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Patrick W. Turner
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April 13, 2000

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37245

Re: *Discount Communications, Inc.*
Docket No. 00-00230

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Mississippi arbitration panel decision which the Directors requested at the hearing yesterday. Also enclosed is a related decision by the Mississippi Public Service Commission, which does not address the issue raised by Mr. Walker during the hearing. A copy of the enclosed is being provided to counsel of record.

Very truly yours,

Patrick Turner

Patrick W. Turner (jm)

PWT/jem

Enclosure

205350

POSTED 4-14-00

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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March 7, 1997

Mr. Neilsen Cochran, Chairman
Mississippi Public Service Commission
P. O. Box 1174
Jackson, MS 39215-1174

RE: In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc.

Docket No. 96-AD-0559

Dear Mr. Cochran:

On behalf of the duly appointed PSC Arbitration Panel, I hereby transmit the Panel's Report.

Sincerely,

Samuel J. Nicholas, Jr.
Chairman

cc: Mr. Bo Robinson, Commissioner
Mr. Curt Hebert, Commissioner
Hon. John McCullouch, BellSouth
Hon. Newt Harrison, AT&T

SJNjr/jw

Enclosure

Mississippi Public Service Commission

In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc.) Docket No. 96-AD-0559

HEARD: Monday, February 10, 1997 - Wednesday, February 12, 1997, Jackson, Mississippi.

BEFORE: Samuel J. Nicholas, Jr., Chairman, Keith Howle and John Antonuk

APPEARANCES

On Behalf of AT&T Communications of the South Central States, Inc.:

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On Behalf of BellSouth Telecommunications, Inc.:

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INTRODUCTION

On February 8, 1996, Congress passed the Telecommunications Act of 1996 ("the Act"). Specifically, the Act provides for competition between local exchange carriers. It seeks to create "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition...."[1] Also, it aims at promoting competition in the local exchange market through the use of options including resale, unbundled network elements, and interconnection.[2]

On August 8, 1996, the Federal Communications Commission released its First Report and Order ("FCC Order") setting forth guidelines to be followed while implementing the terms of the Act.[3] On October 15, 1996, the United States Court of Appeals for the Eighth Circuit entered an Order Granting Stay Pending Judicial Review of certain pricing and the "pick and choose" provisions of the FCC Order.[4]

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[1] Conference Report, H.R. Rep. No. 458, 104th Cong.2d Sess. at 113 (1996) (Joint Explanation Statement of the Committee of Conference).

[2] U.S.C.A. § 251 (West Supp. May 1996).

[3] FCC Order No. 96-325.

[4] Iowa Util. Bd. v. Federal Communications Comm'n, 1996-2 Trade Cas. (CCH) ¶ 71598, 172, P.U.R. 645 (8th Cir. 1996). Inasmuch as this stay was premised upon a jurisdictional challenge

(Footnote Continued)

Section 252 of the Act provides for voluntary negotiations between requesting carriers and incumbent local exchange carriers. If the parties are unable to reach agreement on the terms of an appropriate interconnection agreement, either party has the option of requesting arbitration.[5] Under § 252(b)(4) of the Act, the Commission is to resolve each issue set forth in the Petition and Response for arbitration.

On June 10, 1996 AT&T Communications of the South Central States, Inc. ("AT&T") formally requested negotiations with BellSouth Telecommunications, Inc. ("BellSouth"). BellSouth is an incumbent local exchange carrier as defined by the Act. On November 15, 1996, AT&T filed with the Commission a Petition for Arbitration.

Based upon the foregoing, the evidence adduced at the hearings, and the entire record in this matter, the Panel now issues its findings and conclusions. However, they only represent the views of the Panel as a whole, not individually.

(Footnote Continued)
of the FCC Order rather than the substance underlying the FCC Order, it does not require that this Panel alter its analysis under the Act or the FCC Order.

[5] 47 U.S.C.A. § 252(b)(1).

AT&T/BellSouth Arbitration of

Mississippi Interconnection Agreement

Non-Pricing Issues Analysis

ISSUE 1: What services provided by BellSouth, if any, should be excluded from resale, including promotions, CSA's nonrecurring services, LifeLine/Link-Up, E11/911 and N11?

AT&T Position - BellSouth must resell at wholesale all telecommunications services it offers at retail to noncarriers. In particular, BellSouth must offer at wholesale contract service arrangements (CSAs), Link-Up and LifeLine service, 911/E911, and promotional offerings of more than 90 days. Promotional offerings of 90 days or less must be offered for resale, but not at a wholesale discount. There should be guidelines so that BellSouth does not abuse the 90 day exemption.

BellSouth Position - CSAs should not be discounted, because they are responses to competitive situations; if they were sold at wholesale, then AT&T would be able to undercut BellSouth and win in every such situation. LifeLine and Link-Up are subsidy programs, and AT&T should develop their own. 911 and E911 are not retail services provided to end users, so BellSouth should not be required to resell them at all. Promotions of 90 days or less are not retail services, and BellSouth should not be required to make them available for resale.

Telecommunications Act/FCC Orders - The Act at § 251(c)(4) requires ILECs "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

Analysis & Findings - Means-based services, such as Link-Up and LifeLine, are subject to the same argument, i.e., the wholesale discount that BellSouth must offer should just equal its avoided cost. If these services are not made available to CLECs at a wholesale discount, then one entire customer segment will be must less likely to receive the immediate benefits of competition. BellSouth should be required to provide these means-based services at a wholesale discount.

BellSouth argues that 911 and E911 are not retail services provided to end users (because they are provided to governmental entities. This is not relevant. The Act requires reselling at wholesale those retain services that are not provided to telecommunications carriers. 911 and E911 services are not provided to telecommunications carriers, and BellSouth should make them available at wholesale rates.

BellSouth provides no support for its statement that promotional offerings of less than 90 days are not retail services. Promotional offerings of more than 90 days should be offered by BellSouth at wholesale. As with any other retail service, promotional offerings of 90 days or less must be offered for resale, but not with a wholesale discount. Finally, there is no need at this time to anticipate possible violations by BellSouth of the 90 day rule. If AT&T encounters violations by BellSouth of this or any other aspect of the Order, AT&T should use the avenues already available to it in seeking appropriate action.

Discount Amounts

Promotions

AT&T should be permitted to purchase at wholesale any services subject to promotions of less than 90 days. The prices for these services should not

be discounted below BellSouth's promotional rate. However, AT&T should still be allowed to purchase these services at the allowed discount from tariff rates.

AT&T should be permitted to purchase at wholesale services subject to promotions of 90 days or greater. The prices for these services should be discounted by the allowed discount rate, applied to the promotional price.

For any services for which BellSouth grants rolling less-than-90-day promotional discounts (defined as any subsequent promotion that applies to all or part of the prices for the same or similar service and that takes effect within 30 days of the close of a preceding promotion) AT&{T should be permitted to purchase at wholesale rates discounted by the allowed discount rate, applied to the weighted promotional price. The weighted promotional prices shall be the tariff price less the average of the monetized value of the two most recent less-than-90-day promotional discounts that qualify as rolled together per the definition of rolling as provided above.

Contract Service Agreements (CSAs) CSAs are, by definition, services provided in lieu of existing tariff offerings and are, in most cases, priced below standard tariffed rates. Requiring BellSouth to offer already discounted CSAs for resale at wholesale prices would create an unfair competitive advantage for AT&T and is rejected. Instead, the Panel finds that all BellSouth Contract Service Arrangements which are in place as of the effective date of this Report shall be exempt from mandatory resale. However, all CSAs entered into by BellSouth or terminating after the effective date of this Report will be subject to resale, at no discount.

Life-Line and Link-Up

BellSouth's position does not fully distinguish costs and the sources of revenue that it receives to offset those costs. Technically, the source of the revenue, or who pays what portion of the bill, should not matter to discount calculation. The proper way to begin the analysis is, as BellSouth suggests, to discount from retail rates. However, the analysis cannot end there because of two factors:

1) BellSouth's current rates assume recovery from other retail customers of the amounts of revenue collection it waives in this case.

2) BellSouth has an existing source of third-party findings for some portions of that revenue; moreover, the costs of securing that finding are included in its retail costs and are therefore presumably recovered from its total body of retail customers.

Accordingly, AT&T through the purchase of wholesale services is therefore effectively picking up a share of the costs imposed by the waiver of collection and it is already paying for the costs of the activities that BellSouth must undertake to get third-party recovery for an additional portion of the bill to customers whose interests are involved here. Therefore, the following resolution is appropriate:

1) AT&T gets the allowed discount

2) BellSouth credits AT&T's bill with the amount it waives when it serves such customers.

3) BellSouth credits AT&T's bill with the amount of third-party recovery it can obtain for that customer.

The sequence of these activities is important. If the discount is applied first, then effectively none of the waived charges or third-party recovery offsets avoided costs. To the extent that those two sources of funding are not earmarked for particular costs, they should be removed from the revenue stream first; then the discount should be applied. To the extent that those two funding sources are earmarked, they should be applied as intended, unless the parties can demonstrate prior to the final order why this approach is not appropriate.

ISSUE 2: What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth's services?

AT&T Position - AT&T will restrict resale of residential service to residential subscribers and restrict resale of LifeLine and grandfathered services to eligible subscribers. AT&T acknowledges that BellSouth may provide short term promotions at the promotional rate. BellSouth must prove any other restrictions are reasonable and nondiscriminatory.

BellSouth Position - Terms and conditions in BellSouth's retail tariff should apply to resold services and, in fact, terms and conditions are part of the service. Eliminating the terms and conditions could affect both pricing and service availability. Use and user restrictions are class of service restrictions and thus permitted by the Act. The terms and conditions that BellSouth wants AT&T to follow have been approved by the Mississippi Public Service Commission and are contained in BellSouth's tariffs.

Telecommunications Act/FCC Orders - The Act at § 251(c)(4) states that ILECs may not impose unreasonable or discriminatory conditions or limitations on the resale of services.

The FCC Order at ¶939 states that resale restrictions are presumptively unreasonable. ILECs can rebut the presumption, but only with narrowly tailored restrictions. Such resale restrictions include those in the resale agreement and those in the underlying tariff. The FCC Order at ¶¶940-968 discusses exceptions to the presumption of unreasonableness.

Analysis & Findings - The parties agree that residential services should only be resold to residential subscribers, that Link-Up and LifeLine services should only be resold to eligible subscribers, and that grandfathered services should only be resold to current customers of those services. These restrictions should specifically be included in the Order.

AT&T's assertion that "all restrictions that limit who can purchase a service or how that service may be used constitute unreasonable and discriminatory conditions under the Act," is an oversimplification of this issue. As noted by AT&T, the FCC Order, at §939, states that restrictions on resale are presumptively unreasonable. The Act only prohibits "unreasonable or discriminatory conditions or limitations" on resale. In its analysis of the Act, the FCC specifically approves numerous resale restrictions, and even discusses, with approval, some requirements that services be resold "as-is" (see, e.g. Order §§VIII(C)(4) and (5). The requirement that services be resold "as-is" does not constitute a restriction on resale. Rather, it is a recognition of the simple fact that in reselling a service the reseller takes the service as it finds it. Restated, this is the inherent nature of resale. As BellSouth is, by definition, imposing its own terms and conditions on itself, it is not discriminatory for AT&T to be required to resell services subject to these same terms and conditions. Nor can these restrictions be deemed unreasonable, because all terms and

conditions of any tariff are effective only upon receipt of Commission approval. To the extent AT&T purchases services for resale, it must do so on an "as-is" basis.

ISSUE 3: What are the appropriate standards, such as DMOQs, if any, for performance metrics service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to AT&T by BellSouth?

AT&T Position - BellSouth must provide AT&T the same level of quality that it provides itself. There must be a mechanism to ensure compliance, and AT&T proposes DMOQs for 6 key functions.

BellSouth Position - BellSouth will provide AT&T the same quality of service that it provides its own customers for comparable service. BellSouth should only be required to show it is providing parity service according to the existing measurements of the Mississippi Public Service Commission. BellSouth will cooperate with AT&T in defining the appropriate measures.

Telecommunications Act/FCC Orders - The Act at 251(c)(2) requires that an ILEC provide interconnection that is at least equal in quality to that provided to itself.

The FCC Order at ¶224 requires an ILEC to provide interconnection at a level of quality that is at least indistinguishable from that which it provides itself. The FCC Order at ¶312 requires that, where technically feasible, the ILEC must provide access and unbundled elements at least equal in quality to that which it provides to itself. The FCC Order at ¶970 requires that resold services be provided at a level of quality at least equal to that provided by the ILEC to itself.

Analysis & Findings - Specific quality measures should be agreed upon, that the quantitative level for each measure that BellSouth must achieve in order to provide parity service should be specified, and that the content and frequency of the performance reports to be provided by BellSouth should be defined. Furthermore, the measures specified by the Mississippi Public Service Commission, which were developed in an entirely different context, are necessarily adequate for this purpose.

From their briefs, it does not appear that the parties have reached the stage in their negotiations where they are substantively discussing the above subissues. Accordingly, the Order should require the parties to continue their negotiations on this topic. If they can reach agreement, they should incorporate the agreed-upon measures, levels of each measure to be achieved, and reporting requirement sin their agreement. If they cannot reach agreement, they should each provide their "best and final" offer on these three points.

The appropriate basis for these negotiations is that AT&T is not entitled, in the name of parity, to a predictive standard. It is entitled to what BellSouth does for itself, not what it hopes to do for itself or what it has done for itself in the past. AT&T should be entitled to get what reports are necessary to allow it to verify compliance with that standard, at both the level of service results and at the level of activities and inputs that are important to providing that service. To the extent that AT&T wants reports that BellSouth does not now produce for itself, it should bear the cost of creating them. Moreover, to the extent that AT&T wants a predictive standard, it should be willing to pay for that standard if it proves to be greater than parity.

