FLORIDA PUBLIC SERVICE COMMISSION
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M E M O R A N D U M

FEBRUARY 18, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (BARONE, CULPEPPER)
DIVISION OF COMMUNICATIONS (SHELFER, NORTON, GREER)

RE: DOCKETS NOS. [redacted]-TP, 960846-TP, 960916-TP - PETITIONS BY AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., MCI TELECOMMUNICATIONS CORPORATION, MCI METRO ACCESS TRANSMISSION SERVICES, INC., AMERICAN COMMUNICATIONS SERVICES, INC. AND AMERICAN COMMUNICATIONS SERVICES OF JACKSONVILLE, INC. FOR ARBITRATION OF CERTAIN TERMS AND CONDITIONS OF A PROPOSED AGREEMENT WITH BELLSOUTH TELECOMMUNICATIONS, INC. CONCERNING INTERCONNECTION AND RESALE UNDER THE TELECOMMUNICATIONS ACT OF 1996.

AGENDA: FEBRUARY 21, 1997 - SPECIAL AGENDA - POST HEARING DECISION - MOTIONS FOR RECONSIDERATION - PARTIES DID NOT REQUEST ORAL ARGUMENT - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: 30 DAY REVIEW PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996, MARCH 3, 1997

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\960833RN.RCM

CASE BACKGROUND

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

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

arbitration with BellSouth. By Order No. PSC-96-1039-TP, issued August 9, 1996, the joint motion for consolidation was granted. On August 15, 1996, MCI filed its request for arbitration with BellSouth under the Act.

On August 13, 1996, ACSI filed its petition for arbitration under Section 252 of the Act and Docket No. 960916-TP was established. On August 19, 1996, American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. (ACSI) requested that the Commission consolidate its arbitration proceeding with BellSouth with the petitions filed by AT&T and MCI. By Order No. PSC-96-1138-PCO-TP, issued September 10, 1996, ASCI's motion for consolidation was granted.

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

The hearing in these consolidated dockets was held October 9 through 11, 1996. AT&T and MCI sought arbitration of issues in four main subject areas: network elements; resale; transport and termination; and implementation matters. ACSI and BellSouth later reached an agreement. Consequently, ACSI withdrew its petition for arbitration on November 12, 1996.

On December 31, 1996, the Commission issued Order No. PSC-96-1579-FOF-TP, resolving the issues in AT&T's and MCI's petitions for arbitration with BellSouth. On January 9, 1997, the Commission issued Amendatory Order No. PSC-96-1579A-FOF-TP correcting scrivener's errors. On January 15, 1997, BellSouth Filed a Motion for Reconsideration of Order No. PSC-96-1579-FOF-TP. On January 27, 1997, MCI and AT&T filed separate responses to the Motion for Reconsideration. AT&T also filed a Cross Motion for Reconsideration on that day. On February 4, 1997, BellSouth filed its response to AT&T's Cross Motion.

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth's Motion for Reconsideration of Commission Order No. PSC-96-1579-FOF-TP be granted?

RECOMMENDATION: No. BellSouth has failed to identify any point of fact or law that the Commission overlooked or failed to consider in rendering Order No. PSC-96-1579-FOF-TP. BellSouth's Motion for Reconsideration should, therefore, be denied. Staff does, however, recommend that the Commission clarify the description of the channelization element and clarify that prices ordered for the channelization system apply to the DS1 level to voice grade system. Staff also recommends that the Commission clarify its ruling on PIC change requests. Staff further recommends that the Commission grant BellSouth's request to extend the time for providing CABS-formatted billing to 180 days from the issuance of Order No. PSC-96-1579-FOF-TP. Finally, staff recommends that the Commission correct Order No. PSC-96-1579-FOF-TP to reflect that the $0.0005 termination rate set forth on page 115 of the Order applies to common transport rather than to dedicated transport.

STAFF ANALYSIS: The proper standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law which was overlooked or which the Commission failed to consider in rendering its order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters which have already been considered. See Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959), citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958)(the petition should not be used to reargue matters already addressed in briefs and oral argument).

In its motion, BellSouth seeks reconsideration of the Commission's decisions on the pricing of the recombination of unbundled network elements, tariff terms and conditions, services excluded from resale, pricing of channelization and common and dedicated transport, primary interexchange carrier (PIC) changes, CABS-formatted billing, access to customer records, and pricing of network elements.

BellSouth argues that reconsideration of the Commission's Order is necessary in order to correct misunderstandings of BellSouth's position, to eliminate confusion over the terms "rebundling" and "recombination," to amend the Commission's misapprehension of its legal authority, and to correct

misconceptions regarding the assumption of risk involved in rebundling as opposed to resale.

Pricing of Rebundled Network Elements

BellSouth

BellSouth argues that the Commission misunderstands BellSouth's position regarding the recombination of network elements. BellSouth asserts that MCI and AT&T can combine network elements provided by BellSouth. BellSouth takes issue, however, with the pricing of the unbundled elements when they are recombined to reproduce or duplicate an existing BellSouth service.

BellSouth argues that the pricing standard for individual elements that is set forth in Section 252 (d)(1) of the Act is not the appropriate standard to apply to recombined elements. BellSouth states that the Act establishes two pricing standards: one for the resale of services, and another for the purchase of unbundled network elements. BellSouth argues that the appropriate pricing standard for recombined elements is actually that used for the resale of services. BellSouth further argues that to apply the standard for pricing individual elements would only encourage competitors to choose resold services or to purchase unbundled elements based on which would best provide the competitor with an advantage. BellSouth argues that the problem with this is that competitive advantage would be based on any historical or social agendas that this Commission or other regulatory bodies may have had in the past which resulted in lower prices for certain services. BellSouth argues that this is simply not rational.

BellSouth also argues that the same service can be provided by a competitor, whether obtained through resale or the purchase of unbundled elements. BellSouth states, however, that if the service is obtained through resale, the service is subject to the joint marketing restrictions of Section 271 of the Act and the competitor is billed the retail rate less the resale discount. If the service is obtained by recombining network elements, the competitor avoids the joint marketing restrictions and is billed only for the unbundled loop and port. In addition, BellSouth asserts that competitors would avoid payment for vertical features, such as Caller-ID and Call Waiting, that would be charged for under resale. BellSouth asserts that this cannot be Congress' intent.

BellSouth asserts that unbundling and rebundling are a pricing issue. Thus, BellSouth argues that pricing of recombined elements

falls under the pricing provisions that have been stayed by the Eighth Circuit. BellSouth, therefore, argues that the Commission has the authority to find that rebundled elements should be priced under the resale provisions of the Act.

BellSouth further argues that the pricing of rebundled elements has a tremendous impact on the Act's joint marketing restrictions. BellSouth contends that Congress would not have created the joint marketing restriction had they intended for them to be easily circumvented by the rebundling of unbundled network elements.

In support of its assertions, BellSouth cites a Brief of Amicus Curiae filed by the Honorable John D. Dingell with the Eighth Circuit, and arbitration proceedings in Georgia, Tennessee, and Louisiana involving BellSouth, AT&T, and MCI.

AT&T

AT&T asserts that BellSouth is simply rearguing its case. Regarding the pricing of recombined unbundled network elements, AT&T asserts that each of the arguments raised by BellSouth in its motion were addressed in Commission staff's recommendation and rejected in the Commission's Order. Thus, AT&T asserts that BellSouth has not met the Diamond Cab standard for a motion for reconsideration.

AT&T also asserts that any confusion regarding BellSouth's position on unbundled network elements is the result of BellSouth's own statements in its post-hearing brief. AT&T asserts that BellSouth argued in its brief that AT&T and MCI should not be allowed to rebundle unbundled elements to duplicate a service that is already available through resale, but that BellSouth is now changing its position. AT&T argues that the Commission is not confused about BellSouth's position, but that BellSouth has simply changed its position. AT&T further argues that BellSouth has done this in an attempt to create confusion and, therefore, establish some basis for reconsideration. AT&T argues, however, that the Commission has never shown any confusion or misunderstanding of the pricing provisions in the Act.

