wholesale discount rate. If that rate is small, because avoided costs improperly are understated, then the potential competitor is unlikely to enter the resale market. (See Kaserman, Tr. 499.) In other words, by understating the amount of avoided costs, BellSouth makes it less likely that Florida consumers will benefit from competition in the market of resold services.

B. AT&T'S Cost Study Is Justified While BellSouth's Supposedly FCC Compliant Study Is Not

As should be apparent, BellSouth's cost study, which simply applies BellSouth's subjective judgment, should be rejected as a matter of law. BellSouth claims its other cost study adheres to the interpretation of the Act as adopted by various state commissions and the FCC. (See Ex. 76, WSR-3.)

However, a comparison of AT&T's cost study with BellSouth's supposedly FCC compliant study shows that they differ in their respective treatment of a number of cost categories. AT&T maintains that all or portions of these costs will be avoided when BellSouth sells services on a wholesale basis, and has provided a rational basis for this conclusion. BellSouth maintains that it does not intend to avoid many of these costs, yet provides an inadequate justification, or in many instances, no justification, as to why it will not avoid these costs. The Commission should accept AT&T's cost study because it comports with the Act, is based on sound accounting principles, and offers a reasonable and logical rationale for its conclusions. A summary of AT&T's cost study, and the primary flaws in BellSouth's study, are discussed below.

1. Directly Avoided Costs

AT&T's cost study uses information BellSouth reported in its 1995 ARMIS Report Nos. 43-03, 43-04, and 43-08. (Lerma, Tr. 613-14.) AT&T deducted the costs in six USOA accounts because they are directly avoided retail costs which are unrelated to the provision of wholesale services. AT&T's identification of costs in these accounts as directly avoided complies with the requirement of the Act to identify all retail costs which will be avoided. BellSouth proposes to treat a lesser amount of these costs as avoided, but does not justify its position.

a. 6610 (marketing) and 6620 (service expenses)

AT&T's cost study includes as directly avoided all of the costs in two USOA accounts:

- 6610 (marketing), which includes subsidiary USOA accounts 6611 (product management), 6612 (sales), and 6613 (product advertising)
- 6620 (service expenses), which includes subsidiary USOA accounts 6621 (call completion), 6622 (number services), and 6623 (customer services)

All of these are retail-related costs, and thus reasonably will be avoided when BellSouth provides wholesale services to AT&T. If BellSouth passes these retail costs on to AT&T, AT&T will not be able to offer competitive prices to Florida consumers, because AT&T necessarily must incur these same retail costs when conducting its own retail operations. The

FCC Order presumed all of the costs in both accounts to be avoided. FCC Order 96-325 ¶ 917 (61 Fed. Reg. 45566 (¶ 607)).

BellSouth proposes to treat many of these costs as not avoided. For example, its supposedly FCC compliant cost study treats as avoided costs: 95.63% of BellSouth's product advertising costs; 86.06% of its sales costs; 19.93% of product management costs; and *none* of the number services costs. (See Lerma, Tr. 650.) All of these costs are retail-related, having been incurred in a nearly 100% retail context. Because it is logical that these costs will be reasonably avoided, the FCC Order presumed 100% of these costs will be avoided. BellSouth provides no documentation supporting its assertion that it would avoid less than 100% of these retail-related costs. As a result, BellSouth's supposedly FCC compliant study should not be accepted as to these costs.[35/]

BellSouth's "justifications" for the results of this cost study simply are missing. For example, in this study BellSouth treats only 65.56% of its customer service expenses as avoided. (Ex. 75, WRS-1.) As purported, BellSouth provides two worksheets supposedly evaluating customer service avoided costs by Job Function Code ("JFC"). (See Ex. 75, WRS-1, at 5-6 (Worksheets A & B).) However, these numbers, like BellSouth's other avoided cost figures, are nothing more than numbers on a spreadsheet. Exhibit 75 contains absolutely no explanation why these costs will not be avoided. Even worse, neither these worksheets, nor any other documentation provided by BellSouth, contain any information at all as to accounts 6621 (call completion) and 6622 (number services). Nevertheless, BellSouth alleges that none of the costs in these categories will be avoided.

Overall, the supporting worksheets in Exhibit 75 provide no insight into, no rationale for, no validation of, and no support for BellSouth's alleged JFC analysis. All BellSouth has done in its JFC analysis is look at a subset of the USOA cost accounts, and make unverifiable assertions as to whether or not BellSouth will avoid such costs. Thus, BellSouth again is applying a subjective standard, whereby it decides whether to avoid a cost, but this time does not even provides an explanation.

35/ As was discussed above, BellSouth proposes a wholesale discount rate based on a separate cost study which it concedes does not even purport to follow the FCC Order. (Ex. 75, WSR-1.) This cost study provides an even more startling picture of BellSouth's intent to suppress competition. In this cost study, BellSouth treats as avoided: 4.51% of advertising costs, 66.72% of sales costs, and 0.00% product management costs. (See Id.)

b. <u>6220 (operator systems)</u>

AT&T deducted all of the costs in two additional cost accounts as directly avoided:

- 6220 (operator systems)
- 6560 (depreciation/amortization of operator systems)

BellSouth will avoid these costs because AT&T will provide its own operator services. (Lerma, Tr. 663.) The logic of this is clear: if AT&T provides (and pays for) its own operators when reselling services, then BellSouth will not have to provide (and pay for) its operators. The FCC Order used this same logic in deciding that accounts 6621 (call completion) and 6622 (number services) are presumed to be avoided, "because resellers have stated they will either provide these services themselves or contract for them separately from the LEC or from third parties." FCC Order 96-325 ¶ 917 (61 Fed. Reg. 45566 (¶ 607). Likewise, because BellSouth avoids operator systems equipment costs, then it also avoids the depreciation expenses associated with that equipment (account 6560). (Lerma, Tr. 637.)

BellSouth opposes these two deductions. Once again, it relies upon its excessively broad definition of Local Switch to support its position. Here, BellSouth asserts operator services are a part of its "port" offering, which it will not unbundle, and it therefore does not avoid operator costs when it resells this port offering. (Reid, Tr. 2365.) BellSouth also argues that if AT&T provides such services to its customers, the result would be a competitive loss for BellSouth, because operator services provide it with a separate revenue stream. (<u>Id.</u>)

The basic problem with BellSouth's position, as was explained above, is that operator services is a network element and the Act requires BellSouth to unbundle this element. BellSouth's argument is irrelevant in any event, because BellSouth operator services are, by its own admission, solely retail functions and not related to the provision of wholesale services to AT&T. (Lerma, Tr. 648-49.) BellSouth's "revenue stream" argument is nothing more than another plea not to reduce BellSouth's revenues, even though resellers will provide their own operators.

BellSouth's position is anti-competitive, because AT&T would be paying the salaries of BellSouth operators and the cost of BellSouth operator equipment, even though it would not use these services. If the costs of operator services are not removed from the discount, resellers who provide their own operator services will pay for those services twice: once in the actual cost of providing these services themselves, and once again in the wholesale discount rate. As a result, BellSouth's position is contrary to the purpose of the Act because it causes an anti-competitive result for AT&T and other new market entrants who will be forced to subsidize BellSouth's retail costs.

c. 6533 (testing) and 6534 (plant administration)

AT&T deducted 20% of the costs in two cost accounts as directly avoided:

- 6533 (testing)
- 6523 (plant administration)

As discussed in Issue 13, AT&T has requested electronic interfaces with BellSouth's Service Trouble Reporting database. AT&T needs these interfaces in order to perform both immediate and high quality initial trouble analysis for its retail customers. (Lerma, Tr. 638.) By using these interfaces, AT&T will be able to conduct trouble shooting in response to customer issues, instead of BellSouth having to do this.

