BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI Telecommunications Corporation and MCI Metro Access Transmission Services, 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.	DOCKET NO. 960846-TP ORDER NO. PSC-97-0602-FOF-TP ISSUED: May 27, 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

ORDER ON AGREEMENT BETWEEN MCI TELECOMMUNICATIONS CORPORATION, MCI METRO ACCESS TRANSMISSION SERVICES, INC. AND BELLSOUTH TELECOMMUNICATIONS, INC.

BY THE COMMISSION:

I. BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (Act), 47 USC § 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. This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request under this section.

By letter dated March 4, 1996, AT&T on behalf of its subsidiaries providing telecommunications services in Florida, requested that BellSouth begin good faith negotiations under Section 252 of the Act. On July 17, 1996 AT&T filed its request for arbitration pursuant to the Act.

MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc. (MCIm) requested that BellSouth begin good faith negotiations by letter dated March 26, 1996. Docket No. 960846-TP was established in the event MCIm filed a petition for arbitration of the unresolved issues. On July 30, 1996, AT&T and MCIm filed a joint motion for consolidation with AT&T's request for arbitration with BellSouth. By Order No. PSC-96-1039-PCO-TP, issued August 9, 1996, the joint motion for consolidation was granted. On August 15, 1996, MCIm filed its request for arbitration under the Act.

On October 9 through 11, 1996, we conducted an evidentiary hearing for the consolidated dockets. On December 31, 1996, we issued Order No. PSC-96-1579-FOF-TP, wherein we resolved the remaining unresolved issues between MCIm and BellSouth. In the Order, we directed the parties to file an agreement memorializing and implementing our arbitration decision within 30 days.

The parties filed their arbitrated agreement with us on January 30, 1997, and identified the sections where there were still disputes on the specific language. On March 21, 1997, we issued Order No. PSC-97-0309-FOF-TP, wherein we approved various sections of the agreement that the parties were able to agree on, rejected sections that were not arbitrated, and established language for sections that were arbitrated and still in dispute. The Order specifically identified the language that was to be contained in the final arbitrated Agreement.

Although we specifically identified all of the language to be included in the arbitrated Agreement, the parties still refuse to sign the Agreement due to disputes over language proposed by BellSouth. On April 2, 1997, both parties filed separate versions of an agreement. Having reviewed the agreements filed by the parties, we approve MCIm's agreement as the final, binding arbitration agreement to the extent set forth below.

II. THE AGREEMENT

As discussed in the Case Background, the Commission resolved the unresolved issues in the proceeding on December 31, 1997, and directed the parties to file an agreement memorializing and implementing its arbitration decision within 30 days. The parties were unable to agree to all of the language that should be included in the agreement. Therefore, the parties filed their version of the language that each believed should be part of the final arbitrated agreement. In Order No. PSC-97-0309-FOF-TP, we established all of the language that should be included in the arbitration agreement for Docket No. 960846-TP. Even though we established the language, the parties not only have included language that we have not approved, but continue to argue over what language should be in the agreement. We painstakingly went through the proposed language for each section in the parties' agreement to determine what language should be included in the arbitration agreement.

Although we believe that the parties have directly violated Order No. PSC-97-0309-FOF-TP by not signing the Agreement, we once again attempt to settle the disputes between the parties on the appropriate language that should be included in the agreement.

The various sections in the agreements filed by MCIm and BellSouth on April 4, 1997, can be separated into the following categories: 1) Sections that the parties agreed to and we approved; 2) Sections that we rejected in our Order since they were not agreed to and were not encompassed in an arbitrated issue, but the parties have negotiated language subsequent to the issuance of our Order for our approval; and 3) Sections that are in dispute and were not arbitrated.

Category 1

We approved this language in Order No. PSC-97-0309-FOF-TP. Upon review therefore we approve all sections of MCIm's agreement except for the sections discussed in Categories 2 and 3 below.

Category 2

We rejected the language for the sections identified in Table A in Order No. PSC-97-0309-FOF-TP. In the parties' initial agreement these sections were not arbitrated, and the parties were unable to agree on specific language that should be included in the agreement. Since our decision, however, the parties have agreed to specific language for these sections. Although this action essentially allows the parties a second chance in obtaining Commission approval of their agreement, we believe approving these sections at this time is more expedient than requiring the parties to remove the language and file an amendment to the arbitrated agreement. Upon consideration therefore we believe the sections identified in Table A comply with Section 252(e)(2)(B) of the Federal Act. Accordingly, they are approved and shall be included in the arbitrated Agreement.