AT&T disagrees with BellSouth's argument that the recombination of unbundled elements is actually a pricing matter and that the FCC's rules on the subject were included in the Eighth Circuit's stay. AT&T argues that the Act's provisions on this issue, Sections 251 (d)(1) and 251 (c)(3), do not relate to the stayed pricing provisions in the FCC Order. Even if the Eighth

Circuit's stay does affect unbundled elements, AT&T argues that BellSouth cannot ignore the specific pricing provisions for unbundled elements set forth in the Act itself.

AT&T argues that BellSouth's assertions that unbundled element pricing for recombined elements would lead to competition based solely on arbitrage is deceptive. AT&T asserts that arbitrage simply means shopping for the lowest price available; a concept which is not inconsistent with competition. AT&T asserts that carriers will always enter the market with the lowest cost production available, no matter which rate is applicable. AT&T argues that setting the price of unbundled elements at TSLRIC is the most market-efficient method for facilities, and is the point at which carriers will decide whether to enter the market or not based on their own cost of providing service.

In addition, AT&T asserts that BellSouth is trying to impose rates that exceed economic costs, which will, in turn, hamper competitors' ability to compete and encourage inefficient facilities entry. AT&T argues that BellSouth will, therefore, defeat any significant price competition until facilities-based competitors can enter the market.

Furthermore, AT&T argues that BellSouth's examples of element prices compared to resale prices are misleading in that they ignore nonrecurring charges that BellSouth assesses its competitors. AT&T argues that BellSouth's examples actually demonstrate that price competition will not come to Florida residential customers unless network element prices are reduced. AT&T adds that it disagrees with BellSouth's implication that it will, essentially, be providing vertical services free of charge when AT&T purchases local switching as an unbundled element. AT&T states that vertical features are included in the local switching rate only because these functions are inherent in the switch and are sufficiently covered by the rate.

AT&T notes BellSouth's submission of an amicus brief to the Eighth Circuit from members of the U.S. House of Representative. Citing Weinberger v. Rossi, 456 U.S 25 (1982) and Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102 (1980), AT&T asserts that such post-legislative briefs from members of Congress are to be given very little weight in statutory construction. Nevertheless, AT&T attaches a Brief of Amicus Curiae filed by the Honorable Thomas Bliley, Jr. with the Eighth Circuit Court as support for its arguments. AT&T also states that while three southern states have imposed limitations on the recombination of

unbundled elements, 31 states have determined that no such limitations should be imposed.

MCI

MCI also argues that BellSouth has created any confusion that may exist regarding BellSouth's position on rebundling of network elements. Citing statements in BellSouth's brief, MCI asserts that BellSouth cannot now change the entire focus of its position in an effort to present new arguments.

MCI states that the Eighth Circuit has not stayed FCC Rule 51.315 on the recombination of unbundled elements. MCI also states that although the FCC pricing rules have been stayed, the Commission must still apply the statutory pricing standard; that is, the price for elements must be based on cost. As such, MCI asserts that BellSouth's avoided cost standard is inapplicable because it does not base the rate for elements on cost.

MCI further asserts that the relationship between unbundled elements and joint marketing restrictions is not a basis for reconsideration. MCI argues that the Commission fully addressed this issue, not only in the Commission's order, but also in discussion leading to the Commission's decision.

In addition, MCI argues that BellSouth has improperly relied on various matters extraneous to this arbitration proceeding, including the amicus brief which BellSouth included in its motion. MCI further states its belief that this amicus brief was the subject of an improper ex parte communication. MCI agrees with AT&T that such post-legislative briefs have little significance and adds that the brief would not have been admissible as evidence of legislative intent had BellSouth offered it at the hearing. MCI's Response at 5, citing Blanchette v. Connecticut General Insurance Corp. (Regional Rail Reorganization Act Cases), 419 U.S. 102 (1974). MCI adds that BellSouth has failed to indicate that the majority of decisions in other arbitrations have not limited the combination of unbundled elements.

Staff Analysis

Staff believes that the Commission should not reconsider its decision on the rebundling of network elements for two reasons: 1) the Commission fully addressed this issue in its Order, and 2) BellSouth is attempting to present a new argument and new evidence through its Motion for Reconsideration. BellSouth has not met the standard for reconsideration set forth in Diamond Cab Co. v. King.

The Commission's decision on the rebundling of network elements is set forth at pages 33 through 38 of Order No. PSC-96-1579-FOF-TP. Therein, the Commission addressed each of BellSouth's arguments in full. After much consideration, the Commission indicated it had concerns regarding the FCC's interpretation of Section 251 (c)(3) of the Act and regarding the inapplicability of the joint marketing restrictions on recombined unbundled elements set forth in Section 271 of the Act. The Commission noted, however, that the FCC's interpretation of Section 251 (c)(3) was not affected by the Eighth Circuit's stay. The Commission therefore determined that AT&T and MCI could combine network elements provided by BellSouth in any manner. In so ruling, the Commission stated that it made this determination based on the arbitration standards set forth in Section 251 of the Act and upon the FCC rules on the matter that remained in effect. Based on the extensive discussion set forth in the Commission's Order, staff does not believe that BellSouth has indicated any point of fact or law that the Commission failed to address.

Furthermore, BellSouth appears to be rearguing its case from a different angle. Such an attempt to assert new arguments on an issue which has already been fully addressed is inappropriate. See Sherwood v. State, 111 So. 2d 96 at 99 (Fla. 3rd DCA 1959)(advancing new or other points identified as one of several reasons for rejecting a motion for rehearing). See also Diamond Cab Co. v. King, 146 So. 2d 889 at 891 (stating that rehearing is not available for re-arguing the whole case simply because the losing party disagrees). Staff does not believe that BellSouth's motion identifies any point of fact or law that the Commission failed to address. Staff agrees with AT&T and MCI that BellSouth is merely taking a different tack with its argument in an effort to have the Commission reconsider an issue which it has already considered and ruled upon. Staff notes that the Brief of Amicus Curiae cited by BellSouth and the various arguments raised by MCI against it were not a part of the record of this proceeding, were not considered by the Commission in rendering its Order, and should not now be considered.

Tariff Terms and Conditions

BellSouth

BellSouth argues that the Commission should reconsider its determination that tariff restrictions would only apply to the resale of grandfathered services, residential services, and

Lifeline/Linkup services. BellSouth asserts that its tariff restrictions should apply to all resold services.

BellSouth argues that the Act and the FCC Order permit the Commission to apply any reasonable terms and conditions to the resale of its services. BellSouth states that the FCC, in fact, approved a number of specific restrictions in its Order. BellSouth adds that only unreasonable or discriminatory conditions or restrictions were prohibited. As such, BellSouth argues that the Commission should have allowed BellSouth's tariff restrictions to apply to its resold services. BellSouth argues that such restrictions must be reasonable and nondiscriminatory because the Commission has approved them. BellSouth further argues that if a reseller finds a particular restriction to be unreasonable, the reseller would be free to challenge that provision before the Commission.

BellSouth further argues that the Commission is "throwing the baby out with the bathwater." BellSouth asserts that its tariffs contain numerous beneficial tariff restrictions that, under the Order, are eliminated. Such restrictions include restrictions on the use of the services for illegal purposes, and prohibitions on placing equipment on the line that may cause injury to BellSouth employees. BellSouth argues that these restrictions are appropriate and reasonable; therefore, these restrictions should have been retained.

Furthermore, BellSouth argues that the elimination of restrictions, terms, and conditions will affect both the price of the services and the competitive environment, as well. BellSouth argues that the price of services will certainly be affected, because many services are currently restricted for social reasons. BellSouth presents the example that residential lines are priced much below business lines, and, usually, below cost. If cross-class selling restrictions are removed, the residential line could be sold to anyone, thereby foiling the purpose of the social pricing.

