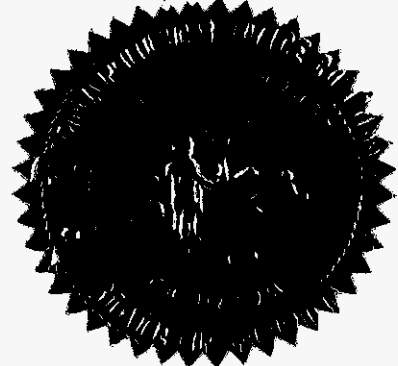


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of : DOCKET NO. 960833-TP  
: DOCKET NO. 960846-TP  
Petitions by AT&T Communications of : DOCKER NO. 960916-TP  
the Southern States, Inc., MCI :  
Telecommunications Corporation, MCI :  
Metro Access Transmission Services, :  
Inc., and 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. :  
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PROCEEDINGS: SPECIAL AGENDA CONFERENCE

BEFORE: CHAIRMAN JULIA L. JOHNSON  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER DIANE K. KIESLING  
COMMISSIONER JOE GARCIA

DATE: Friday, February 21, 1997

TIME: Commenced at 1:00 p.m.  
Concluded at 4:10 p.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: ROWENA NASH  
H. RUTHE POTAMI, CSR, RPR  
Official Commission Reporters

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11                   **WALTER D'HAESELEER**, Director, FPSC Division  
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25 Communications.

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I N D E X

MISCELLANEOUS

ITEM

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## 1 PROCEEDINGS

2 (Hearing convened at 1:00 p.m.)

3 CHAIRMAN JOHNSON: We're going to go ahead  
4 and call the special agenda conference to order.  
5 Counsel.

6 MR. GREER: Commissioners.

7 CHAIRMAN JOHNSON: Okay.

8 MR. GREER: Commissioners, we've got three  
9 recommendations to go through today; reconsideration,  
10 motion for reconsideration, arbitration recommendation  
11 for AT&T and arbitration recommendation for MCI. I  
12 want to point out that apparently the cites in the  
13 recommendation -- motion for reconsideration were  
14 based on a 5.1 order versus the 6.1 version that's in  
15 the CMS directory, so the cites may be a little  
16 different if you have a 6.1 printed order.

17 I would propose that we deal with the motion  
18 first, and then the AT&T and the MCI. As we get to  
19 AT&T and MCI, it might be useful to kind of check and  
20 make sure that everybody has the same documents and  
21 everything, unless you think everything is okay with  
22 that.

23 CHAIRMAN JOHNSON: Very well, that sounds  
24 like a logical approach.

25 MR. GREER: Commissioners, the motion for

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1 reconsideration handled various motions from BellSouth  
2 and a cross motion, I believe, from AT&T. We probably  
3 should go issue by issue. It makes sense, I think.

4           **MS. BARONE:** Yes, Commissioners, Issue 1 is  
5 BellSouth's motion for reconsideration of the  
6 Commission's order. And Issue 2 is AT&T's cross  
7 motion for reconsideration of that order.

8           **CHAIRMAN JOHNSON:** Okay. Do you want to go  
9 through it?

10           **COMMISSIONER GARCIA:** Do we have to go issue  
11 by issue, or can we just discuss issues that have some  
12 relevance? See, I don't know if we have to go through  
13 the whole thing of opening this up if maybe Staff can  
14 answer some questions that I have.

15           **MS. BARONE:** Certainly. We can proceed if  
16 that's how the Commission wishes.

17           **CHAIRMAN JOHNSON:** Joe, you have some  
18 questions then?

19           **COMMISSIONER GARCIA:** Some general  
20 questions. If you guys want to start there, because  
21 it's probably easier for me to listen to your  
22 questions first. But I wanted to ask about AT&T's  
23 motion for reconsideration, the operator services; and  
24 then AT&T's point that perhaps we had erred by  
25 considering that as part of the resale arrangement

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1 since they offer that.

2 And I think they use the terminology that  
3 those are discrete and separate services. And I  
4 thought the arguments presented by, I think it was  
5 Mr. Hatch, were very convincing in AT&T's motion. And  
6 so I'd like to hear Staff discuss that a little bit.

7 COMMISSIONER CLARK: Madam Chairman?

8 Joe, are you talking about Issue 2?

9 COMMISSIONER GARCIA: Yeah.

10 COMMISSIONER CLARK: All right. I have  
11 questions on Issue 1.

12 CHAIRMAN JOHNSON: Okay. Let's go ahead  
13 then, and we'll just start with Issue 1, Bell's motion  
14 for reconsideration. And then we'll go on to  
15 Commissioner Garcia's Issue 2 question.

16 COMMISSIONER GARCIA: Okay.

17 CHAIRMAN JOHNSON: Issue 1,  
18 Commissioner Clark.

19 COMMISSIONER CLARK: Okay. I'd be willing  
20 to kick this off. The pricing of rebundled network  
21 elements, do I understand the concern of BellSouth was  
22 the fact that you could rebundle at a rate lower than  
23 the wholesale rate for the service?

24 MR. GREER: I believe that's correct.

25 COMMISSIONER CLARK: Is that or is that

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1 not -- (Telephone interruption.)

2           **MR. GREER:** Commissioner's, it's my belief  
3 that the rates -- first of all, BellSouth believes  
4 that the unbundled elements we set today: loops, local  
5 switching, those kind of things, gives the competitor  
6 everything that they need to repackage and provide a  
7 service, a B1, or whatever.

8           I don't believe it does. I believe that the  
9 service that they provide and that they are  
10 compensated for is more than just a flat rate B1 loop  
11 and switching. I think it encompasses operator  
12 services. I think it encompasses repairs and all  
13 those types of things, and the 911. And so I don't  
14 see that they are comparable. We haven't set some of  
15 those types of rates in this unbundled element pieces,  
16 so I don't think their analogy that they attached to  
17 their petition was apples to apples.

18           **COMMISSIONER CLARK:** Let me restate what I  
19 think you have said, is the rates that we have set in  
20 this arbitration do not cover all the services they  
21 would need to duplicate residential service.

22           **MR. GREER:** That would be my belief, yes.  
23 Because there's database functions that we haven't  
24 just set and that they haven't asked for it.

25           **COMMISSIONER CLARK:** Okay.

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1           **MR. GREER:** I mean, I understand Bell's  
2 concern. And if you understand their concern and  
3 their belief that they think those things are included  
4 because of the definition of local switching, it says,  
5 "shall include all feature, functions and capabilities  
6 of the local switching."

7           **COMMISSIONER CLARK:** Well, does that throw  
8 some uncertainty into this whole agreement?

9           They interpret local switching to include  
10 everything you need when bundled with the other  
11 services that we have set rates for in this  
12 arbitration, that that constitutes -- that would  
13 provide all the services you would need to duplicate  
14 residential service. And you would duplicate it at a  
15 price less than what you set the resold service for.

16           **MR. GREER:** I don't think it does because  
17 the FCC's Order is very clear on the definition. And  
18 it says, features, functions, capabilities are in  
19 local switching. But for like the database things,  
20 it's access, too. It's not the actual function that  
21 the database provides and those types of things.

22           **COMMISSIONER CLARK:** So you are saying  
23 BellSouth is in error when they say certain services  
24 are included in the definition of switching.

25           **MR. GREER:** I believe so, because I think

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1 the FCC's Order clearly lays out other database  
2 functions, repair, billing, that we haven't set rates  
3 for in some instances.

4           **COMMISSIONER CLARK:** Well, suppose for a  
5 minute that we have set rates for every service you  
6 would need or every unbundled service you would need  
7 to recombine, and you could, in fact, put them  
8 together and sell the same thing as local service.  
9 And the rate you would be charging would be less than  
10 what we set wholesale rate at.

11           **MR. GREER:** Okay.

12           **COMMISSIONER CLARK:** Is that appropriate?

13           **MR. GREER:** I think it's a function of the  
14 way the FCC, or the Act, is laid out in that the  
15 resale provisions are based on a tops down approach  
16 where you have the retail tariff minus some avoided  
17 costs. And the unbundled elements is from a bottom-up  
18 approach where you have everything based on costs.

19           **COMMISSIONER CLARK:** I guess what doesn't  
20 make sense to me is if it is in -- I guess it maybe  
21 illustrates that it's not true that residential  
22 service is priced less than its cost then. If you can  
23 rebundle everything and it comes up to a rate less  
24 than the rate minus a wholesale discount, then you are  
25 sure of covering your costs.

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1           **MR. GREER:** Right. And I mean, I think that  
2 the Act's intention was to give folks the ability to  
3 choose how they wanted to provide service. Do they  
4 want to do it on a resale basis, or do they want to be  
5 like AT&T maybe and provide their operator services  
6 and pick the unbundled element pieces which was  
7 cheaper.

8           **COMMISSIONER CLARK:** Well, Stan, my concern  
9 is that it seems to be -- something seems amiss if  
10 what you, in fact, do is make it so that you really  
11 don't have a retail -- you don't have a discount of  
12 the retail residential service at the rate you set.  
13 It's, in fact, lower at the rate it would be if you  
14 recombine the element. And it makes had me wonder why  
15 did the resale, the joint marketing provision, why is  
16 that attached to when you resell it if, in fact,  
17 there's no difference?

18           **COMMISSIONER GARCIA:** There is a difference.  
19 It comes out less expensive if you unbundle.

20           **COMMISSIONER CLARK:** Yes. And if you  
21 unbundle and recombine, there's no restriction on  
22 joint marketing, right?

23           **MR. GREER:** Correct.

24           **COMMISSIONER CLARK:** So, in effect, there's  
25 no restriction on joint marketing because you'd never

1 choose the resale.

2           **MR. GREER:** Well -- and I guess not knowing  
3 all the pieces that we are going to have to put  
4 together to make an R1 or B1 service, it's difficult  
5 to say whether or not it would be higher or lower than  
6 what's there now.

7           **COMMISSIONER CLARK:** You are saying we are  
8 not there yet.

9           **MR. GREER:** I don't think so.

10           **COMMISSIONER GARCIA:** Stan -- Commissioner  
11 Clark, if I could just ask a question along those  
12 lines?

13           **COMMISSIONER CLARK:** Yes. I mean, I'm sort  
14 of thinking out loud.

15           **COMMISSIONER GARCIA:** To be quite honest,  
16 since you and Commissioner Deason brought this up, it  
17 clearly has been something that I've been thinking  
18 about. And maybe I can present a scenario to Stan,  
19 and Stan can tell me where I'm wrong.

20           Stan, let's suppose that Company A,  
21 BellSouth, is offering a service at \$20, a business  
22 service, just to make up numbers. And you might want  
23 to write them down because my math is horrible. And  
24 with the discount, the business discount, which is  
25 about 17% or 16%, somewhere in between there, I can

1 resale that as AT&T at that price. But if I can  
2 rebundle them -- let's say, I market that service. I  
3 go to Carnival Cruise Lines, and I say I'm going to  
4 offer you everything that you are getting presently  
5 under the BellSouth tariff, I'm going to offer it to  
6 you at a 15% discount.

7 I get their service. And what I do under  
8 resale -- I use resale first. And I figure out what  
9 exactly it is that it's costing me, how that service  
10 works out and whether it's profitable. Then I turn  
11 around after I have my studies of working this  
12 customer, I turnaround to Southern Bell, and I say, I  
13 want exactly the same service I'm purchasing at resale  
14 unbundled and rebundled in exactly the same form. And  
15 now I'm getting a discount of somewhere in the  
16 neighborhood of 40%, as an example. It may be more it  
17 may be less.

18 Precisely, how have we aided competition  
19 there? I mean, all we've basically said is someone  
20 can go to Southern Bell and rebundle the existing  
21 service and sell it, but it's the exact same service.  
22 So our power to control the resale is almost a  
23 nonexistent one because it gives us no control.

24 If I can unbundle and rebundle, I'm  
25 basically calling Southern Bell and saying: Hi, I'm



1 Joe Garcia Telemarketers. I've just sold this client  
2 Southern Bell. I want you to give me the exact same  
3 service, but I want to buy it unbundled, which gives  
4 me a much better discount. And then I want to resell  
5 it, not resale price, I want unbundled service,  
6 repackage it and sell it again to this same carrier.

7           Where then is there a necessity for us to  
8 come up with a resale price? Where is the risk?

9           I mean, clearly, we know that the essential  
10 first steps of this market are not going to be raised  
11 with these residential customers. They are going to  
12 be raised with the larger businesses that have,  
13 clearly, profit margins that are attainable for all  
14 the business people participating. So when I enter  
15 this market, why would I ever go for resale except as  
16 a preliminary step to then unbundling and rebundling  
17 the exact same service they're receiving.

18           **MR. GREER:** I'm not for sure, to tell you  
19 the truth. I think that carriers are going to pick  
20 and choose because, say -- take for AT&T for instance.  
21 They had --

22           **COMMISSIONER GARCIA:** Why are they going to  
23 pick and choose?

24           **MR. GREER:** Because they themselves already  
25 have facilities in place, such as operator services,

1 transport facilities, repair -- to some extent some  
2 repair facilities for their own stock.

3           **COMMISSIONER GARCIA:** And under a less  
4 restrictive or a less broad than what we did here in  
5 our order, if we step back, and I said -- let's say  
6 that we'll go back to the example I talked about.

7           I'm offering a service, a business service,  
8 at \$20, and it includes 10 features. If I resale that  
9 service, I get a 16% discount, so it ends up  
10 somewhere, I guess at around \$17, the cost to me to  
11 rebuy it from Southern Bell and then resell it at the  
12 resale price.

13           But the question is why would I even use  
14 that price? Why was that set up? Did you loose me?

15           **MR. GREER:** It kind of faded out a little  
16 bit there on the last.

17           **COMMISSIONER GARCIA:** All right. Why would  
18 we go that route?

19           **MR. GREER:** Well, I mean, there are  
20 companies that are not going to be the AT&Ts of the  
21 world. And I would say that if they -- without all  
22 the pieces here to say whether or not it clearly  
23 duplicates a service -- I mean, there's a lot of  
24 pieces there that I'm not for sure. I mean, if AT&T  
25 says we want the bill sent to us, does that duplicate

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1 R1 service when BellSouth under their R1 service sends  
2 the bill to the customer?

3           **COMMISSIONER GARCIA:** Well, that is a good  
4 example, because there I would understand. Because  
5 there we would be promoting competition, and we would  
6 be promoting some type of facilities base.

7           Let's say that that \$20 bill that I get from  
8 Southern Bell as Company X -- and I'm using small  
9 figures so that we can play with them. At a resale  
10 level it's at \$17. But let's say that includes 10 --  
11 some 10 services are included in that \$20 price.

12           If I unbundle those services, I can purchase  
13 each of those at, say, \$1 a piece at the unbundled  
14 rate. But perhaps I, as AT&T, have some other service  
15 that I can stick in there. And then I rebundle nine  
16 of them, and I add one of my services. Then I would  
17 understand completely our structuring it so that they  
18 can unbundle the service, or they add three or add two  
19 or add one, because it would be promoting competition  
20 because they would be able to pick what part of the  
21 unbundled service they think is higher than it should  
22 be in terms of cost and they would be able to flip  
23 into that specific -- or target that particular  
24 service, rebundle the Southern Bell package around it,  
25 and sell that at a price that would be even better

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1 than anything Southern Bell obviously is offering at  
2 that moment.

3 MR. GREER: Right.

4 COMMISSIONER GARCIA: And clearly their  
5 profit margin would be greater. But I don't  
6 understand where the advantage is. Isn't our power  
7 being sort of wasted --

8 CHAIRMAN JOHNSON: Joe.

9 COMMISSIONER GARCIA: -- on giving a resale  
10 rate when that resale rate has no --

11 CHAIRMAN JOHNSON: Joe, you are fading out  
12 again. I don't know why, but you are fading in and  
13 out. So I didn't catch the last part of your  
14 statement.

15 MR. GREER: And I think it's still the same  
16 question of why would they choose resale. And I mean,  
17 the pricing structure for resale and the pricing  
18 structure for unbundled elements are different. For  
19 example, business service, I'm not for sure what the  
20 rate is. Say it's 30 bucks right now under resale and  
21 the discount is whatever. So just to say it's 30  
22 bucks.

23 The pricing structure for the unbundled  
24 elements to make that -- I mean, like the local  
25 switching element has usage in it, which is not part

1 of the resale service. So, you know, a competitor is  
2 going to have to decide whether or not that customer  
3 is going to generate enough usage to push me to go  
4 over what I would normally pay with the resale.

5 COMMISSIONER GARCIA: You can hear me,  
6 right?

7 MR. GREER: Yes.

8 COMMISSIONER GARCIA: I understand that.  
9 But I don't think there's any risk of that involved in  
10 the initial stages of this. I agree. AT&T provides  
11 certain services and already has certain equipment  
12 that it will unbundle. They will ask for that service  
13 unbundled, and take certain elements that it already  
14 has, bundle them with Southern Bell elements, and sell  
15 it at a price, at a different price.

16 But what our order does is it basically says  
17 unbundle this. I call Southern Bell, I say  
18 unbundle/rebundle, the same price -- I'm sorry, a much  
19 lesser price than our resale level. So why would we  
20 even put the resale level at this early stage?

21 I understand your argument that in the long  
22 run when you are offering that smaller business, you  
23 have to work it out with other combinations. But in  
24 the early stages, I don't think that there's a risk  
25 involved there.

1           **MR. GREER:** Well, the carriers are going to  
2 have to choose what they want to do. I mean -- and  
3 exclude AT&T putting any facilities at all into the  
4 network, into provision of the service.

5           **COMMISSIONER GARCIA:** Okay.

6           **MR. GREER:** If I come to BellSouth and I say  
7 I want to transfer your service from me -- from  
8 BellSouth to AT&T, and I want it at the unbundled  
9 rates. But right now your service is probably 15  
10 bucks or somewhere around that neighborhood on a  
11 resale basis. But if they went and paid the unbundled  
12 element basis that they would, you know, if they say,  
13 I want -- you can get the unbundled element rates  
14 versus the resale rate that I have with you, some of  
15 those rate elements are going to be usage sensitive.  
16 So they are going to be paying usage every time you  
17 make a call versus receiving that service, R1 service,  
18 at a flat rate.

19           So, I mean, it's a decision for them to pick  
20 and choose. I mean, really do they want to, for you,  
21 use the resale rates, or do they want to use the  
22 unbundled rates? I mean, it's a decision from them as  
23 far as how the pricing is going to fall out and how  
24 much their usage is.

25           **COMMISSIONER GARCIA:** But the question goes

1 to pick and choose what, in the early stages of where  
2 we are, in this supposed competitive framework. We  
3 are not saying to AT&T or any carrier that you've got  
4 to take whoever comes to you.

5 AT&T is certainly, I would assume -- but  
6 that they are going to go to those customers who are  
7 profitable. They are going to have an outline and an  
8 understanding of how that usage works. So then this  
9 Commission is creating a resale rate that has no  
10 function, except in later stages when you are talking  
11 about a customer you have no knowledge of how that  
12 usage is going to work, or a new customer into the  
13 market that there is no history on.

14 But right now, AT&T, or anyone, is going to  
15 go after customers they it has an understanding that  
16 they are profitable.

17 MR. GREER: Sure.

18 COMMISSIONER GARCIA: And they are clearly  
19 going to ask for the service unbundled, which we  
20 bundled, is going to make a difference.

21 Now, I assume that AT&T has a tremendous  
22 advantage over other competitors because there are  
23 elements in that service that are going to be their  
24 elements. And there are other elements that they are  
25 going to purchase from Southern Bell to form the

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1 service, the particular service that the customer  
2 wants or is already receiving.

3 My problem with this comes in is that we are  
4 basically not even promoting any facilities  
5 competition. So anyone who enters the market, all  
6 they have to do, if it's a big enough client -- and as  
7 a general rule, I assume that no smaller clients are  
8 going to be the initial targets -- is simply call  
9 Southern Bell and say, I have Corporation X, they want  
10 service. I'd like you to unbundle them, rebundle them  
11 and give me that price. And they are going to be  
12 guaranteed a much higher rate of return -- not rate of  
13 return, but a much higher margin than that which we  
14 allowed in the resale discount.

