BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of proposed agreements with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996.	DOCKET NO. 960833-TP DOCKET NO. 960846-TP DOCKET NO. 960916-TP ORDER NO. PSC-97-0300-FOF-TP ISSUED: March 19, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
DIANE K. KIESLING
JOE GARCIA

FINAL ORDER APPROVING ARBITRATED AGREEMENT BETWEEN BELLSOUTH TELECOMMUNICATIONS, INC. AND AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC. AND GRANTING EXTENSION OF TIME

BY THE COMMISSION:

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

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

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

Section 252(b)(4)(c) states that the State commission shall resolve each issue set forth in the petition and response by imposing the appropriate conditions as required. We are required by this section to resolve any disputed issues by no later than 9 months after the date upon which the local exchange carrier received the request under this section.

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

On July 30, 1996, AT&T and MCI filed a joint motion for consolidation with AT&T's request for arbitration with BellSouth. By Order No. PSC-96-1039-TP, issued August 9, 1996, we granted the joint motion for consolidation.

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

On October 9 through 11, 1996, we conducted a hearing in these consolidated dockets. AT&T and MCI sought arbitration of issues in four main subject areas: network elements; resale; transport and termination; and implementation matters.

On December 31, 1997, we issued Order No. PSC-96-1579-FOF-TP, resolving the issues in AT&T's and MCI's petitions for arbitration with BellSouth. In the Order, we directed the parties to file agreements memorializing and implementing our arbitration decision within 30 days.

On January 15, 1997, BellSouth filed a Motion for Reconsideration of Order No. PSC-96-1579-FOF-TP. On January 27, 1997, MCI and AT&T filed separate responses to the Motion for Reconsideration. AT&T also filed a Cross Motion for Reconsideration on that day. AT&T and BellSouth timely filed their arbitrated agreement with us on January 30, 1997, Document No. 01150-97. BellSouth and AT&T also indicated certain sections where there were still disputes on the specific language. On February 4,

1997, BellSouth filed its response to AT&T's Cross Motion for Reconsideration.

We addressed the Motions for Reconsideration and the proposed contract language during our Special Agenda Conference on February 21, 1997. During our deliberations, we decided that the parties must submit their final agreement by March 7, 1997.

On March 3, 1997, AT&T and BellSouth filed a Joint Motion for Extension of Time to file their final agreement. In this Order, we address BellSouth's and AT&T's agreement and the motion for extension of time.

I. THE AGREEMENT

The parties to the proceeding have agreed to most of the language in the agreement. Section 252(e)(2)(B) states that we can only reject an arbitrated agreement if we find that the agreement does not meet the requirements of Section 251, including the regulations prescribed by the FCC pursuant to section 251, or if the agreement does not meet the standards set forth in subsection (d) of Section 252. We have reviewed the agreed language for compliance with both our Order issued in this proceeding, the Act and the FCC's implementing rules and Order, and find that the language is appropriate. Therefore, we approve the language contained in the agreement. Below, we discuss the areas where the parties could not agree on appropriate language.

II. LANGUAGE IN DISPUTE

A. Language Pertaining to SS7 Network and Advanced Intelligent Network (AIN)

AT&T proposes language that would require BST's local switch to recognize AT&T's signal control point (SCP) at parity with BST's SCP in all cases, including when a mediation device is used. BST proposes that this section of the agreement be deleted. Our Order and the FCC Order both explicitly state that the use of a mediation mechanism may be necessary in some circumstances. There is sufficient language in section 12.2.10.1 of the agreement to reflect the fact that mediation devices may be required. In addition, any delay caused by the use of a mediation device would be minuscule. Therefore, we agree with BST in this instance and find that AT&T's proposed language for section 12.2.10.1.1 shall be deleted.

B. Pricing and language disputes for unbundled network elements

AT&T and BST have not reached an agreement on rates for several unbundled network elements (UNEs) in Part IV - Pricing, of the proposed agreement. In addition, the parties disagree on language in Section 30.7, Part II - Unbundled Elements, of the proposed agreement.