BellSouth also argues that removing the restrictions on resold services will impede effective competition. BellSouth asserts that it will still remain subject to service restrictions in its tariff, while resellers will have access to BellSouth services without similar restrictions. BellSouth argues that this will harm its ability to compete with the resellers. BellSouth, therefore, argues that the restrictions, terms, and conditions applicable to resold services under BellSouth's tariff are simply part of the resold service and should be viewed by the Commission as such.

Thus, when these services are resold, the same restrictions should apply to the reseller.

AT&T

AT&T argues that BellSouth has already failed at the hearing, and fails again in its motion, to show that all of its tariff restrictions, terms, and conditions are reasonable. AT&T also argues that BellSouth's use of cross-class selling restrictions as an example of the reasonableness of all BellSouth's terms and conditions is irrelevant since cross-class selling restrictions have been retained. Furthermore, AT&T argues that BellSouth has presented no proof that its selling restrictions are reasonable or are based on social goals. AT&T argues that, in fact, most of BellSouth's terms and conditions are based solely on the economic welfare of BellSouth.

AT&T also disagrees with BellSouth's assertion that the Commission's decision to eliminate restrictions on resold services will harm BellSouth's ability to compete. AT&T argues that while BellSouth will be subject to restrictions in its own tariff, BellSouth can change its tariff whenever necessary. On the other hand, AT&T argues that if the Commission chose to apply all of BellSouth's terms and conditions to resold services, BellSouth would have the ability to control competition.

MCI

MCI states that BellSouth appears to assert that all of its restrictions, terms, and conditions on services are presumptively reasonable. In making this assertion, MCI argues that BellSouth is improperly shifting the burden of proof to MCI and AT&T.

MCI argues that under the FCC rules, a LEC may only impose restrictions on services if it proves to the Commission that the restriction is reasonable and nondiscriminatory. Under the FCC rules, MCI argues that the burden of proof is clearly on the LEC to prove that its restrictions are reasonable. MCI further asserts that BellSouth offers no proof as to the reasonableness of its tariff restrictions; therefore, BellSouth's motion should be denied.

Staff Analysis

Staff does not believe that BellSouth has presented any point of fact or law that the Commission failed to consider in its decision. Terms and conditions for resold services were addressed

in depth by the Commission on pages 56 through 60 of Order PSC-96-1579-FOF-TP. In its motion, BellSouth only reiterates the arguments already addressed and ruled upon by the Commission.

Furthermore, staff notes that in considering the propriety of resale restrictions, the Commission stated that the FCC had already determined that resale restrictions are presumptively unreasonable. Order at 57, citing FCC Order at ¶ 939. Staff does not believe that BellSouth has raised any argument that would warrant shifting the burden of proof as to the reasonableness of BellSouth's restrictions. In addition, BellSouth presents no evidence that the Commission failed to consider regarding the reasonableness of its tariff restrictions. Staff, therefore, recommends that the Commission decline to reconsider its decision regarding tariff restrictions on resold services.

Services Excluded from Resale

BellSouth

BellSouth argues that the Commission should also reconsider its determination that BellSouth must offer for resale any services BellSouth offers at retail to end user customers who are not telecommunications carriers.

BellSouth argues that contract service arrangements (CSAs) are customer-specific contracts designed to respond to competitive actions. Under that Commission's order, BellSouth asserts that AT&T and MCI will be able to purchase the CSA and resell it at a lower price to the same customer for whom it was designed, thereby creating a competitive advantage for AT&T and MCI.

BellSouth cites to an Arbitrator's Report from AT&T's arbitration proceeding in Louisiana wherein the arbitrator found that CSAs are not telecommunications services subject to resale under the Act. BellSouth also cites to the Kentucky Commission's Order on arbitration with MCI wherein the Kentucky Commission found that while CSAs are subject to resale, they are to be resold at no additional discount. BellSouth now asks that this Commission choose either one of these two approaches and apply it to CSAs.

In addition, BellSouth asks that the Commission reconsider its decision to require the resale of services grandfathered prior to the initiation of the arbitration proceedings and the Lifeline/Linkup services. Regarding grandfathered services, BellSouth argues that competitors will be able to structure

alternatives to the grandfathered services. Furthermore, BellSouth states that the Commission can refuse to allow grandfathering if it finds that grandfathering will impede competition. As for Lifeline/Linkup services, BellSouth asserts that it is more appropriate for it to sell the residential service to the ALEC and then let the new service provider apply to the National Exchange Carrier Association for the subsidy on the customer's behalf. To do otherwise, asserts BellSouth, would result in BellSouth subsidizing AT&T or MCI.

BellSouth also seeks clarification of the Commission's statement at page 42 of the Order regarding application of the wholesale discount to resale of short-term promotions. BellSouth argues that FCC Rule 51.613(a)(2) allows short-term promotions to be resold at the retail rate for the retail service involved in the promotion, less the wholesale discount.

AT&T

AT&T responds by stating that BellSouth's argument on resale is almost exactly the same argument BellSouth previously presented, which the Commission rejected in its Order. Thus, AT&T argues, this argument should be rejected.

AT&T also argues that requiring the resale of CSAs will prevent BellSouth from being able to push its competitors out of the market by pricing its CSAs below cost. Since the competitors cannot price below their own direct costs, BellSouth would be able to eliminate competition in any instance where its costs are below the wholesale tariff rates of the competitors. Thus, AT&T argues that resale of CSAs is the only way to prevent BellSouth from using predatory pricing.

AT&T further asserts that BellSouth's only support for its argument regarding Lifeline/Linkup services is Commissioner Deason's dissent on the issue. AT&T, however, suggests that the Commissioner's dissent only indicates a difference of opinion, rather than an error in the Commission's decision. As such, AT&T argues that BellSouth has not pointed out any fact overlooked or erroneous application of the law in the Commission's Order.

In addition, AT&T argues that there is no need for clarification of the Commission's statement regarding promotional offerings. AT&T argues that the FCC Rule cited by BellSouth does not preclude a competitor from purchasing a promotional offering at the retail rate.

MCI

MCI argues that BellSouth's assertions regarding resold services is a "hodgepodge" of issues. MCI argues, however, that nothing in BellSouth's assertions indicates a point of fact or law that the Commission has overlooked. MCI states that BellSouth's motion as it pertains to resold services is simply reargument. In addition, MCI states that the dissent of one Commissioner does not indicate an error in the Commission's decision, but merely a difference of opinion.

Furthermore, MCI states that BellSouth is only partially correct in its argument regarding clarification of the Commission's statement on promotional offerings. MCI argues that a competitor can choose to purchase the underlying service at the normal discount from the retail price. MCI also argues that a competitor can purchase a promotion for resale at the full promotional price. MCI adds that while the FCC has exempted short-term promotions from the wholesale pricing provisions of the Act, such promotions are still subject to the resale requirement of Section 251 (b)(1) of the Act.

Staff Analysis

Each issue raised by BellSouth regarding services excluded from resale is addressed in the Commission's Order. The exclusion of grandfathered services is addressed on pages 39 through 41 of the Order. The exclusion of CSAs is addressed on page 41, and promotions are addressed on page 42. The exclusion of Lifeline/Linkup services is addressed on pages 43 through 44 of the Order. BellSouth has identified no point of fact or law which the Commission failed to consider in rendering its Order. Therefore, staff recommends that the Commission decline to reconsider its decision regarding the exclusion of these services.

BellSouth also requested clarification of the Commission's statement on the application of the wholesale discount to promotional offers. The statement in question is found on page 42 of the Order. Therein the Commission stated, "Short-term promotions, however, those in effect for no more than 90 days, are not subject to the wholesale discount." Staff believes that this statement is in agreement with FCC Rule 61.613 (a)(2). In stating that the wholesale discount does not apply to short-term promotions, the Commission did not determine which underlying rate would apply to short-term promotional offers. BellSouth appears to be asking the Commission to make such a determination now. Such a request is inappropriate and is an improper basis for

reconsideration of the Commission's order. As such, staff recommends that the Commission reject BellSouth's request for clarification, or further determination, on the rates applicable to promotional offers.

