1 with all that's going on is going to still be a pretty
2 tight time line for them to work under. But it does give
3 them a little leeway
4 COMMISSIONER R BAKER: Mr. Knowles, do you have
5 anything you need to add?
6 CHAIRMAN D. BAKER: Does that create any problems?
7 MR. KNOWLES: No, sir, other than to pick up on
8 the idea that I think Commissioner Durden had, is maybe we
9 ought to monitor this one And since it's time sensitive,
10 let them file monthly reports.
11 COMMISSIONER R BAKER: I think that's a good
12 idea.
13 CHAIRMAN D BAKER: I'm sorry?
14 MR. KNOWLES: Have them file monthly reports so
15 the staff can monitor their progress, staff and Commission.
16 CHAIRMAN D BAKER: Well, this is July 2 -- I mean
17 -- oh, you mean as to all of these implementation phases.
18 MR. KNOWLES: Yes, sir
19 COMMISSIONER R. BAKER: I think that'd be a good
20 idea so staff and Commissioners could keep up with what's
21 going on. So I'll incorporate that provision also into my
22 motion to add a provision for cost recovery from the
23 industry for expenses for implementation; possibly if we
24 need to, to set up a separate docket on that to determine
25 reasonable costs and also to require that there be monthly

1 reporting as far as implementation of the interface
2 provisions.
3 That concludes my motion.
4 CHAIRMAN D. BAKER: Any other comments or
5 questions?
6 (No response.)
7 CHAIRMAN D. BAKER: Shall we vote on it then?
8 All in favor of Commissioner Baker's motion with
9 the amendment from the Chair and including Mr. Knowles'
10 suggestion as to monthly reports, signify by saying aye.
11 COMMISSIONER BARBER: Aye.
12 VICE CHAIRMAN WISE: Aye.
13 CHAIRMAN D. BAKER: Aye.
14 COMMISSIONER R. BAKER: Aye.
15 COMMISSIONER DURDEN: Aye.
16 CHAIRMAN D. BAKER: All opposed.
17 (No response.)
18 CHAIRMAN D. BAKER: That carries unanimously.
19 Thank you.
20 VICE CHAIRMAN WISE: Mr. Chairman, when will we
21 take up the balance of those items?
22 CHAIRMAN D. BAKER: The other matters that are
23 still pending for reconsideration, our 30-day period for
24 review hasn't run yet. Our regularly scheduled July 16
25 administrative session will still be within the 30-day

1 period, if we wish to reconsider any of the other portions.
2 MR. KNOWLES: So we would be entering an interim
3 order on reconsideration and holding the rest of them.
4 CHAIRMAN D. BAKER: Right.
5 MR. KNOWLES: Very good.
6 Item 18, this is the one we added, concerns
7 Frontier Communications of Georgia formerly --
8 CHAIRMAN D. BAKER: Excuse me, Mr. Knowles. Let
9 me add this just on the record.
10 It has fallen to the Commission to make certain
11 decisions in this 6352-U docket today, but by no means
12 should that preclude the parties from continuing to
13 negotiate and come to whatever agreements they can on any or
14 all of these issues.
15 MR. KNOWLES: Right.
16 The staff is requesting that the Commission issue
17 a schedule and procedural order in Docket Number 4997-U, it
18 concerns Frontier Communications of Georgia, formerly
19 Statesboro Telephone Company. The Commission previously
20 issued a rule nisi proceeding against this company. They
21 have filed for alternative regulation, so it's imperative
22 that the Commission act quickly to resolve this case and
23 we're asking for testimony to be filed on July 5; on July 11
24 to have hearings and on the 16th would be a special session.
25 CHAIRMAN D. BAKER: Comments or questions?