1. PART IV - PRICING - Sections 34 through 42

We address each element in dispute separately.

a. Local Switching

AT&T claims that BST's position is that the rate we set for Local Switching does not include all features, functions and capabilities of the switch. However, we have determined that the Local Switching rate does include all features, functions and capabilities of the switch. Thus, we hereby order BST to comply with Order No. PSC-96-1579-FOF-TP.

b. Selective Routing

AT&T states that BST may incur certain, undisclosed, one-time, non-recurring charges (NRCs) to establish routing information in each local switch to send calls to AT&T's platforms. AT&T believes that the local switching per minute charge will cover the costs of switching the call. We did not consider a charge for selective routing in this proceeding. We only considered the technical feasibility of selective routing. Therefore, we shall not set an NRC for selective routing.

c. AIN rates

AT&T requested AIN capabilities as unbundled network elements in this proceeding. However, AT&T was not specific as to what AIN capabilities it was requesting. Therefore, we were not able to set rates for AIN. We instructed BST to submit a cost study 30 days after receiving a bona fide request by AT&T for AIN. AT&T claims that it has already made a request for AIN in this proceeding and should not be required to make another request. In order to save time, AT&T proposes that an interim rate of $0.00004 per message be used until we set permanent rates for AIN. While BellSouth proposed rates for various unbundled elements in its proposed agreement, it did not propose an interim rate for AIN. We, therefore, find it appropriate to use AT&T's proposed rate on an interim basis, since it is sufficiently above BST's transaction

capabilities application part (TCAP) per message rate. Thus, in the interest of promoting competition, we hereby set an interim AIN rate at $0.00004 per message until BST provides a Total Service Long Run Incremental Cost (TSLRIC) cost study.

d. Nonrecurring Charges for Unbundled Network Elements

We set NRCs for each unbundled element ordered on an individual basis. AT&T claims that BST should only charge an NRC when BST actually incurs the cost to connect UNEs. AT&T states that when BST already has service to its customer and AT&T takes that customer, then AT&T should not have to pay NRCs for each UNE ordered to provide the service because the elements are already combined. BST, however, argues that this issue was not part of the record in this arbitration. We agree. We, therefore, shall not address this dispute.

2. PART II - UNBUNDLED NETWORK ELEMENTS

The parties disagree on the language contained in Section 30.7. Each party's proposed language is as follows:

a. BellSouth's Proposed Language

> BellSouth shall charge AT&T the rates set forth in Part IV when directly interconnecting any Network Element or Combination to any other Network Element or Combination. If BellSouth provides such service to an affiliate of BellSouth, that affiliate shall pay the same charges.

b. AT&T's Proposed Language

> BellSouth shall not charge AT&T an interconnection fee or demand other consideration for directly interconnecting any Network Element or Combination to any other Network Element or Combination provided by BellSouth to AT&T if BellSouth directly interconnects the same two Network Elements or Combinations in providing any service to its own Customers or a BellSouth affiliate, including the use of intermediate devices, such as a digital signal cross connect panel, to perform such interconnection.

As we explained in Part I (d) above, we set nonrecurring charges for interconnection of each unbundled network element. The issue of the application of nonrecurring charges when multiple network elements are combined was not addressed. This is a new issue; therefore, we shall not make a determination on the appropriate language for the agreement.

C. Language Applicable to Contract Service Arrangements (CSAs)

Regarding Section 25.5.2, Contract Service Arrangements, we note that BellSouth currently is required to report CSAs quarterly to us. See Order No. 15317, Docket No. 840228-TL. BellSouth is required to file the case number, location, description of the CSA, the reason, and the contract rates for the CSA. The parties have proposed the following language for this section.

a. AT&T's Proposed Language

> Unless otherwise publicly available, BellSouth shall use the best efforts to provide AT&T copies of all existing CSAs within a reasonable time after the Effective Date. Any CSA entered into after the Effective Date shall be provided to AT&T no less than thirty (30) days before the Effective Date of any such CSA. In any event, if AT&T identifies a specific CSA, BellSouth shall provide AT&T a copy within ten (10) business days of AT&T's request.

b. BellSouth's Proposed Language

> If AT&T identifies a specific CSA, BellSouth shall provide AT&T a copy within ten (10) business days of AT&T's request.