In order to determine that portion of costs in these two accounts which are retail driven, AT&T used estimates of its own costs for testing and plant administration. This was the best information available in the absence of BellSouth data as to these costs. AT&T's experience is that approximately 50% of its own overall Testing and Plant Administration costs involve end-user testing and trouble-shooting. (Lerma, Tr. 638.) Accordingly, as much as 50% of BellSouth's Testing and Plant Administration costs are likely to be retail-type costs that BellSouth will avoid in a wholesale context.

This 50% estimate reflects that BellSouth will continue to incur some testing and plant administration costs even if BellSouth operates only as a wholesaler. But the estimate also reflects that, as a wholesaler, BellSouth will not interface with end user customers as much as it does today, and thus will avoid those testing and plant administration costs which involve end user customers who shift to another carrier. AT&T accounted for potential differences between its own costs and those of BellSouth, by discounting its own costs from 50% of the total to 20% of the total. (Lerma, Tr. 667-68.) BellSouth has provided no evidence that AT&T's estimates are incorrect.

The Plant Administration costs related to facilities that support retail customer testing functions are proportionally affected. Accordingly, BellSouth conservatively will avoid at least 20% of these costs as well. (Lerma, Tr. 638.)

In disputing AT&T's position, BellSouth once again sidesteps the question of whether these costs are avoided, claiming these services are inseparable from the "local services" packaged by BellSouth and therefore may not be provided by any carrier other than BellSouth. (Reid, Tr. 2371-72.) BellSouth should not be allowed to analyze the retail-related portion of its Testing and Plant Administration costs based on its subjective standard, and instead should analyze those costs on the basis of whether such costs may be readily avoided.

Moreover, even under BellSouth's interpretation of the Act, these expenses clearly will be avoided because BellSouth's need to provide retail testing services diminishes as AT&T provides these services. (Lerma, Tr. 648-50; see also Reid Tr. 2335-36) BellSouth's bottom line is that AT&T should pay twice for performing testing on behalf of its retail customers: Once when AT&T does the testing, and once again even though BellSouth does not perform testing.[36/]

2. **Indirectly Avoided Costs**

In its cost study, AT&T also excluded a portion of BellSouth's indirect costs. Indirect costs also are often referred to as overhead, or general and administrative costs. By definition, indirect costs are associated with direct costs. The cost of a human resources department, for example, is an indirect cost. That indirect cost is allocated to direct costs, to yield a total cost for a particular function. *Thus, the total cost of operator services includes the* direct costs of that function (salaries of operators), and the allocable indirect costs (such as a portion of the costs of a human resources department).

When a direct cost is reasonably avoided by BellSouth in its role as a wholesaler, it is logical, indeed necessary, to treat the allocable indirect costs as reasonably avoided. AT&T's avoided cost study indicates BellSouth will avoid 28% of its indirect costs. (Lerma, Tr. 640.) These indirect costs include costs associated with executive, planning, accounting, finance, human resources, legal, uncollectibles, furniture, artwork, and other similar items and functions. BellSouth's supposedly FCC-compliant cost study treats only 10.92% of its indirect costs as avoided. (See Ex. 76, WSR-3.)[37/]

The difference between AT&T's indirect cost factor and BellSouth's lies in the different methods of calculating the percentages. AT&T calculated its indirect cost avoidance factor by using the following equation: avoided direct costs ÷

36/ BellSouth argued that it should not have to unbundle "retail services," presumably categorizing repair and maintenance as bundled retail services. (Reid, Tr. 2364.) The FCC Order, however, specifically contemplates repair and maintenance by new market entrants in a resale context. FCC Order No. 96-324, ¶ 518. ("If competing carriers are unable to perform . . . maintenance and repair . . . for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing").

37/ BellSouth's non-FCC compliant cost study, on which its bases its proposed discount rate, is even worse because it treats no indirect costs as avoided. (See Ex. 75, WSR-1.)

total direct costs. (Lerma, Tr. 640.) Thus, AT&T's cost studies calculate avoided indirect costs *in proportion to the avoided direct costs.* FCC Order No. 96-325 ¶ 918 .

BellSouth, however, uses a different equation to calculate its indirect cost avoidance factor: avoided direct costs ÷ total direct and indirect costs. (See Ex. 76, WSR-3.) For obvious reasons, BellSouth has adopted a methodology which creates, for it, a more favorable rate. BellSouth's approach, however, makes no sense because it fails to allocate all relevant indirect costs. A simple example illustrates the fallacy of BellSouth's position:

> In a two-bedroom apartment, two roommates share rent of $800 per month and utilities of $400 per month. By AT&T's method of allocating indirect costs (in this case, the utilities) each roommate's share of the utilities would be determined based on *the relationship his share of the rent has to total rent* ($400/$800 = 50% which, multiplied by the $400 utility bill, equals a $200 share).
>
> Using BellSouth's method, each roommate's share would be based on the relationship his share of the rent has to the total household expenses -- or $400/$1200 = 33% which, when multiplied by the $400 utility bill, leaves each roommate with only a $133 share.

The fallacy of BellSouth's position derives from the fact that, in essence, BellSouth seeks to create a factor using the very data to which the factor is ultimately applied.

As indicated in the testimony of Mr. Lerma, even incumbent carriers acknowledge the correctness of AT&T's position: "I testified in a Texas Southwestern Bell case just last week. Southwestern Bell agreed that that was the appropriate calculation. It's my understanding that Ameritech has also agreed that that is the appropriate calculation." (Lerma, Tr. 673.)[38/]

AT&T's cost study applied this indirect cost factor to all of BellSouth's indirect costs. These included items such as depreciation, G&A and Executive & Planning. As to depreciation, for example, AT&T treats as avoided a portion of the depreciation costs (account 6560) related to general support assets. Id. These general support expenses include land,

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38/ BellSouth appears to use AT&T's method in the allocation of joint and common costs. BellSouth witness D. Daonne Caldwell testified that joint and common costs were allocated by BellSouth according to a ratio of the direct cost of a single network element divided by the sum total of costs directly assigned to all network elements. (Caldwell, Tr. 2269.)

building, furniture, art work, office equipment and general purpose computers. BellSouth uses to support its retail services. Id. To the extent these assets are used to support BellSouth's retail business, they are not required in their entirety for the provision of wholesale services and must be considered avoided costs pursuant to the terms of the Act. Id.

Similarly, some portion of taxes and return on investment are avoided in a wholesale environment. For instance, return on investment in the retail sector of BellSouth's operations is included in the prices BellSouth charges its end user customers. To the extent this underlying, retail-related investment is avoided the return on that investment also is avoided and should not be included in the wholesale rates. (Lerma, Tr. 619-20.) It makes no sense for Florida consumers to pay higher prices to AT&T so that BellSouth can receive a profit on investment it has avoided. Likewise, taxes paid on BellSouth's retail-related revenues also are included in BellSouth's retail prices. To the extent BellSouth no longer receives retail revenue on a particular service, the taxes on this revenue are avoided and also should not be included in BellSouth's wholesale rates. (Lerma, Tr. 619-20.)

3. Uncollectibles

Finally, AT&T's calculation of its proposed permanent percentage reductions also deducts all uncollectibles costs (account 5301) as indirectly avoided costs. In a resale environment, the liability for all end-user uncollectibles transfers in total to the reseller. BellSouth's avoided cost study also treats uncollectibles as 100% avoided.

ISSUE 5: What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth's services?

* * * * * * *

> AT&T: The Act and the FCC Order require BellSouth not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. Resale restrictions are presumptively unreasonable and prohibited by the Act.

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The Commission should prevent BellSouth from restricting resale in any way. Precluding BellSouth from placing restrictions on the resale of its services to AT&T and other new entrants will help new entrants achieve parity of offerings. Use and user restrictions are anti-competitive on their face. Historically, BellSouth has imposed these restraints to maintain artificially low rates for local residential services, while artificially inflating rates for other classes of customers to maintain adequate revenues pursuant to rate of return regulation. In Florida, BellSouth is now subject to price regulation and is no longer subject to rate of return regulation. (Sather, Tr., 585.) Nevertheless, BellSouth is attempting to perpetuate these outdated pricing structures of the monopoly market that were brought about by use and user restrictions. (Sather, Tr. 583-85.)