15 MR. GREER: I don't think it's a guarantee.  
16 I mean, because we don't have all the pieces here.  
17 And that's where I get back to the point that the  
18 pieces that we have set are not, to me, all the pieces  
19 that need to be put together in order to duplicate the  
20 business service.

21 And by the time you add up all these little  
22 pieces outside of this local switching and the loop, I  
23 don't know that it will be 40%. I don't know if it  
24 will be better if you take the resale. I mean, we  
25 just don't have those pieces set. And what we try to



1 do is, the Act is clear. You have --

2           **COMMISSIONER GARCIA:** Commissioner Clark  
3 asked for that last time, didn't she? She asked  
4 for --

5           **MR. GREER:** Right.

6           **COMMISSIONER GARCIA:** And were we able to  
7 figure that out, or no?

8           **MR. GREER:** And we tried to. And Bell put  
9 the proposal on the back of their motion for  
10 reconsideration which, as I said, I think is a  
11 comparison of apples to oranges in that what they  
12 tried to say is the unbundled rate doesn't include  
13 everything that I would consider in a resold R1  
14 service. Because, I mean, it has a lot of different  
15 pieces. Bell does maintenance on the resale. Bell  
16 provides you E-911 access. By the time you pick up  
17 all those pieces on the unbundled loop side, the  
18 unbundled element side, it may be higher than what  
19 their current resale rate is. I just don't know  
20 without all those pieces.

21           **CHAIRMAN JOHNSON:** Walter, did you have  
22 something you want to ask?

23           **MR. D'HAESELEER:** Yes. I hope this clears  
24 it up a little bit. I think the two concepts are  
25 entirely different between unbundling and resale.

1 Historically, one of the reasons we went through the  
2 unbundling phase of all this was because the  
3 competitors wanted pieces of the network. They didn't  
4 want them all, or they felt they had some and,  
5 therefore, they didn't need a bundled loop.  
6 Therefore, if you look at it, the pricing and costs  
7 are different between the two.

8           You know, we've had these discussions about  
9 the unbundling and that it was TSLRIC and how much  
10 contribution, if any, so there's that concept. Now,  
11 if you look at, historically, the residential and B1  
12 rates, they were set a long time ago; and they were  
13 set under an entirely different concept than you would  
14 set the unbundled elements.

15           So, therefore, I think you are really  
16 comparing apples and oranges, and I don't think it was  
17 anybody's intent that if you were to add all the  
18 pieces together, that that would be cheaper than  
19 anything else. Because it was just the converse, you  
20 really wanted pieces so you could put a loop or  
21 whatever together to be able to sell it. But the  
22 concepts are entirely different, the pricing.

23           **CHAIRMAN JOHNSON:** Walter, do you think if  
24 you added all the pieces together that it would be  
25 cheaper? Do we have any --

1           **MR. D'HAESELEER:** We've asked that several  
2 times. In fact, I asked it today of Staff. And the  
3 problem is nobody really knows what all the pieces  
4 are. We really haven't had the time to really sit  
5 down and analyze it.

6           But I can tell you, conceptually, that isn't  
7 what this was all about. It was to unbundle so you  
8 could only buy what you needed.

9           **CHAIRMAN JOHNSON:** What if that was the  
10 unintended result?

11           **MR. D'HAESELEER:** It could very well be.  
12 And if that is the case, I suppose we have to address  
13 it.

14           **CHAIRMAN JOHNSON:** Say that happened -- I  
15 don't know -- but according to the FCC's rules and the  
16 FCC's Commissioners -- I don't know if it would have  
17 been unintended or not -- what if that was the  
18 intended result. What if that was what this leads to,  
19 where you could unbundle and rebundle and come up with  
20 the service that was cheaper than that resale rate.  
21 Would we be required to do that anyway under the law,  
22 do you think?

23           **MR. GREER:** I would think so. And I think  
24 the FCC did contemplate the differences, or how the  
25 unbundle part tied to the resale part. Because there

1 was a provision in their order that essentially said  
2 you allow competitors to rebundle them however they  
3 want to rebundle them. And if that means duplicate a  
4 service, then that means duplicate a service.

5           **COMMISSIONER GARCIA:** But, Stan, if I read  
6 it correctly, though, I don't think they specifically  
7 stated duplicating the service. Maybe you can point  
8 it out for me, but I don't think they contemplated  
9 directly that. I mean, the exact same service being  
10 rebundled.

11           I agree with what Walter just said. I mean,  
12 Walter and I don't disagree on what we've basically  
13 stated. The original intent was for pieces to be able  
14 to be purchased, not for repackaging of the same exact  
15 service.

16           **MR. GREER:** In the FCC Order they considered  
17 whether or not a competitive local exchange company  
18 had to have a piece in the rebundled service, and  
19 their decision was that they don't. So, I mean, that,  
20 to me, seems to indicate the replication of an  
21 existing service with the unbundled pieces.

22           **COMMISSIONER GARCIA:** But the discussion  
23 goes on to point out that they don't because they can  
24 offer all sorts of different things or services not  
25 currently being offered, and there are all sorts of

1 advantages.

2 I understand what you are saying, that they  
3 were contemplating the argument when they were  
4 responding to this. But they didn't respond to it  
5 directly. At least I didn't find it, and that's the  
6 only thing that caused me some question. Because I  
7 remember when Commissioner Deason brought this up at  
8 the agenda conference. He spoke directly to this  
9 question. And Staff said, no, you can't do that. I  
10 mean, that's not part of what we're -- the FCC  
11 basically states we must do this.

12 MR. GREER: And that would be the part that  
13 says they are allowed to rebundle however they want  
14 to, would mean -- that's what I would think our intent  
15 was when we were talking at the agenda.

16 CHAIRMAN JOHNSON: Well, the part about --  
17 and Monica may be able to help with this. As I  
18 understand Bell's argument on the reconsideration,  
19 let's assume that the FCC meant to allow unbundling  
20 and rebundling, and for those prices or costs to be  
21 lower than the resale price. Let's assume that.

22 And we all seem to have some discomfort with  
23 that, saying maybe that is what the FCC intended. We  
24 have some discomfort with it, but that particular  
25 issue wasn't stayed. That part of their

1 interconnection order wasn't stayed.

2           It appears to me that Bell is now arguing  
3 that maybe we are looking at this incorrectly. That  
4 we shouldn't be looking at the bundling/rebundling  
5 aspects of the interconnection order, but that we  
6 should consider this like general pricing. And that  
7 the pricing provisions haven't been stayed.

8           That's kind of how I was reading their  
9 argument. And to say, well, Commissioners, you do  
10 have some discretion here. This is a pricing issue,  
11 not an unbundling/rebundling issue. How would you  
12 respond to that?

13           **MS. BARONE:** Well, even to the extent that  
14 it were or is ultimately a pricing issue, I think  
15 No. 1, if I may go through this, the Commission simply  
16 determined that based on the FCC's interpretation of  
17 the Act, that the companies could combine unbundled  
18 network elements in any manner they choose. And I  
19 think what Staff is saying is that based on the  
20 evidence that we have in this record, we are not sure  
21 whether or not you recombine these elements that they  
22 would undercut the retail prices. And I think that  
23 was the concern that was raised at the special agenda.

24           So just to make sure, on reconsideration  
25 here, we're taking a look at what you did look at.

1 And we looked at the simple issue of whether they  
2 could recombine. We didn't look at what would happen  
3 if you did recombine numerous elements to recreate the  
4 service. And we don't have that in the record, and we  
5 can't make that ultimate decision here.

6 So we have two issues going on. We have the  
7 pricing; we determined that the pricing had been  
8 stayed. And then we had the narrow issue of whether  
9 they could combine the unbundled elements, but we did  
10 not look at the issue; well, what would happen to the  
11 prices if you recombine those elements. And I think  
12 that's outside the scope of what you consider in the  
13 first place.

14 Now, if there were new information, that  
15 would be a proper subject for a motion to reopen the  
16 record, but we just don't have the evidence here to  
17 make that decision, I think.

18 **CHAIRMAN JOHNSON:** Monica, help me again.  
19 Because it appeared to me that in their argument, or  
20 in their motion, they are kind of suggesting,  
21 Commissioners, you focused on the wrong thing. You  
22 focused on unbundling/rebundling, but this is really  
23 pricing, and pricing wasn't stayed.

24 Explain to me again why that's incorrect or  
25 why what they're saying, why this wouldn't fall under

1 the pricing provisions that were stayed.

2           **MR. GREER:** Commissioners, the issues to the  
3 proceeding was AT&T and MCI be allowed to combine  
4 BellSouth's unbundled network elements in any manner  
5 they choose including recreating existing BellSouth  
6 services. That's the issue.

7           **MS. BARONE:** And that's why I was saying we  
8 were narrowed to the issue of how can you combine  
9 those, not what would happen once you did combine  
10 them.

11           **COMMISSIONER DEASON:** Well, are you saying  
12 then that we did not arbitrate at all the question of  
13 what is the appropriate and applicable price to apply  
14 to a configuration of unbundled networks being  
15 rebundled to result in an R1 or B1 service?

16           **MS. BARONE:** No. I want to ask Staff, but I  
17 think what we did was we looked at the unbundled  
18 elements on an individual basis and set prices based  
19 on TSLRIC on those unbundled elements. But we did not  
20 look at the issue, what you do when you recombine  
21 those unbundled elements. Yes, sir. I do not think  
22 that --

23           **COMMISSIONER DEASON:** So if we did not  
24 arbitrate it then, that's not an issue before us, and  
25 Bell is free to charge what they want then.



1           **MR. GREER:** I think that could be the  
2 possibility, is that AT&T comes in and says I want  
3 these customers at the unbundled rates. And BellSouth  
4 could say, well, it looks like to us you're  
5 duplicating our service, we're going to give you  
6 retail rates. And I guess we'll end up with an  
7 arbitration or a complaint of some type, as bad as I  
8 hate to see them.

9           **COMMISSIONER DEASON:** Well, I'm not in the  
10 market for any more complaints or arbitrations, but --

11           **MR. GREER:** Me neither.

12           **COMMISSIONER DEASON:** -- we need to explore  
13 what -- because what I hear -- and there's lots of  
14 other issues in here in this reconsideration and in  
15 the final arbitration documents that we are going to  
16 have to approve or disapprove. There are situations  
17 in there where Staff says we didn't arbitrate it, we  
18 are not including any language, we are not addressing  
19 it, that's up to the parties to work out or bring a  
20 complaint to us.

21           And I want to understand exactly what you  
22 are saying here. Because what I hear Staff saying is  
23 that if -- the only thing that we arbitrated was the  
24 question as to whether they could recombine unbundled  
25 elements to basically create what heretofore was a

1 bundled service, but we didn't address the price of  
2 it.

3           Then are we willing to take the next step  
4 and say since we didn't arbitrate the price of that  
5 scenario of unbundling elements and then recombining  
6 them, does that mean then that the final arbitration  
7 agreement is solid on the price and that either the  
8 parties have to negotiate that or else there's going  
9 to be a complaint filed?

10           **MR. GREER:** I think the issues that we had  
11 in the case were the rebundling of the unbundled  
12 elements, that issue, plus establishing a wholesale  
13 discount rate for resale and establishing the pricing  
14 for unbundled elements.

15           **COMMISSIONER CLARK:** Some unbundled  
16 elements.

17           **MR. GREER:** Excuse me?

18           **COMMISSIONER CLARK:** Some unbundled  
19 elements.

20           **MR. GREER:** Yes, some unbundled elements.  
21 And there was considerable discussion at the agenda on  
22 this very issue. Now, does that warrant in the  
23 arbitration? I don't know.

24           **COMMISSIONER CLARK:** See, and if I  
25 understand you, we don't have that problem yet of a

1 company being able to take -- or AT&T being able to  
2 take a price established for all the unbundled  
3 elements and recombine it and, in fact, duplicate --

4 MR. GREER: I don't see that problem yet.

5 CHAIRMAN JOHNSON: But if that were to  
6 occur, if Bell -- if they found themselves in a  
7 situation where that's what they thought the request  
8 was, unbundle all this stuff, rebundle it, and they  
9 can look at it and say, hey, man, this is R1. They  
10 are getting around the rules.

11 Are we suggesting at that point in time  
12 would Bell have the opportunity, or whoever the  
13 company might be, have the opportunity to come back to  
14 the Commission and say, wait a minute, this one wasn't  
15 priced, and we want to price this differently because  
16 when you look at this Commission, these services, this  
17 is an R1 or this is a B1. And then we'd have to -- to  
18 the extent that AT&T didn't agree with them, and say,  
19 yeah, you've got us. We've got to charge more, you're  
20 allowed to charge more. Then they would come back to  
21 this forum for us to determine a price.

22 MR. GREER: I would think they would have  
23 to. I mean, for the unbundled elements that they  
24 don't have here, that they need to replicate  
25 something. Then they would have to come to us, either

1 come to us or they negotiate something with Bell  
2 saying here's the unbundled elements. And if they  
3 can't set price, then they'll come to us.

4 I would think that would possibly be one of  
5 the issues if they ever get to the point that they  
6 think they have all the elements that they're going to  
7 apply. Now, is that going to be the case? I don't  
8 have a clue.

9 **CHAIRMAN JOHNSON:** Yeah. I understand your  
10 predicament because we don't know. But that also --  
11 at least Bell is saying, oh, no; this is a situation  
12 where they can unbundle/rebundle and get exactly what  
13 we are offering at resale, but we aren't comfortable  
14 with that.

15 I agree with Commissioner Deason that my  
16 concern is that -- or maybe I'd go even a step  
17 further, is that, is there a forum, a forum to address  
18 that if that situation occurred. Is it here? Can the  
19 parties negotiate?

20 **MR. GREER:** I would think it would be  
21 either. They can negotiate, or it can come back to us  
22 in an arbitration request.

23 **CHAIRMAN JOHNSON:** So to the extent that  
24 they were trying to negotiate it, and AT&T said, no  
25 way; the Commission said you have to give us all of

1 these things on an unbundled basis. If Bell said,  
2 well, we ain't going to do it because we think this is  
3 R1/B1, then it would end up back here before us.

4 MR. GREER: I would think so.

5 MS. BROWN: Chairman Johnson, also, if I can  
6 just remind you all that I think this issue, at least  
7 the philosophy of it, is on appeal at the Eighth  
8 Circuit right now as well. The question of what they  
9 can do with the unbundled elements that they purchase  
10 and what happens. These are the same questions that  
11 Bell is asking of the court.

12 And it is something that we also considered,  
13 perhaps not the specific implications of it, but we  
14 did consider these questions before in our agenda  
15 conference and in your order, not perhaps the specific  
16 differences that might arise between prices when we  
17 got to the point where someone actually tried to do  
18 that, but the fundamental principles of it. We have  
19 addressed, the FCC is responding to appeals on, and I  
20 still think we are in the situation where we are  
21 limited in the scope of our reconsideration here to  
22 matters that are material mistakes of fact or law in  
23 the decision that you made before. And I just wanted  
24 to remind you of that because I sort of felt we were  
25 maybe getting a little further afield than we needed

1 to.

2           **CHAIRMAN JOHNSON:** Ms. Brown, I understand  
3 that, and I keep trying to pull myself back to that.  
4 But in using that standard, one of the things that  
5 Bell appears to be arguing is that pricing of the  
6 rebundled elements fall under the pricing provisions  
7 and that we were confused the last time around. And  
8 that that is something that we could look at as a  
9 material incorrect analysis of the law. Like, hey,  
10 let me set you straight, Commission; you still have  
11 purview over pricing. Unbundled -- that the  
12 unbundled/rebundled is something else. So I was  
13 trying to explore that part, which I thought might  
14 have been appropriate in this particular forum for  
15 reconsideration.

16           **MS. BROWN:** Well, yes. The way I view it,  
17 though, is, I guess, a little bit the way AT&T viewed  
18 it, and said, well, that sounds really good. What it  
19 is, is really just restating the argument the other  
20 way.

21           But even if you get beyond that, it appears  
22 to me that the Commission has already done and  
23 considered pricing issues under the Act, not relying  
24 upon the portions of the FCC rules that have been  
25 stayed, to set prices for unbundled elements.

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1           So even if you assume that the Commission  
2 didn't deal with the pricing questions, actually they  
3 did. And they didn't comply with the specific pricing  
4 sections of the FCC's rules that have been stayed,  
5 they followed the Act in their own determination of  
6 what those prices should be. There wasn't brought to  
7 the Commission's attention a specific issue that said  
8 should the prices of rebundled/unbundled elements be  
9 the same as resale.

10           **COMMISSIONER GARCIA:** Martha, get up close  
11 to the mike because I can barely make you out.

12           **MS. BROWN:** Okay, I'm trying. But this  
13 seems to phase in and out here.

14           **CHAIRMAN JOHNSON:** That's a bad mike.

15           **MS. BROWN:** Is that better? Actually, I'm  
16 done. (Laughter)

17           **CHAIRMAN JOHNSON:** Would you, Ms. Brown, or  
18 Ms. Barone, would you agree with Stan's legal analysis  
19 that there is an issue here, and to the extent that  
20 there was a situation where BellSouth thought that  
21 what was being requested was a rebundling in such a  
22 way that it would constitute an R1, that Bell could  
23 say we're not going to offer that, let's go to the  
24 Commission because we have not addressed R1 in this  
25 way for us to have to sell it at this price. That it

1 is more of a pricing issue?

2 MS. BROWN: You want a yes or no answer, but  
3 let me answer it this way. I hope that if Stan is  
4 right, there is going to be a little bit of time to do  
5 that and, perhaps, we will have more direction from  
6 the Eighth Circuit, from the courts on this, as well.  
7 Because the legal aspect of it, whether we can  
8 restrict the rebundling of unbundled elements in order  
9 that the prices will be comparable --

10 COMMISSIONER DEASON: I don't think that's  
11 what the Chairman suggested. It would be no  
12 restriction on whether they can, it would be simply if  
13 they choose to rebundle in a way that it would  
14 constitute R1/B1, or essentially R1/B1, that the price  
15 that would apply to that scenario is under our purview  
16 and that we can establish what that price is. And  
17 that would be appropriate for reconsideration.

18 MS. BROWN: I'm sorry, Commissioner, I was  
19 in the middle of my thought, and I kind of lost it.  
20 And then I wasn't really listening to what --

21 COMMISSIONER DEASON: What I heard you say  
22 is that it is not within our discretion to determine  
23 whether they can or cannot rebundle. And I didn't  
24 understand the Chairman to be raising that. That's  
25 what I heard you say. I apologize if I misheard what



1 you said.

2           **CHAIRMAN JOHNSON:** Commissioners, Walter  
3 needs a five-minute break. Are you going to come back  
4 with --

5           **MR. D'HAESELEER:** Could we have about a  
6 five-minute break and let us talk among ourselves?  
7 And it may be helpful to give some kind of direction  
8 if we can come up with some solution.

9           **CHAIRMAN JOHNSON:** If you could get  
10 technical and legal.

11           **MR. D'HAESELEER:** Right.

12           **CHAIRMAN JOHNSON:** And at least on that  
13 issue. And I will tell you why I'm very concerned  
14 about that issue and whether or not there is a forum  
15 or some mechanism for us to take care of this, what  
16 may very well be a pricing issue, but perhaps not in  
17 this particular forum. Because you are dealing with  
18 the FCC. And to the extent Bell goes up with an  
19 arbitrated agreement that we approve, that they think  
20 was unbundling/rebundling, and they think it's  
21 something that we've interfered with, I wouldn't want  
22 for us to approve something that would have an adverse  
23 impact on what's going happen under the 271.

24           But I want us to have a forum where when we  
25 know this is a pricing issue that it can come back to

1 us. So to the extent that you all can sit down and  
2 talk that through, five minutes is fine.