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July 1, 1996

Ms. Tere M. Lyndall, Executive Secretary
Georgia Public Service Commission
244 Washington Street
Atlanta, GA 30334

Re: Docket No. 6352-U; Petition of AT&T for the Commission to Establish Resale Rules, Rates, Terms and Conditions and the Initial Unbundling of Services

Dear Ms. Lyndall:

Enclosed for filing in the above-referenced matter are the original and twenty-seven (27) copies of the AT&T Opposition to BellSouth Telecommunications, Inc.'s and MFS Intelenet of Georgia, Inc.'s Motions for Reconsideration and Clarification. Please return two stamped copies to me for my files.

Copies have been served upon all parties of record. Thank you for your assistance in this matter.

Very truly yours,

MORRIS, MANNING & MARTIN, L.L.P.

Laureen McGurk Seeger

LMS:[illegible]
Enclosure
cc: Hon. David Baker, Chairman
Hon. Robert B. Baker
Hon. Mac Barber
Hon. Robert Durden
Hon. Stan Wise
Nancy G. Gibson, Esq.
Roxanne Douglas, Esq.
All Parties of Record

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RECEIVED
JUL 1 1996
Executive Secretary
Ga. Public Service Commission

BEFORE THE

GEORGIA PUBLIC SERVICE COMMISSION

IN RE: Petition of AT&T for the Commission To Establish Resale Rules, Rates, Terms and Conditions and the Initial Unbundling of Services	))))	Docket No. 6352-U

AT&T'S OPPOSITION TO BELLSOUTH TELECOMMUNICATIONS, INC.'S AND MFS INTELENET OF GEORGIA, INC.'S MOTIONS FOR RECONSIDERATION AND CLARIFICATION

AT&T Communications of the Southern States, Inc. ("AT&T") files this opposition to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion for Reconsideration and Clarification and the Motion of MFS Intelenet of Georgia, Inc. ("MFS") For Reconsideration of the Commission's Order, showing the Georgia Public Service Commission (the "Commission") as follows.

PRELIMINARY STATEMENT

As set forth more fully in its June 12, 1996 Order, the Commission has established discounts for resale of BellSouth's residential and business local exchange services and has ordered that BellSouth deliver necessary electronic interfaces to AT&T by July 15, 1996.[1]

Before reaching its decision, the Commission thoroughly considered, among other things, five days of testimony from twelve lay and expert witnesses, detailed financial

[1] The Commission also ordered that BellSouth include white page listings for all new resellers' customers in its directory and that the parties submit a joint report addressing any technical limitations and costs of providing unbundled operator services. BellSouth has not challenged either of these provisions of the Order.

records, cost methodologies, and comprehensive hearing briefs. The discounts established by the Commission not only fall within the range of discounts proposed and testified to by the parties [9% to 28%],[2] but also within the range of discounts adopted in other jurisdictions.[3] More importantly, they were derived from *BellSouth's* own "methodology" and financial statements, as well as evidence presented by AT&T. Nonetheless, BellSouth argues that the discounts are not supported by a "shred of evidence" and that the Order lacks merit.

The Commission also did not, as BellSouth claims, violate any "federal pricing standard" simply because it did not agree with BellSouth's parochial construction of the Telecommunications Act of 1996[4] (the "Federal Act") for determining wholesale discounts. Rather, the Commission reasonably and rationally exercised its considerable discretion when applying the Federal Act to the substantial evidence presented.[5]

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[2] AT&T testified in support of its 28.3% discount; BellSouth testified in support of discount rates of 9.5% and 11%; MFS generally supported BellSouth's discounts; MCI, ATA and Comptel generally supported AT&T's discount rate.

[3] As but two examples, the Tennessee Regulatory Authority established a 25% interim discount in its local competition rules adopted in December 1995. On June 27, 1996, the Illinois Commerce Commission established a weighted average discount of 22.05%. For the Commission's convenience and reference, a true and correct copy of the Illinois Order is attached hereto as Exhibit A.

[4] Pub. L. 104-104, Feb. 8, 1996, 110 Stat. 56. See 47 U.S.C. §§ 251 et seq. for provisions relating to resale of services.