Pricing of Channelization and Common and Dedicated Transport

BellSouth

BellSouth also seeks reconsideration or clarification of the Commission's ruling on channelization, common transport, and dedicated transport.

BellSouth argues that the Commission should specify that the prices for channelization apply only to the DS1 voice-grade system, and that the phrase "channelization system" be revised to "unbundled loop channelization system (DS to VG) - per system."

BellSouth argues that its cost studies only supported TSLRIC rates for the DS1 to voice grade system. BellSouth asserts, however, that the word channelization has often been used in a generic sense which sometimes leads to confusion. BellSouth, therefore, argues that the precise use of the word "channelization" should be clarified.

BellSouth further argues that since its cost studies only supported a rate for the DS1 to voice grade channelization system, it has assumed that that is what the Commission approved. BellSouth, therefore, seeks clarification of what the Commission approved.

BellSouth also seeks reconsideration of the price for certain parts of common and dedicated transport. BellSouth argues that the rate set by the Commission of $1.60 per mile is not discussed within the body of the Order. BellSouth assumes that this rate is for the DS1 level because the Commission set facility termination and the non-recurring charge at the rate in the tariff for the DS1 level. BellSouth argues, however, that it did not supply a cost study for the mileage element, but instead, proposed a tariff rate of $16.75 per mile. Thus, BellSouth requests that the Commission reconsider its decision on this issue and institute a rate of $16.75 per mile as the correct mileage rate for dedicated transport. BellSouth adds that it would also like clarification that the rates for dedicated transport are for DS1 only.

In addition, BellSouth argues for clarification of the Commission's determination of the $0.0005 per termination rate under dedicated transport. BellSouth argues that the cost and rate per access minute structure for dedicated transport do not include a rate per termination. However, the cost and rate structure for common transport does support such a rate. BellSouth argues that there is, nevertheless, no such rate included in the Commission's Order for common transport. BellSouth asserts its belief that the rate was set in error for dedicated transport when, actually, it should have been set for common transport. Thus, BellSouth seeks clarification of whether the rate applies to common transport or dedicated transport.

AT&T

AT&T states that it does not object to the adoption of the term "Unbundled Loop Channelization System (DS1 to VG) - per system."

With respect to the rate for portions of common and dedicated transport, AT&T argues that the $1.60 rate is amply supported in the record by Exhibit 10 to Wayne Ellison's testimony. AT&T also argues that the rate is supported by BellSouth's Local Transport Restructure cost study which establishes that it is substantially in excess of BellSouth's cost for dedicated transport. The cost information, AT&T states, is found in the study in Exhibit 17. AT&T concludes that BellSouth has not brought to the attention of the Commission any matter it overlooked or upon which it erred.

AT&T supports BellSouth's request for clarification on the $.0005 per termination rate listed under dedicated transport.

MCI

MCI states that it does not oppose BellSouth's request for clarification on this issue. MCI agrees, however, with the Commission that tariff rates are not an appropriate basis for pricing unbundled network elements. Further, MCI adds that the $1.60 per mile rate set by the Commission is supported by evidence presented by AT&T's witness Ellison.

Staff Analysis

Staff agrees that the Commission-ordered prices for the channelization system should be clarified to apply to the DS1 level to voice grade system. The channelization element description

should also be clarified as the "unbundled loop channelization system (DS1 to VG)-per system."

Staff agrees that the $0.0005 termination rate for common transport was inadvertently placed under dedicated transport, as shown on page 115 of the Order. Therefore, staff recommends that the Order be corrected to reflect that the $0.0005 termination rate applies to termination of common transport instead of dedicated transport. Staff notes that there is no rate element for termination of dedicated transport.

Staff does not, however, believe that the $1.60 per mile rate for dedicated transport should be changed to the $16.75 rate proposed by BellSouth. The $1.60 rate is supported by sufficient evidence in the record, which was considered by the Commission at the time it made its decision. Staff does not believe that BellSouth has presented a legal or factual basis for the Commission to reconsider its decision on this rate.

PIC Changes

BellSouth

BellSouth also seeks clarification of the Commission's determination that when BellSouth is contacted by a customer of another LEC for the purpose of changing his primary interexchange carrier (PIC), BellSouth must direct the customer to his LEC and give the customer the contact number for the local carrier.

BellSouth argues that it currently accepts PIC changes electronically from IXCs. BellSouth asserts that the Order seems to prohibit it from accepting and processing such requests, including those from customers of local providers other than AT&T and MCI. BellSouth further asserts that some ALECs who resell BellSouth's local exchange service may direct interexchange carriers to BellSouth's electronic system to process PIC changes.

BellSouth argues that the Order should be clarified to allow BellSouth to process PIC changes if the customer's local provider has directed BellSouth to process such changes. BellSouth states that this will allow it to meet the needs of ALECs, other than AT&T and MCI. BellSouth asserts that it will implement procedures to reject PIC changes received directly from IXCs through its system for all local customers of AT&T and MCI. BellSouth would still refer customers of AT&T or MCI to the appropriate carrier.

BellSouth adds that it also seeks reconsideration of the Commission's determination that BellSouth must provide the non-BellSouth end user calling BellSouth's business office to request a PIC change with the contact number of their local carrier. BellSouth argues that it should not be required to maintain the contact numbers for every local service provider's customer service office. BellSouth argues that to require it to do so would be unduly burdensome on BellSouth's customer representatives and would increase administrative costs. BellSouth states that it should only be required to direct the customer to contact his local exchange carrier.

AT&T

AT&T states that, in view of BellSouth's commitment to implement the Order's provisions on PIC changes for AT&T's customers, AT&T does not object to the clarification requested by BellSouth.

AT&T does, however, object to BellSouth's request that the Commission reconsider its determination that BellSouth must provide the contact numbers for other carriers when customers of those other carriers contact BellSouth. AT&T argues that maintaining such a list should not be unduly burdensome because the list would only be for carriers that do not choose to use BellSouth's PIC change system. Furthermore, other carriers maintain such lists with very little problem. AT&T argues that BellSouth will be able to recover any measurable incremental cost from maintaining such a list through the rates it charges for its services. Thus, AT&T argues that BellSouth has identified no error or oversight in the Commission's decision.

MCI

MCI also does not object to BellSouth's request for clarification regarding its ability to accept and process PIC change requests through its electronic system in those instances where the ALEC directs BellSouth to process such requests. MCI states that it would be appropriate for the Order to further state that BellSouth shall not process PIC changes at the direction of an ALEC unless BellSouth has also been directed to do so by the customer's local service provider. MCI asserts that this additional requirement would address the Commission's concern that the responsibility for PIC change requests reside with the local service provider.

MCI disagrees, however, with BellSouth's request for reconsideration of the Commission's requirement that BellSouth maintain a list of the contact numbers other carriers. MCI simply states that BellSouth has presented no basis for this request.

Staff Analysis

BellSouth requests the Commission to clarify its decision associated with PIC Change requests. The Commission prohibited BellSouth from making any PIC change for a customer that receives his local exchange service from a local exchange carrier other than BellSouth. BellSouth also requests reconsideration of the provision in the Order that requires it to direct the request of the customer to its local exchange carrier and provide the customer with a contact number for its local carrier.

BellSouth believes the order should provide that BellSouth will not process PIC changes as contemplated in the Order, unless the customer's local service provide has directed BellSouth to process such changes. AT&T both agree with the suggested change.

Although staff believes this decision only applies to PIC changes of AT&T and MCI, staff believes the proposed change will clarify the intent of the Commission. Therefore, staff recommends the Commission adopt the BellSouth-proposed clarification to the process of handling PIC change requests.