3 Martha, you still look confused. Are you  
4 confused on what I just said?

5 MS. BROWN: I'm always confused.

6 CHAIRMAN JOHNSON: Well, we'll give the  
7 five-minute break. Five minutes.

8 COMMISSIONER KIESLING: Monica has got a  
9 question.

10 CHAIRMAN JOHNSON: Oh, I'm sorry.

11 MS. BARONE: May I ask a question so I can  
12 just clarify? Is your question, if there's a  
13 situation where unbundled elements are recombined to  
14 form an existing resale service and Bell looks at it,  
15 or whoever, and says, hey, they are trying to undercut  
16 the resale service, do they have the opportunity to  
17 come here and say to this Commission, yes -- or say,  
18 Commission, this is a resale service, and you ordered  
19 that that service be offered at this price? Is that  
20 your question?

21 CHAIRMAN JOHNSON: That's where I'm going.  
22 I mean, the competitor can't have his cake and eat it,  
23 too. You know, to have a -- well, maybe the FCC  
24 intended it, but I don't intend it for them to have  
25 their cake and eat it, too. Because to the extent

1 that it's something that we've already declared as  
2 resale, and we've set those discounts, but then they  
3 get to somehow do that same service, call it something  
4 else, and not apply the discounts that we've already  
5 set.

6           **MS. BARONE:** And in my opinion, in that  
7 scenario, the Commission has jurisdiction over the  
8 subject matter of that arbitration agreement.  
9 Therefore, they could come back and come to this  
10 Commission and say that --

11           **CHAIRMAN JOHNSON:** -- what applies.

12           **MS. BARONE:** Yes, I do, I do believe that.  
13 Because you have jurisdiction over the subject matter  
14 of that arbitration agreement.

15           **COMMISSIONER GARCIA:** But now you are  
16 disagreeing with Stan's legal analysis on this.

17           **CHAIRMAN JOHNSON:** No, that was Stan's legal  
18 analysis.

19           **MR. GREER:** No, I don't think so.

20           **CHAIRMAN JOHNSON:** It's consistent.

21           **MR. GREER:** I think we're consistent for  
22 what mine's worth.

23           **CHAIRMAN JOHNSON:** You still need five  
24 minutes? You want five minutes?

25           Okay, we'll take a break. We'll take five

1 minutes. Walter is loosing it.

2 (Brief recess.)

3

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4 CHAIRMAN JOHNSON: We're going go back on  
5 the record.

6 Staff. Ms. Barone.

7 MS. BARONE: I would like to --

8 CHAIRMAN JOHNSON: It's me, I did it.

9 Sorry.

10 MS. BARONE: Okay. We all agree. There are  
11 several things that can be done in this situation.  
12 First of all, BellSouth could ask the FCC for  
13 clarification on these issues.

14 Second of all, we could wait until the  
15 complaint -- until the actual situation arises, and we  
16 can look at it at that point. Because we really don't  
17 have the evidence in the record right here to make a  
18 determination at this time, and it's outside the scope  
19 of what we determined in the first place.

20 Then the last thing that we would suggest is  
21 that we can formally look into this situation and then  
22 come back to you with our findings.

23 COMMISSIONER CLARK: Madam Chair, I don't  
24 think it is something that we can or necessarily need  
25 to address now. But as I stated at the previous

1 agenda, I would like to know if this situation occurs.  
2 And if the facts are, as you say, Stan, that they can,  
3 in fact, combine what they've arbitrated and come up  
4 with the identical service, then I suspect it will  
5 come before us as soon as they do that and the price  
6 is other than what AT&T or MCI would like. If they  
7 agree on the price, then we don't need to worry about  
8 it.

9           **COMMISSIONER DEASON:** Let me to some extent  
10 echo that. I think that we have an obligation to come  
11 out with an arbitrated agreement that is the best that  
12 we can. But, obviously, that agreement is not going  
13 to be so crystal clear that there's never going to be  
14 any question whatsoever as to how the participants in  
15 that agreement are to act on a going-forward basis.

16           I know that we first discussed this matter  
17 at the first agenda conference, I expressed extreme  
18 reservations about the action we were taking. In  
19 fact, I think I voted against it. I still maintain  
20 that position. I am also cognizant of the point  
21 Ms. Brown made; and that is, we're on reconsideration  
22 at this point. We're really not at the point of we're  
23 trying to take more evidence and try to come up with a  
24 better solution.

25           We've got to issue an arbitration agreement

1 or approve an arbitration agreement out of this  
2 process. Hopefully, it will have enough clarity that  
3 it will enable the participants to go forward and  
4 hopefully work things out amongst themselves, which is  
5 the way this whole thing was started to start with. I  
6 mean, it was supposed to be negotiated.

7 I guess the bottom line that I'm trying to  
8 make is that if in our own minds there is doubt about  
9 this, I agree with Commissioner Clark, if the  
10 participants can negotiate it themselves so that it  
11 doesn't come back to us. If they can't, we are going  
12 to see it again. But I think that there's been enough  
13 doubt. I certainly expressed it at the agenda  
14 conference. And I welcome to hear the discussion  
15 we're having today, there's enough doubt about that.

16 If the scenario ever arises where a  
17 participant disagreement is purchasing unbundled  
18 elements and then recombining them to the extent that  
19 it in essence reformulates an existing resold service,  
20 I think that the entity in this case, BellSouth, would  
21 be free to indicate to AT&T or MCI that they are going  
22 to apply the resold rate to that. Or else agree to  
23 try to reach some type of a compromise as to what the  
24 correct rate would be.

25 And I think we need to go forward. I don't

1 think that we need to set this aside and say we are  
2 not making a decision. I think that we need to make  
3 our decision as clear as possible. And to the extent  
4 that there's some ambiguity, there's just going to be  
5 some ambiguity.

6           There's going to be ambiguity in a lot of  
7 things, all these other issues that we're dealing  
8 with. And either the participants are going to have  
9 to work it out, or it's going to have to come back to  
10 us in some form or another. But that's just the  
11 process that we are in, and it's inevitable.

12           So I don't want to dodge the issue and say  
13 let's don't make a decision, let's just wait and do it  
14 later. I think we need to make a decision to the  
15 extent we can and leave it up to the participants to  
16 try to accommodate that decision. If they can't,  
17 well, I guess there's avenues to bring it back to us.  
18 That's what my preference is to do.

19           **COMMISSIONER KIESLING:** And since I haven't  
20 said anything --

21           **COMMISSIONER CLARK:** Well, I can't --

22           **COMMISSIONER KIESLING:** I only wanted to say  
23 that it seems to me that we are on reconsideration and  
24 to the extent that the record below does not contain  
25 sufficient evidence for us to be reexamining this

1 position, I have some level of concern. And that my  
2 concern the other way is ameliorated by the fact that  
3 there is some way for them to come back to us to bring  
4 up this specific issue if we need to.

5 I just figured I would at least get on the  
6 record for my view on this issue.

7 COMMISSIONER CLARK: I don't think that  
8 concludes every part of this issue, and I just have a  
9 few questions on --

10 COURT REPORTER: I can't hear you. You're  
11 mike is not on.

12 COMMISSIONER KIESLING: I can't hear you  
13 either.

14 COMMISSIONER CLARK: Madam Chair, that's  
15 only one portion of Issue 1, and I had some other  
16 questions.

17 With the contract service arrangements, they  
18 were troubling to me at the time. I still believe  
19 that they have to be resold. I don't think we can  
20 prohibit them from being resold. But what about what  
21 the Kentucky Commission has done.

22 I agree with MCI, or somebody, that is  
23 concerned that unless you allow the resale, it opens  
24 an avenue for predatory prices. But what's wrong with  
25 what Kentucky suggests, is that while they are subject



1 to resale, they are to be resold at no additional  
2 discount. Why is that not appropriate?

3 See, I think if you allow them to do that,  
4 then it seems to me, then the competitive advantage  
5 improperly goes the other way. And do you maintain  
6 neutrality if you say, all right; you can enter into  
7 CSA, and they can be resold, but they will be resold  
8 at the same level.

9 MR. GREER: The only problem that I see with  
10 it, Commissioner, is the definition of "resold  
11 service" under the FCC's Order.

12 CHAIRMAN JOHNSON: And what is that?

13 MR. GREER: Well, it essentially says you  
14 take the retail rate, back out the avoided cost, and  
15 that's your wholesale discount for a resold service.  
16 And it doesn't identify -- I mean, it even talks about  
17 below cost services being resold.

18 COMMISSIONER CLARK: And it talks about  
19 below cost services being resold, and what does it  
20 say?

21 MR. GREER: It says that must be resold.

22 COMMISSIONER CLARK: Does it say it also has  
23 to be subject to that discount?

24 MR. GREER: Being that it's a resold  
25 service, I would think it would have to. Now, maybe

1 what you find is that there's no avoided cost in the  
2 provision of a CSA, and you set a different wholesale  
3 discount for those, I don't know. I mean, you could  
4 do that, but that would be looking at it on a  
5 CSA-by-CSA basis.

6           **COMMISSIONER CLARK:** Well, what is the  
7 discount we apply to a CSA then?

8           **COMMISSIONER DEASON:** We didn't apply any  
9 discount. The issue -- unless I'm mistaken, the issue  
10 was can they basically go to the incumbent LEC, say,  
11 "Show me your CSAs." And then go to the customer and  
12 say, "I want to provide this service to you." And  
13 then go to Bell and say, "All right. This arrangement  
14 you work out with this customer. I want to buy it and  
15 resell it to the customer."

16           Now, did we specify a discount that would  
17 apply to that?

18           **MR. GREER:** No. What I meant was that the  
19 issue, I think, was what services should be excluded  
20 from resale. And we said CSA was not one of them. So  
21 the discount that we establish as a wholesale discount  
22 would apply to CSAs. I mean, if it's a business CSA,  
23 they get the business discount, whatever that may be.

24           **COMMISSIONER DEASON:** So you are saying that  
25 if there's a CSA out there -- I'm even more adamant

1 now that I'm glad that I voted against this the first  
2 time around.

3           You are telling me that a competitor can go  
4 out, identify a customer that has a CSA contract, go  
5 to Bell and say I want to resell that and then get a  
6 17% discount on whatever, the CSA that was worked out  
7 with that customer?

8           **MR. GREER:** I believe so.

9           **COMMISSIONER DEASON:** That is bad public  
10 policy. Extremely bad.

11           I thought a situation of just them being  
12 able to provide the CSA and pay Bell the same rate,  
13 but then just claim them for their customer -- this  
14 going way beyond what true and fair competition should  
15 be.

16           **MR. GREER:** And as you expressed at the  
17 agenda conference, the concern with some of these  
18 other things, like Lifeline, one of those types of  
19 things getting a wholesale discount associated with  
20 those. And, yeah, we have some of the same concerns,  
21 but that's the way we are looking at the FCC Order and  
22 what it requires.

23           **COMMISSIONER CLARK:** I'm sorry, what is the  
24 discount applied for CSA?

25           **MS. SHELFER:** It's the same discount that

1 would apply to a business. You know, if it's a  
2 business CSA or a residential one.

3 COMMISSIONER CLARK: And what is it?

4 MS. SHELFER: Well, I'm looking.

5 MR. GREER: It's somewhere around 17 -- 16%  
6 or 17%, I think.

7 COMMISSIONER CLARK: Okay.

8 COMMISSIONER DEASON: Competition should be  
9 two entities out there vying for a customer. What  
10 incentive at all does BellSouth have to go out,  
11 identify a customer, address their specific needs,  
12 tailor a contract which addresses those needs if they  
13 know as soon as a month later when AT&T or MCI finds  
14 out about it, they can provide that same deal at a 17%  
15 discount? There's no incentive for -- and to me, CSAs  
16 is a good form of competition, which is what this Act  
17 is supposed to be encouraging.

18 MR. GREER: I understand. I would agree  
19 with you. But I mean, all I'm telling you is what I  
20 think the FCC's Order requires.

21 MS. BROWN: And, Commissioner Deason, I  
22 would refer you to Page 41 of your original  
23 arbitration order, at the bottom, the last paragraph  
24 there. If you would like, we could restate this in  
25 the Order on Reconsideration. But you say there: We

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1 are concerned that by requiring the resale of CSAs, we  
2 will eliminate any incentive to ever enter into CSAs.  
3 We note, however, that the FCC Order specifically  
4 states a contract and other specific offerings should  
5 not be excluded from resale. Therefore, we shall  
6 require BellSouth to offer contract service  
7 arrangements for resale.

8           **COMMISSIONER DEASON:** Well, you know, I even  
9 disagree with that. I think that contract service  
10 arrangements that have been entered into after the  
11 advent of a competition should not be resold.

12           I agree that those contract service  
13 arrangements that have been entered into before  
14 competition, that those are different. Those were  
15 brought to this Commission, we approved them, they are  
16 more of the so-called monopoly status of service and  
17 that should be resold.

18           But contract service arrangements that are  
19 entered into to respond to the competition that is  
20 coming, it makes no sense to require those to be  
21 resold, period.

22           **COMMISSIONER CLARK:** Let me ask a question.  
23 Stan has linked the rate of discount in a CSA to a  
24 business rate. You say that --

25           **MR. GREER:** That would be whatever. I mean,

1 generally, CSAs are business CSAs.

2           **COMMISSIONER CLARK:** Well, my question is,  
3 is that what the FCC Order requires?

4           It requires them to be resold, but it  
5 doesn't say at what discount. And it appears to me  
6 that what Kentucky has -- Kentucky has complied with  
7 the notion of resales. But then with respect to  
8 pricing, they have said this is how we are going to  
9 price it. Can we do that?

10           **MS. SHELFER:** Commissioners, in the FCC  
11 Order on Paragraph 948, it reads: The Act provides  
12 that incumbent LECs must offer for resale at wholesale  
13 rates any telecommunications services that the carrier  
14 provides at retail to noncarrier subscribers.

15           This language makes no exception for  
16 promotional or discount offerings, including contract  
17 and other customer specific offerings. So I would say  
18 that the FCC Order does require that it be resold at  
19 wholesale rates.

20           And to answer your question earlier, the  
21 residential discount is 21.83%, and the business  
22 discount is 16.81%.

23           **COMMISSIONER GARCIA:** I'm sorry, when you  
24 say the wholesale rate, is that the rate minus the  
25 17%?

1 MS. SHELFER: That's the discount percent.

2 Yeah.

3 COMMISSIONER GARCIA: What does the order  
4 require? You just read it, and I missed that.

5 MS. SHELFER: It says that it must offer for  
6 resale at wholesale rate any telecommunications  
7 services that the carriers provide at retail to  
8 noncarrier subscribers.

9 COMMISSIONER GARCIA: And the wholesale rate  
10 is --

11 MR. GREER: Retail minus the avoided cost.

12 COMMISSIONER GARCIA: Which is not the  
13 discount rate.

14 COMMISSIONER CLARK: What if there isn't --

15 MR. GREER: Excuse me? Excuse me, I'm  
16 sorry.

17 COMMISSIONER GARCIA: It's not the resale  
18 rate.

19 MR. GREER: Well, the wholesale discount is  
20 what you get off of the retail rate.

21 COMMISSIONER GARCIA: Right.

22 MR. GREER: 16% or 17%.

23 COMMISSIONER DEASON: That wholesale  
24 discount, I mean, we took evidence on that. I don't  
25 think it was contemplated anywhere that those were the

1 discounts that should apply to a contract service  
2 arrangement. Was it addressed?

3 I mean, you would think contract service  
4 arrangements are already -- are almost a bare bones  
5 offer to a customer to try to address competition.  
6 And you start applying 17% discounts to that, you  
7 could be asking Bell to provide a service below its  
8 cost.

9 MR. GREER: And the same thing with R1  
10 service, that they are required to give a discount on  
11 the R1 service. And that's -- theoretically, could be  
12 below cost.

13 MS. SHELFER: And Lifeline and Link-Up, no  
14 exception to those.

15 COMMISSIONER DEASON: Which those should not  
16 be resold either, but that's another issue.

17 MR. GREER: I mean, with identifying it as a  
18 resale item then to me, the wholesale discount  
19 applies. And, yeah, I think Staff would agree with  
20 you. Some of these things don't make a lot of sense.  
21 And maybe you do what Kentucky did, which to me  
22 appears to be a violation of the FCC's Order.

23 And that's one of the reasons we put that  
24 language in the order, is like, yeah, we are going to  
25 do this, but we really don't like it, and that it



1 doesn't make much sense.

2           **COMMISSIONER CLARK:** Okay. I understand  
3 your position.

4           Let me ask another question. BellSouth had  
5 asked for clarification of the statement on the  
6 application of a wholesale discount on promotional  
7 offers. And you said, in stating that the wholesale  
8 discount does not apply to short term promotions, the  
9 Commission did not determine which underlying rate  
10 would apply to the short term promotional offer. And  
11 BellSouth appears to be asking such a determination  
12 now.

13           **MS. SHELFER:** I would say, Commissioners,  
14 that the issue that was addressed in that one was  
15 under What Restrictions Should Apply. And the FCC  
16 Order stated that in the case of special promotions  
17 that were 90 days or less, they should not be  
18 discounted.

19           I would say that the Commission really  
20 didn't make any determinations on what rates should  
21 have been applied. But I would say that there's  
22 nothing to stop the companies from selling at the  
23 tariffed rate or negotiating a rate, but what we've  
24 said is that the discount rate will not apply.

25           **COMMISSIONER CLARK:** Well, see, I think it

1 needs clarification because I was confused myself.  
2 And if you want to say that in the Order, either they  
3 charge the rate of the service that's in effect  
4 without the special promotion, or they can charge  
5 something less. I think you need to say that. And I  
6 think that's all they were asking.

7 I mean, as I understood their question is  
8 they didn't know if they could charge the regular  
9 rate. Am I wrong?

10 MS. BROWN: Commissioner, may I refer you to  
11 Page 42 of your order. I don't know if this  
12 completely answers your question, but at least here is  
13 the language and what you specifically said. This is  
14 at the bottom of Page 42, the last paragraph.

15 The FCC Order is clear that promotional or  
16 discounted offerings should not be excluded from  
17 resale. Short term promotions however, those in  
18 effect for no more than 90 days, are not subject to  
19 the wholesale discount. The FCC's rule further  
20 provides that ILECs cannot use these promotional  
21 offerings to evade the wholesale rate obligation.

22 I think implied in the statement that they  
23 are not subject to the wholesale discount is that --

24 COMMISSIONER CLARK: So why don't we say  
25 that? I think that's all they are asking for.

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1 MS. BROWN: How would you clarify  
2 specifically? I hate to ask you a question, but I --

3 COMMISSIONER CLARK: All right. The rate,  
4 it says -- as I understand it, they ask for  
5 clarification, didn't they not?

6 MS. BROWN: Yes, I think so.

7 COMMISSIONER CLARK: I thought they were  
8 just saying if we don't have to have a wholesale  
9 discount, what is the rate we charge. And it's your  
10 regular rate.

11 MR. GREER: And I guess where we fell out  
12 was that that wasn't something the Commission decided.

13 MS. BROWN: That's right.

14 MR. GREER: What they decided was what  
15 services should be excluded from the wholesale  
16 discount.

17 I mean, I agree. I think it falls out that  
18 the other one applies. But the issue was what  
19 services should be --

20 COMMISSIONER CLARK: I guess I see them as  
21 asking for you to state the other side of the coin,  
22 and I don't see anything wrong with that.

23 MS. BROWN: Well, Beth has just handed me  
24 Bell's Motion for Reconsideration. And on Page 24 --

25 COMMISSIONER CLARK: All right. What page?

1           **MS. BROWN:** 24. Right before Paragraph 5,  
2 it states: BellSouth requests clarification that  
3 promotions of less than 90 days may be resold at the  
4 wholesale discount applied to the ordinary retail rate  
5 for the retail service involved in the promotion, not  
6 at the promotional rate.

7           That appears to me to be something that is  
8 quite beyond the evidentiary records.

9           **COMMISSIONER CLARK:** It doesn't to me. It  
10 seems to me that that's the other side of the coin.  
11 You know, what is the difference -- all right. Let's  
12 say that the retail rates for call waiting is \$2, and  
13 they want to offer a promotional discount of less than  
14 90 days, and it's going to be \$1.50. They don't have  
15 to offer a discount on that. But the wholesale  
16 discount on the \$2 charge is 20 cents. They still  
17 have to offer it at \$1.80 as to their competitors.  
18 Isn't that all that that is saying? And isn't that  
19 what we mean?