Under rate of return regulation, BellSouth maintained low local residential services rates by offering these services below cost and then making up the difference in other classes of services, such as high toll rates for business customers. BellSouth then had to impose use and user restrictions to ensure that residential local exchange services could not be used by businesses. To mollify complaints by large volume business customers, BellSouth in turn created cut rate offerings such as WATs or Foreign Exchange Service. BellSouth then had to impose use and user restrictions to keep small volume business customers from taking advantage of these large volume business offerings. In the resulting scheme, residential and large volume business rates were kept low and small volume businesses made up the difference. (Id.)

Because BellSouth no longer is subject to rate of return regulation, this entire pricing scheme of use and user regulations is obsolete. Now, local residential services are no longer priced below cost and BellSouth receives adequate revenue from the sale of these services. (Id. at 585.) Accordingly, this Commission should prohibit BellSouth from perpetuating rate of return regulation in the competitive resale market. The Commission also should reject BellSouth's attempt to impose resale restrictions by referencing tariffs in the interconnection agreement terms and conditions.

It is clear that the foregoing restrictions constitute unreasonable and discriminatory conditions under the Act. 47 U.S.C.A. § 251(c)(4). The FCC Order also provided that restrictions on resale are presumptively unreasonable. FCC Order No. 96-325, ¶ 939, at 465. If allowed to continue, such restrictions only will inhibit the emergence of competition in BellSouth's current monopoly market. These restrictions also will artificially restrain the functioning of competitive market. On the other hand, if competitive market develops, it will drive prices for all classes of services offered to Florida consumers to lowest levels possible to benefit both residential and business consumers. In short, use and user restrictions are yet another tool BellSouth plans to use to prevent competition from flourishing in Florida. (Sather, Tr. 585.)

<u>ISSUE 6:</u> 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?

* * * * * * *

AT&T: Lack of advance notice of changes to BellSouth's resale services is an operational barrier to fair competition. Without advance notice that would allow a new entrant to implement the necessary administrative changes, BellSouth ensures it will be the first local exchange carrier in the market to offer changed services.

* * * * * * *

The Commission should require BellSouth to notify resellers in advance of any services and network changes, at least 45 days prior to the effective date of the change, or concurrent with BellSouth's internal notification process, whichever is earlier. Without this advance notice, new entrants like AT&T cannot make the necessary preparations to resell services offerings which BellSouth intends to change by the effective date of BellSouth's proposed changes. As a result, BellSouth would have an unfair competitive advantage because BellSouth always will be the first carrier to make the changed service offerings available to Florida consumers. (Shurter, Tr. 190, 203.) Such a competitive advantage will help BellSouth preserve its monopoly and deny Florida consumers the benefits of full competition.

Despite the obvious anti-competitive ramifications of this position, BellSouth maintains that it will notify wholesale customers of service and network changes at the same time that it notifies BellSouth's retail customers. (Scheye, Tr. 1633.) BellSouth has no valid reason for its total refusal to provide advance notice. It claims a concern that a competitor might try to hold BellSouth responsible if a proposed change is rescinded before implementation. But it admits that it would be willing to provide advance notice if that concern could be addressed. (Scheye, Tr. 1915-16.)

AT&T has addressed BellSouth's concerns by proposing language that would relieve BellSouth of all responsibility if a proposed change is rescinded. If BellSouth agrees to AT&T's language on this issue, this issue will be resolved.

<u>ISSUE 7:</u> **What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to AT&T or MCI by BellSouth?**

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AT&T: The Act requires nondiscriminatory provision of service to new entrants. AT&T requests the establishment of processes and standards, including Direct Measures of Quality ("DMOQs"), and Service Assurance Warranties, to ensure that BellSouth provides services for resale, interconnection, and unbundled network elements which meet their obligations to provide nondiscriminatory levels of service.

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For AT&T to compete with BellSouth, it must be able to offer at least the same quality services that BellSouth provides its customers. Given the extremely high stakes involved, new entrants also must have a mechanism for ensuring that BellSouth provides them with this same level of quality, rather than merely relying upon BellSouth's "trust me" attitude. Therefore, this Commission should require BellSouth to meet Direct Measures of Quality ("DMOQ") and submit monthly management reports to AT&T that measure BellSouth's performance against DMOQs.

Because BellSouth is a monopoly and new entrants initially must rely on the BellSouth network to compete with BellSouth, BellSouth has a disincentive to provide AT&T and other new entrants with quality service. DMOQs with a meaningful enforcement mechanism will mitigate that disincentive. Using DMOQs also will eliminate the need for AT&T or other new entrants to bring complaints to this Commission on the quality of BellSouth's services. (Shurter, Tr. 188.) The FCC Order requires that BellSouth provide resold services, interconnection and unbundled network elements at a level of quality at least equal to the highest level of quality that BellSouth provides itself, any related entity or other party, including end users. FCC Order No. 96-325 ¶¶ 224, 314, 970; 47 C.F.R. §§ 51.305(a), 51.311(b). AT&T seeks a provision that will meaningfully implement this requirement, without simply relying upon the good faith of BellSouth.

Importantly, DMOQs would promote competition, thus benefiting Florida consumers in a variety of ways. For example, DMOQs would provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against new market entrants by providing inferior services. (Shurter, Tr. 188-89.) DMOQs also would protect the existing reputation of AT&T as a quality provider. (<u>Id.</u> at 189.) (Shurter, Tr. 189.) Like other arms-length negotiated customer-supplier agreements, BellSouth should be required to be financially responsible in the event it fails to achieve appropriate DMOQs. (Id.)

BellSouth also asserts that "until adequate experience is available, it is premature to specify DMOQs." (Varner, Tr. 1529.) *What BellSouth is really arguing is that it wants to delay for at least another six months specifying what its* performance obligations will be. It strains credulity to think that BellSouth itself would enter into a supplier agreement, say with Lucent Technology and Northern Telecom for the provisions of switches, and leave the performance obligations open for later determination. Yet that is what BellSouth is suggesting here. The Commission should require BellSouth to meet DMOQs now and to meaningful enforcement mechanisms, including certifications, to ensure that BellSouth satisfies its obligations under the Act. (Shurter, Tr. 193-94.)

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

AT&T: Yes. Unless it's technically infeasible, BellSouth must brand Operator Services and Directory Assistance as requested by AT&T. AT&T believes it is technically feasible to brand operator services and directory assistance calls. In the alternative, AT&T requests that BellSouth unbrand its services.

Branding is a prerequisite for achieving parity and thereby achieving competition that will benefit all Florida consumers. 47 C.F.R. §§ 51 305(a), 51.311(b); FCC Order No. 96-325 ¶¶ 224, 313, 970. As a result, the Commission should order BellSouth to brand as AT&T any Operator and Directory Assistance services with the AT&T brand where AT&T chooses not to require *direct routing to its own Operator and Directory Assistance platform.* BellSouth argues that the Act does not require BellSouth to brand Operator/Directory Assistance services for AT&T. (Scheye, Tr. 1862.) BellSouth is wrong because the Act expressly precludes BellSouth from imposing discriminatory conditions on resale. 47 U.S.C.A. § 251(c)(4)(B). Additionally, the FCC Order requires BellSouth to brand Operator Services/Directory Assistance services for resale unless it is not technically feasible. 47 C.F.R. § 51.613(c); FCC Order No. 96-325 ¶ 971.

BellSouth argues that branding Operator and Directory Assistance services for AT&T in the resale environment is not technically feasible with respect to resold services, claiming it does not have the capacity to perform customized routing. It is technically feasible for BellSouth to brand Operator and Directory Assistance calls made to it by AT&T

customers. As explained above under Issue 1, customized routing is technically feasible. (Scheye, Tr. 1623; Milner, Tr. 2735.) The same technical issues exist whether in the context of unbundled network elements or resold services.

