BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and complaint of Harris Corporation against BellSouth Telecommunications, Inc. concerning complex inside wiring.	) DOCKET NO. 951069-TL) ORDER NO. PSC-97-0385-FOF-TL) ISSUED: April 7, 1997

The following Commissioners participated in the disposition of this matter:

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

FINAL ORDER RESOLVING PETITION AND COMPLAINT

BY THE COMMISSION:

I. CASE BACKGROUND

On September 7, 1995, the Harris Corporation (Harris) filed a Petition and Complaint against BellSouth Telecommunications, Inc. (BellSouth) alleging that BellSouth has been unlawfully charging for wiring on the Harris Semiconductor Complex. Harris requested an expedited proceeding for:

(a) the immediate termination of BellSouth Corporation's practice of charging Harris for inside wiring; and

(b) a refund of those charges unlawfully made, plus interest.

BellSouth filed its Answer to the Petition and Complaint on September 28, 1995.

On December 20, 1995, the Prehearing Officer issued Order No. PSC-95-1572-PCO-TL which set the hearing for this matter to be held on May 22, 1996. Subsequently, the parties stipulated to continuing the hearing and, with the approval of the Chairman, the hearing was rescheduled to August 2, 1996. On August 1, 1996, the parties filed a Joint Motion to Accept Stipulation of Facts and for Informal Hearing pursuant to Section 120.57(2), Florida Statutes.

Based on the fact that the parties reached agreement on the material facts, and with the approval of the Chairman, the Prehearing Officer granted the Motion by Order No. PSC-96-0984-PCO-TL, issued on August 1, 1996. The parties were directed to file briefs of no more than sixty (60) pages and reply briefs of no more than thirty (30) pages on the following issues:

1. What is the proper legal characterization of the facilities in question?

2. Does/has BellSouth's treatment of these facilities violate(d) any FCC and/or FPSC rules or orders or any federal or Florida statutes?

3. Is the Petitioner entitled to relief? If so, what relief should be granted to the Petitioner?

As noted above, the parties were able to stipulate on what they believed to be the material facts in this case. Those facts are:

1. The "Harris Semiconductor Complex" is a campus consisting of approximately 13 buildings, located at 2401 Palm Bay Road, Palm Bay, Florida.

2. The facilities at issue are located on the Harris Semiconductor Complex, and were originally installed by BellSouth.

3. The demarcation point is in Building 53. All of the wiring at issue is on Harris' side of the demarcation point. At least some of the network terminating devices on the facilities at issue were installed in Building 53 during or after 1988.

4. The facilities at issue connect the PBX in Building 53 to the telephone closets in Buildings 51, 54, 58, 58A, 59, 60, 61, 62 and 63. All facilities run directly from Building 53 to telephone closets in those other buildings, except that the wiring for Building 61 runs from Building 53 into Building 60 and then back out of Building 60 to Building 61. Harris-owned Harris-installed inside wiring connects the telephone closets to customer premises equipment (CPE) in the corresponding buildings.

5. None of the facilities cross a public road. All of the facilities at issue run between the buildings

identified above in Stipulation No. 4, and all are underground (except at the point of connection to the above-referenced buildings).

6. The facilities were installed at the time that the respective building in which each terminates was constructed. The first building was built and occupied in 1969. The last building was occupied in 1984.

7. BellSouth has recorded and continues to record the facilities at issue in Account 242.

8. BellSouth has charged for the facilities at issue as Series 2000 Channels (with USOC 1LVDE), pursuant to Section A113 of its Florida General Subscriber Services Tariff.

9. BellSouth states that these charges include private line service.

10. BellSouth has charged, and Harris has paid, $172,080.14 (not including taxes) for the facilities from January 1, 1989 to January 1996.

11. Harris has continued to pay for the facilities at issue at the rate of approximately $2,000 per month since then; these payments are not included in the $172,080.14 total given above.

II. HISTORICAL BACKGROUND

We have reviewed three FCC dockets that provide guidance in this proceeding. They are CC Docket No. 79-105,[1] CC Docket No. 81-

[1]In the Matter of Amendment of Part 31, Uniform System of Accounts for Class A and Class B Telephone companies, of the Commission's Rules and Regulations with respect to accounting for station connections, optional payment plan revenues and related capital costs, customer provided equipment and sale of terminal equipment.

893,[2] and CC Docket No. 82-681.[3] Below is a chronology of events which stemmed from these dockets.

On March 31, 1981, the FCC released its First Report and Order in CC Docket No. 79-105 (Expensing Order). In the Order, the FCC directed that future inside wiring costs should be expensed and that embedded investment in unamortized inside wiring be amortized over a ten year period. Specifically, inside wire costs capitalized in Account 232 up through October 1, 1981, and as allowed during a four-year phase-in period, were to be amortized to account 608 over a ten year period. Several companies requested and were granted shorter amortization schedules. Therefore, the zero net embedded investment point would differ from company to company, but the FCC held that in no event could it occur later than September 30, 1994.