20           **COMMISSIONER DEASON:** Well, I had the same  
21 question, and I talked to Staff about it yesterday.  
22 And what was explained to me, as I understood it, and  
23 perhaps I misunderstanding, is that the only thing we  
24 are saying in our order is that promotions of less  
25 than 90 days, that they have to be resold. But we

1 didn't specify at what rate. Is that right or wrong?

2 MS. SHELFER: The promotions under 90 days  
3 or less are not subject to the wholesale discount  
4 rate, but they have to be -- promotions have to be  
5 resold. So if you look at the service like  
6 Commissioner Clark just talked about --

7 COMMISSIONER DEASON: So under  
8 Commissioner Clark's scenario, they could resell it at  
9 \$2 --

10 MS. SHELFER: The tariffed rate.

11 COMMISSIONER DEASON: -- not \$2 less 17%.

12 MS. SHELFER: Yes, that's correct. And like  
13 she said, they can resell the tariff rate under the  
14 wholesale discount. They can't discount the  
15 promotion.

16 COMMISSIONER CLARK: Wait a minute.

17 COMMISSIONER DEASON: Okay. That's what you  
18 just explained to me, is what I understood.

19 MS. SHELFER: Yes.

20 COMMISSIONER DEASON: But what about -- they  
21 have to resell it under the tariff rate, not the  
22 promotion rate or a discount applied to the tariffed  
23 rate.

24 MS. SHELFER: That's correct. The discount  
25 applied to the tariffed rate. If it's a promotion of

1 90 days or less, they can still purchase the services  
2 through the discount.

3           **COMMISSIONER DEASON:** Oh, they can apply a  
4 discount to the tariffed.

5           **MS. SHELFER:** To the tariffed. It's just  
6 they can't -- because usually on a promotion they've  
7 bundled stuff together and they offer it without this  
8 or without that. Usually in a promotion it's a  
9 nonrecurring charges way for -- something of that  
10 nature. But if it were a discounted rate, say it was  
11 \$1 and it usually was \$2, they can't purchase the \$1  
12 with the discount, but they can still purchase the  
13 service, the \$2 service, at the wholesale discount  
14 because that's not under the special promotion.

15           **COMMISSIONER CLARK:** And that's all that  
16 that paragraph -- that's all BellSouth is asking us to  
17 say, as I read that paragraph.

18           **MS. SHELFER:** Okay. And I guess the  
19 question is, since that was really not in the record  
20 where we made that actual discussion, but -- and you  
21 believe that it is in the scope of the evidence to  
22 make that.

23           **COMMISSIONER CLARK:** Let me put it to you  
24 this way. Let's go back to the example. Call waiting  
25 is \$2 a month, but they decide -- it's probably not a

1 good example, but it will work -- is that they're  
2 going to offer a promotion for 90 days. If you sign  
3 up now, you will get it for \$1. Since it's less than  
4 90 days, they don't have to resell that and offer a  
5 discount. But AT&T can still buy -- and the discount  
6 we've allowed on that service is, let's say, 20%.  
7 AT&T can still buy the service at \$1.80.

8 MS. SHELFER: Yes.

9 COMMISSIONER DEASON: \$1.60.

10 MS. SHELFER: Whatever the discount.

11 COMMISSIONER CLARK: Thank you. It's not my  
12 strong point. (Laughter)

13 And they cannot buy it at \$1. That's all  
14 that paragraph says to me, and I don't see why we  
15 can't say it. Am I crazy? On this issue.

16 MR. GREER: And I think the only problem is,  
17 is that the issue of what the rate would be was not  
18 before you. I mean, I agree with you that I think it  
19 may --

20 COMMISSIONER CLARK: The math works that way  
21 is all I'm saying.

22 MR. GREER: Well, sure it does. Sure it  
23 does. But, I mean, the issue that was resolved was  
24 what services should the wholesale discount apply to.  
25 It was not, well, okay, for all the things it does

1 apply to, what do you charge.

2           **COMMISSIONER DEASON:** Well, as I understand  
3 what you are saying is the wholesale discount would  
4 apply to the promotional services, but it would be the  
5 discount applied to the tariff rate, not to the  
6 promotional rate if the promotion is 90 days or less.

7           **MR. GREER:** Yes, yes.

8           **COMMISSIONER CLARK:** Right. I agree with  
9 that, and I think that's what that paragraph says.

10           **COMMISSIONER DEASON:** And I think it should  
11 be clarified because it certainly is confusing to me.

12           **MR. GREER:** Okay.

13           **COMMISSIONER CLARK:** Madam Chairman, I think  
14 I only have one more question I want to ask on this  
15 issue.

16           **COMMISSIONER KIESLING:** Let me just ask a  
17 quick kind of procedural question. For example, we  
18 may all be in agreement that there needs to be a  
19 clarification on that one paragraph, because it does  
20 seem that reasonable people can read it differently.

21           How are we going to memorialize that kind of  
22 a decision within one issue? Are we going to --

23           **COMMISSIONER CLARK:** I would just suggest  
24 when we are done with the discussion, somebody has got  
25 to be able to articulate that. And that's usually the



1 Chairman. (Laughter)

2 COMMISSIONER KIESLING: Okay. I can live  
3 with that.

4 CHAIRMAN JOHNSON: I better start writing.

5 COMMISSIONER CLARK: The only other question  
6 I had was on the access to customer records. I have a  
7 concern about the specter of increased slamming,  
8 although I don't necessarily think that we need to  
9 change what we have done regarding access to company  
10 records. I guess my concern is we need to provide  
11 access so competition can take place, but how are we  
12 ultimately going to protect customer's records and  
13 protect against slamming? I mean, how do we balance  
14 those two interests? Do we think we've done an  
15 adequate job?

16 MR. GREER: Commissioners, I guess one of  
17 the biggest problems is a company going into the  
18 company records and just kind of roaming around to see  
19 what they can do. I think they're working on  
20 electronic interfaces to control that. Now, how  
21 that's going to actually work? I don't know.

22 But the way we talked about the information  
23 at the agenda conference was that Section 222 of the  
24 federal law says that essentially the ALECs have the  
25 same responsibilities as incumbent LECs to protect

1 customer information, and they shall not use it for  
2 marketing purposes and that kind of thing. They'll  
3 use it for the provision of service and -- now, is  
4 that the best solution? Maybe not. And are we  
5 concerned about the potentials for slamming? Sure,  
6 always we are. But I don't know any other avenue to  
7 give them access to that information and make it on a  
8 parity basis with the incumbent LEC.

9           **COMMISSIONER GARCIA:** See, I have no problem  
10 with the parity basis, Stan. I just thought that  
11 BellSouth made a good point in that perhaps we should  
12 put into rules very serious consequences for those  
13 people who might engage in slamming, so up front we  
14 know what we are getting into.

15           I agree with you, with everything you've  
16 said. I mean, clearly, we want them to have access.  
17 We want them to be able to deal with the information,  
18 but we should have some type of back up so we don't  
19 end up where we've ended up with the long distance  
20 industry where we are talking about thousands of  
21 complaints a year.

22           **MR. GREER:** And I think we have,  
23 essentially, with what's in the order, you have that  
24 they will not get in those types of slamming problems.  
25 And if they do, then the Commission has their general

1 remedies of show causing them for \$25,000 a day for  
2 violating an order or something of that nature. I  
3 mean, truthfully, it would even be worse than that  
4 because I think they would be violating a federal  
5 order. I mean, that's how I would see to deal with  
6 the slamming complaints, the same as we do today with  
7 the IXC.

8           **COMMISSIONER GARCIA:** Yeah. And we do it  
9 today, and it's a serious problem that we still  
10 haven't brought under control. And we visit it every  
11 once in a while, but yet the complaints keep coming.  
12 My only worry is -- and I agree with everything in  
13 here. But it does bring up a strong point that if we  
14 had some strong structure where people know exactly  
15 what their consequences are -- and you just stated  
16 some of that, but --

17           **MR. GREER:** And I think that it may be --

18           **COMMISSIONER GARCIA:** My fear is the effect  
19 it also has on competition, the negative effect that  
20 it can have for new competitors because there are  
21 always going to be the unscrupulous operators. And I  
22 don't want this brave new world not to start off on  
23 the right foot. And if we right now are right, before  
24 we get in, we can structure this. I think we give  
25 ourselves a safety net to some degree.

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1           **MR. GREER:** And I think we can clearly draft  
2 some rules for alternative local exchange companies as  
3 far as the slamming and those type things. That's  
4 clearly something I think we can do and apply.

5           **COMMISSIONER CLARK:** Is it your suggestion  
6 then that as we issue an order on reconsideration that  
7 we mention that we share a concern about protecting  
8 customers against slamming and point out that we will  
9 be looking at this issue in rulemaking; but in  
10 addition, the federal law covers this, and it would be  
11 a violation?

12           **MR. GREER:** Yeah, that would be a way to add  
13 it and maybe even put some emphasis on the "we're  
14 really serious about this thing." Yeah.

15           **COMMISSIONER CLARK:** Okay. Madam Chair,  
16 then having -- maybe there are other questions that I  
17 can -- when you are ready, I can make a motion.

18           **COMMISSIONER DEASON:** Before we move off of  
19 that subject, just let me indicate that when we get to  
20 the MCI specific arbitration, one of the issues in  
21 there is language concerning access to customer credit  
22 information. Now, I know that's not specifically  
23 addressed in this reconsideration, and I think that is  
24 a serious issue. And I just want to make sure that  
25 this particular issue right here in front of us on

1 reconsideration does not specifically go to that  
2 specific issue on customer credit information.

3           **COMMISSIONER KIESLING:** Well, I hope that  
4 that's also --

5           **COMMISSIONER GARCIA:** Commissioner Deason,  
6 could you repeat the question? I didn't hear the  
7 question.

8           **COMMISSIONER DEASON:** The question is  
9 basically this, in the MCI arbitration, which we are  
10 going to be getting to sometime this afternoon, one of  
11 the issues there is access to customer credit  
12 information. I have a concern about that issue and  
13 Staff's recommendation on that issue.

14           The issue that's in front of us currently on  
15 reconsideration does not specifically address customer  
16 credit information. And I just want to, I guess, put  
17 everyone on notice that I think that is an issue. I  
18 think it's something that we need to address in the  
19 MCI situation. To the extent it has any ramification  
20 here, we need to go ahead and be cognizant of that,  
21 but I'm not sure that it does. Because this seems to  
22 be a broader issue than the more narrow issue of  
23 customer credit information. And that's the nature of  
24 my question.

25           **MR. GRISWOLD:** In terms of the MCI

1 proceeding, it should be customer payment records, not  
2 customer history records -- not credit history  
3 records. We need to make that change, and we will  
4 when it comes up.

5           They baited the hook, and I took it, so to  
6 speak, in writing the recommendation when I shouldn't  
7 have. And there's a couple of other aspects of that  
8 that we can cover when we get to it, or we can do it  
9 now, if you'd like, that I think will clarify that  
10 issue.

11           **COMMISSIONER CLARK:** I'm not sure that it  
12 affects it, and I think we can go ahead. And if we  
13 find that we've made a mistake, we'll come back to it,  
14 I think.

15           **COMMISSIONER DEASON:** That's fine.

16           **CHAIRMAN JOHNSON:** Could we go back to the  
17 one issue, the contract service arrangements -- or  
18 agreements. I understand what our vote was, but I  
19 still am not clear as to why we believe what Kentucky  
20 decided to do was not appropriate, that why just  
21 requiring the resale, but not at the stated discounts  
22 would not be allowable under the FCC's Order.

23           **MS. SHELFER:** The FCC Order specifically  
24 states that wholesale discount must apply. And I  
25 believe that what Kentucky did was in violation of the

1 FCC Order.

2           **CHAIRMAN JOHNSON:** How do they address it?  
3 Do you know at all?

4           **MS. SHELFER:** No, I do not.

5           **CHAIRMAN JOHNSON:** Did they --

6           **COMMISSIONER CLARK:** Madam Chairman, you  
7 know, it looks like a nice way out of it. But I think  
8 there are problems with CSAs, and we've said that.  
9 And to my way of thinking, this sort of illustrates  
10 the problem when they say you have to have the  
11 wholesale.

12           I think we have explained, and with the  
13 addition of the rationale Commissioner Deason has put  
14 in his dissent, we are uncomfortable with these  
15 things. But in some instances we have voted for them  
16 because we feel we are restrained. And I think that  
17 the order indicates that it has to have a discount.  
18 Not only does it have to be resold, it has to have a  
19 discount. And that's just a further problem with what  
20 the FCC has done.

21           **MR. D'HAESELEER:** Commissioners, just from a  
22 historic perspective, there had been occasions when an  
23 FCC Order has come out, and we didn't agree with it,  
24 and we didn't abide by that order, so --

25           **COMMISSIONER CLARK:** Well, I agree with

1 that, Walter. But this is where we are not only  
2 dealing with an order, but we are dealing with a new  
3 law that tells them what they can do. And it's not a  
4 part of the order that I understand is a mistake.

5 MR. D'HAESELEER: I'm just answering Julia's  
6 concern.

7 COMMISSIONER DEASON: It's not part of the  
8 order that what?

9 COMMISSIONER CLARK: Has been stayed. I  
10 don't believe.

11 CHAIRMAN JOHNSON: And that's correct?

12 MS. SHELFER: That's correct; it was not  
13 stayed.

14 CHAIRMAN JOHNSON: The only thing that  
15 bothers me -- Walter, I appreciate that information.  
16 The only thing that bothers me about that, with  
17 respect to this issue, is that a lot of these  
18 agreements will go to them under 271. And to the  
19 extent that there is a rule or an order in a provision  
20 that has not been stayed, that there's not a way to  
21 talk around that, we may later find ourselves having  
22 to prove something that the Bell Company relies upon,  
23 and then it's overturned.

24 MR. D'HAESELEER: In the case I remember, we  
25 were preempted. (Laughter)



1           **CHAIRMAN JOHNSON:** Thank you.

2           **MR. D'HAESELEER:** Yeah, I'm answering your  
3 question.

4           **CHAIRMAN JOHNSON:** I got you.

5           **COMMISSIONER GARCIA:** Always giving us  
6 comfort, Walter.

7           **CHAIRMAN JOHNSON:** Any other comments?

8           **COMMISSIONER CLARK:** Madam Chairman, I am  
9 ready to make a motion, and I would move Staff on  
10 Issue 1, with the exception that I would clarify that  
11 promotions of less than 90 days may be resold at the  
12 wholesale discount applied to the ordinary retail rate  
13 for the retail service involved in the promotion, not  
14 at the promotional rate. I would make that  
15 clarification. And that's my motion.

16           **CHAIRMAN JOHNSON:** Is there a second, or are  
17 there any other amendments that we need to make or  
18 clarifications?

19           **COMMISSIONER DEASON:** I have a question.  
20 And we had a very significant and lengthy discussion  
21 here concerning resale versus unbundling and  
22 rebundling. And I think there was some concern  
23 expressed.

24           Are we going to address that at all in  
25 response to this reconsideration, and you

1 intentionally left that out of your motion? And if  
2 so, why?

3           **COMMISSIONER CLARK:** Because as I understood  
4 what was presented by the Staff, under what we've  
5 approved it can't be -- that we have not made  
6 decisions in the arbitration that cover every service  
7 or element that they would need to recombine to match  
8 a resale of, say, residential service. And,  
9 therefore, it's not covered under this arbitration.

10           If AT&T should request services that could  
11 be recombined, they would have to get together on the  
12 prices of some of those elements. And at that point  
13 it would be right for -- well, No. 1, they might be  
14 able to agree on the prices, and it wouldn't be an  
15 issue. If they can't agree, then it comes back before  
16 us for an arbitration on those network elements and  
17 it's effect on the resale -- possible effect on the  
18 resale price.

19           I don't see it as needing to be addressed  
20 now based on the representation that what we've  
21 approved prices for for unbundled networks, there's  
22 not every element you need to recombine to provide  
23 that service. I don't see it as something we need to  
24 decide now.

25           If you can think of something you want to

1 put in there, I'm amenable to an amendment to the  
2 motion. I just don't see that we need to do it at  
3 this point.

4 COMMISSIONER DEASON: No, I just wanted to  
5 ensure that the fact that your motion was sided on  
6 that that you were somehow acquiescing or backing away  
7 from the previous discussion and saying --

8 COMMISSIONER CLARK: No, I'm not. I'm  
9 basing it on the representation that it can't be done  
10 under what we have approved.

11 COMMISSIONER GARCIA: In essence that we  
12 have not decided that here today?

13 COMMISSIONER CLARK: Right.

14 COMMISSIONER GARCIA: Or we didn't decide  
15 this when this was voted on, correct?

16 COMMISSIONER CLARK: Right. We didn't  
17 decide --

18 COMMISSIONER GARCIA: Let me ask you,  
19 Susan --

20 COMMISSIONER CLARK: We didn't decide  
21 pricing on all the specific elements you need to  
22 recombine --

23 COMMISSIONER GARCIA: Correct.

24 COMMISSIONER CLARK: -- to form a single  
25 service.

1           **COMMISSIONER GARCIA:** Is there some way --  
2 and I guess I ask this to Staff -- that we can  
3 consider something on the slamming? Stan mentioned  
4 something, and then we went on. And either just  
5 saying we are going to go forward and draft some rules  
6 here, or --

7           **COMMISSIONER CLARK:** I guess that I would  
8 request that in the reconsideration we draw further  
9 attention to the requirements of the Act and caution  
10 those companies who will be getting this information  
11 that they must comply with the restrictions on the use  
12 of that customer information and that -- caution them  
13 against slamming.

14           **COMMISSIONER KIESLING:** With that addition,  
15 which was the only thing I was going to add,  
16 hopefully, to your motion, I can second the motion if  
17 made with that additional provision.

18           **COMMISSIONER CLARK:** Consider it done.

19           **MS. SHELFER:** Commissioner Clark, I'd like  
20 to clarify something that you stated on the special  
21 promo just to make sure that I understand what you  
22 wanted.

23           **COMMISSIONER CLARK:** Okay.

24           **MS. SHELFER:** AT&T could purchase the  
25 special promotion rate, they just could not purchase

1 it at the discount; or they could purchase them  
2 individually at the tariffed rate. Was that --

3 COMMISSIONER CLARK: No. No.

4 COMMISSIONER DEASON: It's my understanding  
5 that they cannot acquire that for purposes of resale  
6 at the promotional rate.

7 COMMISSIONER CLARK: That's correct.

8 COMMISSIONER DEASON: They can acquire it at  
9 the tariffed rate with an appropriate discount.

10 MS. SHELFER: And I guess this is where  
11 we're coming in where it really wasn't discussed in  
12 the record. I think what the order said was they were  
13 not to resell it with the wholesale rate, but I don't  
14 believe there's anything to preclude an ALEC from  
15 purchasing it at the promotional rate, just excluding  
16 the discount.

17 COMMISSIONER CLARK: Then you are not  
18 prohibiting the resale -- then you are allowing the  
19 resale, but at the same rate.

20 MS. SHELFER: You are allowing it to be  
21 resold, but not at the wholesale discount.

22 COMMISSIONER CLARK: That's right. But our  
23 order said you don't have to resale promotional rates.

24 MS. SHELFER: In less than 90 days.

25 COMMISSIONER CLARK: Right. And what you

1 are saying is you do, but you don't discount it.

2           **MR. GREER:** I think what our order said was  
3 that you don't apply the wholesale discount to the  
4 promotional less than 90 days. I don't think it said  
5 that you don't resell it.

6           **CHAIRMAN JOHNSON:** Do you have that section?

7           **COMMISSIONER CLARK:** It's on Page 42.

8           **MS. SHELFER:** Yes. At the bottom of Page 42  
9 it says: Short term promotions, those in effect for  
10 no more than 90 days, are not subject to the wholesale  
11 discount.

12           **CHAIRMAN JOHNSON:** I'm sorry, could you say  
13 that again?