Thus, BellSouth again is interjecting a technical infeasibility argument in an obvious attempt to avoid branding Operator and Directory Assistance services. BellSouth's motive for taking this anti-competitive position is obvious: it wants to continue its competitive advantage over new entrants by precluding new entrants from developing brand loyalty with their customers.

In the alternative, if this Commission decides not to require BellSouth to brand resold Operator and Directory Assistance services, this Commission should preclude BellSouth from branding any calls. As discussed in Issue 8(b) below, precluding BellSouth from promoting its brand when providing services on a resale basis would prevent consumer confusion that would result with calls from AT&T customers.

<u>ISSUE 8(b)</u>: **When BellSouth's employees or agents interact with AT&T's or MCI's customers with respect to a service provided by BellSouth on behalf of AT&T or MCI, what type of branding requirements are technically feasible or otherwise appropriate?**

AT&T: AT&T requires that services made available to AT&T be branded as AT&T to ensure AT&T customers who come into contact with BellSouth personnel and agents are not confused, and also in order to permit AT&T to provide its customers with services at parity with BellSouth.

Again, branding is a prerequisite for achieving parity and thereby achieving competition that will benefit all Florida consumers. 47 C.F.R. §§ 51 305(a), 51.311(b); FCC Order No. 96-325 ¶¶ 224, 313, 970; (Shurter, Tr. 186; Carroll, Tr. 717.) As a result, the Commission should order BellSouth to: (1) advise all AT&T customers they are representing AT&T; (2) furnish any customer information materials provided by AT&T; and (3) refrain from marketing BellSouth directly or indirectly when dealing with AT&T's customers on AT&T's behalf. (Shurter, Tr. 185.)

Branding enables a local carrier to establish and maintain its identity in the local exchange market. BellSouth knows this very well, because it has begun an intensive campaign to increase its branding. (Ex. 51.) If local services only carry the BellSouth brand, it will be much more difficult for new market entrants to establish an identity that gives them a presence in the marketplace. (Shurter, Tr. 186.)

Branding also eliminates customer confusion. Without branding, AT&T customers understandably will be confused if they see or hear a BellSouth brand when receiving services. AT&T customers also might become concerned that they will receive an additional charge when they hear or see the BellSouth brand when receiving services. (Shurter, Tr. 186; Carroll, Tr. 721-22.)

BellSouth has acceded to part of AT&T's requests. BellSouth agrees to advise AT&T customers that they are providing service on AT&T's behalf that they are representing AT&T and will refrain from marketing BellSouth directly or indirectly to AT&T customers. (Scheye, Tr. 1629.) BellSouth has refused still AT&T's request that BellSouth personnel use AT&T designed "leave behind" cards when they make a service call on behalf of AT&T. (Scheye, Tr. 1862.)

BellSouth insults its own employees by saying they could not keep track of the leave behind cards of its various competitors, while at the same time burdening its employees to use fill-in-the-blank cards -- a process which obviously is subject to more human error than using leave behind cards already completed by the competitors. (Scheye, Tr. 1919.) By advocating the use of fill-in-the-blank cards, BellSouth plainly intends to disadvantge the brands of its competitors. (Scheye, Tr. 1862, 1919; Carroll, Tr. 721-22.) Generic materials with the AT&T name handwritten into a blank space do not meet AT&T's standards for quality and professionalism. (Carroll, Tr. 721.) Instead, this Commission should require BellSouth employees acting on AT&T's behalf to leave behind AT&T provided materials that meet AT&T's quality standards. (Id. at 721.)

ISSUE 9: When AT&T or MCI resells BellSouth's local exchange service or purchases unbundled local switching, is it technically feasible of 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?

AT&T: Yes. BellSouth should be required to route Operator Services, Directory Assistance and Repair calls from AT&T local customers to AT&T's platforms. Such customized routing is technically feasible.

The Commission should order BellSouth to route AT&T customers calling for Operator and Directory Assistance services directly to an AT&T service platform. Direct routing is the capability for all customers to dial the same Operator and Directory Assistance number, but have their calls routed to the operators of their chosen local service provider. For example, an AT&T customer dialing "411" should be connected with an AT&T operator and not a

BellSouth operator. (Shurter, Tr. 183.) Direct routing is necessary to provide Florida consumers with convenient access to their chosen local service provider and to enhance competition in the local exchange market. (Shurter, Tr. 183-84.)

BellSouth refuses to provide AT&T with direct routing. Rather, it proposes that AT&T customers should have to dial unfamiliar numbers, instead of traditional and familiar numbers such as "411" or "0." BellSouth makes the ridiculous claim that these different dialing patterns for Operator Services and Directory Assistance will not create any confusion for Florida consumers. (Calhoun, Tr. 1718, 1865.) But in direct contradiction to the position it has taken in this proceeding, BellSouth's Internet Web Site has a page aimed at convincing its customers that unfamiliar dialing patterns will create confusion. (Ex. 51.) Adding insult to injury, BellSouth's approach also would mean AT&T customers first would have to contact BellSouth's Operator and Directory Assistance personnel in order to get the number needed to contact AT&T's operators. (Gillan, Tr. 113.)

This confusion and inconvenience inevitably will cause many Florida consumers who ;might choose AT&T as their local service provider simply to dial the well known numbers for various Operator Services and Directory Assistance services, and thereby be connected with a BellSouth operator. BellSouth knows this will give BellSouth a distinct and unfair advantage over its competitors, especially because it brands its "0-" calls. By getting access to the customers of its competitors each time these customers dial "0" or "411" for services, BellSouth would have a built-in mechanism to deny AT&T the chance to prove the quality of its services when its customers need assistance. (Carroll, Tr. 720; Shurter, Tr. 184-85.)

Recognizing the obvious anti-competitive implications of BellSouth's position, both the Act and the FCC Order require customized direct routing of Operator and Directory Assistance Services directly to AT&T's service platform, absent a showing by BellSouth that it is not technically feasible. FCC Order No. 96-325 ¶ 418; (Gillan, Tr. 111-12.) As explained in above under Issue 1, despite the best evidence that BellSouth can muster on this issue, direct routing is technically feasible as revealed by agreements by numerous other incumbent LECs to provide such routing, as discussed above under Issue 1.

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

AT&T: Yes. Unused transmission media is a network element consistent with the definition of network elements found in the FCC's Order. It is technically feasible to unbundle and it should be unbundled as it is not proprietary and its unavailability would introduce unnecessary additional costs to new entrants.

The Commission should order BellSouth to lease to AT&T BellSouth's unused transmission media, also known as "dark fiber." Dark fiber is a network element currently in the possession of BellSouth which, if provided to new entrants would facilitate competition. For example, AT&T will deploy SONET rings in certain market areas to create competitive facilities. Building these rings will require the placement of many miles of fiber, with the attendant difficulties of obtaining rights-of-way, conduit and pole, and building permits. (Tamplin, Tr. 331.) AT&T therefore seeks to lease BellSouth's dark fiber already in place to speed the development of AT&T's own network transmission facilities.

BellSouth has denied all new entrants access to this media, knowing full well this will present another capital investment requirement for AT&T and other new entrants, and thus delaying the date by which they could compete with BellSouth. (Tamplin, Tr. 306-307, 331.) BellSouth's refusal is particularly disingenuous because BellSouth repeatedly has expressed concern over its ability to cover the costs of its network, yet here foregoes an opportunity to generate income from its unused facilities.

BellSouth has refused to allow AT&T access to this unused media on the grounds it is not an unbundled network element and therefore is not required to provide access to this media. (Varner, Tr. 1527.) BellSouth has no other reason to support its actions, and its stated reason is erroneous. Dark fiber clearly is a network element because it is "a facility or equipment used in the provision of a telecommunications service." 47 C.F.R. § 51.5; (Tamplin, Tr. 331.) The fact that it is not currently in use does not change its character: its only use is the provision of a telecommunications service. Therefore, it is a network element currently in the possession of BellSouth, which, if provided to new market entrants, could facilitate competition. Dark fiber should be priced as a separate unbundled network element based on the TSLRIC or TELRIC of providing the element. AT&T's proposal for pricing unbundled network elements is discussed in Issue 1(b).