As for BellSouth's request for reconsideration associated with directing customer inquiries, staff believes this request should be denied since BellSouth has not meet the standards for reconsideration. However, staff recommends that the Commission clarify its Order to indicate that BellSouth has to only direct those customers of ALECs who provide it with contact information. For ALECs that do not provide the contact information to BellSouth, BellSouth should just direct the customer to contact his or her local exchange company.

CABS-formatted billing

BellSouth

BellSouth asks that the Commission reconsider the 120 day requirement for providing CABS-formatted billing for both resale and unbundled elements. BellSouth asks that the Commission extend that time requirement to 180 days.

BellSouth asserts that, currently, its CABS system is not able to bill for local exchange services. While BellSouth's Customer Records Information System (CRIS) is capable of billing local exchange services, BellSouth asserts that the system is not yet able to issue bills in the CABS format. In order to fulfill the Commission's requirement for CABS-formatted billing, BellSouth also asserts that it must analyze the outputs of its CRIS system, map data files, program system changes, and conduct testing to ensure system accuracy. BellSouth argues that this cannot be accomplished in 120 days from the issuance of the Order. Thus, BellSouth requests that the Commission extend the time period to 180 from the issuance of the Order.

AT&T

AT&T states that it is willing to work with BellSouth towards interconnection; thus, it does not object to the extension of time.

MCI

MCI takes no position on BellSouth's request for an extension, since MCI had previously agreed that 180 days was the appropriate time requirement.

Staff Analysis

In view of the parties' apparent agreement, staff believes that an extension of the time requirement for implementing CABS-formatted billing is appropriate. Thus, staff recommends that CABS-formatted billing should be implemented within 180 days from the issuance of Order No. PSC-96-1579-FOF-TP.

Staff believes it is appropriate to note, however, that BellSouth does not present any point of fact or law that the Commission failed to consider, or any error in the Commission's Order. While staff agrees that an extension is appropriate, such a request may have been more appropriate in a petition for waiver or motion for extension of time.

Access to customer records

BellSouth

BellSouth also asks that the Commission reconsider its decision requiring BellSouth to provide unrestricted, direct, on-

line access to all of its customer records before BellSouth has implemented "roaming" protection.

BellSouth states that its customer records and resellers' records are currently within the same database. BellSouth states that it does not have any means in place to prevent access to individual records in any part of that database. BellSouth argues that without knowing which customer's records AT&T or MCI want to review and whether that customer has authorized such review, BellSouth has no way to restrict review of the customer's record.

BellSouth further asserts that the FCC has recognized such unlimited access may jeopardize customer privacy. BellSouth adds that it is continuing to look for ways to provide the necessary access to individual records without disturbing the confidentiality of other records in the database.

BellSouth, therefore, recommends that, until protections can be implemented and the problems with direct, on-line access are resolved, one of the following alternatives should be implemented. First, for customers who are unable to locate their bills, BellSouth recommends a three-way call to the BellSouth service center, or a faxed copy of the record, either of which can be done upon verbal authorization from the customer. BellSouth also suggests a "switch as is" process, so that the customer's current service can be switched without the customer having to specify the exact services it is currently taking.

BellSouth argues that if the Commission does not change its ruling on access to customer records, the potential for slamming will grow tremendously. BellSouth further asserts that a blanket letter of authorization (LOA) is not sufficient to remedy the threat. BellSouth argues that LOAs are used now and slamming remains a problem. BellSouth adds that this is an issue of customer privacy and convenience. Thus, BellSouth requests that the Commission find that a blanket LOA is not sufficient to gain access to all customer records. BellSouth states that it is willing to provide the necessary information after the customer has authorized the request.

In the alternative, BellSouth asks that if a blanket LOA is allowed, that the Commission implement detailed rules governing slamming and unauthorized records access. BellSouth states that such rules should also provide for serious consequences for any violations. BellSouth believes that such rules may minimize the possibility of slamming or unauthorized records access.

AT&T

AT&T responds by stating that it is also concerned about customer privacy. AT&T argues, however, that BellSouth's customer privacy arguments are the same ones addressed and rejected by the Commission. AT&T adds that BellSouth appears to be attempting to substitute inefficient manual methods for ordering and preordering that could deter competition.

AT&T further asserts that BellSouth has not presented any argument or fact that the Commission overlooked or failed to consider in its previous Order. Thus, AT&T requests that BellSouth's motion be denied.

MCI

MCI states that BellSouth's concerns about "roaming" were explicitly discussed in the Commission's Order. MCI adds that both it and AT&T were directed to work with BellSouth to develop an interface that will discourage roaming. MCI argues that the Commission's Order also addressed customer privacy concerns and the use of a blanket LOA.

MCI further asserts that neither of the alternatives presented by BellSouth was discussed at the hearing or suggested in BellSouth's brief. Thus, MCI argues that BellSouth's motion should be denied.

Staff Analysis

Access to customer service records was discussed in full at pages 79 through 81 of the Commission's Order. Therein, the Commission considered BellSouth's customer privacy argument, as well as the parties' arguments regarding blanket LOAs. Staff believes the Commission's decision is supported by the evidence in the record. BellSouth has failed to identify any point of fact or law upon which the Commission erred or which it failed to consider.

Furthermore, the alternatives presented by BellSouth were not previously advanced at the hearing or in its brief. Presenting new arguments on an issue which has already been fully addressed is inappropriate. See Sherwood v. State, 111 So. 2d 96 at 99 (Fla. 3rd DCA 1959)(advancing new or other points identified as one of several reasons for rejecting a motion for rehearing). See also Diamond Cab Co. v. King, 146 So. 2d 889 at 891 (stating that rehearing is not available for re-arguing the whole case simply

because the losing party disagrees). Staff, therefore, recommends that the Commission decline to reconsider its ruling on this issue.

Pricing-General

BellSouth

BellSouth asks that it be allowed to defer filing TSLRIC cost studies for the elements for which the Commission set interim rates and for nonrecurring costs. BellSouth states that the Eighth Circuit is currently considering the validity of the pricing standard chosen by the FCC. In an effort to prevent relitigation of this issue, BellSouth recommends that it be allowed to defer filing of its TSLRIC studies and that the Commission defer its decision to set permanent rates. BellSouth suggests that this can be accomplished by making all the rates that are set interim until the proper pricing standards have been established. BellSouth adds that it believes that such interim rates should be subject to true-up.

AT&T

AT&T states that it does not object to having the rates set in this proceeding be declared interim, as long as the Commission states that it will allow AT&T to again address all the rates that are established when the controversy is resolved.

AT&T argues that BellSouth's request is a "smokescreen" attempt to hide the anti-competitive effect of high interconnection costs. AT&T asserts that a true-up could not correct the effects of even interim prices set at inefficient levels. AT&T adds that it does believe that prices will be set at efficient levels, but that it wants to remind the Commission of the effects of inefficient pricing.

MCI

MCI argues that BellSouth's request has two problems. MCI argues that interim rates create uncertainty and risk for new entrants, thus a chilling effect on market entry would take place. MCI also argues that the Commission's intent to establish permanent rates must be clear in order to obtain timely and complete judicial review.

MCI also argues that BellSouth should not be allowed to defer filing of its TSLRIC cost studies. MCI asserts that BellSouth must

file these studies so that MCI can make sure that it will not overpay for any function for any extended length of time.

Staff Analysis

The Commission considered and addressed the need for BellSouth to file TSLRIC studies at pages 32 through 33, and page 101 of the Order. The Commission also determined that TSLRIC was the proper costing methodology for determining permanent rates; thus, for those elements that BellSouth had not provided a TSLRIC study, BellSouth was required to file a TSLRIC study within 60 days of the issuance of the Order. BellSouth has not identified any point of fact or law that the Commission overlooked or failed to consider. Staff recommends that the Commission, therefore, decline to revisit its decision to set permanent rates. Staff also recommends that BellSouth not be allowed to defer filing its TSLRIC studies. BellSouth should be required to file such studies as set forth in the Order.