Subsequently, the FCC issued a Further Notice of Inquiry (FNOI) in CC Docket 79-105, 86 FCC 2d 885 (1982). As a result of the comments received in response to the FNOI, the FCC decided to distinguish between simple and complex inside wiring in CC Docket 82-681. See Second Report and Order, CC Docket 79-105; Released February 24, 1986.

On November 2, 1983, in CC Docket 82-681; Final Rule, the FCC established the intrasystem concept for new detariffed PBXs and key systems which would consist of common equipment, a switchboard or switching equipment shared by all stations, station equipment (usually telephones or key telephone systems), and intrasystem wiring. (emphasis supplied) The FCC also detariffed new intrasystem wiring installed with new CPE systems and concluded that embedded intrasystem wiring would be addressed in Docket 81-893. See Order 83-457; Final Rule released November 2, 1983.
The FCC stated:

> In Docket 79-105, First Report and Order, the Commission decided that inside wiring included in account 232, "Station connections," should be expensed. Additionally, we stated that Docket 79-105 would be extended by separately issuing a Further Notice of Inquiry (FNOI)

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[2]In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, (Second Computer Inquiry)

[3]Detariffing of Customer Premises Equipment and Customer Provided Cable/Wiring.

> which would solicit comments on a proposal to deregulate the customer premises portion (inside wiring) of station connections. Based on the comments received, we believed that complex inside wiring [FN4] installed for use with complex systems, such as a PBX or key system, could be detariffed. Therefore, we proposed in this proceeding to detariff the inside wiring installed for detariffed complex systems.

Footnote 4 states:

> We defined this wiring as intrasystem wiring which includes all cable and wire and its associated components (e.g., connecting blocks, terminal boxes, connecting between buildings on the same customer's premises, etc.) which connect station components to one another or to the common equipment of a PBX or a key system. Para. 5.

The FCC concluded that the wires it had defined as intrasystem wiring should be recorded in Account 232. Paras. 56-61.

In the FCC's Report in Order in CC Docket 81-893, adopted November 23, 1983 and released on December 15, 1983, the FCC concluded that embedded intrasystem wiring should not be removed from regulated service at that time for two reasons:

> First, the transfer of the wire to ATTIS could have an adverse effect on competition.
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> * * * *
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> Second, a more equitable result can be achieved by requiring that the unamortized labor costs which form the predominant portion of embedded intrasystem wiring investment be recovered under regulation. To do otherwise would place an undue burden on users of this wiring because these users would become the sole source of revenue for the recovery of investment in this wiring. It would be unfair to require current users to contribute to the recovery of this investment because users in prior years have received the benefit of the capitalization of these labor costs. Further, such removal from regulated service would run the risk that invested amounts never would be recovered, to the detriment of carriers'

> investors ... We have already taken action to establish a schedule for the amortization of these unrecovered costs under regulation. [FN 141] Paras. 164 and 165.

Footnote 141 refers to the First Report and Order in CC Docket No. 79-105, 85 FCC 2d 818, 829-30 (1981) cited above and notes that a question arises as to whether the carriers or their customers should own and maintain this wiring once it is completely amortized and carriers have recovered their costs for this investment.

On April 5, 1985, the FCC released a Further Notice of Proposed Rulemaking, in CC Docket 79-105, proposing to detariff the installation of simple inside wiring and also to detariff the maintenance of all inside wiring, both simple and complex. In addition, the FCC proposed that the telephone companies relinquish all claims to ownership of the inside wiring when their investment in the inside wiring account is fully amortized.

On February 24, 1986, the FCC released its Second Report and Order in CC Docket 79-105. The FCC stated that complex inside wiring, which it also called intrasystem wiring, includes all cable and wire and its associated components (e.g., connecting blocks, terminal boxes, conduit) located on the customer's side of the demarcation point, when this wiring is inside a building located on the same or contiguous property not separated by a public thoroughfare, which connect station components to each other or to the common equipment of a PBX or key system. However, wire meeting the other criteria for complex inside wire and crossing a public thoroughfare may be considered intrasystem wiring if approved by an appropriate state or local authority. Simple inside wiring is any inside wiring other than complex wiring. Par. 1, Fn. 2.

In the Second Report and Order, the FCC detariffed the installation of simple inside wire and the maintenance of both simple and complex inside wiring effective January 1, 1987. Par. 43. The FCC also ordered the relinquishment of ownership of inside wire already expensed to Account 605 effective January 1, 1987. Par. 52. With respect to inside wiring recorded in Account 232, the FCC ordered the relinquishment of ownership concurrent with reaching the point of full amortization or zero net investment. Id.