ISSUE 4: Must BellSouth take financial responsibility for its own action in causing, or lack of action in preventing, unbillable or uncollectible AT&T revenues?

AT&T Position - BellSouth should compensate AT&T for revenue losses caused by BellSouth errors because BellSouth is the only party in a position to prevent those errors. BellSouth has agreed to a reasonable provision regarding liability for errors, provided the liability is reflected in BellSouth's retail rates.

BellSouth Position - BellSouth will agree to reasonable provisions regarding liability for errors, such as those provisions in effect for existing access customers. Financial penalties for failure to meet quality standards are inappropriate at this time. Financial responsibility and liquidated damages should not be arbitrated.

Telecommunications Act/FCC Orders - This issue is not addressed in the Act or the FCC Orders.

Analysis & Findings - AT&T asks the Panel to recommend that BellSouth be financially responsible for its actions or inactions that result in unbillable or uncollectible AT&T revenues. In its brief, AT&T does not propose further specification or quantification of this responsibility. AT&T already has appropriate recourse if BellSouth fails to satisfy the terms of the final Interconnection Agreement, and there is no need for additional provisions.

ISSUE 5: Should BellSouth be required to provide real-time and interactive access via electronic interfaces, as requested by AT&T?

AT&T Position - The costs associated with implementing electronic interfaces should be shared equitably among all parties who benefit from those

interfaces, including BellSouth. In short, each party should contribute its fair share. (Carroll, Dir. 23.)

BellSouth Position - BellSouth believes the costs for development of electronic interfaces should be recovered from those carrier that purchase the services or unbundled elements; i.e., costs should be recovered from those who require the interfaces or cause a cost to be incurred by BellSouth.

BellSouth estimates that the cost to date for work on electronic interfaces is $10.5 million. Once the final costs are determined, BellSouth will propose a methodology for recovering those costs.

Analysis & Findings - We agree with BellSouth that the development costs should be borne only from those carriers who utilize the services. Those beneficiaries will primarily be AT&T and any other CLECs who interconnect with BellSouth. BellSouth could also theoretically benefit if its affiliates use that interface or if BellSouth uses it in the long distance business. However, that is contingent on future events.

Moreover, we are in no position at this time to address the reasonableness of BellSouth's current $10.5 million cost estimate. Thus, we recommend that the cost sharing mechanism be developed at the time BellSouth provides its final cost estimate. Also, we ask the parties to propose a 3-5 year amortization period that will assure BellSouth of recovery of its costs.

ISSUE 6: When an AT&T resells BellSouth's local exchange service, or purchases unbundled local switching, is it technically feasible or otherwise appropriate to route operator services and directory assistance calls (and 611 repair calls if used by BellSouth in Mississippi) directly to AT&T's platform?

AT&T Position - Customized routing is technically feasible and the Act requires it. BellSouth's claim that Line Class Codes would be exhausted if they were used to provide customized routing is fallacious. Furthermore, an AIN-based solution to the problem is possible, and BellAtlantic has agreed to provide customized routing using AIN.

BellSouth Position - BellSouth uses a 7 digit number, not 611, to make repair calls in Mississippi, so that is not an issue. The Act does not require BellSouth to modify services offered under resale, so customized routing should not be required for resold services. BellSouth believes that customized routing cannot be provided to all CLECs under all circumstances, so that interim solutions would cause parity problems. A long-term solution should be developed on an industry-wide basis.

Telecommunications Act/FCC Orders - The FCC Order at ¶536 required ILECs to unbundle operator services and directory assistance from both resold services and unbundled elements to the extent technically feasible. This same paragraph also requires customized routing, including to a CLEC's operator services or directory assistance platforms, to the extent feasible.

Analysis & Findings - There is no issue regarding customized routing of repair calls in Mississippi. The FCC Order requires customized routing of operator services and directory assistance where technically feasible, and BellSouth has not demonstrated that customized routing is technically infeasible. On an interim basis BellSouth has, at most, suggested that customize routing using LCC has some capacity limitations. Even if there are such near-term limiting factors, as suggested by BellSouth, that does not prove technical infeasibility. Concerning long-term customized routing,

using AIN or some other method, BellSouth had provided no evidence of technical infeasibility. Accordingly, BellSouth should be required to provide customized routing on an interim basis, and that it work cooperatively to implement a long-term customized routing solution as expeditiously as possible.

ISSUE 7: Must an ILEC brand services sold or information provided to customers on behalf of AT&T?

AT&T Position - If AT&T uses BellSouth's operator services or directory assistance, BellSouth must brand those services with the AT&T brand in order to provide nondiscriminatory service. Providing AT&T with unbranded service while BellSouth still offers branded service is not providing parity.

BellSouth Position - BellSouth may not be able to provide rebranding to all CLECs because of the limited number of line class codes in each switch. Thus, BellSouth might not be able to provide parity service to all CLECs, as required. If required by the Commission, on an interim basis BellSouth could provide unbranded service to all CLECs using line class codes. Under these circumstances, BellSouth should not be required to unbrand its service to its own customers. BellSouth prefers to wait for a long-term industry solution. BellSouth cannot rebrand resold service because it could not distinguish calls of AT&T resold customers from calls of other resellers of BellSouth.

Telecommunications Act/FCC Orders - At ¶537, the FCC Order requires that ILECs provide nondiscriminatory access to operator services and direc-

tory assistance, but declines to make a finding on the technical feasibility of providing branded or unbranded service to CLECs.

§51.613 (c) of the FCC's Final Rules states that failure by an ILEC to comply with reseller unbranding or rebranding requests constitutes a restriction on resale.

Analysis & Findings - Rebranding is important to providing parity of service. Accordingly, BellSouth should be required to rebrand its operator services and directory assistance when requested to do so. Possible limitations on the ultimate extent of BellSouth's ability to rebrand do not change this requirement. BellSouth should unbrand for all including itself when branding cannot be provided.

ISSUE 8: Must BellSouth provide AT&T with the requested billing and usage recording services, including process and data qualification certifications?

Resolved by the parties.

ISSUE 9: Must BellSouth allow AT&T to appear on the cover of BellSouth's directory in a manner at least equal to BellSouth's appearance?

This issue is not included in this arbitration proceeding.

ISSUE 10: Must BellSouth provide AT&T access to BellSouth's directory assistance database?

Resolved by the parties.

ISSUE 11: Must BellSouth provide advance notice to wholesale customers of service changes within 45 days of such change or when BellSouth provides itself notice, whichever is earlier?

Resolved by the parties.

ISSUE 12: How should BellSouth treat a PIC change request from and IXC (other than the ALEC) for an ALEC's local customer?

Resolved by the parties.

ISSUE 13: Must BellSouth produce all interconnection agreements to which BellSouth is a part, including those with other ILECs, executed prior to the effective date of the Act?

Resolved by the parties.

ISSUE 14: Must BellSouth provide AT&T with: 1) unmediated access to AIN triggers or utilize the same mediation device that it requires AT&T to use; 2) routing capabilities to AT&T's operator services platform; 3) access to customers' inside wiring by allowing AT&T to disconnect and ground BellSouth's wire?

1. Unmediated Access To AIN Triggers

2. Routing to AT&T Operator Services

   a) Local Switching
   b) Operator Systems
   c) Transport Elements

3. Network Interface Device

4. Local Loop Facility

AT&T Position - If there are no spare terminals on a BellSouth NID, AT&T wants to be able to disconnect and ground the BellSouth loop and then connect the AT&T loop to the BellSouth NID.

AT&T believes that the mediation of AIN trigger access is unnecessary. If mediation is ordered, then BellSouth should be required to use the same mediation devices required of AT&T, especially to ensure that post dialing delay does not create discrimination. Tests that AT&T and BellSouth conducted show that unmediated access is technically feasible.

BellSouth has applied inappropriate definitions of some unbundled elements, and it refuses to unbundle all IDLC-delivered loops.

BellSouth Position - BellSouth will provide NID-to-NID connection as required by the FCC Order. Also, BellSouth will allow direct connection of AT&T's loop to BellSouth's NID whenever spare terminals are available so

that there is proper grounding and protection of the BellSouth loop. BellSouth will not allow AT&T to remove the BellSouth loop from its NID to make room for AT&T's loop because the BellSouth loop would not be properly grounded or bonded.

Access to AIN triggers as proposed by AT&T is not technically feasible. BellSouth will not allow AT&T to attach its SCPs directly to BellSouth's network without mediation. BellSouth proposes development of a mediation device it calls Open Network Access Point, but which does not exist today, to enable AT&T to access BellSouth's AIN triggers.

Telecommunications Act/FCC Orders - §V.1.4 of the FCC Order discusses databases and signaling systems. In particular, at ¶501 the FCC Order states that the FCC cannot yet make a determination about the technical feasibility of connecting third-party call-related databases to ILEC's signaling systems. For custom routing of operator services, see Issue #6 above.

The FCC Order at ¶392 requires an ILEC to allow a CLEC to connect its loops, via the CLEC's NID, to the ILEC's NID. The FCC Order at ¶396 states that the FCC cannot determine the technical feasibility of directly connecting the CLEC's loop to the ILEC's NID, but that states should determine if this type of connection is technically feasible.

Analysis & Findings - This Panel has not been asked to make a recommendation on the issue allowing AT&T to access BellSouth's AIN triggers to control BellSouth's local switch functions via AT&T's SCPs. Rather, the Panel here is being asked to assume that such access is available, and then recommend whether or not that access should be mediated. The issue is one of technical feasibility, i.e., whether or not unmediated access to BellSouth's AIN triggers is technically infeasible because of potential prob-

lems with network security and reliability. Neither party has provided a compelling case. While the burden is on BellSouth to prove technical infeasibility, we should be mindful of the FCC's unwillingness to make a finding based on the record before it at the time. The Panel is also aware that the FCC intends to address this issue in the very near future, as noted in ¶502 of the FCC Order. Accordingly, based on the criterion of non-discrimination, any party that requires others to use a mediation device should also be required to use that same mediation device itself. Furthermore, those parties that will bear the cost of a mediation device have the right to review and challenge the developer's plans, implementation schedule, cost budgets, and other factors related to developing and implementing the mediation device. If the parties disagree on the appropriateness of any factor and are unable to reconcile their differences, they should be allowed to appeal to the Mississippi Public Service Commission for resolution.

BellSouth recognizes that AT&T may make NID-to-NID connections, as required by the FCC. Furthermore, BellSouth has agreed that AT&T may use spare terminals on BellSouth's NID to connect AT&T's loops. In addition, when spare terminals are unavailable, AT&T wants to be allowed to disconnect BellSouth's loop, ground it, and attach its own loop to BellSouth's NID. AT&T states that it will use properly trained technicians, adhere to the National Electrical Code, and indemnify BellSouth from any resultant harm. BellSouth, on the other hand, argues that there is no way to ground its loop without violating the National Electrical Code. The parties appear to disagree on a purely fact-based issue, i.e., whether AT&T can safely ground BellSouth's loop in adherence to all

applicable standards and codes. AT&T has not offered a compliant method, and its suggesting that indemnification is not adequate. This Commission must worry about preventing injury or death, not merely deciding who is responsible for it. The BFR process should be available when and if a third-party verified method of code compliant grounding is identified and available.

Customized routing is addressed in issue # 6 above, and need not be discussed again here.

The FCC Order at ¶¶383-384 finds that loops using IDLC must be unbundled, and that it is technically feasible to do so. Accordingly, BellSouth should be required to unbundle IDLC-delivered loops.

Finally, AT&T claims that BellSouth uses improper definitions of some of the elements it must unbundle. BellSouth does not discuss this aspect of the issue in its brief. To the extent it is necessary, we should confirm that BellSouth is required to unbundle the network elements listed in the FCC Order at ¶366. Further the unbundled switching element should be defined as in ¶440 of that Order. Thus we should concur with those definitions.

ISSUE 15: Is AT&T allowed to recombine unbundled elements? If so, what is the appropriate price for unbundled elements?

AT&T Position - BellSouth may not place any restrictions on AT&T's ability to combine unbundled network elements with one another, with resold services, or with AT&T's or a third party's facilities. The Act expressly requires BellSouth to "provide such unbundled network elements in a manner that allow requesting carriers to combine such elements in order to

provide such telecommunications service." 47 U.S.C.A. §251(c)(3). The Act also specifically requires that such combinations be priced as unbundled network elements. 47 U.S.C.A. § 252(d)(1). The FCC specifically found that a new entrant may purchase and combine unbundled network elements in any manner it chooses. 47 C.F.R. §§ 51.309(a), 51.315(c); FCC Order No. 96-325 ¶¶ 292, 296.

New entrants should have the ability to create a "platform configuration," whereby the new entrant combines an unbundled switch and an unbundled loop to form a basic exchange platform for local exchange services. (Gillan, Dir. 42.) The new entrant then can market this basic platform, or combine it with its own network elements, such as Operator and Director Assistance services.

The platform configuration is not identical to a basic service available for resale. (Gillan, Tr.v.1, 21-23.) This is because the platform configuration differs in structure, pricing, risk and flexibility from service resale. (Gillan, Dir. 43-44.) The use of the platform by a new entrant has several advantages: (1) it allows new entrants to design their own services; (2) it permits full competition at cost-based rates; (3) it provides ease of shifting between providers because it does not require reconfiguration for a change in providers; (4) it forces new entrants to adopt the role of both local service provider and exchange access service provider; and (5) it allows new entrants to move to facilities-based competition gradually. (Gillan, Tr. v.1,11-13; Dir.42.)