AT&T argues that since CSAs are not published or generally disclosed by BellSouth, but were required to be resold by us, BellSouth should be ordered to disclose the CSAs. AT&T contends it has a right which it can rarely exercise unless the CSAs are made available. The parties do, however, agree that BellSouth shall provide AT&T with a copy of any CSA specifically identified by AT&T within 10 business days of AT&T's request.

BellSouth argues that this issue was not specifically addressed by AT&T in its arbitration petition nor in the arbitration proceeding itself. BellSouth contends that this issue is not related to our decision regarding the resale of CSAs. BellSouth further contends that compliance with AT&T's request is not required by the Act.

Although we did not directly address this issue in the arbitration proceeding, we did consider whether CSAs are available for resale at wholesale discount rates. Since both parties agree that BellSouth shall provide AT&T a copy of any CSA specifically identified by AT&T within 10 business days of AT&T's request, we approve the language proposed by BellSouth.

D. Language Pertaining to Performance Measurement

Regarding Sections 12.1, 12.2, and 12.3, Performance Measurement, by Order No. PSC-1579-FOF-TP, we ordered BST to provide AT&T with telecommunications services for resale and access to unbundled network elements at the same level of quality that it provides to itself and its affiliates. We also ordered BST and AT&T to continue negotiations concerning detailed standards of performance to be incorporated into the proposed interconnection agreement to be submitted to us for approval.

Under the General Terms and Conditions section, both BST and AT&T have submitted language covering Performance Measurement. The language proposed by each party for paragraphs 12.1 and 12.2 addresses the same topics. However, AT&T's language is more specific. In paragraph 12.3, AT&T proposes that performance be monitored monthly and that the parties develop a Process Improvement Plan to establish a forum to improve quality of service. BST proposes to delete this section, arguing that it goes beyond the intent of the Commission. We disagree. In our Order, we instructed the parties to develop performance standards and measurements. AT&T's proposed language for paragraphs 12.1, 12.2 and 12.3 shall, therefore, be included.

AT&T has submitted revised language striking references to damages or penalties in the event of performance failure, and providing detailed standards, Direct Measures of Quality (DMOQs), for six key functions. These six functions are Provisioning, Maintenance Services, Billing-Customer Usage Data, Connectivity Billing and Recording, Line Information Database Processing, and Account Maintenance. BST's proposal includes only four of the key functions. BST excludes Connectivity Billing & Recording and Account Maintenance. In addition, BST has refused to "set goals" for any of the functions. BST has provided no rationale as to why it has excluded the key functions that AT&T has included. While we cannot make a specific judgment on the propriety of each specific standard or DMOQ submitted by AT&T, BST did not submit any specific objections to any of the standards suggested by AT&T.

We have reviewed the language proposed by each party, and find that, for the most part, AT&T's proposed language and standards should be adopted. BST's language is vague, does not contain the required standards, and is not suitable to be used in a contract. In the absence of any reason why an AT&T-proposed DMOQ should not be adopted, we shall approve, in part, AT&T's proposed language and standards.

Specifically, we approve AT&T's proposed language for Performance Measurement DMOQs, Provisioning DMOQs, Maintenance DMOQs, Line Information Data Base (LIDB), and Billing (Connectivity Billing and Recording) in its entirety. For Billing (Customer Usage Data), we approve AT&T's proposed language for the entire section except that which is in Section 4.2, Timeliness. The first sentence for that section is amended to read:

> BellSouth will mechanically transmit all usage records to AT&T's Message Processing Center three (3) times a day.

We have omitted the phrase "via CONNECT:Direct." We did not address this phrase in this proceeding. In the event this refers to a procedure or system that BST has not already developed, we will not require usage records to be transmitted in this manner. The effect of this change is that BST may mechanically submit the required records by the most efficient method to accomplish the requirements of this section.

As it pertains to Account Maintenance, we approve AT&T's proposed language for the entire section except for the language in Section 7.1. Again, we omit the phrase "via CONNECT:Direct" because it was not addressed in this proceeding.