On November 21, 1986, the FCC released its Memorandum and Opinion Order in CC Docket 79-105. The FCC revisited its relinquishment requirements established in the Second Report and Order. Rather than ordering relinquishment, the FCC ordered that telephone companies could not require customers to purchase inside wire which had been expensed or fully amortized nor could they charge customers for the use of such wiring. However, telephone

companies could collect wiring maintenance fees on an untariffed basis from anyone who chose to use that service, provided the companies used the accounts provided for unregulated activities. Par. 35.

Having considered the relevant FCC and FPSC dockets, the stipulated facts, the briefs of the parties, and our staff's recommendations, our decision is set forth below.

III. LEGAL CHARACTERIZATION OF FACILITIES

Harris' Initial Brief

Harris argues that the facilities fit the FPSC's and FCC's definition of complex inside wiring. In support of its argument, Harris notes the following facts upon which the parties have stipulated: 1) The wiring is on Harris' side of the demarcation point in Building 53 on the Harris campus at 2401 Palm Bay Road, in Palm Bay, Florida. 2) The wiring connects the PBX in Building 53 with telephone closets in other buildings on the Harris campus; 4) The wiring runs between buildings, and is mostly underground; and 5) None of the wiring crosses a public road. Harris concludes that because the wiring is located on Harris' side of the demarcation point, inside buildings or between buildings, located on the same or contiguous property not separated by a public thoroughfare and connects station components, i.e. telephones via telephone closets, to the PBX, the wiring at issue is complex inside wiring.

Harris also argues that its conclusion is supported by Order No. PSC-96-1040-FOF-TL, issued August 12, 1996. Harris quotes the portion of that Order which states: "[A] customer who purchases a PBX system connects to the LEC network at a single demarcation point and the interbuilding cable is treated as complex inside wire." Harris also refers to the portion of that Order in which the FPSC also stated that because of the single demarcation point associated with PBX systems, the interbuilding wiring on the customer's side of the demarcation point is characterized as "inside wire." Thus, Harris concludes that because the wiring at issue is associated with Harris' PBX system, is on Harris' side of the demarcation point, and runs between buildings, the wiring is complex wiring.

BellSouth's Reply Brief

BellSouth argues that regardless of the present use of the facilities, they are not nor have they ever been, inside wire of the type that has been deregulated by the FCC. The facilities were

not booked to Account 232, nor should they have been. The facilities are embedded (underground) facilities, not Account 232, inside wire. BellSouth asserts that the facilities were placed underground at various times between 1969 and 1984 during a time when the entire concept of inside wiring had not been created. BellSouth argues that when the concept was created in the Final Rule, it was expressly made applicable to facilities connected to customer premises equipment to be installed in the future. BellSouth states that if the facilities were installed today, or even sometime after 1984, they would constitute complex inside wire.

BellSouth states that it is uncontroverted that Harris has chosen to discharge its responsibility to provide intrasystem wiring on its side of the demarcation point by utilizing the facilities in question, i.e. buried cable installed under regulation at various times between 1969 and 1984). According to BellSouth, the only question remaining is how to categorize these facilities, as regulated (embedded) facilities or inside wire.

BellSouth states that the fallacy of Harris' approach is readily apparent in its repeated efforts to apply the current rules to conclude that these facilities are complex inside wire because they are on the customer's side of the demarcation point. BellSouth argues that, except for a few months at the end of the fifteen year period between 1969 and 1984, there was no demarcation point. BellSouth contends:

> More to the point, there was nothing to demarcate. Both the outside plant facilities (i.e., station connection wire inside buildings) and the "true" inside wire (i.e., station connection wire inside buildings) were part of the local exchange company's network facilities.

BellSouth concludes that the facilities in question are embedded, i.e., they were installed prior to the last few months of 1984. They were properly booked to Account 242 at the time they were installed between 1969 and 1984, and there has been no FCC or Florida Commission ruling to change the status of these facilities. To the extent that Harris has used and wishes to continue to use these facilities as intrasystem wiring, it should be required to pay the appropriate tariffed rate to do so.

BellSouth's Initial Brief

BellSouth describes the facilities as cables that are buried underground, which connect various buildings on a customer's side of a PBX, i.e., intrasystem facilities. BellSouth argues that the question in this case is not, "how do the various FCC Orders deregulating inside wire affect the subject facilities and their proper provision?" According to BellSouth the question is, "do these Orders affect the facilities at all?" BellSouth asserts the answer is, "no" and that none of the detariffing orders address intrasystem cabling installed between 1969 and 1984.