When a new entrant buys unbundled network elements, it is not buying BellSouth's local exchange service. (Carroll, Reb.5.) Instead, it is buying the ingredients to create a local service and stepping fully into

the role of local service provider. (Id.) If AT&T takes on the additional risk of being a full service telephone company by offering both local exchange and exchange access service, it pays the full cost of the network. AT&T then must design services to recoup it for its costs. AT&T takes on product development responsibility, network component management responsibility, and all of the responsibilities of being an access provider. This entails additional risk with additional potential for reward. For example, when AT&T purchases local exchange service from BellSouth and resells it, AT&T then must design services to recoup it for its costs. AT&T takes on product development responsibility, network component management responsibility, and all of the responsibilities of being an access provider. This entails additional risk with additional potential for reward. For example, when AT&T purchases local exchange service from BellSouth and resells it, AT&T obtains shared use of BellSouth's loop for local phone calls. BellSouth, however, designs the local exchange service and retains an access monopoly. When AT&T purchases the same loop as a network element it purchases one hundred percent of the loop's functionality. (Gillan, Tr.v.1,26-28.) AT&T then must provide exchange services for that loop. (Id. at 27.)

Lastly, under BellSouth's view, a new entrant only can use unbundled network elements if it already has its own elements. (Scheye, Dir.49.) If new entrants must deploy their own facilities before they can purchase BellSouth's unbundled elements, the purpose of unbundling is defeated.

BellSouth Position - AT&T should be allowed to combine BellSouth provided network elements with AT&T's own network capabilities to create a unique

service. AT&T should not be permitted to use only BellSouth provided unbundled network elements at the unbundled element price to recreate the same functionality that BellSouth offers at wholesale rates for resale to consumers. (Scheye, Dir.p.49 & Varner Dir.,p.60). BellSouth maintains that, if AT&T purchases BellSouth's loop and port (switching) to provide basic service, then AT&T must pay BellSouth wholesale prices -- as if AT&T were purchasing service for resale. (Varner Direct, p.64) BellSouth further argues that, even if AT&T offers services that differ from BellSouth's utilizing the unbundled loop and switch, then AT&T still should pay wholesale rates as if it were purchasing service for resale. (Scheye Direct, pp. 52-54). BellSouth argues that new entrants will purchase unbundled elements at TELRIC prices, which are less expensive than purchasing retail services at wholesale rates.

The issue of whether AT&T can recombine network elements to recreate BellSouth's existing services is an issue before the Eighth Circuit Court of Appeals. BellSouth believes that the only issue for the Arbitrators to address is the appropriate pricing for such recombinations. (Varner Direct, p. 63). BellSouth requests the Arbitrators to conclude for pricing purposes, that under the Act, when a new entrant such as AT&T simply purchases and requests recombination of underlying unbundled network elements to create a service substantially identical to that which BellSouth is already offering at retail (especially in the case of unbundled local loop and unbundled local port), the parties should treat that transaction for what it is, the resale of a service. When this occurs, a new entrants (i.e. AT&T) should pay the discounted wholesale rate applicable to resold services, and the rebundled services should be offered

subject to the same terms and conditions as resold services, including the application of switched access charges, the imposition of the Act's joint marketing restrictions, and rates for vertical services. (Scheye Direct, p.49).

BellSouth also contends that AT&T's interpretation of the Act will give AT&T: (1) the ability to resell BellSouth's retail services, but avoid the Act's pricing standard for resale; (2) the ability to avoid the joint marketing restriction specified in the Act, as well as any use and user restrictions contained in BellSouth's tariffs; (3) the ability to argue for the retention of access charges by AT&T even though the actual arrangement is really "disguised resale"; (4)the ability to maximize its market position by "gaming the system" and targeting the most profitable form of resale to particular customers (i.e., resale in rural areas, and rebundled services in urban areas); and, finally, (5) the ability to foreclose, to a large extent, facilities-based competition and competitors. Moreover, AT&T would be able to do all of this without investing the first dollar in new facilities or new capabilities in Mississippi. (Scheye Direct, p.50).

Analysis & Findings - The Panel agrees that the issue regarding the recombination of unbundled network elements is one of the most critical issues to be considered in this arbitration proceeding. Section 251(c)(3) of the Act clearly requires local exchange carriers to provide access to network elements in a manner that allows requesting carriers to combine such elements for the purposes of providing telecommunications service. The pricing standard for the individual discrete elements is established by Section 252(d)(1) of the Act. Section 251(c)(4) requires that retail servic-

es be offered for resale at wholesale rates in accordance with the resale pricing standards set forth in section 252(d)(3) of the Act.

AT&T has requested that the Panel impose no restrictions on AT&T's ability to combine or rebundle BellSouth's network elements in AT&T's providing of local exchange service. The FCC's Rules clearly provide that an incumbent LEC shall provide network elements in a manner that allows requesting ALECs to combine such network elements in order to provide a telecommunications service. In addition, the FCC Rules provide that, upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements with elements possessed by the ALEC in any technically feasible manner. However, the Act establishes separate and distinct pricing methodologies for resold services and for unbundled network elements. Specifically, the Act mandates that wholesale rates shall be determined on the basis of retail rates charged to subscribers, excluding the costs avoided by the local exchange carrier. (Section 252(d)(4) of the Act.) However, with respect to interconnection and network elements, the Act specifies that the charges shall be based on cost and may include a reasonable profit. (Scheye Direct, p. 50). Further, the Act places a restriction on the ability of certain telecommunications carriers to jointly market resold services with interLATA services. (Section 271(e)(1) of the Act).

Clearly, all relevant portions of the Act and the FCC Order provide that AT&T may purchase unbundled elements from BellSouth and rebundle those elements in any manner that is technically feasible. This fact is undisputed by either party. The real issue presented is not wheth-

er AT&T may purchase and rebundle elements in any manner they choose, but the rate of compensation for the purchase of such 'elements.'

There is little disagreement that the same service can be provided under "resale" or "recombination/rebundling." Accepting AT&T's position would allow the price AT&T pays for the same service to be substantially different, depending on which ordering method is chosen. One price, paid by carriers reselling the service, is based on the "avoided" costs (a tops-down approach) and the other, paid by carriers recombining unbundled network elements, is based simply on costs plus a profit (a bottoms-up approach). It is illogical to conclude that Congress provided for the resale of LEC retail services and at the same time provided a mechanism to circumvent its resale provisions through the "unbundling and rebundling" of individual network elements.

To the extent AT&T purchases unbundled network elements and then merely requests recombination of these elements to replicate BellSouth services, it is simply reselling BellSouth's services. Resale would be rendered meaningless if AT&T were allowed to bypass resale through the fiction of "rebundling." Unrestricted pricing on the recombination of unbundled elements would allow AT&T to purchase unbundled network elements from BellSouth and then "rebundle" those elements without adding any significant additional capability, in order to create a service which is identical to a retail offering already being provided by BellSouth and, therefore, subject to mandatory resale. Moreover, this arrangement would allow AT&T to avoid the Act's pricing standards for resale; avoid the Act's restrictions regarding joint marketing; and avoid the access charge

requirements. Such an arrangement would also serve as a disincentive for LECs to construct their own facilities.

The Arbitration Panel finds that the recombination of a loop and port is indistinguishable from retail local service and, therefore, should be priced under the resale provisions of the Act. This finding is clearly within the authority of the Panel and is consistent with the Act. By ignoring the resale provisions of the Act, the Panel would be acting contrary to the totality of the Act's requirements. On the other hand, recognizing this issue as one affecting the pricing of recombination is appropriate and is consistent with the Act and with the Eighth Circuit's Stay of the FCC's pricing rules.

Accordingly, AT&T may combine unbundled network elements in any manner it chooses; however, when AT&T simply "recombines" unbundled BellSouth network elements to create services identical to BellSouth's retail offerings, the prices charged to AT&T for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount rate, and shall be offered under the same terms and conditions as BellSouth offers the service. AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT& T contains the functions, features and attributes of a retail service offering that is the subject of a properly filed and approved BellSouth tariff. Furthermore, services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive functionality or capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities,

such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled BellSouth network elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing services identical to a BellSouth retail offering.

ISSUE 16: Must BellSouth make rights-of-way available to AT&T on terms and conditions equal to that it provides itself?

AT&T Position - AT&T wants a common emergency duct to be used according to a priority restoration schedule that it believes should be developed.

AT&T wants to know if an environmental health and safety inspection has been performed within 10 days of applying for a license.

AT&T wants to be allowed to store 50 feet of cable and a reasonable amount of equipment used for installing and splicing for up to 48 hours when space is available in manholes.

BellSouth Position - BellSouth will allow and CLEC to reserve space for itself for maintenance and emergencies, based on a one-year forecast. AT&T's proposal to assign a common emergency duct is not practical. BellSouth states that many parties would need access to a common emergency duct at the same time, creating contention. AT&T should instead include an emergency facility in its requirements and pay for it, assuming it wants one.

BellSouth will allow storage of 50 feet of CLEC cable and permanently attached equipment necessary to the cable's operation.

BellSouth may not immediately know if an inspection has been performed, and would have difficulty in obtaining the report.

Telecommunicaitons Act/FCC Orders - The Act states at §251(b)(4) that all LECs must afford competing providers with access to poles, ducts, con-

duits, and rights-of-way on rates, terms, and conditions that are consistent with section 224.

The FCC Order at §XI.B discusses access to rights of way. It does not address these three specific issues directly, although ¶¶1156-1157 does discuss rates, terms, and conditions of access as between an ILEC and a CLEC.

Analysis & Findings - AT&T's proposed common emergency duct could be cumbersome and difficult to manage in practice. Accordingly, AT&T and other CLECs should request additional facilities for themselves to the extent they believe those facilities may be required to address emergency situations. Where a separate duct is not feasible for space or other reasons, BellSouth should make the existing one available on a basis that does not discriminate between itself and AT&T.

Whenever BellSouth is required by law to perform environmental health and safety inspections, BellSouth should make copies of those reports available to AT&T within 10 days. If doing so is administratively difficult for BellSouth, then BellSouth must improve its procedures so that these reports are readily available. Past reports are more problematic. BellSouth is presumably worried about liability for failure to disclose something it does not find, but that exists. The parties should agree to exactly what burden BellSouth has to look for things and they should limit BellSouth's liability for failure to find and disclose to a material breach of the standard that results from that agreement.

Ducts, manholes and other such facilities may soon be used by many additional parties. Accordingly, the same restrictions about storage

of equipment should apply to all users of the facilities, including BellSouth. BellSouth should determine what those restrictions will be.

ISSUE 17: Must BellSouth provide interim number portability solutions, including remote call forwarding, flex-direct inward calling, route index-portability hub, and local exchange routing guide reassignment?

Resolved by the parties.

ISSUE 18: Must BellSouth negotiate a long-term number portability solution?

Resolved by the parties.

ISSUE 19: Must BellSouth provide AT&T with access to Bell South's dark fiber?

AT&T Position - Provision of BellSouth's dark fiber will enable AT&T to add efficiently to its transmission capabilities.

BellSouth Position - Dark fiber is neither a telecommunications service or a network element as defined by the Act.

Telecommunications Act/FCC Orders - The Act at §251(c)(3) states that ILECs must provide non-discriminatory access to network elements on an unbundled basis.

The FCC Order at ¶450 declines to address the unbundling of dark fiber because the record before it was insufficient.

The FCC Order at ¶366 states that State commissions may prescribe additional network elements to be unbundled, beyond those specified by the FCC.

Analysis & Findings - AT&T's request for dark fiber is unconstrained, i.e., it wants to be able to request any amount of BellSouth's dark fiber, and in any location. This could potentially interfere with BellSouth's ability to satisfy its obligation as the provider of last resort. Accordingly, BellSouth should not be required to provide dark fiber as an unbun-

dled network element. However, note that AT&T can get access to lit BellSouth fiber and BellSouth has agreed that it will not refuse to make access available merely because fiber is now dark.

ISSUE 20: Must BellSouth provide copies of records regarding rights-of-way?

Resolved by the parties.

ISSUE 21: Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

AT&T Position - AT&T contends BellSouth's wholesale rates for services subject to resale should equal BellSouth's retail rates, less all direct and indirect costs related to retail functions. (Lerma, Dir. 6-7.) This position is consistent with the express language and pro-competition intent of the Act. 47 U.S.C.A. § 252(d)(3); see also (Lerma, Dir. 9.) This position also prevents BellSouth from requiring market entrants to subsidize BellSouth's retail business. (See Lerma, Dir. 9.) Finally, it is an objective standard that permits the Panel, and not BellSouth, to determine the appropriate retail and wholesale prices.

BellSouth Position - BellSouth's wholesale rates for services subject to resale should include all retail costs that are not actually avoided in the provision of wholesale services to market entrants. (Reid, Dir.26.) Whether retail costs will be actually avoided depends on whether these costs are volume sensitive or related to customer interface. (See Reid, Dir.7.) No indirect costs will be avoided because these costs are not volume sensitive. (Id. at 27.)

Analysis & Findings - Incorporated in Issue 22.

ISSUE 22: What are the appropriate BellSouth wholesale rates?

A. Directly Avoided Costs

B. Indirectly Avoided Costs

C. Uncollectibles

D. Return on Investment and Taxes

AT&T Position - AT&T proposes a wholesale discount rate of 24.30%. (Lerma, Dir. 3, 17.) AT&T states that its proposed cost study supports this discount rate and is compliant with the requirements of the Act. (Ex. AL-1; see also Lerma, Dir. 17.) AT&T's position on specific categories of directly and indirectly avoided costs is set forth below in detail.

BellSouth Position - BellSouth proposes a wholesale discount rate of 8.2% for business and 8.9% for residences. (Ex. WSR-1; see also Reid, Dir. 16-17.) BellSouth states that this rate reflects exclusion of all costs that BellSouth actually will avoid in providing wholesale services. BellSouth also proposes an alternate "FCC complaint" wholesale discount rate of 10.7% (Ex. WSR-3.) BellSouth's position on costs it will not avoid is set forth below in detail.