14           **MS. SHELFER:** It says: Short term  
15 promotions however, those in effect for no more than  
16 90 days, are not subject to the wholesale discount.

17           **CHAIRMAN JOHNSON:** But is it silent on  
18 whether or not you have to resell?

19           **MS. SHELFER:** I would say yes.

20           **CHAIRMAN JOHNSON:** Is it Staff's opinion  
21 that we are required under the order to resell even  
22 the promotionals less than 90 days at the promotional  
23 rate? The order doesn't go that far, does it? But it  
24 may. That's not a leading question.

25           **MR. GREER:** I'm trying to recall. I don't

1 know that it does.

2           **COMMISSIONER KIESLING:** I mean, I don't  
3 recall that. In my way of analyzing this up until  
4 this discussion today, I had, at least in the scheme I  
5 had created in my mind for how this was going to work,  
6 that a promotion of 90 days or less was simply that.  
7 That it was not a service that could be purchased for  
8 resale whether there was a discount or not.

9           **MR. GREER:** I don't -- I mean --

10           **MS. SHELFER:** I'm reading under the rules on  
11 restrictions of resale. And what it says, it says for  
12 short term promotions an incumbent LEC shall apply the  
13 wholesale discount to the ordinary rate for a retail  
14 service rather than a special promotion rate, only if  
15 such promotion involves rates that will be in effect  
16 for no more than 90 days.

17           So it's under the restrictions of resale;  
18 but when addressing it, it specifically speaks to the  
19 wholesale discount.

20           **COMMISSIONER CLARK:** I'm sorry, Ann. Read  
21 that part again.

22           **MS. SHELFER:** Okay. It says: An incumbent  
23 LEC shall apply the wholesale discount to the ordinary  
24 rate for a retail service rather than a special  
25 promotional rate, only if such promotions involves

1 rates that will be in effect for no more than 90 days.

2 COMMISSIONER CLARK: And that's all it says?

3 MS. SHELFER: That's all it says, yes. It's  
4 under the section Restriction on Resale. I mean,  
5 that's the topic that's under the Rule 51.613.

6 COMMISSIONER CLARK: So you have interpreted  
7 that, as I read this order, that they should be  
8 resold, but not at the discounted rate. That's the  
9 way we have interpreted it.

10 MR. GREER: I don't think we said that. I  
11 think what we said is that the discount rate will  
12 not -- the wholesale discount does not apply to short  
13 term promotionals now. And now that you've brought up  
14 whether or not the FCC's Order contemplates requiring  
15 resale, I mean, the Act's resale requirements,  
16 essentially the retail minus the wholesale -- I mean  
17 or minus the avoided, and that's your wholesale  
18 discount. I don't know that it contemplates resale.

19 COMMISSIONER CLARK: What we need to be  
20 clear is, does the FCC Order say we can exclude  
21 promotions from resale.

22 COMMISSIONER KIESLING: If they are 90 days  
23 or less.

24 COMMISSIONER CLARK: Or does the Order say  
25 they should be resold, but you don't have to apply the



1 discount. There are two different things.

2 MR. GREER: I truthfully don't think it  
3 says.

4 COMMISSIONER CLARK: Well, we characterized  
5 it in our order as saying the FCC Order is clear that  
6 promotional or discounted offerings should not be  
7 excluded from resale. We probably should have stated  
8 that more affirmatively. But it goes on to say,  
9 though, that short term promotions however, those in  
10 effect for no more than 90 days, are not subject to  
11 wholesale discount. So there's two different -- can  
12 we exclude it completely from resale under the FCC  
13 Order? That is the first question we need to --

14 MR. GREER: I don't recall the FCC's Order  
15 ever contemplating it, so I would say probably yes.

16 COMMISSIONER CLARK: Okay.

17 MR. GREER: And I think that would be  
18 consistent with what you proposed as a modification.

19 COMMISSIONER DEASON: I think you are right.  
20 That is consistent with what we are proposing. The  
21 service itself can be resold at the tariffed rate.  
22 The service that's being promoted as a promotion, it  
23 can't be resold at the promotional rate. But the  
24 service, whatever -- I mean, the service is a service.  
25 It's just a question of whether it's a promotion or

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1 whether you want to get it under the tariff.

2           And we are saying it can be resold under the  
3 tariff with the applicable discount rate. But that if  
4 a promotion is less than 90 days, the inherent service  
5 can be resold, but you just buy it at the tariff and  
6 you get whatever wholesale discount applies to that  
7 tariff rate.

8           **MR. GREER:** And I think that's what the  
9 language Ms. Shelfer read said, to me.

10           **CHAIRMAN JOHNSON:** What language she read?

11           **MR. GREER:** The language in the FCC's rules  
12 that said you get the promotional thing at the  
13 ordinary tariff rate minus the wholesale discount.

14           **CHAIRMAN JOHNSON:** And the language that  
15 Commissioner Clark read, BellSouth's clarification  
16 language, would accomplish that.

17           **MR. GREER:** I think that would be  
18 consistent.

19           **CHAIRMAN JOHNSON:** Ann, you don't remember  
20 what she said?

21           **COMMISSIONER CLARK:** If we agree with that,  
22 we have misstated it in our order to begin with, which  
23 to me illustrates why we do need to clarify.

24           **MS. SHELFER:** Would you repeat what you had  
25 said earlier, Commissioner?

1           **COMMISSIONER CLARK:** You see, our order  
2 seems to conclude that it has to be offered for  
3 resale, but you don't discount it. Going back to the  
4 scenario we described, that AT&T -- if there was a  
5 promotion of less than 90 days, and it was \$1 instead  
6 of \$2, then Southern Bell, BellSouth, has to offer  
7 it -- allow AT&T to offer it at \$1. They have to sell  
8 it to them at \$1.

9           What we are saying, as I understand it  
10 today, is they don't have to offer it to AT&T at \$1;  
11 they offer it at \$2, minus 20% which, as Commissioner  
12 Deason pointed out, is \$1.60 not \$1.80. And that's  
13 what the clarification is that we put in our motion --  
14 that I put in my motion that is what was in their  
15 request for reconsideration.

16           **MS. SHELFER:** I believe it could be read  
17 either way, Commissioner. You know, it is silent as  
18 far as --

19           **COMMISSIONER GARCIA:** Excuse me.

20           **MS. SHELFER:** -- the FCC Order in the rule.

21           **CHAIRMAN JOHNSON:** Start over, Ann, I don't  
22 think Joe heard you.

23           **COMMISSIONER GARCIA:** Susan, could you  
24 restate what you think the Order says, or what you  
25 want it to say, because I missed that point.

1           **COMMISSIONER CLARK:** Those are two different  
2 things. I'll just read what our order says when it is  
3 describing what the FCC Order requires. And it says,  
4 the FCC Order is clear that promotional or discounted  
5 offerings should not be excluded from resale. Short  
6 term promotions however, those in effect for no more  
7 than 90 days, are not subject to the wholesale  
8 discount.

9           **COMMISSIONER GARCIA:** And you read that to  
10 mean?

11           **COMMISSIONER CLARK:** That they have to be  
12 offered for resale at \$1.

13           **COMMISSIONER GARCIA:** At the discounted  
14 rate.

15           **COMMISSIONER CLARK:** No, not the discounted;  
16 at the promotional rate.

17           **COMMISSIONER GARCIA:** I'm sorry, at the  
18 promoted rate, or whatever, the promotion rate.

19           **COMMISSIONER CLARK:** The promotional rate.

20           **MS. SHELFER:** That's what we just said.

21           **COMMISSIONER CLARK:** Now the Staff is saying  
22 the FCC Order is not that clear.

23           **MS. SHELFER:** Well, I agree with what you  
24 said then. And what you are saying is that they can  
25 purchase it at the special promotional rate of \$1, but

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1 they can't purchase it at \$1 and have the discount  
2 apply for that.

3           **COMMISSIONER CLARK:** That's my question to  
4 you. Because that's how you have interpreted the  
5 order in our order.

6           **MS. SHELFER:** Yes.

7           **COMMISSIONER CLARK:** The FCC Order. And  
8 then I heard you are say the FCC Order is not all that  
9 clear.

10           **MR. GREER:** The FCC's rules, Commissioners,  
11 what she read would insinuate that -- be consistent  
12 with what you said. But looking back in one of the  
13 paragraphs, 950, it says: We therefore establish a  
14 presumption that promotional prices offered for a  
15 period of 90 days or less not be offered at a discount  
16 to resale.

17           So, I mean, to me that says that it's not to  
18 be offered at a discount to resellers, but it also  
19 insinuates that it can be resold.

20           **COMMISSIONER GARCIA:** Right, just not at a  
21 discounted rate.

22           **MR. GREER:** Right. Maybe we are making it  
23 more difficult than it needs to be.

24           **CHAIRMAN JOHNSON:** So you are saying that  
25 the FCC Order requires the Commission to -- requires

1 the resale of that promotional --

2 MR. GREER: Looking at the language -- I  
3 mean, we are trying to take a quick look at it, but it  
4 looks like that's what it says, is that they can  
5 resell the promotion --

6 CHAIRMAN JOHNSON: Do they have to resell  
7 it? Is it discretionary? I mean, do they have to  
8 resell it?

9 COMMISSIONER KIESLING: Now, that's the part  
10 I want to understand. Do they have --

11 MS. SHELFER: It doesn't specifically say  
12 they have to resell it, but what it says is that the  
13 discount will not apply. So you're under the  
14 assumption that --

15 MR. GREER: -- it must be resold.

16 MS. SHELFER: -- it must be resold, but that  
17 the discount does not apply. I mean, it doesn't  
18 specifically say this, the service has to be resold.

19 MR. GREER: Correct.

20 COMMISSIONER KIESLING: Well, then let me  
21 just understand this then. If it is resold, it can be  
22 resold at the promotional price only for the period  
23 that the promotion is in effect. So when that 90-day  
24 promotion is over, that rate is over even for the  
25 reseller.

1 MS. SHELFER: Yes.

2 MR. GREER: Correct.

3 MS. SHELFER: I mean, to me they are  
4 purchasing a service, and the service is for 90 days  
5 or less. And then when it expires, then that rate  
6 expires, then they purchase it out of the tariff at  
7 whatever that rate is.

8 COMMISSIONER KIESLING: Okay.

9 COMMISSIONER CLARK: Madam Chairman, I am  
10 going to leave my motion as it is, and I'm going to  
11 take the view that the FCC Order does not require that  
12 the promotional service be resold.

13 COMMISSIONER DEASON: At the promotional  
14 rate.

15 COMMISSIONER CLARK: Well -- yeah. The  
16 service itself can be resold just as it -- for purpose  
17 of clarifying the order, that the promotions of less  
18 than 90 days may be resold at the wholesale discount  
19 applied to the ordinary retail rate for the retail  
20 service involved in the promotion, not the promotional  
21 rate.

22 COMMISSIONER KIESLING: Well, then, I'm  
23 going to have to withdraw my second.

24 COMMISSIONER CLARK: Okay.

25 CHAIRMAN JOHNSON: Is there a second?

1           **COMMISSIONER DEASON:** Yeah. I just need  
2 some clarification on the -- I think at Commissioner  
3 Kiesling's urging you added a provision to your  
4 motion. And it had something to do with customer  
5 information and slamming, as I understand it.

6           **COMMISSIONER CLARK:** Right.

7           **COMMISSIONER DEASON:** What is that?

8           **COMMISSIONER GARCIA:** Commissioner Deason,  
9 I'm sorry to -- could you speak into the mike because  
10 it --

11           **COMMISSIONER DEASON:** Okay. I was just  
12 trying to get clarification from Commissioner Clark.  
13 I believe at Commissioner Kiesling's urging,  
14 Commissioner Clark made a modification to her motion  
15 concerning something to do with access to customer  
16 information and possible ramifications on slamming.

17           **COMMISSIONER CLARK:** And that being that  
18 when the order on reconsideration is issued, that we  
19 highlight the companies who are accessing the  
20 information; the requirements of the FCC Order, and  
21 the law in the Telecommunications Act of 1996, as to  
22 the use of that information. And that our Staff will  
23 be pursuing -- reviewing our rules on slamming to  
24 tighten them up to the extent they need to be to  
25 assure that we will have no increase in slamming.



1           **COMMISSIONER DEASON:** Okay. I'm going to  
2 second the motion. And let me say that the area of  
3 contention on the motion seems to be concerning this  
4 promotional offering and discounts -- or not  
5 discounts.

6           I can second Commissioner Clark's motion  
7 because I think to do otherwise than what we've  
8 doing -- first of all, I think there is enough  
9 ambiguity in the FCC's rules that we can interpret  
10 that the way we think the policy should be. And I  
11 think the policy should be consistent with  
12 Commissioner Clark's motion because to do otherwise, I  
13 think, is going to unduly hinder the incumbent LECs,  
14 in this case BellSouth, ability to offer promotions.  
15 And to me, that is what competition is all about, is  
16 to be able to offer promotions and not worry about the  
17 ramifications if your competitor is going to be able  
18 to come in at no cost to themselves and duplicate your  
19 own promotion. So I'm seconding the motion.

20           **COMMISSIONER GARCIA:** Let me state that I  
21 agree with the motion. And as long as it's limited to  
22 the 90 days, then I agree that it's not necessary for  
23 BellSouth to offer that to the competitors because  
24 it's a very limited -- it's a very limited scope.

25           **CHAIRMAN JOHNSON:** It's not necessary for

1 them to offer it to the competitors at that rate, at  
2 the special rate.

3 COMMISSIONER GARCIA: Correct.

4 CHAIRMAN JOHNSON: Okay.

5 COMMISSIONER GARCIA: You can offer it at  
6 the tariffed rate.

7 COMMISSIONER CLARK: So you support the  
8 motion.

9 COMMISSIONER GARCIA: And I think enough has  
10 been given away in terms of other issues today, in  
11 terms of the FCC, that you don't necessarily need to  
12 look at it that way. And as long as it's a 90-day  
13 promotional offer, I think the language that the FCC  
14 provided is ambiguous enough that Commissioner Clark's  
15 definition of it, I think, is well within.

16 MR. GREER: Commissioners, before we take a  
17 vote --

18 CHAIRMAN JOHNSON: Yes.

19 MR. GREER: As bad as I hate to say  
20 something, I think you're right, the FCC's order is  
21 very unclear. And I went back and flipped to the Act  
22 itself. And the resale provision in the Act says the  
23 duty to offer for resale at wholesale rates any --  
24 okay. Excuse me, forget it.

25 CHAIRMAN JOHNSON: There's been a motion and

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1 a second. All those in favor signify by saying aye.

2 COMMISSIONER CLARK: Aye.

3 COMMISSIONER DEASON: Aye.

4 COMMISSIONER GARCIA: Aye.

5 COMMISSIONER KIESLING: Aye.

6 CHAIRMAN JOHNSON: Aye. Show that approved  
7 unanimously. Approved unanimously.

8 Issue 2.

9 COMMISSIONER GARCIA: I wanted to ask, I  
10 guess, Staff about AT&T's position that operator  
11 services are discrete and are separate and maybe to  
12 give me a little bit more argument there from Staff.  
13 Because I think -- I mean, AT&T's position made a lot  
14 of sense to me.

15 MS. SHELFER: Commissioners, how we looked  
16 at services that were resold, such as your B1 or R1  
17 service, it's all encompassed. It's not a piece of  
18 one thing. You are not purchasing just the dial tone  
19 or the 911 separate or access to directory assistance  
20 or to operator services. It's one service that they  
21 are purchasing under a resale agreement. Whether or  
22 not AT&T provides its own operator services or  
23 directory assistance services does not -- I mean,  
24 really doesn't matter because BellSouth still has to  
25 provide those services because, like I said, you are

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1 buying in a function of -- I mean, the entire service,  
2 not a piece of it. So that would still be --

3           **COMMISSIONER GARCIA:** But AT&T makes the  
4 argument that the Commission overlooked the fact that  
5 operator services are a discrete service separate and  
6 apart from other local services. And that this  
7 service has its own discreet tariffs, terms, and rates  
8 and recovers its cost from these rates.

9           **MS. SHELFER:** And I would say that we didn't  
10 overlook it, that even though they are separate and  
11 discrete services, whenever you order an R1, you don't  
12 contact a separate company to get your operator and  
13 your directory assistance. It comes with your  
14 service, just like your access to E-911 is. If  
15 operator services, if AT&T wants to provide those  
16 services, then it can do it under an unbundled basis  
17 and purchase the other pieces as well. When Staff --

18           **COMMISSIONER GARCIA:** I have a problem with  
19 that definition because, for example, I'll talk about  
20 my local phone here in Dade County. I have a whole  
21 series of options that are now on my phone, which I  
22 have and paid for, I pay to have those services added  
23 to my phone. In other words, I can have Caller ID if  
24 I dial a specific number, and I find out who called  
25 me. I pay more than the person who's buying that as

1 part of their service because it's an additional  
2 service.

3 But in terms of operator services, because  
4 the company makes -- that's not built into the rate.  
5 That's a separate and additional cost. We shouldn't  
6 necessarily be lumping it into the cost of resale.

7 MR. GREER: Commissioner, I'm not for sure I  
8 would say that it's not built into the rate. I mean,  
9 the services that they're providing as a local  
10 company, operator services is one of them. Now,  
11 granted, you get charged some rate for providing  
12 operator service. But does that mean that individual  
13 charge picks up all that cost?

14 I mean, the way you either do the resale to  
15 me, is you do a specific avoided cost study for every  
16 service that you have in order to make it right. Now,  
17 that's probably the best way to do it, but we don't  
18 want to have to go through that. So we put in the  
19 pieces that BellSouth used to provide local service.

20 Operator service is a piece of local service  
21 to me, just as E-911, and repair, and all that type of  
22 stuff. And so when we develop the resale rates,  
23 that's how we put all the pieces together, because it  
24 says retail service. And the retail service is R1 or  
25 B1, which includes those types of capabilities.

1           **COMMISSIONER CLARK:** Madam Chairman, if  
2 there are no other questions, I can move Staff on  
3 Issue 2.

4           **CHAIRMAN JOHNSON:** Second.

5           **COMMISSIONER GARCIA:** I'm sorry?

6           **CHAIRMAN JOHNSON:** She moved Staff on  
7 Issue 2 if there are no other questions. Do you have  
8 any other questions?

9           **COMMISSIONER GARCIA:** No, I don't think so,  
10 unless anyone is going to join me in the argument. I  
11 guess not. (Laughter)

12           **CHAIRMAN JOHNSON:** There's been a second.  
13 All those in favor signify by saying aye.

14           **COMMISSIONER CLARK:** Aye.

15           **COMMISSIONER DEASON:** Aye.

16           **COMMISSIONER KIESLING:** Aye.

17           **CHAIRMAN JOHNSON:** Aye.

18           Opposed.

19           **COMMISSIONER GARCIA:** Aye.

20           **COMMISSIONER KIESLING:** You mean nay?

21           **COMMISSIONER GARCIA:** I'm part of the  
22 majority.

23           **CHAIRMAN JOHNSON:** You're with the majority?

24           **COMMISSIONER GARCIA:** Yes.

25           **CHAIRMAN JOHNSON:** Show the issue approved

1 unanimously.

2 COMMISSIONER CLARK: And I can move Issues 3  
3 and 4.

4 COMMISSIONER DEASON: Second.

5 CHAIRMAN JOHNSON: Show them approved  
6 unanimously.

7 COMMISSIONER CLARK: Do you all need a  
8 break? Do you want a break, or do you want to keep  
9 going?

10 COMMISSIONER KIESLING: Well, I don't need a  
11 break if I can get someone to go get me a Coke.

12 CHAIRMAN JOHNSON: Okay.

13 COMMISSIONER CLARK: I'm fine.

14 COMMISSIONER KIESLING: Do I see any  
15 volunteers?

16 COMMISSIONER CLARK: Joe, do you -- Joe's  
17 already gotten up and walked around. He doesn't need  
18 a break.

19 CHAIRMAN JOHNSON: Staff.

20 MR. GREER: I would probably like to go with  
21 the AT&T one first.

22 CHAIRMAN JOHNSON: Okay.

23 MR. GREER: Commissioners, we tried to set  
24 the recommendations up with essentially three  
25 different areas. The first being the areas that the

1 company has agreed to and that we think is consistent  
2 with 251 and should be approved.