TABLE A

Attachment	Section	Title
Part A	11	Limitation of Liability and Indemnification
Part A	19	Non-Discriminatory Treatment
Part A	22	Audits and Examinations
4	2.2.2	Compensation Mechanisms
6	1.3.9.3 1.3.9.4	Compliance with Environmental Laws
8	6.1.3.3.3.3	Miscellaneous Services & Functions
9	3	Revenue Protection

Category 3

The language contained in this category appears to involve the only dispute between the parties. BellSouth's proposed agreement includes language associated with the pricing of rebundled network elements to duplicate a resold service. Specifically, BellSouth proposes to include the following language associated with the pricing of rebundled unbundled network elements (UNEs):

> The recurring and non-recurring prices for Unbundled Network Elements ("UNEs") in Table 1 of this Attachment are appropriate for UNEs on an individual, stand-alone basis. When two or more UNEs are combined, these prices may lead to duplicate charges. BellSouth shall provide recurring and non-recurring charges that do not include duplicate charges for functions or activities that MCIm does not need when two or more Network Elements are combined in a single order. MCIm and BellSouth shall work together to mutually agree upon the total non-recurring and recurring charge(s) to be paid by MCIm when ordering multiple Network Elements. **Further negotiations between the parties should address the price of a retail service that is recreated by combining UNEs. Recombining UNEs shall not be used to under cut the resale price of the service recreated.** Where the parties cannot agree to these charges, either party may petition the Florida Public Service Commission to settle the disputed charge or charges. BellSouth must notify the Commission when a rate is set that excludes duplicated charges by filing a report within 30 days of the rate being established. This report must specify the elements being combined and the charges for that particular combination.

BellSouth proposes to include the bold language above based solely on our deliberations at our Agenda Conference on BellSouth's Motion for Reconsideration in this proceeding. We expressed some concern with the potential pricing of UNEs to duplicate a resold service, and our Order reflects that concern in dicta. We stated, however, that the pricing issue associated with the rebundling of UNEs to duplicate a resold service was not arbitrated. Accordingly, BellSouth's proposed language shall not be included in the agreement.

III. REQUIREMENT TO SIGN AGREEMENT

As discussed earlier, we have already identified all of the specific language that should be included in the arbitrated agreement between MCIm and BellSouth. We directed the parties to file an agreement memorializing and implementing our arbitration decision within 30 days. Neither party has complied with our Order. Instead, the parties have negotiated different language than what was ordered, attempted to include language that was not ordered, and are still disputing over language that was not at issue in the arbitration. We believe the parties have violated Section 252(b)(5) of the Act. That Section states:

> Refusal to Negotiate. The refusal of any other party to the negotiation to participate further in the negotiations, to cooperate with the State commission in carrying out its function as an arbitrator, or to continue to negotiate in good faith in the presence, or with the assistance, of the State Commission shall be considered a failure to negotiate in good faith.

Upon consideration, we find that the parties shall include our decisions in this Order in a signed agreement, incorporating the exact language identified herein, within 14 days of the issuance of this Order. If a signed agreement is not timely submitted, we will immediately issue a Show Cause Order, pursuant to Section 364.285, Florida Statutes, against the non-signing party to show in writing why it should not be fined $25,000 per day for willful refusal to comply with the Commission's Order.

If the signed agreement is timely submitted and comports with our Orders in this docket, an administrative order shall be issued acknowledging that a signed agreement has been filed. Further, if the signed agreement comports with our Orders, the agreement shall be deemed approved on the date the administrative order is issued.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that each and all of the specific findings herein are approved in every respect. It is further

ORDERED that MCI Telecommunications Corporation and MCI Metro Access Transmission Services, Inc.'s Agreement is approved as discussed in the body of this Order. It is further

ORDERED that MCI and BellSouth shall sign the arbitrated agreement within 14 days of the issuance of this Order or an Order to Show Cause shall be issued against the Non-signing party as discussed in the body of this Order. It is further

ORDERED that this docket shall remain open.

By Order of the Florida Public Service Commission, this 27th day of May, 1997.

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BLANCA S. BAYÓ, Director
Division of Records and Reporting

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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).