DIRECTLY AVOIDED COSTS

AT&T Position - AT&T's cost study includes as directly avoided all of the costs in two USOA accounts: (1) 6610 (marketing), which includes subsidiary USOA accounts 6611 (product management), 6612 (sales), and 6613

(product advertising); and (2) 6620 (services), which includes subsidiary USOA accounts 6621 (call completion), 6622 (number services), and 6623 (customer services). (Ex. AL-2.) All of these are retail-related costs, and thus reasonably will be avoided when BellSouth provides wholesale services to AT&T. (Lerma, Dir. 12-13). The FCC Order presumed all of the costs in both accounts would be avoided. FCC Order 96-325 ¶917 (61 Fed. Reg. 45566 (¶607).

BellSouth Position - BellSouth contends it will not avoid these costs, and relies upon its FCC compliant study as support. For example, its FCC compliant cost study treats as avoided costs: 93.38% of BellSouth's product advertising costs; 86.34% of its sales costs; 63.78% of customer service costs; 10.92% of product management costs; and none of the costs of number services and call completion. (Ex. WSR-3.) BellSouth maintains that many of the costs in these accounts still will be incurred in a wholesale context. (See Reid, Dir. 31-34.)

AT&T Position - AT&T deducted all of the costs in two additional cost accounts as directly avoided: (1) 6220 (operator systems); and (2) 6560 (depreciation/amortization of operator systems). (Lerma,Dir. 13-14) AT&T contends BellSouth will avoid these costs to the extent AT&T provides its own operator services. (Id. at 13.) If AT&T provides (and pays for) its own operators and operator systems equipment when reselling services, then BellSouth will not have to provide (and pay for) operators and operator systems equipment to serve AT&T retail customers. The FCC Order used this same logic in deciding that call completion (account 6621) and number services (account 6622) costs are presumed to be avoided, "because resellers have stated they will either provide these services them-

selves or contract for them separately from the LEC or from third parties." FCC Order No. 96-325 ¶917 (61 Fed. Reg. 45566 ¶607). Likewise, because BellSouth avoids operator systems equipment costs, then it also avoids the depreciation expenses associated with that equipment (account 6560). (Lerma, Dir. 14.)

BellSouth Position - BellSouth opposes these two deductions. If AT&T provides such services to its customers, the result would be a competitive loss for BellSouth, because operator services constitute a wholly separate revenue stream. (Reid, Dir.42.)

AT&T Position - AT&T deducted 20% of the costs in two cost accounts as directly avoided: (1) 6533 (testing); and (2) 6523 (plant administration). (Lerma, Dir. 14-15.) As discussed above, AT&T has requested and BellSouth has agreed to provide electronic interfaces with BellSouth's Service Trouble Reporting database. Using these interfaces, AT&T will be able to conduct trouble shooting in response to customer issues, instead of BellSouth having to do this. BellSouth's cost data indicates that approximately 47% of its own overall Testing and Plant Administration costs are retail-driven costs involving customer-initiated testing and trouble shooting. (BellSouth Discovery Response, Item No. 2, Att. 1.) AT&T conservatively estimated BellSouth's avoided cost percentage in this area at only 20%. (Id.)

BellSouth Position - BellSouth will avoid no testing and plant administration costs because the Act does not require BellSouth to unbundle these services. (Ex. WSR-3, Reid, Dir.43.)

INDIRECTLY AVOIDED COSTS

AT&T Position - In addition to excluding directly avoided costs, proper calculation of the wholesale rate requires exclusion of indirectly avoided costs. AT&T believes the proper ratio for calculation of avoided indirect costs is total avoided direct costs divided by total direct costs. (Lerma, Reb. 16.) AT&T argues that this formula results in full allocation of indirect costs, and is consistent with FCC guidance. (Id.) Applying this formula, the proper indirect cost avoidance factor is 21.9% (Id.)

BellSouth Position - The proper ratio for calculation of avoided indirect costs is total avoided direct costs divided by total direct and indirect costs. (Ex. WSR-3.) This formula is consistent with FCC guidance that indirect costs be avoided in proportion to avoided direct expenses and the FCC's formula for estimating avoided indirect costs in the calculatin of default proxies. FCC Order No. 96-325 ¶ 929. BellSouth contends the proper indirect cost factor is 7.87%. (See Ex. WSR-3.)

Analysis & Findings - The Panel treats avoided cost for product management expense (A/C 6611) as 25% of the account. BellSouth's detailed analysis of this account is superior to AT&T's treatment of 100% of the cost as avoided. BellSouth's analysis rebuts the presumption that all of these expenses will be avoided. It is clear from the record in this proceeding that BellSouth will continue to incur product management expenses even in a wholesale environment. However, the Panel's judgment is that some of the current expenses charged to this account which BellSouth's study treats as non-avoided may be associated with market management and market research activities which should be treated as avoided for purposes of setting wholesale discount rates. For this reason, the Panel sets the avoided amount for this account at 25%. The panel notes that this is simi-

lar to the decision reached by the Alabama Commission which treated 25% of this account as avoided.

The Panel accepts BellSouth's detailed analysis of sales and product advertising expenses (A/C 6612 & A/C 6613, respectively). For these two accounts, the Company has treated approximately 86% and 93% of the expense as avoided. These relationships are reasonable in comparison to the FCC's default assumptions of 90% for these accounts. The Panel also notes that decisions in other states, such as Alabama, reflect 90% of the expense in these accounts as avoided.

For call completion and number services expenses in Accounts 6621 and 6622, the Panel concludes that none of these expenses should be treated as avoided. It is evident from the record that while AT&T plans to use its own operators, it does want continued access to BellSouth's operators. In addition, BellSouth contended during the hearings that its operator service tariffs fully covered its expenses for call completion and number services expenses. The Company further argued that under these conditions the costs for operator services re not recovered in the prices for its other services, and therefore, these other services should not be discounted for AT&T performing its own operator services. AT&T did not successfully rebut this argument. For these reasons, the Panel concludes that none of the expenses in Accounts 6621 and 6622 should be treated as avoided.

Regarding the expenses for customer services in Account 6623, the Panel's judgment is that 90% of this account should be treated as avoided.

BellSouth's study treats approximately 64% of the expense as avoided, while AT&T's study assumes that 100% of the expense is avoided. The Panel believes that some customer services expenses will be incurred by the Company to serve connecting carriers, public services, etc. as argued by the Company. However, the Panel is not convinced that only 64% of customer services expenses will be avoided. For purposes of its default calculations, the FCC assumed that 90% of the expenses in this account were avoidable. Therefore, the Panel treats 90% of customer services expenses as avoided.

In its study, AT&T requested that certain accounts be treated as avoided which were treated as not avoided in the FCC's rules. The FCC put the burden of proof on AT&T to rebut the presumption that expenses in these accounts were not avoidable. The Panel does not believe that AT&T has met its burden of proof and will therefore treat all expenses in Accounts 6220, 6533, 6534, and 6560 as not avoidable.

Uncollectible expenses in Account 5301 are treated 100% avoidable. the Panel notes that in BellSouth's study which it claimed was in compliance with the Act, the Company treats uncollectibles as 100% avoided. AT&T also treats uncollectibles as totally avoided.

Another issue which was argued by the parties was the appropriate factor for allocating indirect expenses. BellSouth claims that it used an indirect allocation factor of total direct avoided expenses divided by total expenses. The Company argued that this factor was used by the FCC in its Order. AT&T argued that the indirect allocation factor should be total direct avoided expense divided by total direct expenses. The

Panel calculates the indirect allocation of avoided costs based on AT&T proposed methodology.

MISSISSIPPI ARBITRATION PANEL
Calculation of Wholesale Discount
(Residence & Business)
(000)

ACCOUNTS ASSUMED AVOIDED	1995 REG	AVOID AMT	%AVOIDED
A/C 6611 PRODUCT MGT.	6,578	1,645	25%
A/C 6612 SALES	12,274	10,597	86%
A/C 6613 PRODUCT ADV.	4,471	4,175	93%
A/D 6621 CALL COMPLETION	6,610	-	0%
A/C 6622 NUMBER SERVICES	8,265	-	0%
A/C 6623 CUSTOMER SVCS.	50,491	45,442	90%
A/C 6220 OPERATOR SYSTEMS	4,448	-	0%
A/C 6533 TESTING	10,912	-	0%
A/C PLANT OPR. ADM.	21,105	-	0%
A/C 6550 DEPR.OPER.SYSTEMS	42		0%
TOTAL DIRECT AVOIDED	124,746	61,858	
UNCOLLECTIBLES	6,341	6,341	100%
INDIRECT AVOIDED COSTS			
A/C 6711 EXECUTIVE	2,653		
A/C 6712 PLANNING	1,020		
A/C 6721 ACCTG. & FINANCE	6,863		
A/C 6722 EXTERNAL RELATIONS	7,403		
A/C 6723 HUMAN RESOURCES	8,749		
A/C 6724 INFO. MGMT.	34,657		
A/C 6725 LEGAL	2,882		
A/C 6726 PROCURMENT	2,265		
A/C 6727 R & D	1,883		
A/C 6728 OTHER GEN. & ADM.	13,226		
TOTAL OVERHEAD ACCOUNTS	81,601		
GENERAL ACCOUNTS			
A/C 6121 LAND & BLDGS.	19,148		
A/C 6122 FURN. & ARTWORKS	1,068		
A/C 6123 OFFICE EQUIPMENT	1,523		
A/C 6124 GEN.PURPOSE COMP	19,260		
TOTAL GENERAL SUPPORT	40,999		
TOT. OVERHEAD & GEN. SUPPT.	122,600	17,028	
TOTAL DIRECT AVOIDED	61,858		
TOTAL DIRECT EXPENSES	445,386		
ALLOCATION FACTOR	0.13888717		
TOTAL AVOIDED COSTS		85,227	
TOTAL REVENUES-INTRA#		541,292	
WHOLESALE DISCOUNT FACTOR		15.75%	

ISSUE 23: What is the appropriate price(s), including nonrecurring charges for each unbundled network element AT&T has requested?

A. Pricing of Unbundled Network Elements at "TELRIC Plus" Promotes Efficient competition And Comports With The Act.

B. The Commission Should Adopt AT&T's Recommended Rates For Unbundled Network Elements

C. BellSouth's Cost Studies Are Flawed

AT&T Position - The Panel should recommend that unbundled network element prices be set at rates generated by the Hatfield Model. (Ex. WE-1, Ellison, Dir. 12.) These rates represent BellSouth's Total Element Long Run Incremental Cost (TELRIC), plus a reasonable share of joint and common costs. (Wood, Dir. 9-14.) As such, these rates are necessary to permit efficient competition as intended by the Act and fully compensate BellSouth for its forward-looking economic costs. (?,Dir.11.)

BellSouth Position - BellSouth recommends as rates for unbundled network elements the BellSouth existing tariffed rates for services that are comparable to the unbundled network elements, where they exist. For unbundled network elements where there are no existing tariff rates, BellSouth proposed market based rates that are subject to a true-up process within the next six months. BellSouth's proposed rates are set forth in Scheye Exhibit RCS-4. BellSouth and ACS used this approach in its recently negotiated settlement in which the parties agreed on rates for the elements that ACSI needed to get into business, and made the agreed upon market rates subject to a true-up process after the relevant regulatory bodies determined final prices through a generic cost proceeding. As long as the

prices are set on a reasonable basis (which did not mean the FCC proxy rates or rates derived from the Hatfield Model) and as long as there is a true-up provision, BellSouth is agreeable to using such a process in this docket.

Analysis & Findings - AT&T used Version 2.2, Release 2 of the Hatfield Model to generate its TELRIC based rates. (Wood, Dir.5.) The Hatfield Model uses seven categories of input data which permit reasonable estimates of unbundled network elements costs. These input data include Census Block Group (CGB) data, business employee data, cable and installation cost data, wire center data, traffic data, expense data, and ARMIS-reported data on the number of residence and business lines. (Wood, Dir.6.)

BellSouth has raised several issues concerning HM's validity. Emmerson pointedly identified several Hatfield Model inputs requiring modification should the Arbitrators decide to rely on Hatfield Model. (Rebuttal Testimony, pg. 59.)

> "First, I do not think that the HM 2.2.2 can be fixed as it is presently constructed. As I have explained, I believe that the model systematically understates the distribution facilities required to provide local loops. The HM 2.2.2 should be thoroughly audited to correct its mathematical errors. AT a minimum, however, I recommend modifying the HM 2.2.2 techniques and inputs in the following ways: (1) reduce the fill factors, (2) shorten the depreciation lives, (3) increase the cost of capital (4) increase the percentage of distribution and feeder structure assigned to telecommunications operations, and (5) increase the variable overhead factor."

BellSouth has proposed tariffed rates for those unbundled network elements where the Commission has established tariffs. (Scheye, Dir.61.) This is contrary to the Act, which expressly requires that rates not be

determined with reference to rate-based proceedings. 47 U.S.C.A. §252(d)(1)(A)(i). This also is contrary to the position BellSouth took before the North Carolina Public Utilities Commission just last year. Then, BellSouth argued that the North Carolina Commission should make no corrections in BellSouth's tariff-based because:

> "Competition will purge the market, and Southern Bell's rates, of inequities...Southern Bell believes, however, that the application of rate of return and rate-base regulation to Southern Bell, to AT&T, and to other competitors would be antithetical to the competitive regime envisioned by the General Assembly when it enacted House Bill 161, as well as to the principles of competition and market economies that underpin that legislation. (Response of BellSouth Telecommunications, Inc., in Opposition to "Emergency" Petition of AT&T, Answer, and Motion to Dismiss, May 22, 1995, at 57.)

BellSouth filed several TELRIC studies as supporting evidence for using its proposed tariff rates, AT&T raised issues regarding their validity.