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

AT&T: BellSouth must provide access to appropriate engineering documents upon request for access to right-of-way, with appropriate redaction of proprietary information. Additionally, AT&T requires access to third party rights-of-way owned or controlled by BellSouth. If any reservation is permitted a one year reservation period should apply to all parties.

The Commission should order BellSouth to provide AT&T with copies of pole and conduit engineering records to facilitate AT&T's planning of access to facilities. (Tamplin, Tr. 305.) The FCC Order indicates an expectation that BellSouth will make its maps, plats and other relevant data available for inspection and copying when BellSouth receives a legitimate request for access to its facilities or property, subject to reasonable conditions to protect proprietary information. FCC Order 96-325 ¶ 1223; (Tamplin, Tr. 318.)

BellSouth states that it will not provide access to all of the information requested by AT&T because: (1) it is not required by the Act; (2) if it gives the records to AT&T, it would be required to give access to all local providers; and (3) the FCC's Order provides for protection of proprietary information. (Milner, Tr. 2720.) First, although the Act does not explicitly require access, the Commission is free to order such access to facilitate AT&T's ability to determine the rights of way, conduits, pole attachments and other pathways necessary for AT&T to provide competitive services to Florida consumers. Second, if access is required, it should be required for all new entrants who request it. That BellSouth wants to restrict access again highlights its anti-competitive motives. Finally, AT&T understands it must protect proprietary data and is willing to agree to reasonable conditions.

BellSouth has offered to provide access, but it knows that its offer will not result in parity. In particular, BellSouth insists on reserving for itself five years of capacity in a given facility. (Milner, Tr. 2682.) BellSouth's arbitrariness is highlighted by its statement that it would not grant even one year of reserve space to AT&T. (Milner, Tr. 2683-84.) New entrants with immediate needs should not be turned away just because BellSouth arbitrarily has established a need for itself for up to five years in the future. As to unused maintenance spares, BellSouth's position is even more extreme: it refuses to give any access to its unused maintenance spares. (Milner, Tr. 2682.) BellSouth's position is thus yet one more example of its attempts to continue its monopoly in the local market.

The Act requires BellSouth to provide nondiscriminatory access to other providers. 47 U.S.C.A. § 251(c)(2) and (6). Additionally, the FCC Order explicitly prohibits BellSouth from reserving right-of-way capacity for its future needs at the expense of the needs of new entrants. Order No. 96-325 ¶ 1170. The reason is clear: unequal access is discriminatory, and nondiscriminatory access is required to promote competition. If BellSouth gets its way, only BellSouth will be able to reserve capacity. If another provider has immediate plans to serve consumers, BellSouth must not be permitted to thwart those plans simply by claiming it has a yet undeveloped need for the capacity. There is only one winner in such a scenario -- BellSouth. Other providers, and ultimately, Florida consumers, are the losers in such a deal.

BellSouth laments the FCC's Order's adoption of an "altered" definition of nondiscrimination which prohibits BellSouth from treating itself differently than it treats other carriers. (Milner, Tr. 2719.) BellSouth asserts that it is unacceptable to allocate capacity on a first-come/first-serve basis, and that it is unfair and inefficient to allow all carriers to reserve space. (Milner, Tr. 2720.) But nondiscriminatory access means everyone is treated the same, including BellSouth. BellSouth does not, and cannot, explain how "nondiscrimination" permits BellSouth to grant itself rights not given to other providers. BellSouth's reservation in advance of five years of capacity is unreasonable and will hinder the efforts of new entrants to compete and bring new services to Florida consumers. If any reservation is permitted, it should be for no more than one year and should apply to all parties.

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

AT&T: AT&T should be the contact point for PIC change requests by AT&T local customers. BellSouth should reject any PIC change request from another carrier and notify the carrier to submit the request to AT&T. This practice complies with the standards adopted by the National Order and Billing Forum Committee.

Where AT&T is the local service provider, the Commission should require BellSouth to refer requests for PIC changes made by AT&T's local customers to AT&T, instead of BellSouth directly processing such requests itself. A PIC change is a request from a customer to change its long distance carrier. Only AT&T will have the most current customer account information, which could include restrictions on PIC changes. Therefore, allowing BellSouth to process PIC change requests will diminish AT&T's ability to provide quality services to its customers. It also will lead to confusion among customers. Finally, BellSouth would gain a competitive advantage. Its customers who request PIC changes will receive better service, because BellSouth presumably will have more accurate and up-to-date information on its own customers than as to AT&T's customers.

Despite the detrimental effect on competition and the concomitant effect on the price and quality of services, BellSouth plans to handle PIC requests for all resellers. (Scheye, Tr. 1634.) The reason is obvious -- the more control BellSouth can assert between AT&T and other new entrants and their customers, the better for BellSouth.

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

Pre-Service Ordering

Service Trouble Reporting

Service Order Processing and Provisioning

Customer Usage Data Transfer

Local Account Maintenance

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

> AT&T: Yes. The Act requires BellSouth to provide AT&T with nondiscriminatory access to requested systems and functions by January 1, 1997. With all five of the above functions, AT&T must have real-time and interactive access to BellSouth's systems in order to achieve parity with what BellSouth provides its customers. All parties should share the costs.

The Commission should require BellSouth to provide AT&T, by a date certain, with electronic real-time interactive operational interfaces for unbundled network elements. Such electronic interfaces will provide AT&T with the capability to meet its customers demands for service. If the electronic interfaces placed into service by BellSouth do not provide AT&T with the ability to timely and accurately responding to customers requests, AT&T will be severely disadvantaged in the marketplace. BellSouth should provide the interface for all five of the following different functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing.

AT&T has requested such electronic interfaces since August 1995, when negotiations first began between the two companies. BellSouth agreed to provide electronic interfaces for the resale of local service only after the Georgia Public Service Commission issued its order in May 1996, granting AT&T's request of electronic interfaces in a resale environment. Even with issuance of this Order, it took until almost the week before the arbitration hearing in this case before BellSouth would agree to specific language to provide AT&T with *electronic interfaces in a resale environment.* Even more recently, AT&T has learned that the method of such access appears to be in dispute..

AT&T has continued to negotiate similar language for interactive electronic interfaces for unbundled network elements, but to date has been unsuccessful. BellSouth still refuses to provide AT&T with interactive electronic interfaces for unbundled network elements for the five functions described above. BellSouth will continue to refuse interfaces unless this Commission orders BellSouth to provide them, just like the Georgia Public Service Commission had to with respect to electronic interfaces for resale.

Manual processing is inherently inferior to electronic interfaces for each of the above five functions, and previously was offered by BellSouth to AT&T as a "solution" for electronic interfaces. (Shurter Tr. 180-81; Carroll, Tr. 718.) Through pre-ordering, a LEC provides a potential customer with various types of important information, such as the types of services available at the customer's address. (Shurter, Tr. 179.) If the pre-ordering function was provided by way of real-time electronic interfaces, an AT&T operator during the initial contact with a new customer instantaneously could provide the customer with various types of information, such as the customer's proposed phone number. If AT&T were required to rely on manual processes to obtain pre-ordering information, AT&T would have to record requests from the customer, send a request to BellSouth by facsimile, and then call the customer back after receiving BellSouth's reply. (Carroll, Tr. 718; Shurter, Tr. 180-81.)

Similarly, manual processes are inadequate for ordering, by which the local provider orders a particular service for a customer, such as touch-tone dialing, and receives confirmation that the order has been completed. (Shurter, Tr. 209-10.) These processes also are inadequate for provisioning, by which AT&T checks on the status of a particular order. (Shurter, Tr. *179-80.) The inherent delays and errors of manual processing would make AT&T's ability to fill a* customer's order, or check on the status of that order, greatly inferior to that of BellSouth, as revealed by AT&T's prior failed attempt to rely on manual processing when ordering for resold services from Rochester Telephone Company. (Shurter, Tr. 181-82, 208.)