3           The second area would be the areas that were  
4 not -- the parties could not agree to that we did not  
5 believe was either directly associated with their  
6 issue or fell out of an issue. And we've proposed to  
7 exclude those from -- to not establish language by the  
8 Commission to include into the agreement.

9           And then there's the areas that the parties  
10 that were at dispute -- and we believe that they are  
11 part of the arbitration proceeding, and we should  
12 establish language for those sections.

13           And we can go issue by issue if you want to,  
14 or however you want to proceed through it.

15           **CHAIRMAN JOHNSON:** Commissioners, what's  
16 your pleasure?

17           **COMMISSIONER CLARK:** I think issue by issue  
18 has worked because I have some questions.

19           **CHAIRMAN JOHNSON:** Okay.

20           **COMMISSIONER CLARK:** I can move Issue 1.

21           **COMMISSIONER DEASON:** Second.

22           **CHAIRMAN JOHNSON:** Show it approved without  
23 objection. Issue 2.

24           **COMMISSIONER CLARK:** I have a question. It  
25 just wasn't clear to me what happens when there is the



1 necessity of mediation.

2 MS. SIRIANNI: When there is a necessity for  
3 mediation?

4 COMMISSIONER CLARK: Right.

5 MS. SIRIANNI: Like are you asking how that  
6 would be accomplished?

7 COMMISSIONER CLARK: Yeah. You say here --  
8 and maybe it's because I needed to book it. I'm not  
9 sure I've looked at the language specifically.

10 MS. SIRIANNI: Well, the reason that there  
11 might be a need for the mediation would basically be  
12 so that the transfer -- (Telephone static.)

13 I'm, like, is that me?

14 CHAIRMAN JOHNSON: Joe.

15 COMMISSIONER KIESLING: Hey, Joe.

16 CHAIRMAN JOHNSON: Hey, Joe, stop playing  
17 with the phone.

18 COMMISSIONER CLARK: He's not here so we  
19 could reach out and grab him when he --

20 COMMISSIONER GARCIA: No, but it appears  
21 that I can reach out and grab you. (Laughter)

22 COMMISSIONER CLARK: Maybe I just  
23 misunderstood.

24 MS. SIRIANNI: Well, all I was going to say  
25 was that the reason for the need of mediation would be

1 to ensure that the information that was going into the  
2 SCP, that the informations could talk to each other,  
3 that they were on the same language or what not. And  
4 that need would be there whether it was going into  
5 BellSouth's SCP or if it was going the other way.  
6 It's just a -- to enable the --

7           **COMMISSIONER CLARK:** I don't understand why  
8 you agree that the language doesn't need to be in  
9 there then. I guess that's what I -- AT&T proposes  
10 language that would require BellSouth's local switch  
11 to recognize AT&T's SCP at parity with BellSouth's SCP  
12 in all cases including when a mediation device is  
13 used. That is what I understand the substance of  
14 their proposed language to be.

15           And why are you saying it's not necessary?

16           **MR. GREER:** Commissioners, essentially what  
17 we did in the proceeding was that -- we said that you  
18 interconnect at the STP level, not the SCP level, and  
19 that you do your mediation at the STP level, not the  
20 SCP level. So we really essentially said that you  
21 don't get direct access to the SCP. The mediation  
22 goes at the STP which is a step below the SCP. And so  
23 I think it's contradictory to what we order, for the  
24 most part.

25           **MS. SIRIANNI:** If I can help, you are asking

1 why we want to delete this section?

2           **COMMISSIONER CLARK:** Yes. What is your  
3 rationale? To me, I did not understand the rationale  
4 why this language shouldn't be in there. That's all.

5           **MS. SIRIANNI:** The previous section to this  
6 basically states that the mediation device may be  
7 needed. This section specifically stated that they  
8 wanted it at parity exactly -- I mean, like, with no  
9 delay at all.

10           We never said, even in the order, that it  
11 was, I guess, silent, that it would be exactly at  
12 parity. I mean, there may be maybe 100th of a second,  
13 maybe 1,000th of a second. We're not really sure, but  
14 it's not going to be exactly, I mean, at parity  
15 because you have to, in order to do the mediation,  
16 it's going to take some time. Now how much time that  
17 will take, I really can't say, but I know it's very  
18 small.

19           So all this paragraph did was to expand on  
20 the fact that it should be at parity. The prior  
21 portion of the arbitration agreement said --

22           **COMMISSIONER CLARK:** Now, I understand.  
23 What you are saying is that when we had our discussion  
24 on this we understood that mediation may be necessary.

25           **MS. SIRIANNI:** Right.

1           **COMMISSIONER CLARK:** And mediation does  
2 introduce some delay.

3           **MS. SIRIANNI:** Exactly.

4           **COMMISSIONER CLARK:** So it is not at parity,  
5 and that's why you are not --

6           **MS. SIRIANNI:** Right.

7           **COMMISSIONER CLARK:** All right.

8           **MS. SIRIANNI:** The previous subpart of this  
9 has language in it that says mediation may be needed,  
10 I mean, so it's still in the agreement.

11           **COMMISSIONER CLARK:** And it's with the  
12 understanding that you can't get maybe a parity when  
13 there is mediation.

14           **MS. SIRIANNI:** Exactly.

15           **COMMISSIONER CLARK:** All right. I move  
16 Issue 2.

17           **COMMISSIONER DEASON:** Second.

18           **CHAIRMAN JOHNSON:** Show it approved without  
19 objection.

20           Issue 3.

21           **MR. STAVANJA:** Commissioners, Issue 3  
22 addresses whether or not the Commission should address  
23 the pricing and language disputes for unbundled  
24 network elements between AT&T and BellSouth. Staff  
25 recommends that the Commission establish language for

1 the pricing sections that are in dispute as discussed  
2 in Staff's analysis.

3           **CHAIRMAN JOHNSON:** Any questions?

4           **COMMISSIONER DEASON:** Well, I have a  
5 question on selective routing. I guess it's more of a  
6 clarification.

7           You are recommending that the Commission not  
8 set a nonrecurring charge for selective routing. And  
9 by that I mean -- I understand you to mean that that  
10 was not arbitrated, that we cannot set a rate. That  
11 does not mean that the service is to be provisioned at  
12 zero cost; it's that before the service is to be  
13 provisioned, the parties are going to have to get  
14 together on a rate because we do not have the  
15 information in front of us to know what the rate  
16 should be.

17           **MR. STAVANJA:** Right.

18           **COMMISSIONER DEASON:** That is the  
19 recommendation.

20           **MR. STAVANJA:** That's the recommendation.

21           **COMMISSIONER CLARK:** Thanks. I do have a  
22 question. You need to clarify for me on -- AT&T made  
23 the argument that -- and I'm on the bottom of Page  
24 9 -- that they should not have to pay nonrecurring  
25 charges when ordering a combination of network

1 elements that are already combined.

2           How does that square with what we just did  
3 on reconsideration where they have duplicative costs?  
4 And we're saying that if it's duplicative, it  
5 shouldn't be charged?

6           **MR. STAVANJA:** Yes. In the reconsideration  
7 we said wherever there's duplicate charges associated  
8 when combining several elements, we should remove  
9 those duplicate charges.

10           What AT&T is asking for here is that if the  
11 elements are already combined, they shouldn't have to  
12 pay a nonrecurring charge to Bell to put them together  
13 because they are already together. The service is  
14 already being provided to the end user.

15           **COMMISSIONER CLARK:** That's not a  
16 duplicative service cost.

17           **MR. STAVANJA:** That's not the same. What  
18 was in the reconsideration is there are -- the  
19 nonrecurring costs were set per element. Okay? So  
20 you've got, for example -- and I used this in the  
21 recommendation -- that service ordering, there's a  
22 service order charge when one element is ordered. If  
23 you order two elements, you're going to pay two  
24 service ordering charges. You really shouldn't have  
25 to. There should only be one service ordering charge.

1           **COMMISSIONER CLARK:** Okay.

2           **MR. STAVANJA:** That's that example. Here  
3 what's going on is that if, for example, you've got  
4 service to your house, your residence, if AT&T were to  
5 come to you and say we've got a deal for you, we want  
6 you to switch to us, and you say okay. And then they  
7 go to the LEC and say, we want Commissioner Clark's  
8 service now, but we want to offer it based on  
9 unbundled elements, and they purchase those unbundled  
10 elements, they are going to have to pay nonrecurring  
11 charges for each and every element. But the service  
12 is already in place. Those elements are already  
13 hooked up, and they are saying we shouldn't have to  
14 pay for the nonrecurring charge for each element. The  
15 service is already -- all those elements are already  
16 hooked up. And this wasn't addressed in the  
17 proceeding, and we are saying we can't do anything  
18 about it.

19           **MR. STAVANJA:** We were talking about risk  
20 earlier, and this is one of the risks that the company  
21 is going to have to assume when they want to put  
22 unbundled elements together. I mean, the cost to pay  
23 an unrecurring charge for each element is not cheap,  
24 and they can't impose that cost on the end user.

25           I mean, why would you want to -- you as an

1 end user who already has a service, if AT&T came to  
2 you and said, yeah, we're going to provide you the  
3 service now, but, you know, we're going to have to hit  
4 you up for \$200.00, or whatever, for a hookup charge,  
5 I don't think I would take it. I think I would be  
6 happy to stay with the service I have.

7 AT&T, in other words, is going to have to  
8 eat that charge, those nonrecurring charges, and  
9 they're going to have to recoup those costs through  
10 the services that you get from them; and that's the  
11 risk that they take when they go with unbundled  
12 elements as opposed to resale.

13 COMMISSIONER CLARK: I feel like saying "If  
14 you say so, okay," but I still don't -- it sure looks  
15 like what was being talked about in the duplicative  
16 service. I guess I'm not understanding your  
17 distinction.

18 MR. STAVANJA: Well, okay. In this  
19 situation, given that you've already approved that the  
20 duplicate charges need to come out of nonrecurring  
21 charges --

22 COMMISSIONER CLARK: Wait a minute. You're  
23 going too fast, Wayne.

24 MR. STAVANJA: All right.

25 COMMISSIONER CLARK: What we said on



1 reconsideration, if there are duplicate charges -- if  
2 you order two parts of a service and both of them have  
3 a service ordering charge connected with them as part  
4 of their charge, you're going to eliminate one service  
5 order charge because it duplicates it, correct?

6 MR. STAVANJA: Right.

7 COMMISSIONER CLARK: Now, what is the  
8 difference here in this one?

9 MR. STAVANJA: In this one those two  
10 charges -- okay. You used an example of two charges  
11 just now, or two elements. Here if it only took two  
12 elements to provide this service, they would -- they  
13 would have -- Bell is saying if those two elements are  
14 already combined, we should not have to pay any  
15 nonrecurring charge because they're already combined.

16 MR. GREER: It's the duplication of service  
17 in that if I just want to go and say, I want to  
18 resell -- I want to duplicate this service, but that  
19 service is already provisioned, and they ask for the  
20 unbundled rates, they want to say, well, the  
21 nonrecurring charges don't apply. And we're saying,  
22 no, well, you asked for the unbundled rates, they do  
23 apply.

24 COMMISSIONER CLARK: Got you.

25 MR. GREER: And that's why we're --

1                   **COMMISSIONER CLARK:** All right. I'm okay  
2 with it now.

3                   **CHAIRMAN JOHNSON:** Any further questions in  
4 Issue 3?

5                   **COMMISSIONER CLARK:** I move Staff.

6                   **CHAIRMAN JOHNSON:** Show it approved without  
7 objection. Issue 4?

8                   **MS. SHELFER:** Issue 4 is "Should the  
9 Commission establish language for the disputes --  
10 associated -- with the resale between AT&T and Bell.  
11 Has to do with contract service arrangements again.

12                   Staff recommends that our language be  
13 approved. AT&T has asked to -- that it would like to  
14 know what CSAs are available for resale, and BellSouth  
15 will provide the information if AT&T specifically  
16 identifies the CSA. And the Commission already has  
17 CSAs reported to it quarterly, and so Staff is  
18 recommending that BellSouth provide it instead of  
19 quarterly every 30 days to AT&T and list the level of  
20 detail in which it files with the Commission; and if  
21 AT&T has a specific CSA, BellSouth is in agreement  
22 that it will provide the information within 10 days.

23                   **COMMISSIONER DEASON:** Why are we adding the  
24 requirement, the 30-day requirement? Right now  
25 they're required to file this information with the

1 Commission quarterly?

2 MS. SHELFER: Yes, quarterly.

3 COMMISSIONER DEASON: So why are we  
4 requiring this information to be provided every 30  
5 days?

6 MS. SHELFER: Well, AT&T had asked that it  
7 get the information -- an effective date, like 30 days  
8 before the effective date of a CSA; and I thought 30  
9 days was a reasonable -- that they could provide their  
10 list. Then AT&T, or whomever, can look and make its  
11 decision on which ones it wants to request from  
12 BellSouth.

13 MR. GREER: I guess, Commissioners -- I  
14 mean, when they enter the contract, they may tie the  
15 customer up. I mean, it could be a possibility that  
16 there would be a considerable liability -- termination  
17 liabilities for the customer if they enter the  
18 contract. I mean, if this 30-day notice gets to AT&T,  
19 they can say, hey -- you know, go to the customer,  
20 we've got a deal for you that's better. I mean, yeah,  
21 it's not --

22 COMMISSIONER DEASON: Well, I thought this  
23 was already consummated CSAs, not proposed CSAs.

24 COMMISSIONER KIESLING: It says "current".

25 MR. GREER: Correct. I mean, but I think

1 what AT&T wants to see is beforehand; isn't that  
2 right?

3 COMMISSIONER DEASON: Well, that's what I'm  
4 having trouble reconciling.

5 MS. SHELFER: I would say that you don't  
6 have a CSA until you have a signed agreement, and I  
7 believe what they report to us are the contracts, the  
8 CSAs, which is an agreement; and I believe that's what  
9 AT&T is looking at.

10 COMMISSIONER DEASON: They provide to us the  
11 what?

12 MS. SHELFER: They provide us quarterly  
13 their CSAs.

14 COMMISSIONER DEASON: That they have  
15 actually entered into? Or they are proposing?

16 MR. GREER: No, I believe they have --

17 MS. SHELFER: They have actually entered  
18 into. It's not a -- it is an agreement already, and  
19 then they provide us some of the terms and conditions  
20 and details under which those agreements were -- and I  
21 believe that's what AT&T is asking for, not someone  
22 that they are soliciting or may have an agreement  
23 pending. I would believe that those are not CSAs.

24 COMMISSIONER DEASON: Then my question still  
25 remains. If we want this information here at the

1 Commission quarterly, why do we want them to provide  
2 it to their competitor every 30 days?

3 MS. SHELFER: No specific reason. I thought  
4 30 days was reasonable.

5 MR. GREER: We were trying to find some  
6 notice capability other than a quarterly, because  
7 quarterly is kind of a long period.

8 COMMISSIONER DEASON: Is there a cost on  
9 Bell in providing this information more often than  
10 what is required by Commission policy, and if so, who  
11 is going to pay that cost?

12 MR. GREER: Well, when they file a  
13 quarterly, it's broken down by the month. So, I mean,  
14 it's not like we get a big list per quarter. It gets  
15 broken down by the month, that they fill it out, so I  
16 can't see it being too big of a problem.

17 MS. SIMMONS: Commissioner Deason, there is  
18 a sheet supplied for each contract entered into, so I  
19 don't think the frequency of providing the information  
20 would be that much of a problem.

21 COMMISSIONER DEASON: What do we do with the  
22 information when we get it quarterly?

23 MR. GREER: Well, an example, that we --  
24 that people can come in and look and see whether or  
25 not they want to get the same contract service

1 arrangement, that they identify the service, they  
2 identify what the discount is from the tariff rate and  
3 that kind of thing. And sometimes we get into the  
4 situations as we did like with Monroe County and  
5 complaints with the CSA and what they're providing in  
6 the CSA and trying to keep up with what -- what has  
7 CSA authority. Now, that may be a little different in  
8 this day and age, but --

9           **COMMISSIONER DEASON:** Well, I guess that  
10 kind of goes back to one of my basic points. It seems  
11 to me we required CSA information back in the days of  
12 the rate based regulation in trying to prevent  
13 customers from subsidizing other customers, and it  
14 seems to me under a price cap scheme that we have  
15 these days, the need for that is diminished and we may  
16 not even need the quarterly information; but Staff is  
17 wanting the incumbent LEC to provide it to their  
18 competitor every 30 days.

19           **MR. GREER:** Except for there's a -- there's  
20 a requirement that CSAs be resold. And outside of  
21 some type of reporting requirement, there's no way for  
22 a competitor to know what CSAs they've entered into  
23 and what they haven't. And I would agree that we  
24 don't want to get too detailed on what we get, but as  
25 far as just identifying certain things.

1           **COMMISSIONER DEASON:** Well, are you not by  
2 doing this allowing the competitor to have open access  
3 to all of the bottom line marketing efforts of  
4 BellSouth? They don't have the -- the competitor does  
5 not have to employ the same amount of marketing and  
6 efforts to go and contact the customer and try to find  
7 out what their needs and concerns are and try to  
8 tailor a service arrangement which meets their needs.  
9 All they've got to do is wait every 30 days, find out  
10 what Bell did, and then go and try to undercut them.  
11 They'll have 1/100th of the marketing staff that Bell  
12 has to have. And is that fair competition?

13           **COMMISSIONER GARCIA:** Well, even less than  
14 that, Commissioner. All they have to do is go up and  
15 offer them 15 -- 16 percent discount --

16           **COMMISSIONER DEASON:** Yeah, and make it a --

17           **COMMISSIONER GARCIA:** -- to write exactly  
18 the same service.

19           **MR. GREER:** But, I mean, is it also fair  
20 competition for Bell to be able to enter into CSAs and  
21 not ever report that to anybody?

22           **COMMISSIONER DEASON:** What prevents AT&T  
23 from going and contacting a customer and not telling  
24 Bell they've got a special deal for customer X?

25           **MR. GREER:** I would argue that AT&T is not

1 the incumbent LEC here, and that they don't have the  
2 same requirements under the federal law as the  
3 incumbents do. They don't have the --

4           **COMMISSIONER GARCIA:** Stan, but what  
5 keeps --

6           **COMMISSIONER CLARK:** Commissioners --

7           **COMMISSIONER GARCIA:** But what keeps AT&T  
8 from sitting back and every 30 days they get their  
9 list; here's 100 new businesses being offered CSAs,  
10 and they simply go to those businesses and say, we'll  
11 give you the same, exact deal?

12           **MR. GREER:** The termination liabilities  
13 within the contract for the customer stops them from  
14 doing that.

15           **COMMISSIONER CLARK:** Commissioners, I think  
16 we need to remember that what we're trying to  
17 accomplish here is not set the rules for a market  
18 where there is currently free and full competition; we  
19 are trying -- it's a transitional phase of introducing  
20 competition into a market where one of the competitors  
21 has the entire market; and it's the same thing that we  
22 had to go through -- or we didn't have to go through,  
23 but we played some role in it -- that was when -- that  
24 the court went through when there was a divestiture,  
25 AT&T and the Bell operating companies.



1           To me, these are interim measures to  
2 stimulate the competition, and that's the reason you  
3 have more requirements and more reporting requirements  
4 on the incumbent LEC at this point.

5           Ultimately, I agree with you, Commissioner  
6 Deason, that when you have competition and when you  
7 have competition in the local market such that you  
8 don't have a bottleneck, then people ought not to have  
9 to disclose things to their competitor --

10           MR. GREER: And when the --

11           COMMISSIONER CLARK: -- but the fact is,  
12 we're in a transitional phase of --

13           COMMISSIONER GARCIA: So, Stan, will you --  
14 what Stan's argument is, is basically that because  
15 these contract service arrangements have specific time  
16 arrangements, that then the person will not get out of  
17 the contract?