Local Switching

Staff notes that BellSouth, at Footnote 3 of its Motion for Reconsideration, contests the Commission's definition of local switching. AT&T addressed this footnoted comment in its Response.

Staff agrees with AT&T that the Commission's definition is supported by the FCC. Staff believes there is no need for the Commission to revisit this issue.

ISSUE 2: Should AT&T's Cross Motion for Reconsideration of Order No. PSC-96-1579-FOF-TP be granted?

RECOMMENDATION: AT&T's Cross Motion for Reconsideration should be granted in part and denied in part. Specifically, staff recommends that the Commission reconsider its decision and order BellSouth to establish Nonrecurring Charges that do not include duplicate charges or charges for functions or activities that AT&T does not need when two or more network elements are combined in a single order. Staff also recommends that the Commission Order BellSouth to establish Recurring Charges that do not include duplicate charges. Further, staff recommends that BellSouth be ordered to notify the Commission when a rate is set that excludes duplicated or avoided charges. The report should be filed within 30 days of the rate being established and should specify the elements being combined and the rates or charges, recurring and nonrecurring, for that combination. Staff also recommends that the Commission should, on its own motion, reconsider its decision on these points with respect to MCI. Staff recommends that AT&T's Motion be denied on all other arguments presented.

STAFF ANALYSIS: AT&T argues that there are certain errors and inconsistencies in the Commission's decisions which clearly result from points the Commission overlooked or failed to consider and must be corrected. Specifically, AT&T addresses the Commission's wholesale discounts for residential and business services and rates for unbundled network elements.

I. Wholesale Discounts

The Order established a wholesale discount of 16.81% and a wholesale residential discount of 21.83%. AT&T requests that the Commission reconsider its decision regarding wholesale discounts and establish an additional discount rate that excludes operator services expenses from the wholesale rate for those situations in which AT&T and MCI provide their own operator services.

AT&T states that in the Commission's analysis of the avoided cost standard the Commission determined that the cost for operator services would not be excluded from the calculation of the avoided cost discounts. It appears, according to AT&T, the Commission's finding is based on Witness Reid's testimony that AT&T and MCI will continue to secure operator services from BellSouth under resale.

AT&T argues that when AT&T provides its own operator services and does not use BellSouth's operator services, none of BellSouth's

expenses for operator services can be attributed to the local service provided to AT&T. According to AT&T, BellSouth will actually avoid these expenses. AT&T argues that this actual avoidance of operator services expenses must, under the Commission's articulated standard for setting the resale discount, be factored into the calculation of avoided costs. In this case, AT&T argues, the retail service provided by BellSouth will be local service and will not include any operator services. Thus, AT&T concludes that requiring it to pay for even a portion of BellSouth's operator services expenses in those instances where no operator services are being performed by BellSouth is inconsistent with the Commission's avoided cost standard and BellSouth's own description of the relationship between the retail service and wholesale price.

AT&T also argues that the Order seems to assume that if AT&T purchases basic local service from BellSouth at a discount that, somehow, operator services are included in the package. This assumption, AT&T argues, is incorrect. According to AT&T, the Commission overlooked the fact that operator services are a discrete service separate and apart from local or other services.

BellSouth argues that AT&T's Motion simply raises again the inclusion of operator services in the calculation of the avoided discount and the establishment of prices for unbundled elements based on BellSouth's cost studies.

BellSouth argues that AT&T's rationale is defeated by its own argument. BellSouth asserts that AT&T describes operator services as:

> ...a discrete service separate and apart from local or other services. This service has its own discrete tariffed terms and rates and recovers its costs from those rates.

BellSouth argues that by AT&T's own admission, the retail tariff rates for local services other than operator services do not recover the costs of operator services. According to BellSouth, if this is the case, there can be no rationale on which to base any contention that AT&T should receive an increased discount on these other retail local services when AT&T provides its own operator services. When AT&T provides its own operators, it is essentially taking over a competitive line of business. BellSouth states that AT&T will be receiving revenues for the provision of operator services that will offset its operator services expenses. Thus,

BellSouth concludes, there would be no other "avoided" costs to be removed from the rates for retail services that remain.

BellSouth further argues that the Commission's decision is supported by the Act. Specifically, BellSouth cites Section 252(d)(3) which states that a state commission shall determine wholesale rates on the basis of retail rates charged to subscribers excluding costs that will be avoided by the local exchange carrier.

AT&T's argument can be summarized as follows: the Commission should establish an additional discount rate that excludes operator services expenses from the wholesale rate for those situations in which AT&T and MCI provide their own operator services. No matter how this argument is presented here, it is a reiteration of what AT&T and MCI originally argued and what the Commission clearly rejected in its Order. The Commission stated:

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

Staff believes AT&T's assertion that the Commission overlooked the fact that operator services are a discrete service separate and apart from local or other services is without merit. AT&T simply disagrees with the Commission on what is included in basic local service.

Based on the foregoing analysis, staff recommends that the Commission deny AT&T's Motion for Reconsideration on this point. AT&T has not raised a point of fact or law which the Commission failed to consider when rendering its Order in the first instance.

II. Pricing of Unbundled Elements

AT&T begins by stating that the Commission established prices based on BellSouth's cost studies submitted in this proceeding and that AT&T's witness Ellison made numerous criticisms of the BellSouth cost studies. AT&T argues that although the Commission stated that it would consider AT&T's adjustments, it failed to do so and thus should be reconsidered. [SIC] AT&T argues that there are several problems with BellSouth's cost studies.

BellSouth argues that AT&T's motion simply raises again the establishment of prices for unbundled elements based on BellSouth's cost studies. BellSouth points out that during the hearing AT&T abandoned rates based on its originally proposed adjustments in favor of rates based solely on the Hatfield model. Now, BellSouth argues, AT&T wishes to go back to its original proposal.

Staff notes that AT&T does not refer to the record in this proceeding to show that the Commission failed to consider the problems which it argues exist. Rather, in those instances AT&T did provide a reference, it referred to the deposition of Daonne Caldwell taken in Louisiana. The deposition was taken on November 21, 1996, which was after the conclusion of the hearing in this docket and is not a part of this record. With respect to AT&T's criticisms that were a part of this record, the Commission noted that "Generally, both AT&T and MCI criticize BellSouth's TSLRIC cost studies; AT&T, however, cites several specific concerns." In fact, the Commission found:

> Although AT&T is recommending Hatfield based rates, we believe AT&T's suggested adjustments to BellSouth's cost study results are worth noting and we will consider them in setting rates.

For example, AT&T argued that BellSouth's cost of money assumption was too high. The Commission considered the evidence on this argument and held:

> ...We believe the cost studies can be used to set permanent rates for those elements covered by the cost studies, since the other assumptions appear reasonable. The rates we are setting take into consideration that BellSouth's cost of money assumption may be at the upper range of reasonableness. Order at p. 33

As illustrated above, AT&T's assertion that the Commission described AT&T's criticisms, but did not make any adjustments to

the costs is incorrect. Further, even if the Commission decided not to make any adjustments based on AT&T's criticisms, the Commission would not have to, for that reason alone, reconsider its decision. Staff notes AT&T expected all rates to be set at cost. However, the Commission's rates were based on TSLRIC cost and included contribution to joint and common costs. Staff agrees with BellSouth that the Commission was not required to set rates at cost.

Nonrecurring Cost Studies

AT&T argues that there are several problems with BellSouth's nonrecurring cost studies. First, BellSouth's nonrecurring cost study assumed heavy manual intervention in the service order process for such activities as engineering circuits and field work. AT&T argues that in light of the Commission's decision to require BellSouth to provide real-time interactive electronic interfaces for service ordering, preordering, trouble reporting, customer usage date transfer and local account maintenance, BellSouth's costs are overstated. AT&T concludes that because the heavy manual intervention, assumed by BellSouth, will be obviated by the electronic interfaces, the costs for service ordering must be reduced. This, AT&T argues, will more accurately reflect the environment in which BellSouth will be operating.