Likewise, manual processing would make maintenance and repair on unbundled network elements unworkable. To carry out maintenance and repair, AT&T must perform testing functions after receiving a customer complaint, and then refer the results to BellSouth. (Shurter, Tr. 180; Carroll, Tr. 718.) AT&T then would need to find out the status of ongoing repairs, and confirm when BellSouth has completed the repair.

The manual processing of these steps would be inefficient, error laden and a slower method, and consequently would preclude new entrants from using unbundled network elements as effectively as possible. (Carroll, Tr. 718.) Finally, manual processing of billing is so cumbersome and prone to human errors that it would preclude new entrants from using unbundled network elements.

By refusing to provide electronic interfaces for unbundled network elements, BellSouth seeks to stifle competition based on the unbundling of network elements. Its refusal also violates the Act, because the Act requires BellSouth to provide AT&T with services equal to those which BellSouth provides to itself and its affiliates. 47 U.S.C.A. § 251(c)(2)-(4). The Act specifically requires that BellSouth provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on . . . terms, and conditions that are just, reasonable, and nondiscriminatory . . . ." Id. § 251(c)(3). Likewise, the FCC Order requires BellSouth to provide nondiscriminatory access to operations support systems, and any relevant internal gateway access, in the same time and manner in which BellSouth provides such functions to itself. 47 C.F.R. § 51.313(c); FCC Order No. 96-325 ¶¶ 517-528.

AT&T believes the costs associated with implementing electronic interfaces should be shared equitable among all parties who benefit from those interfaces, including BellSouth. In short, each party should contribute its fair share.

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

AT&T: Yes. The use of the Centralized Message Distribution System ("CMDS") for intraLATA collect, third party and calling card calls would provide a uniform system that simplifies the billing process. The telecommunications industry currently uses the CMDS process to determine applicable rates and appropriate compensation for such calls.

The Commission should require BellSouth to use the Centralized Message Distribution System (CMDS) process for billing of intraLATA collect, third-party, and calling card calls. Under this process, all such calls are billed at the originating service provider's rates. (Shurter, Tr. 214.) The telecommunications industry currently uses the CMDS process to determine the applicable rates and appropriate compensation for collect, third-party, and calling card interLATA calls. (Id. at 213-14.) CMDS has eliminated confusion and disputes as to which rates apply and the compensation due each carrier. (Id. at 214.) In general, this process greatly simplifies the billing procedure for interLATA calls. (Id. at 213.) Likewise, application of the CMDS process to intraLATA calls would simplify billing procedures for those calls as well. Accordingly, the Commission should require that intraLATA collect, third-party, and calling card calls be priced in accordance with CMDS.

BellSouth argues that it has no "regional" system using the CMDS process for intraLATA calls, and therefore it should not be required to price and allocate compensation for these calls in accordance with this process. (Scheye, Tr. 1786.) The existence of regional system uniform to all BellSouth states, however, is entirely unrelated to BellSouth's ability to process information in accordance with CMDS for intraLATA calls which, by definition, do not cross state lines. BellSouth admits it can provide the recommended capabilities with systems that are "currently state specific." (Id. at 1786.) Moreover, BellSouth offers no reason, technological or otherwise, why it cannot make these systems uniform within its nine states. (See id.) Given the proven effectiveness of the CMDS process in simplifying the billing procedure for interLATA calls, and BellSouth's failure to identify any reasons why this process would not achieve similarly efficient results applied to intraLATA calls, BellSouth's objections are insubstantial.

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

> AT&T: Calls to Information Service providers must be provided to AT&T in a rated format so that AT&T may bill the customer. Until such time as AT&T develops the appropriate billing capability for Information Service Provider calls, AT&T requests BellSouth to continue billing the end user.

The Commission should order that calls to Information Service Providers (ISPs) be presented by BellSouth to AT&T in rated format for billing the customers. ISPs provide information to consumers by way of "900" type numbers. AT&T has requested that BellSouth continue to rate and bill AT&T customers for calls to ISPs, as is done today, until such time as AT&T notifies BellSouth that AT&T is able to bill such calls to ISPs. (Carroll, Tr. 754-58.) AT&T expects this interim process to be in place for the first six months of 1997, at which time AT&T will begin rendering its own bills to end users for calls to ISPs.

Instead, BellSouth has proposed that any calls to ISPs by AT&T customers will be billed by BellSouth to AT&T, with AT&T as the customer of record. To date, AT&T has no agreement with any ISPs for the billing of calls or for remitting any money received from customers for such calls. BellSouth is the company with such agreements. AT&T needs BellSouth to provide this billing consistent with current practices, until AT&T can establish its own arrangements.

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

> AT&T: AT&T requires BellSouth to render Local/IntraLATA bills by utilizing the existing billing systems (CABS) in the standard format (SABR). This is the system that is currently in place for Specials and Switched billing and is the standard being sought nationally.

The Commission should direct BellSouth to provide information for billing and usage recording through an electronic interface compatible to BellSouth's Carrier Access Billing System ("CABS"). CABS is designed to render bills from BellSouth to AT&T and other new entrants for access services. BellSouth has used the CABS system for a number of years to render bills to AT&T. This experience has led AT&T and BellSouth to conclude that the CABS system is efficient and produces quality bills. (Shurter, Tr. 214-15, 242-44.) Further, CABS represents the industry standard billing system used by all interexchange carriers. (Shurter, Tr. 215, 242.) AT&T has agreed to share the costs of implementing an electronic interface to enable it to use CABS. (Shurter, Tr. 245.)

Nonetheless, BellSouth insists that AT&T use BellSouth's Customer Record Information System ("CRIS") for services sold for resale and for certain unbundled network elements. (Calhoun, Tr. 2526-27.) If new entrants are to compete effectively against BellSouth, they should not have to adopt a second system, CRIS, for some purchases. AT&T seeks a single billing system, as BellSouth currently enjoys, for rendering bills to its customers, which is based upon the familiar CABS. (Shurter, Tr. 215.)

Moreover, BellSouth incorrectly argues that CRIS is superior to CABS, asserting CRIS provides more detailed customer information. This customer detail is not needed for billing and is available, when it is needed, through usage data that is received outside of the billing context. (Shurter, Tr. 242-43.) If new entrants must use CRIS, BellSouth will have a competitive advantage due to the increased costs and time that AT&T will need to adjust to the CRIS system, even though the CABS system is the best way for AT&T to expeditiously bill its customers. (Shurter, Tr. 215.)[39/]

BellSouth offers various convoluted explanations why CRIS should be used, and tries to hide its real reason: it simply wants to keep doing business the way it has always done business. This is borne out through BellSouth's position at the Order and Billing Forum ("OBF"), where it said it would "ignore" any industry standard except CRIS. (Ex. 88, OBF Issue Identification Form, at 18.) Thus, once again BellSouth is trying to do all that it can to preserve its monopoly position, rather than trying to respond to the market place and help establish fair competition. The Commission should require BellSouth to provide CABs billing within one year of execution of an agreement or when billing standards are adopted which ever is sooner.

39/ Although the FCC Order does not address these issues, the Order requires parity in that BellSouth must provide terms and conditions that are just, reasonable and nondiscriminatory. FCC Order No. 96-325 ¶¶ 216-220, 224, 307-311, 315, 970. AT&T's request for CABS billing is just fair and reasonable because it is necessary for accurate and timely billing services. (Shurter, Tr. 214-15, 242-44.)

<u>ISSUE 16</u>: **Should BellSouth be required to provide Process and Data Quality Certification for carrier billing, data transfer, and account maintenance?**

AT&T: Yes. AT&T requires BellSouth to meet the Direct Measures of Quality ("DMOQs") for connectivity billing. Such standards are currently used in the provision of Specials and Switched billing. AT&T requires such performance measurement standards to ensure meaningful control over billing quality.