18           MR. GREER: Well, there's generally -- in  
19 contracts, there's termination liabilities built in  
20 for the customers, and the customers got to -- you  
21 know, to switch to AT&T, they may have to pay a big  
22 up-front cost to do that.

23           COMMISSIONER GARCIA: So then why does AT&T  
24 need this service within 30 days? Why do they need to  
25 know --

1           **MR. GREER:** It could be a contract that they  
2 have a similarly situated customer that wants those  
3 same terms and conditions, and they may be able --

4           **COMMISSIONER GARCIA:** Okay.

5           **COMMISSIONER CLARK:** And I think Staff has  
6 brought up the notion of predatory pricing, too. If  
7 you don't require some disclosure of --

8           **COMMISSIONER GARCIA:** Yeah.

9           **COMMISSIONER CLARK:** -- these CSAs, then  
10 Bell could move all its marketing to -- or all its  
11 service to some sort of CSA, and if you never had to  
12 disclose it, competitors would never know what was --

13           **COMMISSIONER GARCIA:** So the only way -- the  
14 only way then that, for example, AT&T could use this  
15 would be to simply at the end of 30 days they get --  
16 Clark's Construction Company got some X deal with  
17 Southern Bell, but clearly that contract probably has  
18 some limitations from Clark's Construction leaving  
19 that, but they could turn around and say, well, we  
20 want that particular contract arrangement with this  
21 similarly situated client, and BellSouth would have to  
22 give it to them at a discount?

23           **MR. GREER:** That's a possibility, or they --  
24 I think that's a possibility, or they could --

25           **COMMISSIONER GARCIA:** Or they --

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1           **MR. GREER:** -- agree to pay the termination  
2 liabilities for the customer and pick up the customer  
3 if they think they'd generate enough revenue.

4           (Simultaneous comments.)

5           **COMMISSIONER DEASON:** Are you telling me  
6 that a competitor can go to Bell and say, "All right,  
7 I see you got a CSA for ABC Company --

8           **UNIDENTIFIED SPEAKER:** Commissioners --

9           **UNIDENTIFIED SPEAKER:** No.

10          **COMMISSIONER DEASON:** -- I want the same  
11 deal for XYZ?"

12          **UNIDENTIFIED SPEAKER:** No.

13          **UNIDENTIFIED SPEAKER:** No.

14          **MS. SHELFER:** No. No, I would say that a  
15 CSA is customer specific and the resale of it is to  
16 that specific customer. If you can't -- you know, if  
17 AT&T wants to create a contract on its own with one,  
18 then that's different, but they -- I don't believe  
19 they can resell BellSouth's CSA to another customer.  
20 It goes to the exact --

21          **COMMISSIONER GARCIA:** Okay. Then --

22          **MS. SHELFER:** I'd also --

23          **COMMISSIONER GARCIA:** Then why was -- then  
24 the only reason AT&T would want this is to simply be  
25 able to target their marketing at that specific

1 customer that Southern Bell has already signed, is  
2 already sealed and delivered, basically, and all that  
3 AT&T would want this information for is to be able to  
4 cost out its losses on that contract over a specific  
5 period of time and take that customer?

6 MS. SHELFER: I don't disagree with you,  
7 Commissioner. I believe they're based on the order  
8 that we -- they have to be resold. So, you know, I  
9 don't disagree with what you're saying. I believe to  
10 be in compliance with the order, AT&T has the right to  
11 resell the CSAs, and if they're not aware of that,  
12 then I don't know how they can compete; and I guess  
13 that's the problem where --

14 COMMISSIONER DEASON: They employ their own  
15 marketing staff, and when they go out and contact ABC  
16 Company and ABC says, sorry, we just signed a deal  
17 with BellSouth, that's when they find out about it,  
18 and then they call BellSouth that we want to see the  
19 exact deal you cut with ABC Company.

20 MS. SHELFER: Okay. Also, the requirements  
21 that we have for the information that they file with  
22 us, BellSouth on the CSA, only requires a case number,  
23 location, description of the CSA, the reason and the  
24 contract rates. So if the customer is located -- you  
25 know, I mean, they can track them down by the

1 location, but there is no customer name; it's by case  
2 number. So it's going to be a little more work to it  
3 than just go through and picking them out, but --

4 MS. SIMMONS: I was going to add, having  
5 looked at some of those reports recently, I believe  
6 that the location is simply the name of the city in  
7 many cases.

8 Just a couple things I wanted to mention.  
9 They may or may not be pertinent at this point in the  
10 discussion, but I wanted to mention that a CSA, of  
11 course, is only used once there is some competitive  
12 activity. Otherwise, there would be no reason for the  
13 LEC to want to enter into one. That was one thing.

14 And I also wanted to make you aware that the  
15 reports we have to date are public information. I did  
16 some checking, and we have never had a request for  
17 confidentiality in any of the reports we presently  
18 have in our possession.

19 COMMISSIONER DEASON: And I don't dispute  
20 any of that. That's fine. My only question is, we  
21 provide the information to be filed with us. We want  
22 it quarterly. We have two positions here which the  
23 parties could not agree on, and I'm inclined to go  
24 with one of the other instead of trying to draft a  
25 compromise; and I'm wanting to know before I take that

1 position why it is so essential that we impose a  
2 30-day requirement instead of what we would require  
3 here for our own purposes, and that's quarterly. And  
4 I understand -- I guess -- I've gotten an explanation  
5 as to why. I'm not asking the question again, but  
6 that was the nature of the question.

7 CHAIRMAN JOHNSON: Is there a motion?

8 COMMISSIONER DEASON: I move we deny Staff,  
9 approve BellSouth's position on Issue 4.

10 CHAIRMAN JOHNSON: Is there a second?

11 COMMISSIONER GARCIA: I'll second.

12 CHAIRMAN JOHNSON: There's been a motion and  
13 a second that we deny Staff on Issue 4 and that we  
14 adopt the language proposed by Bell. All those in  
15 favor signify by saying aye. Aye.

16 COMMISSIONER GARCIA: Aye.

17 COMMISSIONER DEASON: Aye.

18 COMMISSIONER KIESLING: Aye.

19 CHAIRMAN JOHNSON: Opposed?

20 COMMISSIONER CLARK: Nay.

21 CHAIRMAN JOHNSON: Show the BellSouth  
22 language adopted by a vote of 4 to 1. Issue 5.

23 COMMISSIONER KIESLING: Before we take up  
24 Issue 5, we're having an equipment problem, which I'm  
25 trying to pass on now. Apparently there's something

1 that has to be done at Joe's end to keep that feedback  
2 that we can barely hear but that is coming through  
3 loud and clear on the court reporter's headphone, so  
4 she's hearing two different things at the same time.  
5 And it's an echo suppressor, echo canceler at your  
6 end, Joe. If there's any technical person around  
7 there who can do that, it needs to be done  
8 periodically.

9           **COMMISSIONER GARCIA:** Let me try to get  
10 someone here and let me see what I can do.

11           **COMMISSIONER KIESLING:** Sorry about that.

12           **COMMISSIONER GARCIA:** No; no problem. Give  
13 me a second, though, because I have a point I'd like  
14 to make on the next issues.

15           **CHAIRMAN JOHNSON:** We'll take a few minutes'  
16 break until Commissioner Garcia returns.

17           (Brief recess.)

18           **CHAIRMAN JOHNSON:** We're on Issue 5.

19           **MS. NORTON:** I believe Commissioner Garcia  
20 said he had a question.

21           **CHAIRMAN JOHNSON:** We'll come back if  
22 necessary.

23           **COMMISSIONER DEASON:** Well, I have a  
24 question on Issue 5. Basically Staff is recommending  
25 that the AT&T proposed DMOQ should be adopted absent

1 any reason why they should not. That's the way I read  
2 the recommendation. My question is -- and perhaps I'm  
3 stepping ahead a little bit, but I know that there are  
4 numerous issues in the MCI arbitration where BellSouth  
5 contends that some of the tracking and reporting  
6 requirements cannot be accomplished under present  
7 systems. My question is, did they make that argument  
8 in relation to what AT&T is proposing here?

9 MS. NORTON: No; did not, not so  
10 specifically. All Bell said was, let's take six  
11 months and figure it out; there's no rush. They said  
12 that that's within the intent of the Commission, and  
13 it was -- Staff disagreed with that approach and said  
14 they were supposed to bring something back in this  
15 agreement; and we took what was brought back.

16 COMMISSIONER DEASON: So there was no  
17 assertion by BellSouth that what AT&T is requesting  
18 could not be accomplished within their current --

19 MS. NORTON: They did not make that  
20 assertion; that's correct.

21 COMMISSIONER GARCIA: If you don't mind,  
22 Commissioner, I noticed at the -- going, I guess,  
23 stepping ahead a little bit. On MCI, the proposed  
24 language in I think it's Issue 3, if I'm not  
25 mistaken --



1 MS. NORTON: Are we going to MCI now?

2 COMMISSIONER GARCIA: No. No. I just  
3 thought that the language there made a lot more sense.  
4 In other words, what basically we required is the  
5 performance measurements and reporting in terms of  
6 MCI's case, and I guess I'll read a second here.

7 It says -- I'm at Page 21 of the MCI. It's  
8 2.5.1. "In providing services and elements, BST will  
9 provide MCIM with the quality and service BST provides  
10 to itself and its end users." And that sort of made  
11 more sense to me as a sort of standard than what we  
12 have here. It just seemed easier to implement.

13 MR. GREER: Commissioners, the FCC gives the  
14 ability for the telecommunications carriers to request  
15 a superior quality of service than what BellSouth  
16 provides to itself.

17 MS. NORTON: Commissioner, this language is  
18 in this agreement in AT&T. It's on Page 11 of their  
19 agreement, Section 12.1. "In providing services and  
20 elements, BellSouth will provide AT&T with the quality  
21 of service BellSouth provides itself and its end  
22 users." It is in both of them.

23 COMMISSIONER GARCIA: Where are you reading  
24 from, because I must have missed it?

25 MS. NORTON: It's under the general terms

1 and conditions at the beginning of the agreement.  
2 It's in sort an overall provision, as opposed to under  
3 the specific DMOQ section. I'm --

4           **CHAIRMAN JOHNSON:** Let's go off the record  
5 for a couple seconds. (Brief pause.)

6           **COMMISSIONER GARCIA:** I'm sorry. I didn't  
7 hear what someone just said.

8           **COMMISSIONER CLARK:** We're off the record,  
9 Joe, until we figure out the --

10           **COMMISSIONER KIESLING:** We're still getting  
11 the echo.

12           **COMMISSIONER GARCIA:** All right. Hang on  
13 one second.

14           (Microphones adjusted.)

15           **COMMISSIONER KIESLING:** While she's moving  
16 to a different mike, Joe, what she's taking about is  
17 the big white notebooks that have the agreement that  
18 they have agreed on; and it's in there, therefore, it  
19 wasn't at issue.

20           **CHAIRMAN JOHNSON:** We're back on the record.

21           **MS. NORTON:** I'm sorry, Commissioner. It's  
22 in the proposed AT&T agreement?

23           (Microphones adjusted.)

24           **COMMISSIONER CLARK:** Madam Chairman, can't  
25 the court reporter just take off the mike and listen

1 without the earphones in?

2 CHAIRMAN JOHNSON: We'll all try to speak  
3 up. How is this?

4 COMMISSIONER GARCIA: Am I still the  
5 problem?

6 CHAIRMAN JOHNSON: No. We'll just have to  
7 all speak loudly so she can hear us, because she's not  
8 going to use the earphones.

9 COMMISSIONER GARCIA: Okay. So you're  
10 reading from the BellSouth agreement with AT&T itself,  
11 with AT&T's agreement --

12 MS. NORTON: That's correct. It's on  
13 Page 11 under Section 12.1.

14 COMMISSIONER GARCIA: It just seemed to me  
15 more sensible the way it read out in the MCI  
16 provision, and if you're saying to me that that's part  
17 of what's here --

18 MS. NORTON: Yes, sir.

19 COMMISSIONER GARCIA: I'm just not seeing  
20 that.

21 MS. NORTON: Yes, sir. That was language  
22 that was in the order, and both agreements have  
23 contained that language.

24 COMMISSIONER GARCIA: Okay. Well, then I  
25 guess I could move it.

1 COMMISSIONER CLARK: Second.

2 COMMISSIONER GARCIA: But I think --

3 CHAIRMAN JOHNSON: It's been moved and  
4 seconded. All those in favor signify by saying aye.

5 COMMISSIONER CLARK: Aye.

6 COMMISSIONER DEASON: Aye.

7 COMMISSIONER GARCIA: Aye.

8 COMMISSIONER KIESLING: Aye.

9 CHAIRMAN JOHNSON: Aye. Show it approved  
10 unanimously. Issue 6.

11 COMMISSIONER DEASON: Move Staff.

12 CHAIRMAN JOHNSON: Is there a second?

13 COMMISSIONER KIESLING: Second.

14 CHAIRMAN JOHNSON: Show it approved

15 unanimously. Issue 7.

16 COMMISSIONER DEASON: Move Staff.

17 CHAIRMAN JOHNSON: Is there a second?

18 COMMISSIONER GARCIA: Second.

19 MR. GRISWOLD: If I may, Commissioner, we've  
20 got a filing by Bell, a letter that says that they  
21 also concur, or are in agreement, on the -- on  
22 Attachment 15; so we need to include that document  
23 number, I think, in this portion. Am I making any  
24 sense?

25 CHAIRMAN JOHNSON: No. Would you slow

1 down --

2 MR. GRISWOLD: AT&T --

3 CHAIRMAN JOHNSON: -- and say it again.

4 MR. GRISWOLD: AT&T's letter has a specific  
5 document number, so we're including that. Bell has  
6 filed a letter saying that they also agree. We need  
7 to include that document number as well in this  
8 section. In other words, both agree. We just to want  
9 include Bell's statement that they agree, as well.

10 CHAIRMAN JOHNSON: Okay. So in the section  
11 where you have the parentheses, "see document  
12 numbers," you're just going to include one more?

13 MR. GRISWOLD: Right.

14 CHAIRMAN JOHNSON: And do you have that?

15 MR. GRISWOLD: Yes, we do. I don't have the  
16 document number now, but I have the document.

17 CHAIRMAN JOHNSON: Any questions,  
18 Commissioners?

19 COMMISSIONER DEASON: Move Staff.

20 CHAIRMAN JOHNSON: Is there a second?

21 COMMISSIONER KIESLING: Second.

22 CHAIRMAN JOHNSON: Show it approved without  
23 objection.

24 COMMISSIONER CLARK: Madam Chairman, on  
25 Issue 8 I don't have -- I'm okay with the

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1 recommendation so long as it doesn't conclude that the  
2 financial responsibility for unbillables, or  
3 uncollectibles is a liquidated damage.

4 I'm not sure I agree with that, but as I  
5 recall, it wasn't essential to making a decision on  
6 this. It basically wasn't covered in the arbitration.

7 MS. BROWN: Commissioner, that's correct. I  
8 think this language in here that says all of these  
9 general contract provisions -- or specifically the  
10 penalty or remedy provisions that were suggested be  
11 included are liquidated damages or are like liquidated  
12 damages is probably not as clear as it could be.

13 What we're trying to say here is that all of  
14 these provisions are either general contract  
15 provisions or they are in the nature of remedies or  
16 penalties, which we do not believe the Commission has  
17 the authority to include in an arbitration.

18 COMMISSIONER CLARK: Martha, I was  
19 comfortable that we denied -- that we stick to our  
20 premise that we would not arbitrate general  
21 contractual terms and conditions, and that our  
22 authority to arbitrate disputed issues under the Act  
23 is limited to those enumerated in those sections and  
24 matters necessary to implement them, and not draw a  
25 conclusion that they are essentially liquidated

1 damages. That's all I'm suggesting.

2 MS. BROWN: Sure. We can change that  
3 language somewhat if you like.

4 COMMISSIONER CLARK: And I can move 8 with  
5 that understanding.

6 COMMISSIONER DEASON: Second, with that  
7 understanding.

8 CHAIRMAN JOHNSON: Show it approved without  
9 objection.

10 COMMISSIONER CLARK: And I move Issue 9.

11 MR. GREER: Commissioners, before you move  
12 Issue 9, we probably need to put -- and something I  
13 forgot to put in -- was a time frame as to what they  
14 should file their signed agreement incorporating the  
15 language that the Commission has approved; and I would  
16 say, you know, a couple weeks to file the actual  
17 signed agreement with the incorporated language; two  
18 weeks from today.

19 COMMISSIONER CLARK: I would move, then,  
20 that the agreements incorporating the substance of our  
21 decision today be filed with us within two weeks. Of  
22 today's date or the order?

23 MR. GREER: I would say two weeks of today's  
24 date.

25 COMMISSIONER CLARK: I'll move that.

1           **CHAIRMAN JOHNSON:** Is there a second?

2           **COMMISSIONER KIESLING:** Second.

3           **CHAIRMAN JOHNSON:** Show it approved without  
4 objection.

5           **MR. GREER:** Commissioners, the next  
6 recommendation deals with MCI's arbitration agreement.  
7 Apparently MCI has filed an additional document dated  
8 February 13th that introduces some other language  
9 that -- for certain sections that they have agreed to,  
10 and we would like to incorporate those as being  
11 approved; and it's my understanding the parties have  
12 agreed to both of them for all the changes; and  
13 they're listed as the subsection, so it shouldn't be  
14 too hard to just drop in the language. With that, we  
15 took the same approach with this recommendation as we  
16 did with the last. And do you want to go issue by  
17 issue?

18           **COMMISSIONER DEASON:** What you just handed  
19 out, this would be a supplement to what is included  
20 within Issue 1?

21           **COMMISSIONER GREER:** Correct. That's my  
22 understanding.

23           **COMMISSIONER CLARK:** I can move Issue 1 with  
24 that supplement.

25           **COMMISSIONER DEASON:** Second.

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1           **CHAIRMAN JOHNSON:** Show it approved without  
2 objection. Issue 2.

3           **COMMISSIONER GARCIA:** Let me just ask. This  
4 supplement doesn't change anything that I'm looking  
5 at; it's just an addendum that both parties agreed to?

6           **MR. GREER:** It may -- I don't know for sure  
7 if it takes some disputed language out and makes it  
8 approved language. I don't think it does. I think  
9 they just tweaked some of the agreed upon language.

10           **COMMISSIONER GARCIA:** Because obviously I'm  
11 not holding that here.

12           **COMMISSIONER CLARK:** I move Issue 2.

13           **COMMISSIONER KIESLING:** Second.

14           **CHAIRMAN JOHNSON:** Show it approved without  
15 objection. Issue 3.

16           **MS. NORTON:** Issue 3 is the price list for  
17 the various prices in the agreement. Staff has made  
18 specific recommendations as to which prices should be  
19 incorporated into the agreement.

20                   We have also recommended that all the  
21 introductory language be eliminated. We reviewed it.  
22 There was a lot of dispute about it. We did not  
23 believe that any of it was integral to understanding  
24 of the agreement, and so the only important parts in  
25 there were the actual resale discount percentages. We

1 recommended that they be inserted into the price list.  
2 And on Page 7 of the recommendation it shows the  
3 specific rates that need to be incorporated into the  
4 final agreement.

5 MR. GREER: Commissioners, it's not just  
6 Issue 3 in -- includes all the disputed areas, and  
7 maybe we ought to kind of go through them attachment  
8 by attachment, and we'll try to point out where the  
9 attachment starts. Ms. Norton's attachment is  
10 Attachment 1 with the price schedules, and then I  
11 would probably talk about those issues, or ask  
12 questions if you have them, or approve those sections  
13 based on the attachments.

14 MS. NORTON: I'm sorry, Commissioners. I  
15 was speaking specifically to Attachment 1, which is  
16 the price schedule within that issue.

17 COMMISSIONER KIESLING: Well --

18 COMMISSIONER GARCIA: I guess I can move  
19 that.

20 COMMISSIONER KIESLING: -- I found it a  
21 little difficult because it was all in one issue. So  
22 for ease, my first questions that weren't resolved by  
23 talking to Staff yesterday start on Page 19. So  
24 anybody that's got something before that --

25 COMMISSIONER CLARK: I just have one on

1 Issue 6. I mean on Page 6. Evidently BellSouth has  
2 included some services that we did not order, and your  
3 recommendation is just leave them in there and they  
4 can take them at that rate or not; is that correct?