After concluding that none of the detariffing orders address the facilities at issue, BellSouth argues its position on the proper accounting classification of the facilities. First, it states that the proper accounting classification of network facilities is set forth in Part 31 of the FCC's rules and regulations. BellSouth asserts, that during the relevant time frame, outside cable and inside wire were clearly distinguished from each other and booked differently. Specifically, account 242 was the appropriate account in which to book various types of outside cabling used to service customers. This account included sub-accounts for aerial, underground, submarine and buried cable. BellSouth states that the buried account was defined to include "the original cost of buried cable and other material used in the construction of such cable." It also included "wire when buried and used as part of the general distribution system." Citing 47 C.F.R. §2423, Note A.

BellSouth asserts, Account 232 entitled "Station Connections," included the original cost of installing or connecting items of station apparatus and the original cost of inside wiring and cabling and of drop and block wires." (citing §31.232(a)). BellSouth also notes that the rule defining station connections also contains the following note:

> Note B: The cost of outside plant, such as poles, wires and cables whether or not on private property, used to connect a private branch exchange with its terminal stations shall be charged to the appropriate pole, wire and cable accounts.

BellSouth concludes that under the rules that pertained to outside cable installed during the pertinent time frame, buried cable was to be charged to Account 242. BellSouth argues that to the extent that wires or cables were utilized between buildings to connect a PBX in one building to terminal stations in others, the cable was to have been charged to the appropriate cable account.

BellSouth states that its predecessor company classified the cable in Account 242 because it was unquestionably a part of the company's network that was buried underground. It argues that it is uncontroverted that the PBX and the related facilities were all in place by 1984 and thus properly booked to account 242. BellSouth asserts that no FCC Order has been entered since then to change the regulatory treatment of this cable. According to BellSouth, the facilities were subject to regulation when placed, and they are still subject to regulation today.

After summarizing points from several FCC Orders, BellSouth concludes that the intrasystem wiring concept, and the detariffing of this intrasystem wire applies only to new CPE. According to BellSouth, the effect of the Final Rule in CC Docket No. 82-681 was that cable, buried or otherwise, or wiring used as intrasystem wiring in newly installed CPE would have to be offered on a detariffed basis. BellSouth also argues that the Final Rule did nothing to address embedded intrasystem wiring/cable like that at issue in this case. We note that the FCC stated in the Final Rule that the investment in embedded intrasystem wiring would be addressed in Docket No. 81-893. In Docket 81-893, it is arguable that the FCC concluded that the embedded wiring would be recovered under regulation. After the telephone company recovered its investment, it could no longer charge for the use of the facilities. Id.

BellSouth states that based on the Final Rule, it filed an Amendment to its General Subscriber Service Tariff, A13.1, Extension Tie Line Services on August 28, 1984. BellSouth quotes from the tariff:

> In compliance with an Order of the Federal Communications Commission in CC Docket No. 82-681, the provision of new intrasystem wiring and associated components located on the customer's side of the demarcation point, inside a building or between customers buildings located on the same or contiguous property, will be the responsibility of that customer. The company will not furnish, maintain, or repair such new intrasystem wire or cable facilities placed after June 30, 1984. (A13.1.1D)

At the same time,

> Existing Company provided intrasystem wiring inside a building or between buildings located

> on the same contiguous property, will continue to be available as required after June 30, 1984. The Company will condition to offer additional services on these facilities as long as such wiring or cable facilities are available, at standard tariff rates and charges. (A13.1.1D)

Therefore, BellSouth argues, it filed a specific tariff revision to accommodate the distinction between embedded intrasystem wiring and new intrasystem wiring. Specifically, new facilities associated with detariffed CPE would not be provided under regulation; existing facilities used with previously installed CPE, however, would continue to be offered under regulation. BellSouth notes that this tariff was approved by the Commission by Order No. 13680 in Docket No. 840266-TL. BellSouth quotes from the Order:

> Southern Bell's proposal to remove the provision of complex inside wire from its tariff is based on the FCC's Order 83-457 in Docket 82-681. The FCC Order requires the detariffing of new intrasystem wiring installed with new Customer Premises Equipment (CPE) and specifies that this type of wiring be provided to new installations on a detariffed basis after June 30, 1984. The intent of the FCC's action appears to be that new complex inside wire be treated in the same manner as new CPE. We agree that new complex inside wire should be treated like new CPE. Therefore we approve the Company's filing.

BellSouth argues that the Commission's Order confirmed the appropriate treatment of the facilities like those in this case.

As noted before, BellSouth concluded that, according to the tariff, existing facilities used with previously installed CPE would continue to be offered under regulation. We agree that when the tariff was approved, the facilities would have been offered under regulation. We do not agree, however, with the result of BellSouth's argument: the facilities will continue to be offered under regulation even after BellSouth has recovered its investment. Nor did we adopt this position when we approved the tariff.