The Arbitrators find merit in the criticisms provided of both parties' costs models. As BellSouth has stated:

> "Therefore testimony during the proceedings indicates that both party's studies are subject to scrutiny."

The Arbitrators reviewed several unbundled element rates proposals by both parties as displayed in the following table.

	BST TELRIC	BST PROP. Exist. Tariff	BST PROP Price True-up	AT&T PROP. HM Rate
2-wire unbundled loop	$29.66	$25.00	$22.00	$20.81
Local switching, per minute	$.002419	n/a	$.0059	$.002
Local switching, mostly 2 wire	$2.52	n/a	n/a	$1.46

The examination of these rates does not reveal great discrepancy. Having found neither parties' TELRIC model satisfactory, for the purpose of this arbitration we will use their results (however, imperfect) to establish an upper and lower range. We find that taking the mid-point value of this range provides for a reasonable interim rate. therefore, for all loop changes (excluding non-recurring charges), local switching - monthly, and local switching - per minute, we establish the interim rate as the mid-point between the BellSouth TELRIC value (Scheye Exhibit RCS-4) and AT&T's proposed rate (Ellison, Exhibit WE-1). The the Panel accept BellSouth's position that deaveraged unbundled element rates have public policy implications beyond the scope of this arbitration. Therefore, the arbitrators decline to recommend deaveraging of unbundled element rates.

The Panel does not agree with AT&T that establishing these interim rates subject to true-up would inhibit the introduction of competition. We therefore establish the above interim rates subject to true-up within six (6) months.

NON-RECURRING CHARGES

AT&T Position - BellSouth provides no cost studies supporting its proposed non-recurring loop charges. BellSouth proposed to charge $140.00 to AT&T for the non-recurring loop hook-up charge for each loop AT&T purchases from BellSouth (Ex. RCS-4). These charges appear to be considerably in excess of the price BellSouth charges its own retail customers. In addition, BellSouth's proposed charges include costs related to sophisticated engineering of special access loops unrelated to the basic loop requested by AT&T. (Caldwell, Tr.v.2B, 30-32). BellSouth's non-recurring loop charges also do not account for the fact that AT&T has requested, and BellSouth has agreed to provide, electronic interfaces that will allow AT&T to submit service orders without the customer interface time reflected in BellSouth's prices. (Ellison, Dir. 12-13) Finally, BellSouth's non-recurring loop changes do not reflect the lower levels of cost BellSouth will incur when a customer simply desires a transfer from BellSouth to the requesting carrier with no change in the services or features available. (Id; see also Caldwell, Tr.v.2B, 34-35). AT&T witness Ellison has testified without contradiction that the appropriate price for required software-oriented non-recurring activity may in fact be less than $5.00 (Id.)

BellSouth Position - "Charges for the non-recurring provisioning of unbundled elements should recover cost plus reasonable contribution. BellSouth has proposed rates equal to existing rates for non-recurring charges for unbundled services already provided under tariff. For new unbundled elements, BellSouth offers non-recurring charges at rates subject to true-up process until cost studies are conducted once the FCC rules are resolved." (Scheye, Rebuttal page 15)

Analysis & Findings - The Panel agrees with the issues raised by AT&T and do not believe that BellSouth's proposed non-recurring rates should be adopted. No cost studies have been submitted by BellSouth and AT&T is not in possession of data necessary to conduct such studies for BellSouth non-recurring cost elements as it is for unbundled network elements utilizing the HM.

The Panel recommends that on an interim basis all AT&T proposed non-recurring charges be adopted subject to a true-up within six (6) months one BellSouth has submitted cost studies which led to the development of permanent rates. We believe a true-up is required in this situation as we can place no reliance on either parties' proposed rates as they are not cost based.

ISSUE 24: What is the appropriate price for call transport and termination?

AT&T Position - AT&T proposes two rates: (a) interconnection through the BellSouth tandem of $0.0065 per minute and (b) direct end office interconnection of $0.0026 per minute. These values are based on HM results.

BellSouth Position - BellSouth's average local interconnection rate of $0.01 per minute meets that the standard set forth in § 252(d)(2)(A) of the Act in that it allows for the recovery of BellSouth's costs and is reasonable. The reasonableness of BellSouth's rate is further demonstrated by the agreements that BellSouth has reached with other facilities-based carriers. Companies such as ASCI, Intermedia Communications, Inc., Brooks-Fiber Communications of Mississippi and others have found BellSouth rates to be reasonable, allowing them a fair opportunity to compete for local exchange customers. If the rates these companies agreed to were not

reasonable, they would not have signed an agreement, but would have filed for arbitration of the local interconnection.

Analysis & Findings - The Panel reviewed the underlying element rates proposed by both parties:

Transport and Termination	BellSouth Prop. Rate	AT&T Prop. Rate
Tandem Switching	$0.000676	$0.0028
Common Transport, per mile	0.00004	0.0000
per minute	0.00036	0.00185
term or line per minute of use	0.00787	0.002
End office switching	0.002	not appropriate
Tandem intermediary charges		

The Panel agrees with AT&T in that two rates are required: tandem versus a direct end office interconnection. The Arbitrators recommend that AT&T's proposed rate of per minute for direct and office termination be established as the interim rate.

The Panel has established an upper and lower limit based on each party's proposed rate for a tandem interconnection: $0.01 per minute and $0.0065 per minute, respectively.

The Panel recommends that the mid-point value of $0.0083 be established as the interim rate subject to true-up within six (6) months. BellSouth should file cost studies for transport and termination, which are verifiable and in compliance with the Telecommunications Act of 1996.

ISSUE 25: Is "bill and keep" an appropriate alternative to the terminating carrier charging TELRIC or another method of providing mutually reciprocal compensation?

Resolved by the parties.

ISSUE 26: What is the appropriate price for certain support elements relating to interconnection and network elements?

AT&T Position - AT&T contends prices for access to poles, conduits, ducts, rights of way should be set at economic cost. BellSouth has not provided sufficient cost information to permit appropriate pricing of these elements. The Panel should recommend that the Commission require BellSouth to produce adequate cost documentation for these capabilities. (Ellison, Dir. 19.)

BellSouth Position - BellSouth has proposed reasonable and non-discriminatory rates for support functions such as access to rights of way, interim number portability and collocation. BellSouth's rates are based on costs and provide profit to BellSouth.

Analysis & Findings - Access to Poles, Conduits and Rights-of-way-AT&T does not provide specific cost recommendations. It suggests that the Panel require BellSouth to provide cost data using the same standards as AT&T proposed for network elements. BellSouth asserts that consistent with 47 U.S.C. § 224 (c), it shall continue to provide access to poles, conduits, and rights-of-way under standard licensing agreements.

The Panel recommends that BellSouth's position be accepted.

Interim Number Portability

AT&T recommends that all parties offer interim number portability at no charge. In essence, each carrier will pay its own costs of providing interim number portability. AT&T correctly point out that this option complies with FCC requirements as established in their Interim Number Portability Rules.

BellSouth recommends that the rates it has negotiated with ICI should apply.

The Panel does not feel compelled to accept a rate that BellSouth has negotiated with other carriers. The Panel; however, does believe that all rates should satisfy the Act and only relevant FCC rules. In this particular instance, the Panel believes that the FCC Interim Number Portability rules are binding.

The Panel does not accept AT&T recommendations, even though it is one of the FCC approved cost recovery mechanisms, we believe that BellSouth will initially be the primary carrier providing INP and should recover these costs. No necessary cost studies have been filed to assist us in establishing a rate. Therefore, the Panel rules that BellSouth provide such studies within six (6) months. Until such time, the Panel recommends that parties institute truck and true. Until a permanent rate and an appropriate cost sharing mechanism are established, all parties will track the number of INP arrangements it has provided. Based on the permanent rate, all parties will true-up their costs with interest.

Collocation

AT&T has proposed that BellSouth's existing interstate virtual collocation rates be adopted on an interim basis. For physical collocation rates, AT&T has proposed interim rates based on "review of various BellSouth studies," "interstate rates" and on "BellSouth's proposals." In both cases, AT&T recommends that BellSouth be required to file cost studies supporting permanent rates.

BellSouth has not filed any collocation cost studies. Rather, it has only proposed physical collocation rates based on several negotiated interconnection agreements.

The Panel does not believe that BellSouth has satisfied the requirements of the Act. We, therefore, recommend that BellSouth's interstate virtual collocation rates be adopted on an interim basis subject to true-up within six (6) months.

The Panel's review of the parties' proposed physical collocation rules reveals many identical rates and most others somewhat comparable. The Panel recommends that where parties proposed rates are different, that AT&T's proposed rate plus one-quarter of the difference between it and BellSouth's proposed rate be adopted as an interim rates.

The Panel also recommends that BellSouth be required to file cost studies supporting permanent physical and virtual collocation rate.

ISSUE 27: Do the provisions of Section 251 and 252 apply to the price of exchange access? If so, what is the appropriate price for exchange access?

AT&T Position - AT&T believes charges for call transport and termination should be non-discriminatory -- whether for "local" long distance or "toll" long distance. Under the Act, new entrants purchasing unbundled network elements are entitled to do so at economic rates -- that is, TELRIC plus a reasonable allocation of joint and common costs. 47 U.S.C.A. §§ 251(c)(2),252(d)(1). These are the appropriate pricing standards for carriers who purchase BellSouth unbundled local switches necessary for "local" and "long distance" access and serve their own new customers. (Ellison, Dir. 12.) This Panel should not permit BellSouth to assess additional access charges for calls routed through a switch purchased by the new entrant and serving the new entrant's customers. (Gillan, Dir. 35-38.) To add access or other surcharges would allow BellSouth to recov-

er more than its costs, impairs competition and restricts calling area product differentiation to the detriment of Mississippi consumers. (Id.)

BellSouth Position - The access charge provisions of the FCC's Order have been stayed. Therefore, the Panel should reaffirm that when Alec's purchase unbundled switching and use it for access for intraLATA, and interLATA intrastate traffic or for interstate traffic normal access charges should apply. (Scheye Dir.,p.83).

Analysis & Findings - AT&T argues that the Commission should order cost-based termination rates that apply equally to both local and long distance traffic. BellSouth argues that the pricing rules in Section 251 and 252 apply only to local interconnection rates.

The Panel finds that the pricing rules in §251 and §252 regulate the prices of local interconnection and unbundled network elements used for local service only. Congress intended the pricing and other rules (§251 and §252) to open local telecommunications markets to competition. Those sections were clearly structured to create the framework for interconnection of local networks and access to network elements in order to create local competition. There is nothing in the Act or its legislative history that would suggest that these rules were intended to cause a drastic change in the current exchange access charge structure.

The Panel is unpersuaded by AT&T's argument that the Act requires cost-based termination rates for long distance traffic. The Panel notes that proceedings are currently open before the FCC with regard to access charge restructuring and universal service. The results of these proceedings may impact significantly on the issue of long distance exchange access. Until those proceedings are complete, and all appeals have

run their course, the Panel rejects AT&T's argument that termination rates for long distance access should be priced like those for local service.

ISSUE 28: When AT&T resells BellSouth's telecommunications services, do AT&T's rates apply to collect, third party, IntraLATA calls when such calls are originated from an AT&T customer but billed to a BellSouth customer?

AT&T Position - AT&T argues the Panel should recommend that the Commission require BellSouth to use the Centralized Message Distribution System ("CMDS") process for billing of intraLATA collect, third-party and calling card calls. Under this process, all such calls are billed at the originating service provider's rates. (Carroll, Dir.35.) The telecommunications industry currently uses the CMDS process to determine the applicable rates and appropriate compensation for collect, third-party, and calling card interLATA calls. (Id.) In general, this process greatly simplifies the billing procedure for interLATA calls. (Id.) AT&T believes application of the CMDS process to intraLATA calls would simplify billing procedures for those calls as well.

BellSouth Position - BellSouth has no "regional" system using the CMDS process for intraLATA calls, and therefore, it should not be required to price and allocate compensation for these calls in accordance with this process. (Scheye, Dir.84-85.)

Analysis & Findings - BellSouth offers no reason, technological or otherwise, why it cannot develop the necessary system to accommodate AT&T's request. Therefore, the Panel recommends that the Commission order BellSouth to develop such a system within nine (9) months of the date of the Final Order in this Docket.

ISSUE 29: What are the appropriate general contractual terms and conditions that should govern the arbitration agreement

(e.g. resolution of disputes, performance requirements and liability/indemnity)?

AT&T Position - The only remaining aspects of this issue are whether BellSouth's affiliates should be bound by the Interconnection Agreement and whether parties must make customer credit information available to third-party credit bureaus.

AT&T should not be forced to negotiate separate agreements with BellSouth's affiliates. This would be a needless expenditure of time and resources. The Panel should recommend that the Commission require that BellSouth affiliates join in the interconnection agreement between AT&T and BellSouth

In addition, AT&T requires access to customer's credit information in order to determine whether potential customers are credit worthy. Therefore, the Panel should recommend that the Commission order BellSouth to release customer credit information to third party credit bureaus.

BellSouth Position - General contractual terms and conditions will vary depending on the companies negotiating. The terms and conditions included in agreements is more a legal consideration and should not be included in this proceeding. BellSouth submits that AT&T has raised portions of this issue in Issues 3 and 4. It is BellSouth's understanding that, through negotiations, the parties reached an agreement regarding the appropriate liability and indemnification language, as well as an agreed upon procedure for resolving disputes that may arise after the execution of the contract. (Varner, Dir. p. 75).

Analysis & Findings - It is prudent for BellSouth and AT&T to have general terms and conditions in their interconnection agreement, and the parties

are instructed to include in their interconnection agreement language on matters in dispute as part of their best-and-final offer.