[5] MFS argues that the Commission varied the discount methodology of the Act, and BellSouth repeatedly asserts that the Commission has exceeded what BellSouth characterizes as extremely narrow authority under the Federal Act. Both parties fail to reconcile their position with express language of the statute to the contrary. The Federal Act specifically confers upon state commissions the express authority to enforce the Act's wholesale pricing standards, 47 U.C.C. § 252(d)(3); it also preserves a state commission's authority to enforce other requirements of state law, 47 U.S.C. § 252(e)(3); and, most significantly, it states that "[n]othing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part." 47 U.S.C. § 261(c).

As discussed more fully below, the Order substantially furthered the intent and purposes of the Federal Act to encourage competition in the local exchange market by requiring BellSouth to provide electronic interfaces by a near-term deadline. BellSouth has offered no support for its claim that it cannot meet the deadline. Rather, BellSouth merely continues the rhetoric that resellers' needs can be met by doing what BellSouth "agrees" to do, and - once again - under BellSouth's time frames. A firm, near-term, deadline is required to force BellSouth to do what it has failed to do on a voluntary basis after over nine months of negotiations with AT&T

Simply put, the Motions for Reconsideration completely lack merit. BellSouth's Motion, in particular, is typical of its strategy of delay in dealing with AT&T as a serious local exchange competitor. BellSouth touts its "pro-competition" mind-set each time it has signed an agreement with a competitor from whom it perceives a minimal threat. MFS, however, has been in negotiations with BellSouth for a year without reaching an agreement. MFS filed its request for arbitration with this Commission on June 26, 1996, as a result of these failed negotiations. The MCI/BellSouth agreement filed with this Commission on May 14, 1996, by its own terms, acknowledges the magnitude of the issues remaining between MCI and BellSouth. The self-congratulatory statements BellSouth espouses to the media and to this Commission concerning its pro-competitive posture are distinctly different from the experience of new entrant competitors who must negotiate with BellSouth before serving even the first local exchange service customer.

AT&T'S experience has been that BellSouth seeks delay of any meaningful competition. Its unsupported argument that it should not be required to deliver necessary interfaces by July 15, 1996 and its advocacy of discount prices so low they would

effectively thwart any meaningful competition in the local exchange market are further evidence of BellSouth's desire to postpone effective local exchange competition.

Accordingly, BellSouth's Motion for reconsideration should be denied. With the exception of MFS' request relating to grandfathered services, MFS' Motion also should be denied.

ARGUMENT

I. The Pro-Competitive Purposes Of The Federal Act Are Promoted By The Order.

It is undisputed that Congress intended in passing the Federal Act to promote competition in the local exchange market both through resale, using unbundled network elements, and facilities-based offerings. With respect to resale, the Federal Act requires incumbent local exchange carriers, like BellSouth, to provide all retail services to resellers at a discount which takes into account the retail costs that *will be* avoided in providing wholesale services to resellers. 47 U.S.C. § 252(d)(3). The Georgia Act echoes the intent and purpose of the Federal Act O.C.G.A. § 46-5-161(a)(1).

Despite the altruistic professions in its Motion for Reconsideration, BellSouth's primary goal in this docket has been to maintain the bottleneck which it has on the local exchange market, thus maintaining its monopoly customer base. There is no better way to do this than with unrealistically low discounts, which BellSouth tried to obtain by convincing the Commission that minimal costs will be avoided when its services are offered for resale.

Even BellSouth, however, cannot legitimately challenge the overall reasonableness of the Order's wholesale discount To do so, BellSouth would have to

perpetuate the implausible position it maintained in its Avoided Cost Model -- that 93.3% of its total costs will not be avoided regardless of how many customers BellSouth loses to resellers. For obvious reasons, BellSouth attacks the means by which the Commission reached its decision rather than provide any compelling substantive reason as to why the Order should be changed.

Nor can BellSouth reasonably contend that despite its substantial monopoly resources and obvious technological prowess, it lacks the expertise to develop interfaces by the July 15, 1996 deadline.[6] Order at 9. AT&T has been negotiating with BellSouth on this issue for months and has afforded BellSouth substantial notice of this requirement. Without Commission directive, BellSouth will not provide these essential capabilities.