BellSouth concludes that the Commission's Order approving the tariff and the FCC's Final Rule (Order 83-457) "all make crystal clear the fact that the term 'complex inside wire' applies only to those facilities connected to systems that are newly installed." Staff disagrees. We do not believe, that by simply approving the tariff, the Commission determined that the term complex inside wire

only applied to new installations. Existing facilities were required to be offered under regulation, but only until the telephone company recovered its investment during the applicable amortization period. However, we note that since BellSouth determined these facilities were network facilities it never booked them to Account 232.

BellSouth argues that if there is any doubt about the fact that embedded intrasystem wiring continued to be regulated after the entry of the Final Rule, that doubt should be dispelled by the actions of the FCC the following year in Docket No. 81-893. The FCC found that intrasystem wiring currently owned by AT&T or the independent telephone companies should not be detariffed and removed from regulated service at this time. In 1985 the FCC concluded again that embedded intrasystem wiring should not be detariffed and removed from regulated service. BellSouth argues that nothing has happened since 1985 to change this result.

Upon review, we agree that in Docket 81-893 the FCC stated that the intrasystem wiring should not be detariffed and removed from regulated service. We disagree, however, that nothing happened to change that result. It is arguable that this embedded investment was addressed in cc Docket 79-105. In that docket the FCC ordered expensing and amortization of all inside wire.

Finally, BellSouth argues that the Second Report and Order, CC Docket No. 79-105, released February 24, 1986, did not address in any way the status or treatment of embedded facilities that functioned as intrasystem cabling prior to the date in 1984 on which new complex inside wire was detariffed. BellSouth asserts that the FCC in this Order took the view that complex wire had been adequately dealt with in the Final Rule in CC Docket 82-681 and that the Second Report and Order limited detariffing to wiring included in Account 232. We agree. However, the Order detariffed wiring that had been previously included in Account 232. The embedded investment, i.e. intrasystem wiring in Account 232, was as stated earlier, addressed in Docket 79-105. On a going forward basis, new inside wire would be offered on a detariffed basis, whereas the embedded or existing wire would be offered under regulation until the telephone company recovered its investment.

BellSouth concludes that if the facilities were installed today, they would constitute complex inside wire, and they would be installed on a detariffed basis. Instead, BellSouth argues, the facilities were installed during a time when, at least until 1984, there was no demarcation point between network facilities and facilities for which the customer was responsible. Instead all the facilities constituted network facilities. There was no complex

intrasystem wiring because the FCC had not yet conceived of this classification of wiring/cable as a means to facilitate detariffing inside wire. According to BellSouth, these facilities were and remain buried cable, and they were classified accordingly. BellSouth asserts that this cable has never been deregulated by the FCC, nor by this Commission.

Harris' Reply Brief

Harris states that BellSouth contends that because the wiring was installed between 1969 and 1984, it is not complex inside wiring. Harris responds to those arguments as follows:

In response to BellSouth's claim that the term "intrasystem wiring" applies only to wiring installed after May 2, 1984, Harris asserts that BellSouth misreads the Detariffing Report and Order. According to Harris, BellSouth confuses the intrasystem concept defined therein with intrasystem wiring. Harris asserts that the intrasystem concept included PBXs, telephones, and intrasystem wiring. (Citing Detariffing Report and Order, para. 9) Harris argues that BellSouth merges these words and invents the term "intrasystem wiring concept." Harris argues that it was the immediate detariffing of intrasystem wiring in 1984 that applied only to new intrasystem wiring. The term intrasystem wiring applied to new intrasystem wiring and existing intrasystem wiring.

Harris makes several arguments to support its contention that the term intrasystem wiring applied to both new and existing wire. First, in the Notice of Proposed Rulemaking corresponding to the Detariffing Report and Order, the FCC explicitly stated: "Currently, it is required that intrasystem wiring be recorded in account 232..." (Citing Fed. Reg. 44,770 para. 25) Harris states that the Notice was released on October 1, 1982, more than one year before the release of the Detariffing Report and Order BellSouth cites. Thus, according to Harris the term intrasystem wiring includes wiring that existed before October 1, 1982 and before the adoption of the Detariffing Report and Order. Second, in the Report and Order, Procedures for Implementing the detariffing of Customer Premises Equipment and Enhanced Services, the FCC stated that it had taken steps to amortize embedded intrasystem wiring. Harris asserts that in that Order the FCC cited the First Report and Order, Amendment of Part 31. Thus, Harris asserts that the term intrasystem wiring applied to wiring that existed prior to March 31, 1981 and concludes that BellSouth's assertion that there was no complex intrasystem wiring at least until 1984 is wrong.