BEFORE THE

MISSISSIPPI PUBLIC SERVICE COMMISSION

In the Matter of the Interconnection Agreement Negotiations Between AT&T Communications of the South Central States, Inc., and BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. § 252	)))))	Docket No. 96-AD-0559

ORDER APPROVING ARBITRATED INTERCONNECTION AGREEMENT

On February 8, 1996, the Telecommunications Act of 1996[1] became law. The Act provides for negotiations to arrange resale, interconnection, and unbundled network elements between incumbent local exchange carriers and new entrants. 47 U.S.C. § 252(1). When parties cannot successfully reach a satisfactory resolution to their negotiations, however, the Act provides that they are entitled to ask, between the 135th and 160th days after the initial request for negotiations, the appropriate state commission for arbitration of unresolved issues. 47 U.S.C. § 252 (b)(1).

On August 8, 1996, the Federal Communications Commission ("FCC") released its First Report and Order in CC Docket No. 96-98 ("First Report and Order" or the "Order") concerning interconnection issues. The Mississippi Public Service Commission (the "Commission"), BellSouth Telecommunications, Inc. ("BellSouth") and a number of other companies and public service commissions appealed the FCC Order.

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[1] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)(hereinafter cited as the "Act").

On October 15, 1996, the United States Court of Appeals for the Eighth Circuit (the "Eighth Circuit") entered its "Order Granting Stay Pending Judicial Review"[2] (the "Stay") of certain portions[3] of the FCC's First Report and Order in CC Docket No. 96-98. In Section II.A. of its Opinion, the Court found that the petitioners were likely to succeed on the merits of their appeal. Specifically, the Eighth Circuit held that it was likely that the petitioners would prevail on their arguments that the Act did not give the FCC the jurisdictional authority to mandate to the states rules on pricing. The Eighth Circuit also stayed the "pick and choose" provisions of the FCC Order in Section II of the Stay.

On June 10, 1996, AT&T Communications of the South Central States, Inc. ("AT&T") formally requested negotiations with BellSouth "for interconnection to enable AT&T to provide competing telecommunications services, including local service", in Mississippi. Despite extensive and detailed negotiations that occurred over an extended period of time, BellSouth and AT&T were unable to reach total agreement on all issues. On November 15, 1996, AT&T filed a Petition for Arbitration in Mississippi. BellSouth filed its Response to AT&T's Petition on December 10, 1996. Thereafter, on December 23, 1996, the Mississippi Public

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[2] See Order Granting Stay Pending Judicial Review, Iowa Utilities Board, et al. v. FCC; No. 96-3321 (U.S. Ct. of App., 8th Cir., October 15, 1996).

[3] The Eighth Circuit Stayed §§ 51.501-51.513 (Total Element Long Run Incremental Cost (TELRIC) (Pricing Methodology and proxy prices for unbundled elements); 51.515 (interim access charge mechanism); 51.601-51.611 (resale methodology and proxies); 51.705-51.715 (pricing rules and proxies for reciprocal termination and transport termination); and 51.809 (the so called "pick and choose" rule). However, on November 1, 1996, the Eighth Circuit lifted the Stay as to § 51.701, 51.703, and 51.717. See Order Lifting Stay in Part, Iowa Utilities Board, et al. v. FCC, No. 96-3321 (U.S. Ct. of App., 8th Cir., November 1, 1996).

Service Commission issued an Order appointing a three member Arbitration Panel to arbitrate the unresolved issues in the pending proceeding.

The Arbitration Panel held a prehearing conference with the parties on January 9, 1997. A procedural calendar was subsequently set forth on January 14, 1997. The Arbitration Panel heard testimony and evidence presented by both AT&T and BellSouth at the arbitration hearing held on February 10-12, 1997.

On February 24, 1997, the parties filed post hearing briefs and jointly filed a proposed Interconnection Agreement which reflected the issues already agreed to by the parties. On March 10, 1997, the Arbitration Panel filed its Panel Report with the Commission and copies were provided to the parties. The Panel Report listed the twenty-nine (29) issues that AT&T originally sought to have this Commission arbitrate under the Act. The Panel Report reflected that a number of these issues were either "resolved by the parties" or were withdrawn from the arbitration proceedings. As to the issues which were arbitrated by the Arbitration Panel, the Panel Report set forth brief descriptions of the positions of both AT&T and BellSouth, followed by the analysis and findings of the Arbitration Panel.

Based upon the findings contained in the Arbitration Panel Report, on March 17, 1997, the parties filed "best and final language" (in the form of proposed Interconnection Agreements along with supporting rationale and/or position statements) on the remaining unresolved issues. Also, pursuant to the Arbitration Panel's direction, the parties filed, on March 27, 1997, subject to reservation, an agreed-upon table of prices for unbundled network elements.

On April 3, 1997, the Arbitration Panel issued its decision on the remaining disputed issues. The decision regarding these remaining issues was transmitted to the parties along with a request for the parties to incorporate the Panel's decision and to execute and deliver an Arbitrated Interconnection Agreement to the Arbitration Panel by April 7, 1997. The parties did so, and on April 8, 1997, the Arbitration Panel filed the executed Arbitrated Interconnection Agreement which they adopted with the Commission along with the parties' post-hearing briefs dated February 24, 1997, and the parties' respective proposed Interconnection Agreements (with attachments) dated March 17, 1997.

The Commission acknowledges the diligent and professional work performed by the Arbitration Panel in fulfilling their appointed duties by resolving the disputed issues between AT&T and BellSouth and by furnishing the Commission with an executed Arbitrated Interconnection Agreement.

On April 14, 1997, pursuant to the Commission's Order Adopting Procedures in Docket No. 95-UA-358, Sub Docket; Section 252 Procedures, dated August 23, 1996, the Commission received Comments on the Arbitrated Interconnection Agreement from BellSouth and the Office of the Attorney General, as well as AT&T's objections to the Arbitrated Interconnection Agreement.

The issue before the Commission is whether to approve or reject the executed Arbitrated Interconnection Agreement, with written findings as to any deficiencies, which has been submitted in this docket by the Arbitration Panel appointed by this Commission.

II. DISCUSSION AND FINDINGS

A. JURISDICTION AND PROCEEDINGS

Under the Act, the Commission has jurisdiction to review "[a]ny interconnection agreement adopted by negotiation or arbitration." 47 U.S.C. § 252(e). The Commission is required to approve or reject an Arbitrated Interconnection Agreement, with written findings as to any deficiencies, within thirty (30) days after the Agreement is submitted. The Commission has ninety (90) days to approve or reject a negotiated Interconnection Agreement after the Agreement has been submitted. 47 U.S.C. § 252 (e)(4).

Under the Act, the Commission may reject an Agreement (or any portion thereof) adopted by negotiation if it finds that the Agreement (or a portion thereof) discriminates against a telecommunications carrier not a party to the Agreement or that the implementation of the Agreement (or portion thereof) is not consistent with the public interest, convenience and necessity. 47 U.S.C. § 252(e)(2)(A). The Commission may reject an Agreement (or any portion thereof) adopted by arbitration if it finds that the Agreement does not meet the requirements of Section 251 of the Act, including the regulations prescribed by the FCC, pursuant to § 251, or the standards set forth in Section 252(d) of the Act. 47 U.S.C. § 252(2)(e)(2)(B).

AT&T has requested this Commission to modify the Arbitrated Interconnection Agreement filed and adopted by the Arbitration Panel. Section 252(e) of the Act refers to this Commission's authority to approve or reject the Arbitrated Interconnection Agreement with written findings as to any deficiencies. The Act does not expressly provide for modification. Due to the Commission's decision to approve

the filed Arbitrated Interconnection Agreement which was adopted by the Arbitration Panel, the Commission does not need to decide whether it has any authority, implied or inherent, to modify said Arbitrated Interconnection Agreement.

The Commission has thoroughly reviewed the record in this matter. The Commission has carefully considered the evidence presented to the Arbitration Panel, the briefs of the parties, the Arbitrated Interconnection Agreement adopted by the Arbitration Panel, the proposed interconnection agreements submitted by the parties, the two decisions[4] rendered by the Arbitration Panel, the Comments filed by BellSouth and by the Office of the Attorney General, the Objections filed by AT&T, the Telecommunications Act of 1996, the FCC Order, the FCC's rules or regulations, and the Eighth Circuit Court's Stay of certain provisions[5] of the FCC's Order.

The Commission's Order Adopting Procedures in Mississippi PSC Docket No. 95-UA-358, Sub-Docket: Section 252 Procedures, dated August 23, 1996, at page 23 of Exhibit "A" thereto, provided for the submission of comments by "[a]ny person, agency, corporation, partnership or any other entity . . . regarding the Arbitrated Interconnection Agreement with the Commission." This same provision also allows for the filing of such comments by "the arbitrating parties". As stated earlier, the Commission has received such comments from the two "arbitrating parties" (AT&T and BellSouth) and from the Office of the Attorney General of Mississippi. The Commission's Section 252 Procedures do not call for anyone to file comments in

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[4] As noted earlier herein, the Arbitration Panel filed its Panel Report on March 10, 1997 with the Commission and the Arbitration Panel issued its decision on April 3, 1997, as to the remaining disputed issues.

[5] See footnotes 3 and 4 earlier herein for a list of the FCC Rules still subject to the Stay issued by the U.S. Court of Appeals for the Eighth Circuit.

reply to another person's comments. Thus, when we considered AT&T's "objections" as to six (6) of the disputed issues resolved by the Arbitration Panel, we considered BellSouth's positions on those issues as provided in the Panel Report, BellSouth's & AT&T's Briefs and the record from the arbitration hearing. The Arbitration Panel has fully heard all the testimony and evidence presented at the hearing in this matter. It is clear from our review of the Panel Report that careful and thoughtful consideration was given to all of the unresolved issues as the Arbitration Panel reached their decisions.

--Moreover, the Commission has thoroughly reviewed and fully considered each issue that was disputed, arbitrated, and then resolved by the Arbitration Panel. These issues are listed below, utilizing the same numbers as they were assigned during the arbitration proceeding. The list of unresolved issues which were Arbitrated by the Arbitration Panel[6] are as follows:

1. What services provided by BellSouth, if any, should be excluded from resale, including promotions, CSAs, nonrecurring services, LifeLine/LinkUp, 911/911 and N11?

2. What terms and conditions, including use and user restrictions, if any, should be applied to resale of BellSouth services?

3. What are the appropriate standards, such as DMOQs, if any, for performance metrics, service restoration, and quality assurance related to service

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[6] As noted earlier, the parties were able to either resolve or agree to not include the following issues from the original list of twenty-nine (29) disputed issues in AT&T's Petition for Arbitration filed with the Commission: Issues 8-13, 17-18, 20, and 25.

provided by BellSouth for resale and for network elements provided to AT&T by BellSouth?

4. Must BellSouth take financial responsibility for its own action in causing, or its lack of action in preventing, unbillable or uncollectible AT&T revenues?

5. Should BellSouth be required to provide real-time and interactive access via electronic interfaces as requested by AT&T?

If this process requires the development of additional capabilities, and costs are incurred, how should those costs be recovered?

6. When AT&T resells BellSouth's local exchange service, or purchases unbundled local switching, is it technically feasible or otherwise appropriate to route operator services and directory assistance calls (and 611 repair calls if used by BellSouth in Mississippi) directly to AT&T's platform?

7. Must an ILEC brand services sold or information provided to customers on behalf of AT&T?

14. Must BellSouth provide AT&T with:

1) Unmediated access to AIN triggers, or utilize the same mediation device that it requires AT&T to use; 2) routing capabilities to AT&T's operator services platforms; 3) access to customers' inside wiring by allowing AT&T to disconnect and ground BellSouth's wire?

1) Unmediated Access to AIN triggers

2) Routing to AT&T Operator Services

3) Network Interface Device

4) Local Loop Facility

15. Is AT&T allowed to recombine unbundled elements? If so, what is the appropriate price for unbundled elements?

16. Must BellSouth make rights-of-way available to AT&T on terms and conditions equal to that it provides itself?

19. Must BellSouth provide AT&T with access to BellSouth's dark fiber?

21. Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

22. What are the appropriate BellSouth wholesale rates?

23. What is the appropriate price(s), including nonrecurring charges, for each unbundled network element AT&T has requested?

24. What is the appropriate price for call transport and termination?

26. What is the appropriate price for certain support elements relating to interconnection and network elements?

27. Do the provisions of Sections 251 and 252 apply to the price of exchange access? If so, what is the appropriate price for exchange access?

28. When AT&T resells BellSouth's telecommunications services, do AT&T's rates apply to collect, third party, and intraLATA calls when such calls are originated from an AT&T customer, but billed to a BellSouth customer?

29. What are the appropriate general contractual terms and conditions that should govern the Arbitrated Interconnection Agreement (e.g., resolution of disputes, performed requirements, and liability/indemnity)?

Based upon the Commission's review of each of the issues listed above, the Commission hereby adopts the Arbitration Panel's Report filed on March 10,1997, and the Arbitration Panel's decision on the remaining issues rendered on April 3, 1997. The Commission also approves the executed Arbitrated Interconnection Agreement between BellSouth and AT&T which was adopted by the Arbitration Panel and filed with the Commission on April 8, 1997.

Moreover, the Commission shall specifically address each of the Objections filed by AT&T as well as the Comments of the Attorney General. AT&T requests that the Commission not approve six of the provisions in the Arbitrated Interconnection Agreement because they allegedly conflict with the Act and/or the FCC Order and Rules, and requests that this Commission modify the Arbitrated Interconnection Agreement as follows:

(1) Delete Paragraph 1.A. of the General Terms and Conditions contained in the pending Agreement. This Paragraph requires AT&T to pay resale rates rather than cost based rates when AT&T recombines network elements to mimic a BellSouth retail service.

(2) Increase the resale discount rates set out in Paragraph 35 of the pending Agreement from 15.75% to 24.30%.

(3) Modify the language in Paragraph 25.5.1 and 25.5.2 of the pending Agreement so as to require BellSouth to offer all Contract Service Arrangements ("CSAs") for resale at the wholesale discount price.