For AT&T to compete with BellSouth, it must be able to offer at least the same level of quality that BellSouth provides its customers. A mechanism is needed to ensure BellSouth meets this standard because BellSouth otherwise has little incentive to provide AT&T with this same level of quality. Therefore, this Commission should require BellSouth to meet the Direct Measures of Quality ("DMOQs") for connectivity billing. Such standards are currently used in the provision of Specials and Switched billing. AT&T requires such performance measurement standards to ensure meaningful control over billing quality. The parties have agreed on a provisional billing process. If finalized, it will be a step in the right direction but will not fully address AT&T's needs.

AT&T's position is straight-forward. When AT&T purchases services for resale, BellSouth has sole responsibility for the personnel provisioning the services and the equipment providing the services. (Shurter, Tr. 187.) Thus, BellSouth should be responsible for any work errors that result in unbillable or uncollectible AT&T revenues, and should compensate AT&T for any losses caused by BellSouth's errors.

DMOQs would promote competition that would benefit Florida consumers in a variety of ways. For example, DMOQs would provide objective standards to determine whether BellSouth is discriminating, intentionally or unintentionally, against new market entrants by providing inferior services. (Shurter, Tr. 188-89; Carroll, Tr. 723.) DMOQs also would protect the existing reputation of AT&T or other new entrants as a quality provider. Like other arms-length negotiated customer-supplier agreements, BellSouth should be required to agree to contract terms that hold BellSouth financially responsible in the event it fails to achieve appropriate DMOQs for connectivity billing. The Commission should require BellSouth to use this experience to develop DMOQs regarding the services it will offer for resale to AT&T, and provide process and data certifications to ensure that BellSouth satisfies its obligations under the Act. (Shurter, Tr. 193-94.)

Amazingly, BellSouth refuses to accept liability for its own errors. Such a position would be unheard of in the competitive market. But BellSouth does not want a competitive market. Here, and again, its position illustrates the lengths it will go in order to retain its monopoly position. To ensure parity of offerings, however, the FCC Order requires BellSouth to provide services for resale that are at least equal in quality to what BellSouth provides itself. FCC Order No. 96-325, ¶¶ 224, 313, 970; (Shurter, Tr. 194.) The most effective way for this Commission to ensure that BellSouth provides services available for resale which are equal in quality, is to make sure BellSouth pays for its mistakes. Otherwise, BellSouth will have no incentive to prevent those mistakes.

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

AT&T: Yes. To provide AT&T with non-discriminatory access to its Directory Listings as required by the Act, AT&T's name and logo must appear on the directories in the same size and format as provided BellSouth, and under the same terms and conditions as BellSouth Advertising & Directory Publishing Corporation provides BellSouth.

The Commission should order that the AT&T logo be displayed on BellSouth's telephone directories. (Shurter, Tr. 185.) This will inform Florida consumers that they have a choice for local services. It also will prevent consumers from misperceiving BellSouth as the "best player" in the local services market because BellSouth's logo, and only its logo, appears on the local telephone book -- the icon of local telephone service.

In response, BellSouth has raised a number of procedural arguments, all in an attempt to hide its real desire to retain exclusive control over its telephone directory. For example, it asserts the issue is not subject to arbitration, because BellSouth Advertising & Directory Publishing Corporation ("BAPCO") is the party whose interest are at stake but BAPCO is not a party to this proceeding. (Scheye, Tr. 1676.) However, it is clear that this issue is on e parity and, hence, subject to arbitration. BAPCO's presence in this proceeding is irrelevant because BAPCO is an affiliate of BellSouth and both are controlled by a common parent. BellSouth is a party to this proceeding and can simply be instructed that its contractual relations with BAPCO must include provision that require BAPCO to treat all competing carriers in a nondiscriminatory manner with respect to the publishing of directories.

Despite BellSouth's procedural arguments, but consistent with BellSouth's anti-competitive positions, BellSouth agreed to include AT&T's logo, but only if AT&T agreed to discriminatory terms, such as excessive rates, and restrictive and anti-competitive terms and conditions. (Shurter, Tr. 186, 201.) Such terms and conditions ultimately impact Florida consumers by hindering competition. Thus, the Commission should require BellSouth to brand all customer services that BellSouth provides on behalf of AT&T, including phone directories on terms and conditions at parity with those which BellSouth provides itself.. (Shurter, Tr. 199-200.)

> ISSUE 18: Should BellSouth be required to provide interim number portability solutions besides remote call forwarding? If so, what are the costs involved and how should they be recovered?
>
> AT&T: Interim Number Portability should be provided by Remote Call Forwarding, Route Indexing, or Local Exchange Routing Guide reassignment. AT&T shall specify the desired method on a per number basis and BellSouth shall provide such method to the extent technically feasible. Carriers should bear costs on a competitively neutral basis.

The Commission should require BellSouth to provide four interim number portability solutions: remote call forwarding ("RCF"), direct inward dialing ("DID"), route index portability hub, and local exchange routing guide assessment ("LERG"). (Ex. 17, JC-2, Attachment 8, at 2-3) The FCC agrees that Congress intended that currently available number portability measures be provided until a long-term portability method is technically feasible and available. FCC Order No. 96-286, ¶ 112. The FCC concluded that incumbent LECs are required to offer interim number portability through RCF and DID, and other comparable methods because these methods, are currently available and technically feasible. FCC Order No. 96-286 ¶ 110; (Tamplin, Tr. 305-306.)

BellSouth has agreed that all options are technically feasible, and has agreed to provide them but will only so only if AT&T first promises reciprocity. By this, BellSouth means AT&T should agree now, that once AT&T has established itself as a local service provider, AT&T will provide interim number portability by the same means to customers who decide to switch back to BellSouth. Not surprisingly, BellSouth is unable to be specific about its interim number portability needs, because it currently has none. BellSouth is simply asking AT&T to speculate about what it will be capable of doing at some undetermined future date.

The Act does not require new entrants to agree to the terms of an interim arrangement that may soon be mooted by a permanent solution prior to the time new entrants have their own facilities. It is likely that a Permanent Number Portability ("PNP") Solution will be reached before AT&T has its own equipment in place. The FCC has ordered implementation of a PNP solution for the 100 largest metropolitan statistical areas between October 1997 and December 1998. FCC Order No. 96-286 ¶ 77. BellSouth's insistence that AT&T reciprocate an interim solution is not a meaningful request and instead is only a ploy to delay competition.

The Act gives the FCC express and exclusive jurisdiction to determine the basis upon which all telecommunications carriers will bear the costs of establishing number portability. 47 U.S.C.A. § 251(e)(2). BellSouth argues that the appropriate rate for interim number portability should be set at rates previously established by the Commission in Florida Docket No. 950737-TP. However, BellSouth acknowledges that the FCC Order released in Docket No. 95-116 potentially affects rates established for interim number portability. (Scheye, Tr. 1675.)

In fact, the Order to which BellSouth refers prohibits the pricing that BellSouth proposes. Federal Communications Commission, Docket No. 95-116, Order No. 96-286, July 2, 1996, at 69 ("FCC Order No. 96-286"); (see also Ellison, Tr. 420.) In fact, this particular FCC Order implements § 251(e)(2) of the Act, provides that costs of number portability be "borne by all telecommunications carriers on a competitively neutral basis." (FCC Order No. 96-286, ¶ 126.) The FCC specifically stated that imposition of even the incremental costs alone, on a new entrant, would violate the "competitively neutral" standard of the Act. (Id. at 71.) Rather, the costs of number portability must be borne relative to the marketshare or revenues of the market participants. (Id.) The Commission should adopt a cost recovery mechanism for interim number portability consistent with the terms of the Act and FCC Order No. 96-286. The rates for interim number portability should be established at the nominal levels required by that Order.