In addition to the above, Harris cites the FPSC's Order approving BellSouth's detariffing of the installation of new

intrasystem wiring which refers to BellSouth's proposal to remove the provision of complex inside wire from its tariff. Harris argues that if the term complex inside wire were to apply only to newly installed wire, there would have been no need for BellSouth to "remove" the provision of complex inside wire from its tariff. Further, Harris argues, the FCC referred to new intrasystem wiring when it detariffed the installation of intrasystem wiring. If the term intrasystem wiring were to apply only to wiring installed after May, 1984, there would be no need for the FCC to use the adjective "new."

Harris goes on to address BellSouth's argument that at the time the wiring at issue was installed, all wiring was network facilities. Harris states that this argument is absurd because if all facilities were network facilities, the wiring inside customers' homes prior to 1984 must have been network facilities. According to Harris, if that were the case, such wiring would not have been amortized by BellSouth, and BellSouth could still be charging homeowners for the wiring inside their homes. But BellSouth did amortize that wiring. (Citing Petitions of Southern Bell Telephone and Telegraph Company for Rate Stabilization and Implementation Orders and Other Relief, 88 FPSC 10:311, 328 (1988).

Harris argues that BellSouth's assertion that when the wiring was installed there was no demarcation point is inconsistent with FPSC and FCC rules and orders. Further, Harris argues there was no reference to demarcation point in the definition of intrasystem wiring initially adopted by the FCC and thus the definition of demarcation point was not a threshold requirement for the amortization and detariffing of intrasystem wiring.

Harris also asserts that there are no FPSC or FCC orders referencing network intrasystem cabling. Further, BellSouth's characterization of the wiring as buried cable has no merit. Buried cable is part of the network, and recorded in Account 242.3, one of the outside plant accounts. Harris concludes that the wiring is on Harris' side of the demarcation point, so it cannot be part of the network. Thus, the wiring is not buried cable which is subject to regulation.

Decision

To summarize the parties' positions, Harris argues that the facilities meet the FCC's definition of complex inside wire. BellSouth agrees that if the facilities were installed today that they would be considered complex inside wire. However, BellSouth argues that the facilities, based on their accounting classification and vintage, are network facilities.

Upon consideration, we find that the facilities, as described in the stipulation of facts, meet the FCC and FPSC's definition of complex inside wire. We note that our finding is supported by the fact that BellSouth is charging for the facilities at issue as Series 2000 Channels (with USOC 1LVDE), per stipulation of facts #8. BellSouth's tariff, A113.5 Extension and Tie Line Services, and USOC handbook reveal that this tariff is "(f)or a channel between different buildings on same continuous property and for different premises within the same building." We find that the Harris case conforms to the first portion of this definition. Further, given that stipulation of facts No. 3 indicates that there is one demarcation point, we believe the only rational conclusion is that the facilities at issue constitute complex inside wire. We also believe the fact that the FCC did not define these types of facilities until after the facilities at the Harris complex were installed is irrelevant. Further, we are not persuaded by BellSouth's argument that the facilities are network facilities because they were properly booked when installed and nothing has changed since they were installed.

IV. ACCOUNTING TREATMENT OF FACILITIES

Harris argues that the facilities at issue are complex inside wiring and, as such, should have been recorded in Account 232, Station Connections - Inside Wire, and amortized in accord with FCC rules and regulations. Once amortization was complete, Harris argues, BellSouth should have ceased charging for the facilities in accord with FPSC Order No. 20162, issued October 13, 1988 in Docket Nos. 880069-TL and 870832-TL. Harris asserts that BellSouth completed the amortization of its inside wire by January 1, 1989. Harris further argues that BellSouth should have expensed the installation of all new facilities beginning in the 1980s.

Harris opines that as early as 1949, the FCC's Account 232 included this type of equipment; i.e., wires used to connect PBXs with their terminal stations. 47 C.F.R. 31.232 (1949) Harris further argues that the FCC's Report and Order is very clear that all PBXs and wiring defined as intrasystem wiring should be recorded in Account 232. Citing See Order No. 83-457 at Par. 61. This Order defines an intrasystem as

> common equipment (a switchboard or switching equipment shared by all stations), stations equipment (usually telephones or key telephone systems), and intrasystem wiring. (emphasis added)

Intrasystem wiring is defined as

> all cable or wiring and associated components which connect the common equipment and the station equipment and which are located inside a building or between a customer's buildings located on the same or contiguous property not separated by a public thoroughfare. (emphasis added) (par 29)

Thus, since 1949, Harris argues, this associated investment should have been recorded in Account 232 and subject to the amortization and expensing requirements beginning in 1981 by the FCC's First Report and Order. See First Report and Order released March 31, 1981 in CC Docket No. 79-105

Harris argues that BellSouth should not have been charging for the wiring at issue pursuant to tariff. Harris cites FPSC Order No. 20162, issued October 13, 1988 in Docket Nos. 880069-TL and 870832-TL. The Commission ordered BellSouth to eliminate the lease charge on complex station lines on January 1, 1989 coinciding with the full recovery of Account 232. Further, the Order stated that the ownership of the wire would remain with BellSouth; however, customers would be able to use it free of charge.