II. The Commission Has Already Considered and Rejected the Central Premise of BellSouth's Motion

Given the strong federal and state policies favoring competition in the local exchange market as soon as possible and the potential for delay inherent in a motion for reconsideration, such motions should be granted only in extreme circumstances. At a minimum, the proponent of a motion for reconsideration should be required either to advance significant new evidence or significant new legal arguments which could not have been presented earlier. BellSouth fails to meet this standard and simply reiterates arguments raised earlier and fully considered by the Commission in rendering its Order.

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[6] BellSouth has filed no affidavit or other evidence to support any claim that it could not meet the July 15, 1996, deadline.

Illustrative of the foregoing is BellSouth's central and incorrect premise that the only variable costs avoided are those which BellSouth agrees will be avoided and that no indirect costs will be avoided when its services are offered for resale. For example, as the Commission pointed out in its Order, BellSouth contends that only 6.7% of BellSouth's total expenses for Georgia operations during 1995 would have been avoided in a wholesale environment. Order, at 9.

However, nowhere in the Federal Act is BellSouth's theory of absolute dominion over these proceedings adopted as the appropriate standard for establishing wholesale prices. The statute also does not state that only variable or direct costs can be treated as avoided costs. Instead, the Federal Act simply requires that rates for wholesale services be calculated by subtracting from the retail rate for that service any marketing, billing, collection or *other costs* which will be avoided by the local exchange carrier," which is what the Commission properly did in its Order. 47 U.S.C. §252(d)(3).

BellSouth previously has advanced and fully briefed the above-described theories to the Commission. After considering BellSouth's arguments, arguments of other parties, the evidence, the statutes, and legislative comments, the Commission rejected BellSouth's position. BellSouth's motion provides no reason for the Commission to reconsider its conclusion that "BellSouth's position reflects a narrow, constrained view of an avoided cost approach." Order, at 9. Instead, its motion strengthens the Commission's assessment, because BellSouth merely regurgitates its prior reasoning in hopes of further delaying any effective resale competition. Accordingly, BellSouth's Motion should be denied.

III. The Commission Properly Included Advertising, Call Completion, Number Services, Additional Sales Costs, and Indirect Costs In Calculating The Discounts.

Unable to challenge the overall reasonableness of the wholesale discount price adopted by the Commission, BellSouth specifically challenges the inclusion of any advertising, call completion, number services, or indirect costs in the category of avoidable expense under the Federal Act. It argues either that there is not a "shred" of evidence to show that such costs will decrease in the wholesale environment, or that the Commission improperly calculated the level to which such costs might decrease. BellSouth's claim lacks any merit unless the Commission ignores the record and surrenders its responsibility.

Nowhere is this more apparent than with respect to advertising and sales expense. The Commission's determination that 75% of BellSouth's sales and advertising expenses will be avoided in a resale environment falls between the two positions proposed by the parties. The Commission arrived at this figure after receiving testimony from BellSouth which admitted that 100% of its "sales" expenses would be avoided[7] and a study from BellSouth representing that 61% of "total" sales expense would be avoided. BellSouth then stated that no other marketing or advertising costs will be avoided. In contrast, AT&T estimated that 100% of all sales and advertising costs will be avoided in a competitive resale environment. BellSouth Ex. 4.

The Commission further based its determination on BellSouth's own financial statements and the Commission's considerable expertise in weighing the evidence. It

[7] In BellSouth Ex. 7, p. 3, entitled "BST Georgia Resale Study," BellSouth represents that "BST will not incur a sales expense for each customer that chooses to buy service from a reseller".

correctly noted that that there is a correlation between sales expenses and product advertising costs. It also correctly assessed the testimony in the record. Apparently, BellSouth believes that the Commission is not entitled to rely upon any evidence contrary to BellSouth's positions and that the Commission must abandon its role as the evaluator and ultimate decision-maker of the conflicting evidence before it.