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

AT&T: *Section 252(d)(1) expressly applies pricing standards to interconnection with facilities and equipment described in Section 251(c)(2)(A). Exchange access and switched access charges must be priced according to Section 251(d)(1). The price is the same as for unbundled elements that are used to transport and terminate long distance service.*

Section 252(d)(1) of the Act expressly applies pricing standards to interconnection with facilities and equipment described in § 251(c)(2) of the Act. Exchange access and switched access charges must be priced according to § 251(d)(1) at economic costs.

Efficient competition requires that both "local" access and "long distance" access be priced at cost. (Gillan, Tr. 80-83.) If both "local" and "long distance" access are priced at cost, competitors can offer a variety of boundaries defining "local" access . In this way, Florida consumers can select the combination of "local" calling area boundaries and prices that best meet their needs. (Id.) In essence, the needs of the consumer will define the price and boundary packages which competitors can successfully market to them.

While the functionality of transferring and terminating calls is the same whether the call is "local" or "long distance," charges to long distance carriers to terminate toll traffic are, at present, far above cost. (Gillan, Tr. 80.) BellSouth would perpetuate this discrimination between local and long distance calling, maintaining the high profits it receives when terminating long distance calls, and maintaining control over the boundaries of the "local" calling area, to the detriment of competition.

To the extent BellSouth seeks to justify these high profits on the grounds that such profits subsidize particular consumers or services, the subsidies should be specifically identified and explicitly recovered through a competitively neutral Universal Service Fund contemplated by the regulatory framework. (Gillan, Tr. 82.)

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

AT&T: Two way trunking is necessary for efficient interconnection and reflects the interconnection capability available to BellSouth.

BellSouth and AT&T have agreed to the following:

BellSouth and AT&T have agreed to implement the most efficient trunking arrangement to exchange all traffic. Initially, BellSouth will provide one-way trunk groups for completion of BellSouth originated local and intraLATA traffic and AT&T will provide two-way trunk groups for completion of AT&T originated local and intraLATA traffic. AT&T and BellSouth will continue to utilize existing separate two-way trunk groups for the origination and termination of interLATA traffic. The parties will meet every six months to analyze the trunk recording capabilities and define the administration methods and procedures. When the methods and procedures are agreed to by AT&T and BellSouth, BellSouth and AT&T will utilize two way trunks for the origination and termination of local and intraLATA traffic.

The parties have reached an agreement that they will begin interconnection with one way trunking and move to two way trunking over an established timeline. (Atherton, Tr. 2796-2798). Therefore, the Commission need not consider this issue at this time.

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

> AT&T: The Commission should order that interconnection be priced at TELRIC and that BellSouth be ordered to develop TELRIC studies as promptly as possible. Until such studies are completed, this Commission should require a bill and keep arrangement for interconnection.

Efficient competition in the local exchange market will occur only if the price for call transport and termination is equal to the economic cost of the network elements which perform functions. As previously discussed in Issue 1(b), both buyers and sellers in the competitive market make economic decisions based on economic costs. Accordingly, the Commission should price call transport and termination at economic costs. Until BellSouth produces information sufficient to permit the pricing of transport and termination at economic costs, the Commission should implement interim bill-and-keep provisions as permitted by the Act.

Under the Act, each local exchange carrier has the duty to "establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C.A. § 251(b)(5). The Act requires that the pricing for transport and termination provide for the recovery by each carrier of "cost associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." 47 U.S.C.A. § 252(d)(2)(A). The Act permits arrangements that provide "mutual recovery of costs through the offsetting of reciprocal obligations," to the extent that such arrangements permit the recovery of the related costs. 47 U.S.C.A. § 252(d)(2)(B). Further, the Act specifically identifies "bill-and-keep" arrangements as acceptable to the extent that each carrier recovers the cost of transport and termination. Id. Bill-and-keep arrangements compensate a carrier terminating a call originated with another carrier by requiring the carrier originating the call to, in turn, transfer and terminate calls originating from the other carrier. Under a bill-and-keep arrangement, no money changes hands.

The FCC Order provided that transfer and termination should be priced at TELRIC. The FCC also has provided a proxy default range of 0.2-0.4 cents per minute, based on cost data from multiple jurisdictions, to be used where a particular State Commission does not have complete TELRIC studies before it. Finally, the FCC Order provided that states may impose bill-and-keep arrangements if traffic is roughly balanced between the carriers and neither carrier has rebutted the presumption of symmetrical rates. FCC Order No. 96-325. Under the FCC Order, money would change hands only if traffic were "significantly out of balance." Id. at ¶ 1113.[40/]

BellSouth has not provided TELRIC studies adequate for determination of the economic costs of transfer and termination. Should this Commission not wish to set the interim costs of transport and termination within the proxy range set by the FCC Order, AT&T recommends that this Commission implement an interim bill-and-keep arrangement as permitted by the Act, and as previously established by this Commission (and termed "mutual traffic exchange"). See In re Establish Nondiscriminatory Rates, No. 950985-TP, 1996 WZ 159638 (Fla. Pub. Serv. Comiss. Mar. 29, 1996.)

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

AT&T: The Act requires BellSouth to provide interconnection, unbundled network elements and wholesale services at terms and conditions that are just, reasonable and non-discriminatory. The terms and conditions proposed by AT&T, with regard to these and other issues in its proposed interconnection agreement, are appropriate and should be adopted.

40/ The FCC has defined "symmetrical compensation arrangements" as those "in which the rate paid by an incumbent LEC to another telecommunications carrier for transport and termination of traffic . . . . is the same as the rate the incumbent LEC charges to transport and terminate traffic originated by the other telecommunications carrier." FCC Order No. 96-325. Looking at the similarity of carriers' transport and termination costs within a given geographic area, the FCC concluded that use of incumbent LEC's forward-looking cost for transport and termination as a proxy for the cost incurred by the interconnecting carriers satisfied the requirement of § 252(d)(2) of the Act requiring that cost be determined "on the basis of a reasonable approximation of the additional costs of terminating of such calls." FCC Order No. 96-325.

The interconnection agreement that BellSouth and AT&T are to enter into must address terms and conditions regarding various issues if the goals of the Act are to be achieved. The terms and conditions in AT&T's proposed Interconnection Agreement should constitute the "General Terms and Conditions" that the parties should resolve and agree to after the Commission has arbitrated the parties' differences and issued an Order. (See Ex. 17.).

The Act requires BellSouth to provide interconnection, unbundled network elements and wholesale services at terms and conditions that are just, reasonable and non-discriminatory. It also requires the Commission to ensure an interconnection agreement include: termination of the agreement; good faith performance, options to purchase; governmental compliance; environmental contamination; regulatory matters; liability and indemnity; audits and inspections; customer credit history; federal state and local taxes; alternative dispute resolution; notices; branding; directory listings requirements; and subscriber list information. (Id.; Carroll Tr. at 752-54). The terms and conditions proposed by AT&T for theses issues in AT&T's proposed interconnection agreement are appropriate and should be adopted.

ISSUE 29: Should the agreement be approved pursuant to the Telecommunications Act of 1996?

AT&T: Yes. The arbitrated agreement should be approved pursuant to the provisions of Section 252(e).

The Act expressly requires this Commission to approve agreements entered into pursuant to the Act. 47 U.S.C.A. § 252(e)(1). Section 252(e)(1) provides that "[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State Commission." Section 252(e)(1) also requires that a "State Commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies."

ISSUE 30: **What are the appropriate post-hearing procedures for submission and approval of final arbitrated agreement?**

> AT&T: The deadline for filing an agreement should be 14 days from the date of the Order. If no agreement is reached, the parties should propose agreements within 20 days after the Order. The Commission should then adopt on each issue the contractual language that complies with the Order.

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

CONCLUSION

For the reasons set forth above, AT&T respectfully requests the Commission to enter an order in accordance with AT&T's position. Respectfully submitted this 22nd day of October, 1996.

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ATTORNEYS FOR AT&T COMMUNICATIONS OF
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CERTIFICATE OF SERVICE

DOCKET NOS. 960833-TP, 960846-TP and 960916-TP

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U. S. Mail or hand-delivery to the following parties of record this 22nd day of October, 1996:

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