BellSouth argues that, regardless of the present use of the facilities at issue, they are outside the subject buildings and, as such, were and are properly recorded in Account 242. They are not now, nor have they ever been, inside wire of the type that has been deregulated by the FCC. Therefore the regulatory treatment of Account 232 wiring is of no consequence in this proceeding.

BellSouth further argues that the facilities at issue were installed during the 1969 - 1984 period when there was no intrasystem concept. It proffers that none of the detariffing orders address this type of embedded intrasystem cabling. BellSouth opines that these facilities are network facilities and are appropriately recorded as outside plant in Account 242.

In support of its position, BellSouth refers to the FCC's Code of Federal Regulations, Part 31, that existed during the relevant time frame. It compares the definition of Account 232 to that of Account 242 stating that these accounts were clearly distinguished from one another. Account 242.3, buried cable, is defined to include "the original cost of buried cable and other material used in the construction of such cable" and also "wire when buried and used as part of the general distribution system." In contrast, Account 232, Station Connections, includes "the original cost of installing or connecting items of station apparatus and the

original cost of inside wiring and cabling and of drop and block wires." BellSouth refers to Note B of the Station Connections account which states

> Note B: The cost of outside plant, such as poles, wires, and cables whether or not on private property, used to connect a private branch exchange with its terminal stations shall be charged to the appropriate pole, wire, and cable accounts.

BellSouth therefore submits that the FCC rules in effect during 1949-1984 instructed that buried cable facilities, such as those currently at issue, were to be booked to Account 242. Further, BellSouth submits, the fact that the cabling in question was used to connect a PBX to various terminal stations in other buildings did not change its essential character or the appropriate classification. Finally, BellSouth opines, no FCC Order has been entered since then to change the regulatory treatment of this cable.

BellSouth asserts that the effect of the FCC's Final Rule was to simply detariff intrasystem wiring in newly installed CPE and did nothing to address embedded intrasystem wiring such as that at issue in this proceeding. Further, it argues, the actions of the FCC in Docket No. 81-893, in the Report and Order, released on December 15, 1983, and the Memorandum Opinion and Order On Reconsideration issued on March 6, 1985, reaffirmed the continued regulation of embedded intrasystem wiring.

Decision

Upon consideration, we find that the issue is not so much with the accounting treatment of the facilities prior to 1984, but with the accounting treatment since 1984. BellSouth contends that Note B of Account 242 is convincing that outside facilities utilized to connect a private branch exchange to a terminal station would have been booked to Account 242, even if they functioned in a way that later came to be defined as intrasystem wiring.

As discussed above, Harris contends that Paragraph 61 of the FCC's Final Rule supports its belief that all intrasystem wiring should be booked to Account 232, and should have been booked this way since 1949. BellSouth asserts that the purpose of Paragraph 61 was to address the contention that Note A to Account 232 required intrasystem wiring for large PBXs to be recorded in Account 234. The argument is that the note in question stated that wiring in Account 232 was restricted to small interior cable. This account

did not include cable connected to large PBXs, which according to Paragraph 61 was not affected by the provisions of the Final Rule, nor did it include network cable. Paragraph 61 of the Final Rule states:

> First the items list for account 232 clearly requires that wires used to connect private branch exchanges, switchboards or their distributing frames with terminal stations should be recorded in account 232. This clearly applies to all PBXs and the wires we have defined as intrasystem wiring. The language in Note A that relates to account 234 covers cables from the interface with permanent house or outside cables or wires to a large PBX. These cables or wires have always been recorded in account 234 and were not affected by the expensing required in Docket 79-105. Therefore, California's interpretation that intrasystem wiring should be recorded in account 234 is incorrect. emphasis supplied. See Order No. 83457; Final Rule released November 2, 1983, par. 61.

BellSouth argues that the intrasystem wiring definition in the Final Rule only applies to newly installed CPE and complex inside wire, not to embedded facilities. Upon review, we agree that the Final Rule addressed the detariffing of new intrasystem wiring installed with new CPE. However, we believe it is incongruous to conclude that new intrasystem wiring would be treated as inside wire while embedded intrasystem wiring would continue to be maintained as network cables.