(4) Delete from the pending Agreement that portion of Paragraph 36 which provides that "unbundled local switching does not include vertical features."

(5) Delete Paragraph 24.3(ii) of the pending Agreement which imposes upon AT&T all use and user restrictions contained in BellSouth's existing tariffs.

(6) Delete Attachment 12 of the pending Agreement and substitute, in lieu thereof, the direct measures of quality (DMOQs") as advocated by AT&T.

The Office of the Attorney General's Comments address only one issue: the calculation of the wholesale discount. The Commission shall also address those Comments.

B. DISCUSSION AND RESOLUTION OF THE OBJECTIONS BY AT&T

1. AT&T Objection I: Rebundling of Unbundled Network Elements

AT&T objects to, and requests that this Commission delete Paragraph 1.A of the Arbitrated Interconnection Agreement in its entirety. Paragraph 1.A states as follows:

> When AT&T recombines unbundled BellSouth Elements to create services identical to BellSouth's retail offerings, the prices charged to AT&T for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount rate, and shall be offered under the same terms and conditions as BellSouth offers the service. AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features and attributes of a retail service offering that is the subject of a properly filed and approved BellSouth tariff. Furthermore, services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive

functionality or capability in combination with unbundled Elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled BellSouth network elements, shall not constitute substantiate functionality or capability for purposes of determining whether AT&T is providing services identical to a BellSouth retail offering.

AT&T asserts that under the Act, the FCC Order and the FCC rules, a new entrant can use unbundled network elements (UNEs) to provide any service. AT&T also asserts that a new entrant can use UNEs at cost-based rates, plus a reasonable profit, collect access charges and no longer pay access charges to BellSouth.

AT&T argues that Section 251(c)(3) of the Act allows requesting carriers to combine network elements to provide any telecommunications service. AT&T also cites the FCC Rules at § 51.309(a) as providing that incumbent LECs shall not impose restrictions on requests for or use of UNEs "that would impair the ability of a requesting carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." 47 C.F.R. § 51.309(a). AT&T also claims that the position advocated by BellSouth and adopted in the Arbitrated Interconnection Agreement was expressly rejected by the FCC.

In addition, AT&T argues that there is an inherent conflict within the Arbitrated Interconnection Agreement. Specifically, AT&T argues that there is no reason why BellSouth's Operator Services platform, which constitutes a separate element for purposes of unbundling, should not also constitute a separate element when provided by AT&T and combined with BellSouth UNEs to mimic a BellSouth service. Thus, AT&T states that if it provides its own Operator Services and incurs the costs

associated therewith, it should be able to pay the UNE charges for the remaining elements rather than the resale price.

Finally, AT&T argues that Paragraph 1.A would thwart and delay the development of local competition in Mississippi because it artificially expands the scope of resale, where BellSouth controls the service and the price and can constrict the ability of new entrants to use BellSouth's network creatively to provide competitive choices throughout Mississippi, with more price choices and variety of services. Moreover, as "identical services" is defined in Paragraph 1.A, a new entrant would need to deploy a switch or similar functionality to obtain the UNE prices but such deployment takes time and begins only in densely populated urban areas at first. AT&T concludes that elimination the limitation will enable new entrants to develop competitive offerings throughout BellSouth's serving areas in Mississippi.

DISCUSSION

The Commission finds that AT&T has not demonstrated that there is a difference between resale and the rebundling of UNEs for services identical to BellSouth's tariffed service offerings, in order to justify treating such rebundling differently from resale. AT&T's objections on this point merely contain conclusory allegations that such differences exist, without citations or factual support. On the other hand, the record demonstrates that AT&T's "rebundling" of unbundled network elements to create services identical to BellSouth's services would render the Act's resale provisions meaningless as a practical matter. (Varner Direct, pp. 60-66; and Scheye Direct, pp. 49-55). Congress provided different pricing mechanisms for the two distinct ways to enter local markets - through resale, or through the use of

network elements combined with the new entrant's own facilities. When the new entrant provides its customers with services identical to BellSouth's services, by using only BellSouth's network elements, it is essentially reselling BellSouth's services. For such a situation, Congress directed that the reseller pay BellSouth its retail rates minus a wholesale discount based on the costs BellSouth can avoid as a result of selling to the reseller. 47 U.S.C. § 252(d)(3).

The Commission is not persuaded by AT&T's assertions that the rebundling of BellSouth's network elements to create a service identical to BellSouth's service can be construed as something different from the resale of BellSouth's service. Allowing AT&T to purchase unbundled elements at unbundled element prices and "rebundle" them to mimic BellSouth's retail services would obviate the resale provisions of Section 251(c)(4). In addition, it would arguably allow AT&T to circumvent the Act's joint marketing restriction, by allowing AT&T (prior to BellSouth's entry into in-region interLATA markets) to jointly market AT&T's long distance services with local services identical to BellSouth while using solely BellSouth's network elements.

AT&T's objections placed considerable reliance on the FCC's First Report and Order. The Commission finds AT&T's arguments unpersuasive. The Eighth Circuit granted a Stay on October 15, 1996, pending judicial review of the provisions of the First Report and Order and associated rules relating to pricing. The Commission finds that its deliberations are governed by the Act. Moreover, and more fundamentally, when AT&T in fact purchases BellSouth's network facilities from end to end to replicate BellSouth's existing services, this constitutes plain resale, and

the Act's express provisions concerning resale must apply if those provisions are to have any meaning at all.

The Commission affirms the Arbitration Panel's finding that AT&T is not prevented from combining unbundled network elements in any way it chooses that is technically feasible. However, AT&T simply has not shown that when such recombinations mimic BellSouth's services without adding any AT&T functionality or capability, they should be treated differently from resale.

The Commission finds that Paragraph 1.A of the Arbitrated Interconnection Agreement meets the standard in Section 252(e)(2)(B) of the Act and, therefore, the Commission expressly approves Paragraph 1.A. of said Agreement, and specifically denies AT&T's objection.

2. AT&T Objection II: The Resale Discount Rate of 15.75%

AT&T requests that the Commission raise the discount rate from 15.75% to 24.30%, which is the discount rate AT&T sought to have established in the arbitration proceedings. It is noted by the Commission that BellSouth sought to have a discount rate of 8.2% set for business service and 8.9% set for residence service in the arbitration. AT&T maintains that the discount rate of 15.75% will make it difficult, if not impossible, to compete with BellSouth in Mississippi. AT&T believes the rate is too low and does not remove all of BellSouth's avoided costs from the prices it is authorized to charge.

AT&T asserts that the resale level is such that it gives BellSouth a competitive advantage. According to AT&T, that, combined with the Arbitration Panel making it virtually impossible to offer telecommunications service by combining

network elements at cost based rates "virtually assures BellSouth of maintaining a monopoly" for the foreseeable future.

AT&T further complains that the Arbitration Panel did not exclude every avoided cost in establishing the discount. AT&T specifically took issue with the finding that 7% of the product advertising cost incurred by BellSouth are not avoidable. AT&T also specifically took issue with the finding that BellSouth's operator services costs were not avoidable.

The Office of the Attorney General of Mississippi ("Attorney General") also commented on the resale discount. The Attorney General believes the Commission must determine the costs BellSouth would avoid if it were a resale only entity. The Attorney General appears to rely heavily on its understanding of the FCC Order in making its comments. In particular, the Attorney General recites Paragraph 911 of the FCC Order as apparently providing the appropriate definition of avoided costs: "those costs that an incumbent LEC would no longer incur, if it were to cease retail operations and instead provide all of its services through resellers." (emphasis added by Attorney General). The Attorney General further argued that "[w]hile retail-related costs may not be 'avoidable' in one sense (i.e. they are fixed for BSC(sic) as BSC(sic) exists today), they certainly are avoidable from the perspective of an efficiently operated wholesale company--the BSC (sic) which the Commission must construct for purposes of defining the wholesale discount." See Comments of the Attorney General, page 3, dated April 14, 1997.

DISCUSSION

The Commission rejects AT&T's request to reset the discount rate at the level AT&T wanted during the arbitration, 24.30%. AT&T has not raised any new evidence to support its request. AT&T's argument appears to simply be another presentation of the evidence it presented in the arbitration.

As to its specific complaint regarding advertising expenses, the Commission notes, and affirms, the Arbitration Panel's finding that BellSouth's detailed analysis of the sales and product advertising expenses were reasonable. BellSouth treated 93% of this expense as avoided. The reasonableness of BellSouth's detailed analysis is borne out by the fact that the FCC's default assumption uses 90% for the advertising expense accounts. BellSouth's calculation exceeded the FCCs as to these expense items. (Reid Direct, pp. 22-23 and Exhibit WSR-1).

Additionally, the Commission affirms the Arbitration Panel's findings that BellSouth's operator services expenses should not be treated as avoided. The record clearly demonstrates that AT&T wishes to have it "both ways" on this issue. AT&T wants the cost of operator services removed for purposes of calculating a resale discount, but it wants to continue to have access to BellSouth's operator services. AT&T will have access to BellSouth's operator services and the expenses therefore shall not be treated as avoided.

As to the Attorney General's concerns, the Commission finds that the Arbitration Panel followed the avoided costs standard set forth in the Act. Specifically, the Act states:

> For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection and other costs that *will be avoided* by the local exchange carrier.

Section 252(d)(3)(emphasis added). The Act requires that an avoided cost study be performed in order to calculate a local exchange carrier's (LEC's) wholesale discount. The Act, unlike the FCC's First Report and Order, does not overlay any requirement or assumption regarding the environment in which the LEC operates. The Attorney General's argument is similar to that of AT&T; the Commission should ignore the realities of the marketplace in which BellSouth does business and, in the words of the Attorney General, "the Commission must construct [a BellSouth Company]" "from the perspective of an efficiently operated wholesale [only] company" "for purposes of defining the wholesale discount". See Comments of the Attorney General, page 3, dated April 14, 1997. The Commission declines to do so since such a requirement is not specified in the Act.

Based on the evidence in this proceeding, the Commission finds AT&T's and the Attorney General's arguments unpersuasive, and denies AT&T's request to change the discount rate from 15.75% to 24.30% and the Attorney General's request to change the discount rate to 23.46%. The Commission finds that the provisions of the Arbitrated Interconnection Agreement reflecting the resale discount rate meet the standard in Section 252(e)(2)(B) of the Act and, therefore, expressly approve the provisions of said Agreement as they pertain to the wholesale discount.

3. AT&T Objection III: Contract Service Arrangements ("CSAs")

AT&T objects to Paragraph 25.5.1 which exempts CSAs from application of the wholesale discount. AT&T also requests deletion of Paragraph 25.5.2 and requests that BellSouth be required to use its best effort to provide all CSAs to AT&T which are entered into or terminating after March 10, 1997.

AT&T argues that exempting CSAs from the wholesale discount disregards the "express direction" of the Act, the FCC Order and Rules. AT&T asserts that Section 251(c)(4) of the Act requires that all retail services be made available at wholesale rates, which would be determined in the arbitration context pursuant to Section 252(d)(3) of the Act. AT&T also points to the FCC Rules which do not contain an explicit exemption for CSAs from the discount and which require incumbent LECs to offer any retail service at wholesale rates except short-term promotions, cross-class services, and other service restrictions "proven by the LEC to be reasonable and non-discriminatory."

AT&T acknowledges that the FCC's Order stated that the avoidable cost for a service with volume-based discounts may be different in the case of volume contracts. AT&T, nonetheless, argues that if BellSouth contends that its avoidable costs for CSAs differ from other retail services, then it should have to demonstrate affirmatively how, and to what extent, such avoidable costs differ in order to comply with the FCC Order. Also, AT&T complains that CSAs in place as of March 10, 1997, must be subject to resale. AT&T maintains that there is no support for the Arbitration Panel's decision to totally exempt these CSAs from resale.

Finally, AT&T desires a revision be made to Paragraph 25.5.2 such that BellSouth is required to provide AT&T with copies of CSAs. AT&T maintains that there is no "practical way of knowing" what CSAs exist.

DISCUSSION

There is no real dispute that CSAs entered into by BellSouth after the effective date of the Arbitration Panel Report should be made available for resale; the issue is whether to apply the wholesale discount. The Commission notes that the FCC's Order and Rules do not affirmatively require that CSAs be subject to the same wholesale discount as other retail services. Nor do the FCC's Order and Rules contain the requirement urged by AT&T that BellSouth must affirmatively demonstrate how and to what extent BellSouth's avoidable costs differ for CSAs than for other retail services. The FCC, however, did recognize that the avoidable cost for a service with discounts may be different than without volume discounts. See FCC Order at ¶ 951.

The evidence before the Arbitration Panel during the arbitration shows that avoidable costs do indeed differ for BellSouth's CSAs, inasmuch as CSAs represent customer specific discounts. The testimony also showed that CSAs represent discounts in response to competitive situations, and that applying a fixed wholesale discount would place BellSouth at a permanent competitive disadvantage with respect to price. (Scheye Direct, p. 23).

AT&T did not show that there are avoided or avoidable marketing costs for existing CSAs, and it appears that such costs are not avoided or avoidable because by definition, BellSouth has already incurred costs for marketing to the customer,

determining its needs, and setting up the services configured to meet those needs. Further, recognizing that the FCC also concluded that avoided costs would be less for volume-discounted offerings, AT&T has not shown what, if any, discount could be fashioned for the resale of BellSouth CSAs.

The Commission concurs with the Arbitration Panel's finding that it would be unreasonable to mandate application of the wholesale discount to CSAs entered into after the date of the Report, and finds that it would be reasonable and competitively neutral to make CSAs entered into after the Report available for resale at no discount. The Commission concludes that making CSAs entered into after the Report available for resale, but not allowing the wholesale discount, meets the applicable standards and requirements pursuant to Sections 251(c)(4) and 252(d).