E. Language for access to poles, ducts, conduits and rights-of-way

1. Sections in Dispute

The parties have proposed language for the following sections of the agreement:

Attachment	Sections	Title
3	3.8.3	Processing Of Applications
3	3.10.2.2	Construction Of AT&T's Facilities
3	3.4.10.3	Reservation of Ducts for Emergencies

We do not believe Section 3.8.3 or 3.10.2.2 were considered in this arbitration proceeding. We, therefore, will not establish language for these sections. We shall, however, establish language for Section 3.4.10.3. We do believe that it was part of the arbitration proceeding.

2. Emergency Duct Language

a. AT&T's Proposed Language

Where BellSouth has available ducts and inner ducts, BellSouth shall offer such ducts and inner ducts to AT&T for AT&T's use. One full-sized (Typically 4 inch diameter) duct and inner duct shall be assigned for emergencies. If BellSouth or any other service provider utilizes the emergency duct or inner duct, and such duct or inner duct was the last unoccupied full-sized duct or inner duct in the applicable cross-section, said provider shall, at its expense, reestablish a clear, full-sized duct or inner duct for emergency restoration as soon as practicable. If occupancy of the emergency duct or inner duct by BellSouth or other service provider was for non-emergency purposes, such occupancy shall be subject to immediate removal should an emergency arise calling for the need of a restoration conduit. In the event that an emergency situation causes a service outage, pole and/or duct access will be afforded without discrimination to service providers, with the following prioritization: (i) fire, police and/or hospital facilities, and (ii) facilities impacting the greatest number of people consistent with an intention to best serve the needs of the people.

b. BellSouth's Proposed Language

BellSouth proposes to delete this section

AT&T proposes that there be a common emergency duct and inner-duct for use in emergency service restoration situations. AT&T also proposes a priority restoration schedule in emergency situations to restore service first to fire, police and/or hospital facilities and then to restore service to the facilities affecting the greatest number of people.

AT&T claims that BellSouth did not agree to include any language addressing emergency duct use or restoration priorities. AT&T asserts that the establishment of an emergency duct would ensure new entrants have some ability to react as quickly as possible in an emergency situation. AT&T argues that sharing the duct is efficient. Without an emergency duct, AT&T argues that it and other new entrants will be at a disadvantage to BellSouth because BellSouth does not restrict itself with regard to using available duct space to respond to an emergency.

BellSouth stated that it will reserve space for itself for maintenance that will also be utilized by BellSouth in cases of

emergency based upon a one-year forecast. Further, in compliance with our decision, BellSouth will allow any telecommunications provider to reserve such space for maintenance and emergency purposes, based upon a one-year forecast. BellSouth's position is consistent with our determination on this issue and is also the most efficient approach to the issue of space in cases of emergency.

AT&T's position is quite the contrary. AT&T wants BellSouth to assign a full-sized duct for emergencies that will be common for all occupants of the conduit space. In cases where the emergency affects service to more than one occupant, the access to the common emergency duct would be determined by a priority list as set forth by AT&T in its contract language.

We do not believe that AT&T's common emergency duct is practical. We agree with BellSouth that most emergencies affect all occupants of the space; therefore, prioritization of need would, more often than not, be an issue. In addition, we believe that allowing all telecommunications providers to serve a maintenance or emergency duct totally avoids the issues of prioritization and access to the common duct. Furthermore, AT&T's position is contrary to our determination in this docket. Our determination provides a solution to the issue of emergencies while AT&T's language merely adds a level of complexity. AT&T's language will also require BellSouth to reserve additional space in conduit for emergencies.

BellSouth stated that it has no objection to allowing AT&T to reserve a duct for itself for emergency purposes and then to offer to share such capacity with other telecommunications carriers willing to enter into such a sharing arrangement.

As stated, we do not believe that one common duct for emergencies and maintenance would be an efficient or manageable arrangement. Questions on priorities and impediments to restoration of service could arise under a common duct arrangement. We do not believe that it is necessary for us to require BellSouth to allow AT&T, as well as other parties, to reserve capacity in the same manner that BST reserves capacity for itself.