5 MS. NORTON: No. Bell had proposed to put  
6 rates for AIN and other things in there. They  
7 acknowledged that they were not ruled upon by the  
8 Commission, and their argument for putting them in  
9 there was that in case MCI wanted them, they would be  
10 available. MCI simply said they're disputed, they're  
11 disagreed.

12 COMMISSIONER CLARK: I understand that. So  
13 what did we --

14 MS. NORTON: We said no.

15 COMMISSIONER CLARK: Take them out?

16 MS. NORTON: Do not put them in.

17 COMMISSIONER CLARK: Okay.

18 COMMISSIONER DEASON: I have a question on  
19 Page 7. At the bottom of the page reference is made  
20 to rates for poles, ducts, conduits and rights-of-way,  
21 and Staff points out this was not arbitrated, so we're  
22 not setting a rate.

23 MS. NORTON: The rates were not arbitrated.  
24 There were no rates proposed or approved and,  
25 therefore, we are not recommending any rates be put

1 into the price list.

2           **COMMISSIONER DEASON:** So it's going to be up  
3 to the participants, in this case BellSouth and MCI,  
4 to negotiate that.

5           **MS. NORTON:** That's correct.

6           **COMMISSIONER KIESLING:** Or to come back and  
7 seek to arbitrate that.

8           **MS. NORTON:** That's correct.

9           **COMMISSIONER GARCIA:** Do you guys want to do  
10 this attachment by attachment, or just --

11           **CHAIRMAN JOHNSON:** Joe, we're kind of going  
12 through the pages to the extent --

13           **COMMISSIONER GARCIA:** Okay.

14           **CHAIRMAN JOHNSON:** -- Commissioner Kiesling  
15 said she didn't have a question until Page 19, and we  
16 were handling those before then.

17           **COMMISSIONER DEASON:** I have a question on  
18 14. Under Staff's analysis they indicate that with  
19 some modification, BellSouth's language would be  
20 acceptable. What exactly is the modification?

21           **MS. SHELFER:** That one is mine. If you look  
22 under Staff's recommended language in Section 2.4.1,  
23 basically what Staff took -- where it reads at the  
24 very end "tandem switching rate," BellSouth had  
25 proposed interconnection rates. Since the Commission

1 specifically set tandem rates and end office, what I  
2 did was I substituted in whether it was a tandem rate  
3 or an end office rate instead of just saying  
4 "interconnection rate".

5           So in the first one, 2.4.1, I entered  
6 "tandem switching rate". In Section 2.4.2 I added the  
7 last sentence, "BellSouth shall not compensate MCI for  
8 transport and tandem switching unless MCI actually  
9 performs each function." I added that, and that's  
10 consistent with what we've done in 1230 and in 838.

11           In section 2.4.3, six lines down where it  
12 reads "BellSouth, the end office switching rate,"  
13 BellSouth had proposed interconnection rate, and I  
14 changed it to end office switching so it specifically  
15 addresses the function.

16           **COMMISSIONER DEASON:** And all of that is  
17 consistent with what was actually arbitrated?

18           **MS. SHELFER:** Yes.

19           **COMMISSIONER DEASON:** I move Staff on -- oh,  
20 we're not at the point of moving. We're still asking  
21 questions.

22           **COMMISSIONER CLARK:** I don't have any  
23 questions.

24           **COMMISSIONER KIESLING:** Well, then my first  
25 questions come up on the credit history part on

1 Page 19 and Page 20, and --

2 MR. GRISWOLD: Maybe I can hopefully kind  
3 of --

4 COMMISSIONER KIESLING: -- I need some help  
5 there, because --

6 MR. GRISWOLD: -- clarify. Under MCI's  
7 proposed language, on the third line it states that  
8 MCI -- allow MCI to obtain customer payment history  
9 information that's detailed above. In Bell's  
10 rationale about three bold headings down, it says "MCI  
11 is inappropriately seeking the treatment of customer  
12 credit history." Payment history and credit history I  
13 don't believe are the same thing.

14 COMMISSIONER KIESLING: Well, I need to  
15 understand the difference, because up in -- then in  
16 MCI's proposed language, MCI Metro's proposed  
17 language --

18 MR. GRISWOLD: Sorry. Yes.

19 COMMISSIONER KIESLING: -- where it says  
20 "obtain the customer payment history information as  
21 detailed above --

22 MR. GRISWOLD: Yes.

23 COMMISSIONER KIESLING: -- where is it  
24 detailed?

25 MR. GRISWOLD: 2.1.5.

1           **COMMISSIONER KIESLING:** And how is that --  
2           **MR. GRISWOLD:** It is a --  
3           **COMMISSIONER KIESLING:** -- a detail?  
4           **MR. GRISWOLD:** I'm sorry.  
5           **COMMISSIONER KIESLING:** How is that a  
6 detail?  
7           **MR. GRISWOLD:** Detailed above. Actually  
8 there's a laundry list here of what is included in the  
9 customer record.  
10           **MR. GREER:** Look in Attachment 8 --  
11           **MR. GRISWOLD:** Attachment 8.  
12           **MR. GREER:** -- of your big white binder.  
13           **COMMISSIONER KIESLING:** Big binder, okay.  
14           **MR. GRISWOLD:** It's Attachment 8, Page 8 in  
15 MCI's.  
16           **COMMISSIONER KIESLING:** Attachment 8, Page  
17 8?  
18           **MR. GRISWOLD:** Yes.  
19           **COMMISSIONER KIESLING:** What I have is --  
20           **MR. GRISWOLD:** You may be in -- I say in  
21 MCI's. If you're in Bell's, it's Page 9.  
22           **COMMISSIONER KIESLING:** Well, I don't know  
23 which one I'm in. Here it is. It is on Page 9.  
24           **MR. GRISWOLD:** So you notice that 2.1.5.1.1  
25 through .8.

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1           **COMMISSIONER KIESLING:** And then if I  
2 understand what you're saying, then only the things  
3 that are in 2.1.5.1 --

4           **MR. GRISWOLD:** That's right, as detailed  
5 above.

6           **COMMISSIONER KIESLING:** -- point 1 through 8  
7 are what you think is the limit of the payment  
8 history?

9           **MR. GRISWOLD:** Yes.

10          **COMMISSIONER KIESLING:** And not their credit  
11 history?

12          **MR. GRISWOLD:** Right.

13          **COMMISSIONER KIESLING:** Well, I can probably  
14 live with that a little better than I could with the  
15 other.

16                Okay. Well, as long as you're going to  
17 rewrite it so that it's limited only to those payment  
18 history portions that were detailed by the parties, I  
19 can live with that.

20          **MR. GRISWOLD:** Okay.

21          **COMMISSIONER KIESLING:** I don't know if  
22 Commissioner Deason can, but --

23          **COMMISSIONER DEASON:** Well, I guess I need  
24 some clarification. Are you changing your  
25 recommendation?

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1           **MR. GRISWOLD:** What I believe should be  
2 stated in the analysis where we say "although credit"  
3 history," we should be talking about customer payment  
4 records. We shouldn't be talking about credit  
5 history. That's my --

6           **MR. GREER:** I think the recommendation is  
7 fine. I think we used the term "credit history" in  
8 the Staff analysis. The recommendation says "Staff  
9 recommends the Commission approve MCI's proposed  
10 language which has customer payment history."  
11 Although the MCI's rationale says "customer credit  
12 history," the actual language says "payment history".

13           **CHAIRMAN JOHNSON:** I have one question on  
14 that, MCI's proposed language in 2.1.5.4. How is this  
15 going to work? MCI Metro would be required to tell  
16 the incumbent that they actually had gotten the  
17 subscriber's authorization?

18           **MR. GRISWOLD:** They would have access to the  
19 records, but they would have to get the customer's  
20 authorization before opening up that record. It's  
21 kind of a vagary. In other words, they have access to  
22 the record. They don't have to go to the customer to  
23 get authorization before they have access to the  
24 records, all the records.

25           **MR. GREER:** It's kind of the same --

1           **MR. GRISWOLD:** This is an electronic  
2 transfer. You have to remember that this is --

3           **MR. GREER:** It's kind of the same problem  
4 that we had on roaming, you know, just getting into  
5 the record and just roaming around. The requirement  
6 essentially falls down to the requirements in 2.2.2 as  
7 far as what the requirements are, how they can use it  
8 and how they get into the stuff; and I think that's  
9 one of -- the discussion is about, maybe drafting some  
10 slamming rules, if they get into that type. So maybe,  
11 I mean --

12           **MR. GRISWOLD:** The concern is that they're  
13 going to go browsing through the records? Is that  
14 the --

15           **CHAIRMAN JOHNSON:** Right.

16           **MR. GRISWOLD:** Okay.

17           **CHAIRMAN JOHNSON:** So they have access to  
18 them, but they aren't supposed to open them and look  
19 at the information until they have this authorization?

20           **MR. GRISWOLD:** That's right.

21           **COMMISSIONER DEASON:** Well, I still have a  
22 question. And regardless of whether you call it  
23 credit history or payment record or whatever, it seems  
24 to me that this is information -- if the CLEC is  
25 concerned about whether they want to provide service

1 to a good paying customer, and that's enough of a  
2 question for them, there are avenues available on the  
3 open market for them to go and determine what the  
4 credit history is of a given customer.

5           They have to pay a rate for it. They have  
6 to go to a credit bureau and get a credit report. So  
7 why do we have to require a competitor to get this  
8 type of sensitive customer information from the  
9 incumbent LEC?

10           **MR. GRISWOLD:** Two things. This is why I  
11 was coming back -- there's a difference between a  
12 customer payment record and credit history. You can  
13 be refused credit or have bad credit for any number of  
14 things, but your customer payment record is specific  
15 to your telephone bill; okay? That's the first thing.

16           The second thing is that both the companies  
17 agree on this language as to what's in the laundry  
18 list. So, yes, you could get access to somebody's  
19 credit history, but if they didn't make a payment on  
20 their furniture in time, it would be reflected there,  
21 where they may be paying their phone bill right on  
22 time.

23           **CHAIRMAN JOHNSON:** You said both parties did  
24 agree to this language?

25           **MR. GRISWOLD:** Yes.

1           **COMMISSIONER CLARK:** I move Staff on  
2 Issue 3.

3           **CHAIRMAN JOHNSON:** Is there a second?

4           **COMMISSIONER KIESLING:** I had a couple  
5 others. I'm sorry.

6           **COMMISSIONER CLARK:** I thought you were  
7 done.

8           **COMMISSIONER KIESLING:** I know that we're  
9 trying to hurry here, but I had a question on Page 21,  
10 then. In the Staff analysis about two-thirds of the  
11 way down it says that Staff agrees with BellSouth that  
12 this issue was not addressed in the arbitration  
13 proceeding, but despite this we are going to include  
14 their language. And I guess I'm having some trouble  
15 just trying to be consistent that in other areas we  
16 have said because it wasn't addressed, we are not  
17 including it, so --

18           **MR. GRISWOLD:** This appears to be a timing  
19 issue. The April 1st date -- they don't seem to  
20 disagree on this, but the April 1st date was what we  
21 thought was appropriate.

22           **COMMISSIONER KIESLING:** So they're agreeing  
23 in substance, it's just that MCI Metro's language had  
24 an interim date of January 1, '97, which has already  
25 passed, so you just used the language that had an

1 April 1 date --

2 MR. GRISWOLD: Right; and during the period  
3 while they're bringing this up they're going to use a  
4 ready -- they're going to allow a ready supply of  
5 telephone numbers during that period of time.

6 COMMISSIONER KIESLING: Okay. That was all  
7 the questions I had.

8 COMMISSIONER DEASON: Well, I have another  
9 question, and it's found in several areas; and it  
10 references information which MCI wants access to in  
11 terms of reports on quality of the service and certain  
12 criteria that they want met, and they want tracking  
13 systems in place to provide the information as to  
14 whether the various criteria which they want has, in  
15 fact, been met.

16 And I think without exception in the MCI  
17 case, BellSouth has indicated that the degree of  
18 specificity in detail which is contained within MCI's  
19 language cannot be tracked and reported under the  
20 present reporting systems that are in place. And  
21 Staff's recommendation is that, well, BellSouth can  
22 develop those systems and provide the information and  
23 make measurements as to whether those criteria are, in  
24 fact, being met.

25 My concern is, first of all, obviously if

1 they don't have the systems in place now, they're  
2 going to do some type of modification, which implies  
3 to me there's going to be a cost; and I don't know  
4 what the magnitude of that cost is. And that's  
5 something that was not arbitrated that I know of.

6           So that is a concern that I have, and I need  
7 some clarification from Staff's recommendation when  
8 you say that BellSouth can do this, are you meaning  
9 they can do it and there's not going to be any charge  
10 associated to MCI for wanting this amount of detail  
11 with this amount of specificity?

12           **MR. GRISWOLD:** No.

13           **COMMISSIONER DEASON:** What are you --

14           **MR. GRISWOLD:** We anticipated that there  
15 would be a charge for it, that it would -- would be  
16 charged for it. They have to at least provide the  
17 services at the same level that they provide them to  
18 themselves.

19           In the arbitration order at Page 87, we say  
20 if a system or process is developed exclusively for a  
21 certain carrier, those costs shall be recovered from  
22 the carrier who is requesting the customized system.

23           **COMMISSIONER DEASON:** So then in a nutshell  
24 what you're saying is that, MCI, we're going to  
25 approve these criteria, but if you want all this

1 information tracked and reported to you, there's going  
2 to be a cost associated with it. We're not saying  
3 what the charge is going to be for that. That's  
4 between MCI and BellSouth to work out.

5 MR. GRISWOLD: That's right. Yes, sir.  
6 They may decide they don't want --

7 COMMISSIONER DEASON: What happens if MCI  
8 says, wow, I did not know it was going to cost so  
9 much, I don't need this information after --

10 MR. GRISWOLD: They may say, we don't want  
11 it.

12 MR. GREER: Well, there's an avenue that if  
13 they down the road decide, hey, maybe we don't really  
14 want this, then they can come back in and modify this,  
15 this agreed lease, you know, jointly file some kind of  
16 modification to the agreement.

17 MR. GRISWOLD: It -- a portion of 2.5.1.1  
18 allows the parties to come in and modify the agreement  
19 where they feel it needs to be tweaked. So they have  
20 that option.

21 COMMISSIONER CLARK: I think Commissioner  
22 Deason just brings up a good point in the sense that  
23 if our order said that they have to provide MCI Metro  
24 with the same --

25 MR. GREER: At a minimum.

1           **COMMISSIONER CLARK:** At a minimum.

2           **MR. GREER:** At a minimum. And the FCC's  
3 order clearly allows the carriers to request higher  
4 quality of service. And our belief is, is that if you  
5 request it and you want it, then you pay for it.

6           **COMMISSIONER CLARK:** Well, I guess -- then  
7 let me be clear. We had an arbitration where they  
8 didn't agree, and what we concluded was you will, at a  
9 minimum -- was that what we --

10          **MR. GREER:** Yes.

11          **COMMISSIONER CLARK:** I guess what I'm trying  
12 to get at is why wouldn't that be the language in the  
13 order, and then if MCI can say, outside of this  
14 agreement we want a higher level, tell us what it's  
15 going to cost, and then -- why are we doing -- it  
16 seems like we should -- we're doing it the opposite of  
17 the way we should do.

18          **MR. GREER:** The way we had the issue was --  
19 actually when we had the recommendation we said, adopt  
20 AT&T or MCI's DMOQ, and we felt uncomfortable at that  
21 time -- and I believe Commissioner Deason was the one  
22 that raised it -- that we felt uncomfortable at that  
23 time setting those standards.

24          **COMMISSIONER CLARK:** Okay.

25          **MR. GREER:** And we said, you know, go back



1 and set them, you know, go back and negotiate these  
2 standards and file it when they come in with the  
3 arbitration, and make clear that, you know, if you  
4 don't negotiate them, we'll set them; and that's kind  
5 of where the point we're at is that we have to -- we  
6 need to either pick one or the other.

7           **COMMISSIONER CLARK:** I see; okay.

8           **MR. GREER:** And with the caveats of them  
9 having the abilities to come and change them, you  
10 know, if they realized down the road --

11           **COMMISSIONER CLARK:** It's going to be clear  
12 that we understand that there is a -- there will be a  
13 price involved in developing these, and that that will  
14 be the part of what --

15           **COMMISSIONER KIESLING:** Susan, I can't  
16 hear --

17           **COMMISSIONER CLARK:** That will be part of  
18 what -- if they still want them, they have to pay for  
19 them.

20           **MR. GREER:** They will either negotiate the  
21 price or come back to us in an arbitration on the  
22 price.

23           **CHAIRMAN JOHNSON:** Any other questions?

24           **COMMISSIONER KIESLING:** Well, I think you  
25 moved 3, and I'll second that now with all of those

1 clarifications.

2           **CHAIRMAN JOHNSON:** There's been a motion and  
3 a second on Issue 3. All those in favor signify by  
4 saying aye.

5           **COMMISSIONER CLARK:** Aye.

6           **COMMISSIONER DEASON:** Aye.

7           **COMMISSIONER GARCIA:** Aye.

8           **COMMISSIONER KIESLING:** Aye.

9           **CHAIRMAN JOHNSON:** Aye. Show it approved  
10 unanimously.

11           **COMMISSIONER CLARK:** I move Staff on Issue  
12 4.

13           **MR. GREER:** We need to make the same date  
14 modification we did; two weeks.

15           **COMMISSIONER CLARK:** With the requirement  
16 that they file it in two weeks.

17           **CHAIRMAN JOHNSON:** Show -- is there a  
18 second?

19           **COMMISSIONER KIESLING:** Second.

20           **CHAIRMAN JOHNSON:** Show it approved as  
21 modified.

22           **COMMISSIONER DEASON:** Before we conclude, I  
23 want to take just a moment and say something that I  
24 should have said when we voted in the reconsideration,  
25 and obviously there are a number of issues which I

1 disagreed with in the first time that we heard the  
2 arbitration, and I still maintain those positions.

3           The reason I was able to vote with the  
4 majority was because we're on a reconsideration  
5 standard, and that's the standard that I was applying  
6 to the situation; but I still maintain the positions  
7 that I advanced at the first arbitration, the special  
8 agenda.

9           **MS. SHELFER:** Commissioners, I need to make  
10 one modification to Attachment B, which is your last  
11 page. Under Attachment -- if you go down to 4, under  
12 Section, it says "2.2". I need to fix that to read  
13 "2.2.2".

14           **COMMISSIONER CLARK:** It doesn't change  
15 anything, right?

16           **MS. SHELFER:** No, ma'am.

17           **COMMISSIONER CLARK:** Okay. You're just  
18 making corrections. I can still move it, or whatever.

19           **CHAIRMAN JOHNSON:** Show that modification  
20 captured in the motion. Any other matters?

21           **COMMISSIONER GARCIA:** Thank you all for  
22 tolerating me being on this system.

23           **CHAIRMAN JOHNSON:** And thank you, Staff --  
24 not Commissioner Garcia -- thank you, Staff, for all  
25 your work. It was a good job. Thank you much.

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(Thereupon, the hearing concluded at 4:10

p.m.)

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STATE OF FLORIDA )  
 :  
COUNTY OF LEON )

CERTIFICATE OF REPORTERS

We, ROWENA NASH and RUTHE POTAMI, CSR, RPR,  
Official Commission Reporters,

DO HEREBY CERTIFY that the Special Agenda  
Conference in Docket Nos. 960833-TP, 960846-TP and  
960916-TP was heard by the Florida Public Service  
Commission at the time and place herein stated; it is  
further

CERTIFIED that we stenographically reported  
the said proceedings; that the same has been  
transcribed under our direct supervision; and that  
this transcript, consisting of 144 pages, constitutes  
a true transcription of our notes of said

DATED this 27th day of February, 1997.

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