BellSouth argues in response that the existence vel non of electronic interfaces has nothing to do with the need for the manual labor engineering circuits and field work. These are distinct and separate. Manual intervention is required to coordinate cutovers, as well as for the coordination of the loop and port connection. Therefore, the service ordering costs are not overstated.

Staff has reviewed the record and AT&T's brief; it appears no party raised an argument with respect to the effect of manual intervention on the cost studies. Therefore, staff recommends the Commission deny AT&T's Motion on this point since AT&T has failed to meet the Diamond Cab standard.

Second, BellSouth's nonrecurring cost study reflects field work in every instance. In support of its argument, AT&T quotes BellSouth's Motion for Reconsideration:

> If MCI or AT&T wins this customer, and chooses to resell the service, then only the billing records are changed so that the service is billed to MCI or AT&T, instead of the

> end-user. No physical work is done to the customer's service. By way of comparison, without modification, the Commission's Order will allow MCI and AT&T to simply advise BellSouth that it has won the existing customer, and to request that the service be provided and billed to it at the at the unbundled rates for the loop and port. The same service results. (emphasis supplied)

AT&T states that as admitted by BellSouth, when a UNE platform is purchased from BellSouth, the NRCs in the study are overstated. AT&T asserts that the Commission did not consider this cost overstatement when setting rates. Therefore, according to AT&T, the Commission must establish separate rates to reflect installations involving customer transfers and installations requiring field work and those where no field work is necessary.

BellSouth argues that AT&T has lifted the sentence "no physical work is done to the customer's service" out context. BellSouth asserts that its "statement explicitly and clearly referred to the situation where the loop and port are not unbundled (i.e., remain a retail service) and the billing records are simply transferred. BellSouth states that nonrecurring cost studies specifically establish the cost of providing unbundled network elements, not existing retail services.

Staff has reviewed the record and AT&T's brief; it appears AT&T has raised this argument for the first time in its Motion for Reconsideration. Therefore, staff recommends that the Commission deny AT&T's Motion on this point. AT&T has failed to meet the Diamond Cab standard.

Third, BellSouth's nonrecurring cost study assumes that there would be no combinations of loops and ports. Thus, since the Commission determined that loops and ports may be combined, it appears that duplicate service order processing charges are included in the combined NRC for ports and loops. AT&T argues, therefore, the Commission must correct this duplication which causes BellSouth's NRCs to be overstated. BellSouth did not respond to this point in its response.

Staff believes, as discussed more fully below, that the Commission should grant AT&T's Motion on this point.

Fourth, BellSouth's nonrecurring cost study assumes that each loop ordered by AT&T will require a design layout record (DLR). AT&T argues that this function adds significantly to the cost of a loop. AT&T argues that it has not requested engineered circuits,

therefore, BellSouth's incorrect assumption that each loop requires a DLR causes the nonrecurring loop cost to be significantly overstated. AT&T cites Louisiana Caldwell deposition transcript pp. 90-94 dated 11/2/96) BellSouth did not respond to this point in its response.

Staff notes that BellSouth witness Scheye, stated under cross examination that BellSouth would consider offering different NRCs for different situations. (Tr. p. 1956). The cost studies for NRCs by BellSouth appear to include costs for functions that may not be needed by AT&T. The DLR is an example. Staff believes that if a DLR, or other function is not needed by AT&T, then the cost should not be included in the total NRC. Therefore, staff recommends that the Commission reconsider its decision and Order BellSouth not to include DLR's if AT&T's request for a loop does not require a DLR. Staff also recommends that the Commission, on its own Motion, reconsider its decision and Order BellSouth not to include DLR's if MCI's request for a loop does not require a DLR.

Staff Recommendation

AT&T's Cross Motion for Reconsideration on nonrecurring charges should be granted in part and denied in part. AT&T's Motion should be granted with respect to DLRs as discussed above. AT&T's Motion should also be granted based on the following: The Commission set a NRC for each network element on an individual or stand-alone basis. The Commission did not, however, set NRCs when multiple network elements are combined. AT&T witness Ellison testified:

> Although BellSouth provided non-recurring cost estimates, the BellSouth studies assume that unbundled elements will be ordered on an individual, stand-alone basis. This approach is not consistent with the manner in which unbundled elements are likely to be purchased. The Commission should therefore determine those network elements BellSouth must provide and, thereafter, require BellSouth to submit new non-recurring cost estimates structured to reflect the various single element and combination element ordering and provisioning processes actually required. (Tr. p. 391)

The NRC cost studies provided by BellSouth do not assume that there will be combinations of network elements. Therefore, when

two or more network elements are combined, there will be duplicate charges. There are several functions that make up the total NRC for a network element. An example of the different functions that make up the NRC for an unbundled loop are: service ordering, engineering, connection and testing and technician travel time. It is possible that one or more charges for these functions could be duplicated when multiple network elements are ordered or provided. Service ordering is a function that is included in every NRC for each unbundled element provided by BellSouth. At a minimum, the charge for service ordering would be duplicated. Staff believes that it is appropriate that duplicated or avoided functions should not be charged when multiple network elements are ordered. Included in avoided functions are those activities that AT&T does not need or can provide for itself. Staff notes that BellSouth witness Scheye stated that BellSouth would be willing to consider offering different NRCs for different functions. (Tr. 1956).

Based on the foregoing, staff recommends that the Commission order BellSouth to provide NRCs that do not include duplicate charges or charges for functions or activities that AT&T does not need when two or more network elements are combined in a single order. Staff also recommends that the Commission, on its own Motion, reconsider its decision with respect to MCI and order BellSouth to provide NRCs that do not include duplicate charges or charges for functions or activities that MCI does not need when two or more network elements are combined in a single order. However, staff believes that requiring BellSouth to submit cost studies for every combination of network elements would be burdensome or unnecessary. Therefore, the parties should work together to establish the NRC in situations where the ALEC is ordering multiple network elements. If the parties cannot agree to the total NRC when ordering multiple network elements, then either party may petition the Commission to settle the disputed charge or charges. Further, staff recommends that BellSouth be ordered to notify the Commission when a rate is set that excludes duplicated or avoided charges. The report should be filed within 30 days of the rate being established and should specify the elements being combined and the NRC for that combination.

BellSouth's Recurring Monthly Cost Studies

AT&T argues that similarly, BellSouth's recurring monthly cost studies assume a main distribution frame termination charge for the loop and again for the port based on an incorrect assumption that there will be no loop/port combinations. According to AT&T, with a combined loop and port, only one main frame connection and one

protector would be included. Also when a loop is served by integrated digital loop carrier, the loop central office terminal associated with unintegrated digital loop carrier would not be included. (cites Caldwell Louisiana depo p. 68)

BellSouth argues that AT&T's claim that the main distribution frame cost and the central voice terminal cost are duplicated is unfounded. BellSouth asserts that it calculated the costs of providing unbundled network elements and that costs for the main distribution frame appear in both the loop and port studies. BellSouth argues that the unbundled loop must terminate on the main frame so that it can be cross connected to the ALEC's switch. According to BellSouth, the port must also be on the main frame so that it can be cross connected to the ALEC's loop. BellSouth argues that when a BellSouth loop and a BellSouth port are both provided to the ALEC to serve a particular customer, it must be priced as the resale of an existing retail service, not as unbundled network elements.

BellSouth further argues that even if the Commission holds on reconsideration that an ALEC can purchase the unbundled loops and port at unbundled network element prices, there will still be situations where a facilities-based carrier will order the loop or the port, but not both. BellSouth concludes in that situation the cost of the main distribution frame must be included in both network elements.

BellSouth argues that AT&T's claim that it is inappropriate to include the cost of a central office terminal when the loop is served by an integrated digital loop carrier is also unfounded. According to BellSouth, the unbundled local loop must terminate on the main distribution frame at the voice grade level in order to connect the loops to the ALEC's switch. Further, a central office terminal is required for loops that are provisioned over integrated digital loop carrier in order to convert the loops to voice grade level. In addition, any ALEC who purchases a loop from BellSouth that is served over digital loop carrier will require the central office terminal.