BST shall, therefore, allow AT&T to reserve an emergency duct for itself and then to offer to share that capacity with other carriers that are willing to enter into such a sharing agreement. Thus, we hereby approve the language set forth below.

c. Approved Language

BellSouth will allow AT&T and other parties to reserve capacity under the same time frames, terms and conditions that it affords itself. This includes reservations of emergency ducts as well as ducts for growth and other purposes. AT&T, if it so chooses, may reserve one emergency duct for itself and then offer to share this duct with other telecommunication carriers that are willing to enter into such a sharing agreement.

F. Language for electronic interfaces

AT&T and BST submitted disputed proposed language concerning electronic interfaces. Ultimately, the parties reached a consensus on the appropriate language for this section. On February 11, 1997, AT&T filed the revised language with us for inclusion with the interconnection agreement. (See Document Numbers 01547-97 and 01587-97). By letter dated February 20, 1997, BellSouth agreed to the revised language. (See Document No. 01953-97). We, therefore, approve the revised language.

G. Language for general contract terms and conditions

The parties also did not agree on language pertaining to general contract terms and conditions as found in the first paragraph of the preface, and in Sections 13, 6, and 2.2.

The dispute concerns AT&T's assertion that BST's affiliates should be required to comply with the agreement, with access to customer credit history data, and with financial responsibility for unbillables and uncollectables caused by fraud or third party actions.

AT&T's request to bind BST's affiliates to the agreement was not an issue arbitrated by us; therefore, we shall not establish any language to address this concern. Also, AT&T's request to require BST to disclose its customer credit history to a credit bureau, thereby providing AT&T access to the information, was not an issue arbitrated by us; therefore, we shall not establish any language to address this request. Furthermore, we decided in this proceeding that we would not arbitrate general contractual terms and conditions. We determined that our authority to arbitrate disputed issues under the Act is limited to those items enumerated in Sections 251, 252, and matters necessary to implement those sections. Thus, we shall also decline to establish any language to address the sections on financial responsibility for unbillables and uncollectables caused by fraud or third party actions.

H. Conclusion

We have reviewed the agreement submitted to us by BellSouth and AT&T pursuant to the directives and criteria of the Telecommunications Act of 1996, 47 U.S.C. § 251 and 252. We believe our decisions herein on the agreement and the disputed language comport with the terms of Section 251, the provisions of the FCC's implementing Rules that have not been stayed pending appeal, and the applicable provisions of Chapter 364, Florida Statutes.

III. MOTION FOR EXTENSION OF TIME

On March 3, 1997, AT&T and BellSouth filed a Joint Motion for Extension of Time. Specifically, the companies request that we grant them an extension of time to file a signed arbitrated agreement until 14 days after we issue our Order memorializing our decision at the February 21, 1997, Special Agenda Conference. In support of their Motion, the companies state that our extensive discussion at the Special Agenda Conference has created some confusion as to our ultimate decisions. The parties have different views as to what we decided. Thus, the companies argue that completing the final language of the arbitrated agreement is difficult. AT&T and BellSouth agree that review of our Order reflecting our decision at the February 21, 1997, Agenda Conference will assist them in formulating the appropriate language to be included in the final agreement.

Upon consideration, we find that this request is reasonable. We, therefore, grant AT&T and BellSouth's Joint Motion for Extension of Time.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the agreement submitted by BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. is approved to the extent set forth in the body of this Order. It is further

ORDERED that the parties shall include in their arbitrated agreement the approved language set forth herein. It is further

ORDERED that these dockets shall remain open until the parties have filed their signed agreement, and BellSouth Telecommunications, Inc.'s cost studies, filed pursuant to Order No. PSC-96-1579-FOF-TP, have been reviewed. It is further

ORDERED that BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc.'s Joint Motion for Extension of Time is granted. It is further

By ORDER of the Florida Public Service Commission, this 19th day of March, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: _____
Chief, Bureau of Records

(S E A L)

BC

DISSENT

Commissioner Clark

I dissent from the decision to approve BellSouth's proposed language on Contract Service Arrangements. While we are in this transitional phase, I believe it is appropriate to hold the local exchange company (LEC) to more frequent and detailed reporting requirements. Otherwise, the LEC may engage in predatory pricing or could move many of its services to CSAs in an effort to avoid disclosure. When we reach free and full competition in the local market, then reporting requirements should be abated.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).