Had the Commission accepted BellSouth's position, it would have encouraged the perpetuation of inefficiencies inherent in a monopoly market, in contravention of the Federal Act's purpose. The Federal Act requires state commissions to undertake an objective, forward-looking estimation and evaluation of the costs that *will be* avoided by the local carrier, which the Commission performed. Congress could just as easily have established a backward-looking, after the fact, approach to establishing the wholesale discounts. It did not do so.

BellSouth's contention that its advertising expenses will not decrease in a wholesale environment also contravenes the plain language of the Federal statute. The Federal Act not only expressly includes "marketing" expenses – which clearly encompass advertising expenses – as one type of cost likely to be avoided in the wholesale environment, it mentions it *first* among listed avoided costs. 47 U.S.C. §252(d)(3).

BellSouth's and MFS' challenges of the Commission's inclusion of indirect costs in calculating the discount rate are similarly flawed. The Federal Act requires BellSouth to extract from the retail charge for services all costs that will be avoided in providing the wholesale function. It does not exclude indirect costs from consideration, as BellSouth urges the Commission to do. To the contrary, the Act's express language contemplates

the possibility that *other* costs in addition to marketing, billing, and collection will be avoided. 47 U.S.C. § 252(d)(3).

With respect to general overhead or indirect costs, the Commission agreed with AT&T's witness that some portion of the "General Support, Administrative, and Corporate Operations" expense were attributable to BellSouth's provision of retail services. BellSouth disagrees, claiming that there is "not a scintilla of evidence" to support the Commission's finding or that the Commission erred in the method used to calculate indirect costs.

Once again, BellSouth's argument on general overhead or indirect costs misrepresents the record before the Commission. In particular, BellSouth ignores the testimony of Mr. Lerma in which he stated that some amounts of indirect costs would be avoided in the provision of wholesale services and that the best estimate of such costs is the direct cost/causative basis. Tr. at 264. BellSouth likewise disregards the testimony of Messrs. Schwarz and Ankum, which concurred with Mr. Lerma regarding the avoidance of indirect costs. Tr. at 718-20, 860. Thus, AT&T supported with evidence in the record the fact that there are indirect costs which will be avoided whenever there are direct costs which will be avoided.

BellSouth further ignores its own reluctant acknowledgment that costs other than direct costs would be avoided if BellSouth lost customers to resellers. Tr. at 539-40. Ms. Maddox, a BellSouth representative, stated in response to questioning that if BellSouth lost 20-25% of its customers, it would need to "start looking" at any additional costs; at 50%, it definitely needed to "look at" additional costs; and at 75%, it probably would

avoid some additional cost. Tr. 539-40. Only a company which has yet to face competition could be so smug on this issue.

Recognizing that some logical measure for arriving at an estimate was required, AT&T proposed a "direct cost/causative basis" method of calculating avoided indirect costs which was not unlike that adopted by the Commission. AT&T's witness explained that the best estimate of indirect costs which will be avoided was to compute the amount based upon a ratio of indirect costs to direct costs. Tr., at 243-244.

Given the record, the Commission was correct in its determination that some measure of indirect costs would be avoided and that the best estimate of such costs was the direct cost/causative basis.[8] BellSouth's claim that no indirect costs were includable as costs which will be avoided defies common sense. The Commission also correctly noted that the results of its computations were conservative. Where BellSouth will avoid a cost in reselling to AT&T or any other reseller, the cost should be excluded from the wholesale price.

IV. Evidence Before The Commission Clearly Supports The Feasibility of Providing Electronic Data Interfaces As Required In The Order.

Like its claims with respect to discounts, BellSouth's assertion that the record is without a "shred of evidence" which supports the feasibility of the electronic data interfaces required in the Order mischaracterizes the testimony before this Commission.

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[8] Even BellSouth recognized that its own estimates of avoided costs significantly understated the amount that will be avoided. As noted by the Commission, BellSouth apparently believed that only 6.7% of its costs would be avoided, but increased that amount by 40% when proposing discounts of 9.5% and 11%.