Staff Recommendation

Staff believes that the prices the Commission set for UNEs are appropriate on an individual basis. However, when two or more UNEs are combined, AT&T or MCI may be paying duplicate charges. In the example of combining a loop and port, staff believes it is inappropriate for an AT&T or MCI to incur duplicate mainframe

connection and protector charges. Therefore, staff recommends that the Commission order BellSouth to remove all duplicate charges when combinations of network elements are ordered. Staff also recommends that the Commission, on its own Motion, reconsider its decision with respect to MCI and order BellSouth to provide recurring charges that do not include duplicate charges for functions or activities that MCI does not need when two or more network elements are combined in a single order.

Staff believes that requiring BellSouth to submit cost studies for every combination of network elements would be burdensome or unnecessary. Therefore, the parties should work together to establish the recurring charge in situations where the ALEC is ordering multiple network elements. If the parties cannot agree to the recurring charge when ordering multiple network elements, then either party may petition the Commission to settle the disputed charge or charges. Further, staff recommends that BellSouth be ordered to notify the Commission when a rate is set that excludes duplicated charges. The report should be filed within 30 days of the rate being established and should specify the elements being combined and the recurring charge for that particular combination.

BellSouth's Local Switching Cost Study

AT&T asserts that BellSouth's local switching cost study overstates local switching costs. AT&T argues that this is particularly true with respect to the additional charge included in the local switching rate for the first minute. AT&T states that included in BellSouth's switching cost study is an "expense per message charge." AT&T argues that this charge significantly increases the price of [the] first minute additive. AT&T points to Ms. Caldwell's depo transcript wherein she states that the per message charge is not an appropriate TSLRIC charge and that it was removed from BellSouth's Louisiana study. While this charge appears small, AT&T argues, its impact is very large because of the total number of minutes that will be subject to the charge. Therefore, the local switching rate must be corrected to more accurately reflect BellSouth's costs.

In response, BellSouth argues that under the Act, the Commission has the freedom to set prices based on costs; the Commission is not required to set prices at cost. BellSouth asserts that indeed prices should be set to cover not only incremental costs, but also to provide joint and common costs. Thus, BellSouth concludes, AT&T's assertion that the Commission did

not set the price for local switching at cost is irrelevant and does not provide the basis for reconsideration.

Staff recommends that the Commission not reconsider its decision on this point. The Commission's decision was based on the evidence in the record. AT&T did not provide evidence in this proceeding to refute BellSouth's cost study for this element for the Commission to consider. AT&T is attempting to raise a new argument based upon a deposition transcript that is not part of this record. Therefore, AT&T has failed to raise a point which the Commission failed to consider in rendering its Order in the first instance.

BellSouth's Loop Cost Study

Finally, AT&T argues with respect to the loop cost study, the Commission apparently overlooked Exhibit No. 72 in its deliberations. Exhibit 72 is a Commission Staff Audit Report that examines BellSouth's cost studies. According to the report, the total monthly recurring cost, based on BellSouth's cost studies, for an ESSX loop is $5.68. This, argues AT&T, is significantly below BellSouth's stated loop costs in this proceeding. AT&T argues that Exhibit 72 is particularly significant in that BellSouth's witness Milner stated during cross examination that there was no significant technical difference between a single-line residential loop and an ESSX loop. AT&T concludes that the dramatic differences between the two studies regarding the same facility, the loop, indicate that BellSouth's TSLRIC loop cost study in this proceeding badly overstates its loop costs and cannot be relied upon to establish permanent rates. AT&T asserts that to conclude otherwise would indicate that BellSouth has entered into a competitive contract service arrangement at rates substantially below its actual costs.

BellSouth summarizes AT&T's argument: either BellSouth's loop cost study overstated costs or BellSouth entered into a contract service arrangement. BellSouth argues that neither of these claims are valid since Exhibit 72 shows that BellSouth's recurring and nonrecurring costs were covered by recurring and nonrecurring revenues. BellSouth asserts that while it is true that there is no technical difference between a single-line residential loop and an ESSX loop, there are other substantial differences between the two. According to BellSouth, the major difference is the average length of each loop. ESSX services is a distance sensitive offering; ESSX customers tend to be located closer to the central office than the

average residential customer. This, BellSouth states, lessens the cost of each ESSX loop.

Staff recommends that the Commission not reconsider its decision on the ESSX loop rates. The Commission did consider Exhibit 72 and set a rate based on all the evidence in the record. Staff notes that the ESSX costs in Exhibit 72 cannot be identified since the cost study to arrive at those costs was not entered into the record.

In summary, staff recommends that the Commission grant in part and deny in part AT&T's Cross Motion for Reconsideration. Specifically, staff recommends that the Commission reconsider its decision and order BellSouth to establish Nonrecurring Charges that do not include duplicate charges or charges for functions or activities that AT&T does not need when two or more network elements are combined in a single order. Staff also recommends that the Commission Order BellSouth to establish Recurring Charges that do not include duplicate charges. The parties should work together to establish the Nonrecurring Charge and Recurring charges in situations where the ALEC is ordering multiple network elements. If the parties cannot agree to the total NRC or Recurring Charge when ordering multiple network elements, then either party may petition the Commission to settle the disputed charge or charges. Further, staff recommends that BellSouth be ordered to notify the Commission when a rate is set that excludes duplicated or avoided charges. The report should be filed within 30 days of the rate being established and should specify the elements being combined and the rates or charges, recurring and nonrecurring, for that combination.

Staff also recommends that the Commission, on its own Motion, reconsider its decisions as discussed above with respect to MCI.

ISSUE 3: Should the Commission amend Part V.E. of Order No. PSC-96-1579-FOF-TP?

RECOMMENDATION: Yes. The Commission should amend Part V.E. of Order No. PSC-96-1579-FOF-TP.

STAFF ANALYSIS: On December 2, 1996, the Commission, after having considered the evidence presented during hearing and the recommendations made by staff, voted on the issues submitted for arbitration. The Commissions decisions were memorialized in Order No. PSC-96-1579-FOF-TP, issued on December 31, 1996.

In Part V.E., the Commission ordered BellSouth to provide real-time and interactive access via electronic interfaces as requested by AT&T and MCI to perform pre-service ordering, service trouble reporting, service order processing and provisioning, customer usage data transfer and local account maintenance. However, the following language, which reflects the Commission's decision during the agenda conference, was inadvertently omitted:

> If any of the processes require additional capabilities, BellSouth shall develop the additional capabilities by January 1, 1997. If BellSouth cannot meet that deadline, BellSouth shall file a report with the Commission that outlines why it cannot meet the deadline, the date by which such system will be implemented, and a description of the system or process which will be used in the interim. BellSouth, AT&T and MCI shall also establish a joint implementation team to assure the implementation of the real-time and interactive interfaces. These electronic interfaces shall conform to industry standards where such standards exist or are developed.
>
> BellSouth shall not require MCI and AT&T to obtain prior written authorization from each customer before allowing access to the customer service records (CSRs). MCI and AT&T shall issue a blanket letter of authorization to BellSouth which states that it will obtain the customer's permission before accessing CSRs. Further, BellSouth shall develop a real-time operational interface to deliver CSRs to ALECs, and the interface shall only provide the customer information necessary for MCI and AT&T to provide telecommunications service.

Based on the foregoing, staff recommends that Part V.E. of Order No. PSC-96-1579-FOF-TP be amended to include the foregoing language.

ISSUE 4: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open until the parties have filed their signed arbitration agreement, and the Commission has completed its review of BellSouth's cost studies that were required to filed pursuant to the Order in this proceeding.

STAFF ANALYSIS: No. This docket should remain open until the parties have filed their signed arbitration agreement, and the Commission has completed its review of BellSouth's cost studies that were required to filed pursuant to the Order in this proceeding.