The Commission also finds that it is reasonable to exempt CSAs executed prior to the effective date of the Arbitration Report from resale. Those CSAs were negotiated in a different environment, and to require resale of those CSAs would be competitively unfair to BellSouth.

The Commission also finds unpersuasive AT&T's argument that BellSouth should be required to furnish copies of all CSAs to AT&T. As competition accelerates, a simple call on a customer will produce information as to whether or not that customer has a CSA with BellSouth. That sort of customer contact is a very "practical" way for AT&T to discover whether, and where, a CSA exists. AT&T's request to revise Paragraph 25.5.2 is denied.

The Commission finds that Paragraph 25.5.2 of the Arbitrated Interconnection Agreement meets the standard of Section 252(e)(2)(B) of the Act and, therefore, the Commission expressly approves Paragraph 25.5.2 of said Agreement.

4. **AT&T Objection IV: Vertical Features Non-Inclusion in Unbundled Local Switching**

AT&T requests that the second sentence of Paragraph 36 of the Arbitrated Interconnection Agreement which reads, "Unbundled local switching does not include vertical features," be deleted. AT&T argues that the Arbitration Panel's finding that vertical features are not part of the unbundled local switching element is contrary to the Act, the FCC's Order and Rules. AT&T claims that when it purchases the unbundled local switching element, it is entitled to get all of the features, functions and capabilities of that element. AT&T argues that the language in Paragraph 36 will force it to pay twice for the vertical features: once when it purchases the switching element and again when AT&T purchases a feature such as call waiting.

DISCUSSION

Section 3(29) of the Act defines a network element as follows:

> [a] facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscribers numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission routing, or other provision of a telecommunications service.

Further, Section 251(d)(2) of the Act states the following regarding unbundled network elements:

In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether -

> (A) access to such network elements as are proprietary in nature is necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

In its First Report and Order, the FCC required incumbent LECs to provide local switching as an unbundled network element, a finding with which this Commission agrees. Further, at Paragraph 413 of the Order, the FCC ordered that a vertical feature in the switch, such as Caller ID, Call Forwarding, Call Waiting, etc., must be a part of the local switching element. The FCC also stated in its Order that these vertical features in the switch must be included in the price of the local switching element, a finding with which this Commission has some concerns.

BellSouth shall offer local switching capability which involves the line termination (port) and the line side switching (dialtone) capability in the central office. These functions provide connectivity to the switching features associated with a telephone line and telephone number and routing capability to end users and other capabilities.

Vertical features, while technically provided in the central office, are not part of local switching. Vertical features, although they may be accessed in the switch itself, are retail services and should be made available as part of the resale of retail service offerings. (Scheye Direct, p. 55).

The section of the FCC's Order discussing the unbundled local switching element has not been stayed; however, the Commission regards this issue as a matter of pricing. Based upon the Eighth Circuit's Stay, the Commission believes that vertical features are themselves retail services and will price those features at the resale pricing standard of retail price less avoided costs. Furthermore, this Commission is simply not convinced that Congress intended to create any mechanism that would allow a competitor to evade the resale pricing standard contained in the Act.

The Commission adopts, as did the Arbitration Panel, the FCC's definition of the unbundled local switching network element. As the Panel Report reflects, the Commission finds that the software features that are included in this definition and that are activated per the instructions of the purchasing competitor should be priced at their respective retail prices minus the wholesale discount specified in the Arbitration Panel Report as adopted by the Commission earlier herein. The Commission finds that Paragraph 36 of the Arbitrated Interconnection Agreement meets the standard in Section 252(e)(2)(B) of the Act and, therefore, the Commission expressly approves Paragraph 36 of said Agreement.

5. **AT&T Objection V: Use and User Restrictions In BellSouth's Tariffs**

AT&T objects to the contract language contained in Paragraph 24.3(ii) that imposes upon AT&T all use and user restrictions contained within BellSouth's existing tariffs. Paragraph 24.3 states that no use and user restrictions shall be applicable to the resale of BellSouth's telecommunications services except for

"reasonable, non-discriminatory terms and conditions in the underlying BellSouth tariffs."

AT&T's objection to Sub-Paragraph (ii) of Paragraph 24.3 is, according to AT&T, based upon the Act and the FCC Order. AT&T states that Paragraph 24.3 fails to define which use and user restrictions meet these criteria, and that BellSouth has taken the position that all use and user restrictions in its current and future tariffs apply.

AT&T states that certain restrictions exist within BellSouth's tariffs which exceed those expressly permitted under the Act and the FCC First Report and Order (although AT&T did not specify such restrictions). AT&T therefore objects to any restrictions which were not expressly litigated during the arbitration "and for which BellSouth has not met its federally imposed burden of proof."

AT&T contends that, other than cross-class selling (*i.e.*, residence services sold to business customers), means-based offerings, and grandfathered services, the Act and FCC Order deem presumptively unreasonable any restrictions which limit who can purchase a service or how that service may be used for resale. 47 U.S.C. § 252(c)(4); FCC Order at ¶ 939. AT&T argues that use and user restrictions are products of rate of return regulations, and are now out-dated.

AT&T further argues that the FCC ruled that use and user restrictions other than the previously enumerated restrictions are "presumptively unreasonable." AT&T also pointed to the FCC's statement that incumbent LECs "can rebut this presumption, but only if the restrictions are narrowly tailored." FCC Order at ¶ 939.

AT&T concludes that allowing BellSouth to avoid the unrestricted resale of its retail services "without any proof of necessity" thwarts the pro-competitive policies of the Act and unjustifiably limits the choices of, and benefits to Mississippi consumers. Therefore, AT&T asks the Commission to delete Paragraph 24.3(ii) of the Arbitrated Interconnection Agreement.

DISCUSSION

Section 251(c)(4)(B) of the Act states that the incumbent LEC is "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with the regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." In its First Report and Order, the FCC approved certain resale restrictions and permitted this Commission to approve others which the incumbent LEC proves are "reasonable and nondiscriminatory." 47 C.F.R. § 51.613(b).

BellSouth previously demonstrated the appropriateness of its tariff restrictions when it submitted them to this Commission for approval, and BellSouth submitted sufficient evidence in the record of this arbitration to support the imposition of these restrictions upon AT&T's resale. For example, BellSouth's witness Mr. Scheye testified that its use and user restrictions are reasonable and should be maintained not only for its own customers, but when its services are resold. (Scheye Direct, pp. 25-28). BellSouth's witnesses Mr. Scheye and Mr. Varner presented testimony

supporting BellSouth's position that the use and user restrictions in the tariffs are both reasonable and nondiscriminatory as applied to competing resellers of local services. They explained that a retail service includes not only the stated rates, but also the terms and conditions found in the tariff. They also testified that if these terms and conditions change, the service has changed, and the retail price would likely be different. (Scheye Direct, pp. 25-28; and Varner Direct, pp. 49-50).

The most predominant use and user restriction in place today is for basic residence and business service, such that basic residence service cannot be purchased at the lower residence rate and used for business purposes. BellSouth presented evidence that if such use and user restrictions (cross-class selling restrictions) were eliminated, a competitor could undermine the rate structure and rate levels for business services by purchasing basic residence service and reselling it as basic business service. (Scheye Direct, pp. 26-27). BellSouth's witness Mr. Scheye added that a significant level of support for universal service is provided by business service, and that if such restrictions were lifted, most, if not all of that support would flow to AT&T and other competitors' shareholders rather than to support universal service. In the end, Mississippi's rural residential telephone users could be harmed. (Scheye Direct, pp. 26-27).

If the restrictions were now lifted across the board, with BellSouth having to return in the future to defend them on a piecemeal basis, it would be tantamount to allowing AT&T to pick and choose selectively across BellSouth's tariffs in a way that would undermine BellSouth's entire rate structure and would unreasonably discriminate against BellSouth in the local market. BellSouth has demonstrated that

it would not be reasonable to "open the floodgates" in this manner. Given this situation, it is reasonable and non-discriminatory to require that resellers must observe the tariffed use and user restrictions, just as BellSouth does. Moreover, the Commission will allow AT&T an additional opportunity not explicitly afforded to it by the FCC's Rules. BellSouth has demonstrated the reasonableness and nondiscriminatory nature of these restrictions and AT&T failed to present evidence to overcome BellSouth's showing. AT&T is not foreclosed by this finding from returning to the Commission to seek redress on specific restrictions. In such cases, BellSouth will have the burden again of establishing the appropriateness of the restrictions.

The Commission concludes that BellSouth has made a sufficient showing that its use and user restrictions are reasonable and non-discriminatory. The Commission concludes that the Arbitration Panel's ruling on this point, and the Arbitrated Interconnection Agreement's implementation of the ruling, meet the standards and requirements of Section 251(c)(4) and the FCC's Order and rules. The Commission finds that Paragraph 24.3(ll) of the Arbitrated Interconnection Agreement meets the standard in Section 252(e)(2)(B) of the Act and, therefore, expressly approves Paragraph 24.3(ll) of said Agreement.

6. AT&T Objection VI: "Service Parity" Measurements

AT&T requests that the "service parity" measurement's in Attachment 12 to the Arbitrated Interconnection Agreement mandated by the Arbitration Panel be deleted and replaced by AT&T's proposed Direct Measures of Quality ("DMOQs"). AT&T argues that it is entitled to these "DMOQs" because the Act requires that BellSouth provide AT&T with the capability to provide services that are equal to the

highest level of quality BellSouth provides or is required to provide to itself or another party.

AT&T claims that, without parity, "competitors will not be able to attract customers and competition will not come to Mississippi."

AT&T claims that, although the Arbitration Panel's Report recognized that AT&T is "entitled" to parity, the standards adopted by the Panel do not fulfill that "entitlement."

DISCUSSION

The Commission finds AT&T's arguments unpersuasive. From a careful review of the record, it appears that the Arbitration Panel decided that specific quality measures should be agreed upon by the parties; however, the Panel found that AT&T is not entitled to, in the words of the Arbitration Panel, a "predictive standard", in the name of parity. The Arbitration Panel further stated that what AT&T is entitled to is "what BellSouth does for itself, not what it hopes to do for itself or what it has done for itself in the past. AT&T should be entitled to get what reports are necessary to allow it to verify compliance with that standard, at both the level of service results and at the level of activities and inputs that are important to providing that service." The Panel Report further stated that "[t]o the extent that AT&T wants reports that BellSouth does not produce for itself, it should bear the cost of creating them." The Commission agrees with the Arbitration Panel's conclusions here.

The Arbitration Panel instructed both parties, in the event that they could not reach agreement on "agreed-upon measures, levels of each measure to be achieved, and reporting requirements in their agreement", to each provide their "best

and final" offer or contract language on these three points to the Arbitrators. The parties were apparently unable to reach agreement on their own since proposed contract language was submitted on this issue. Clearly, the Arbitration Panel chose BellSouth's "best and final" proposed standards rather than AT&T's because they most closely matched the finding of the Panel.

AT&T's arguments appear to be recitations of positions taken in the arbitration proceeding and raise no new issues or points of law for the Commission's consideration.

The Arbitration Panel rejected AT&T's demand for a predictive standard of "service parity" measurements. The Commission concurs in that decision, and rejects AT&T's request to insert its "DMOQs" into the Arbitrated Interconnection Agreement. The Commission finds that Attachment 12 to the Arbitrated Interconnection Agreement meets the standard in Section 252(e)(2)(B) of the Act and, therefore, expressly approves Attachment 12 to said Agreement.

III. CONCLUSION

For the reasons set forth in the preceding sections of this Order, the Commission finds and concludes that the executed Arbitrated Interconnection Agreement between BellSouth and AT&T, which was adopted by the Arbitration Panel, is consistent with Sections 251 and 252 of the Act, is consistent with the public interest, convenience and necessity, and should be approved pursuant to Section 252(e) of the Act.

IT IS THEREFORE, ORDERED THAT:

1. The Arbitration Panel Report filed March 10, 1997; the Arbitration Panel's second decision of April 3, 1997, regarding the remaining disputed issues; and the executed Arbitrated Interconnection Agreement between BellSouth and AT&T which was adopted by the Arbitration Panel and which documents are incorporated by reference as though fully set forth herein are hereby approved and adopted subject to the reservation of this Commission's authority to revisit any issue addressed in the adopted Arbitrated Interconnection Agreement as this Commission deems necessary and/or based upon any significant change in circumstances, including but not limited to, the final result of the Eighth Circuit litigation, the Federal-State Joint Board Universal Service Plan, or a general rate case proceeding.

2. All findings, conclusions, and decisions contained within the preceding sections of this Order are hereby adopted as findings of fact, conclusions of law, and decisions of regulatory policy by this Commission.

3. Within three (3) months of the date of this Order, BellSouth shall file TELRIC cost-of-service studies covering those items subject to true-up in the Arbitrated Interconnection Agreement. Concurrent with the filing, BellSouth shall serve a copy of the cost-of-service studies on AT&T. After the referenced filing, the Commission will issue further Orders as may be proper in the premises.

4. Jurisdiction over all matters involved in this arbitration proceeding, including, but not limited to, the prices set for resold Local Services, or the wholesale Discount Rate, is expressly reserved for the purpose of entering such further Order

or Orders as this Commission may deem necessary, just and reasonable and/or in the public's interest.

5. This Order shall be effective upon its issuance.

SO ORDERED, this the 8th day of May, 1997.

Chairman Nielsen Cochran voted Aye; Vice Chairman Bo Robinson voted Aye; and Commissioner Curt Hebert voted Aye.

MISSISSIPPI PUBLIC SERVICE COMMISSION

Nielsen Cochran, Chairman

Bo Robinson, Vice Chairman

Curt Hebert, Commissioner

ATTEST: A TRUE COPY

BRIAN U. RAY
Executive Secretary