As discussed previously, the FCC's Final Rule established the intrasystem wiring concept for new detariffed PBXs. This consisted of common equipment, a switchboard or switching equipment shared by all stations, station equipment, and intrasystem wiring. The FCC also detariffed new intrasystem wiring installed with new CPE systems and concluded that embedded intrasystem wiring would be addressed in Docket 81-893. See Order 83-457; Final Rule released November 2, 1983, effective May 2, 1984. The FCC further stated that wires it had defined as intrasystem wiring should be recorded in Account 232. See NPRM; Notice of Proposed Rulemaking released October 1, 1992, adopted September 23, 1982, par. 25.

> Currently, it is required that intrasystem wiring be recorded in account 232 and that station equipment and PBXs be recorded in accounts 231 and 234. We are proposing herein that these accounts be amended to preclude the recording of this intrasystem wiring, station equipment and intrasystem PBX. (emphasis added)

(NPRM, Notice of Proposed Rulemaking, Docket No. 82-681, released October 1, 1982, adopted September 23, 1982)

With respect to BellSouth's argument on Note B of Account 242, we believe that prior to 1984, that note could be interpreted to include the facilities at issue. On the other hand, we believe that the FCC's Final Rule is clear that the FCC intended that embedded intrasystem wiring be recorded in Account 232 and amortized in accordance with its Expensing Order. Nonetheless, Note B continued to be reflected in Account 242 thereafter and the FCC never issued an Order requiring the reclassification of such facilities to Account 232.

We disagree that these facilities are network cable even if some time in the past they had been considered that way. The stipulation of facts Nos. 3 and 8 indicate that there is only one demarcation point, the facilities are on the customer's side of that designation, and BellSouth's tariff is for Series 2000 Channels defined as channels between different buildings on the same continuous property. These facilities are no longer considered network cables; they are complex inside wire.

Although we find that the facilities are complex inside wire, it does not appear BellSouth has violated any Florida rules, regulations or statutes. Further, given the apparent inconsistency between the FCC's Final Rule and Note B to Account 242, it is unclear whether any FCC rules or regulations have been violated.

V. RELIEF

Harris argues that by FPSC Order No. 20162, BellSouth should not have been charging for the wiring at issue since January 1, 1989 when the amortization of Account 232 - Inside Wire was complete. If BellSouth had reclassified the associated net investment from Account 242 to Account 232 and amortized it accordingly, then Harris would be correct. However, as discussed previously, BellSouth believes these facilities have always been network cables and therefore has continued to record this investment as buried cable in Account 242.

Decision

As demonstrated above, it is unclear whether BellSouth has violated rules, orders, or regulations regarding the accounting treatment of the facilities at issue. In light of this, we will not order a retroactive refund of charges to Harris.

However, as noted earlier, based on the stipulation of facts in this proceeding, we find the facilities constitute complex intrasystem wiring, a.k.a. complex inside wire, and it would have been appropriate for BellSouth to reclassify the associated investment to Account 232 and amortize it accordingly. As we stated earlier, it is incongruous to treat new complex intrasystem wiring as inside wire and maintain the embedded amounts as part of the network in Account 242.3. We note BellSouth could have recovered the investment in these facilities by January 1, 1989 through amortization; it chose not to avail itself of that opportunity. Even so, there should be little unrecovered investment remaining since these facilities went into service during the 1969 to 1984 time period. Further, BellSouth is achieving recovery of these facilities through normal accounting treatment as outside plant cables in Account 242.3 as well as through the tariff charges to Harris. See Stipulation of facts nos. 8 and 11.

We note that facilities such as these have been deregulated for many years. BellSouth was ordered in Order No. 20162 to eliminate the lease charge on complex station lines on January 1, 1989 coinciding with the full recovery of Account 232. Further, the Order stated that the ownership of the wire would remain with BellSouth; however, customers would be able to use it free of charge. Regardless of the ambiguity between the FCC's Final Rule and Note B in Account 242, we believe it would have been appropriate for BellSouth to reclassify these facilities to Account 232. If BellSouth had taken this action, it would have already recovered its investment.

Based on the foregoing, we find that, on a going forward basis, BellSouth shall no longer charge for the use of the facilities. Accordingly, BellSouth shall discontinue charging Harris the $2,000 tariffed rate.

It is, therefore,

ORDERED by the Florida Public Service Commission that Harris Corporation's Petition and Complaint are resolved as set forth in the body of this Order. It is further

ORDERED that the facilities at issue are complex inside wire as discussed in the body of this Order.

ORDERED that BellSouth shall no longer charge for the use of the facilities as discussed in the body of this Order. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission, this 7th day of April, 1997.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
Chief, Bureau of Records

(S E A L)

MMB

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: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.