Indeed, BellSouth's own witness testified that the electronic interfaces requested by AT&T presented no insurmountable barrier or hurdle. Tr. at 434. Likewise, no other witness raised any technological objection as to the interfaces. Thus, it appears that there is no evidence in the record that the electronic interfaces requested by AT&T are *not* technically feasible.

With respect to the timing of the interfaces, AT&T submits that the July 15, 1996, deadline established in the Order is possible given prior discussions and the considerable resources available to BellSouth. There is a significant difference between what BellSouth *can do* and what BellSouth *chooses to do*, and thus far it has only chosen to delay and propose discount rates so low that competition would likely never succeed in the Georgia local exchange market.

Importantly, the Illinois Commerce Commission (the "Illinois Commission") recently imposed a similar, near-term operational interface deadline on the incumbent local exchange carrier. See Ex. A, p. 51. In its Order, the Illinois Commission explained that equal operational interfaces are essential to the development of resale competition. The Illinois Commission also firmly refused to postpone the deadline unless and until the incumbent carrier filed a detailed explanation of why it could not meet the deadline and proposed an alternative deadline acceptable to the commission. Id. The deadline should not be moved for BellSouth, particularly given the many months AT&T has been negotiating electronic interfaces with BellSouth without success.

Finally, BellSouth's claim that the requirement to provide electronic interfaces constitutes a "taking" under the Fifth Amendment is without merit. As the Illinois Commission explained, "equal operational interfaces are 'essential to the development of

resale competition,' and [the Illinois Commission] requires them to be provided to resellers at parity with those provided to the LEC's own retail customers." Ex. A. at 2. Moreover, while there was conflicting testimony before the Commission regarding the issue, BellSouth's own representative testified that BellSouth had sought no compensation for the establishment of the electronic interfaces in this docket and that BellSouth "will interface with the carriers at no cost." Tr., at 440. Given these representations in the record, BellSouth's constitutional claim is disingenuous, at best.

BellSouth's "taking" argument also completely ignores the fact that coincident with the opening of the local exchange market to competition, BellSouth was granted price regulation in Georgia. In fact, it has enjoyed price regulation in Georgia for almost a year without any actual competition in the local exchange market. It voluntarily relinquished its ability to be protected from losses and bad business decisions to gain increased competitive freedoms, such as the ability to increase prices and set its own depreciation schedules. BellSouth has the flexibility and incentive to manage its costs and prices - thereby maximizing its profits - as never before.

In addition, the legal authority cited by BellSouth in support of its "taking" argument does not relate to the case at hand. Here, the legislature has passed reasonable rules relating to what was once a government granted monopoly. The rules expressly require interconnectivity for good reason and take no physical property of BellSouth. Indeed, the alleged "injury," if any, is only incidental to the legitimate exercise of government powers for the public good of supporting competition in the local exchange market. It is therefore proper. See, e.g., Black Hills Video Corporation v. F.C.C., 399 F.2d 65 (8th Cir. 1968).

BellSouth also claims to be confused as to the nature of the interfaces sought by AT&T. This is yet another smoke screen argument by BellSouth. Notwithstanding BellSouth's professed confusion, AT&T's position on this issue has never wavered. AT&T is entitled to interfaces which will allow it to provide services to its customers of a quality and nature equivalent to that which BellSouth provides its customers. To that end, for months AT&T has specifically sought the implementation of electronic data interfaces to accomplish five tasks essential to effectively compete with BellSouth: (1) pre-service ordering; (2) service ordering and provisioning; (3) access to directory listing and line information databases; (4) service trouble reporting; and (5) access to daily usage data. BellSouth and AT&T continue to discuss the implementation of these interfaces. Any claimed confusion as to the nature of these interfaces, therefore, cannot be attributable to any party other than BellSouth and, once again, is compelling evidence of BellSouth's strategy of delay in its dealings with AT&T.

V. The Order's Provisions As To Services Which Are Required To Be Resold Are Clear And Unambiguous.

The Federal Act unambiguously requires BellSouth to offer for resale at wholesale rates "any telecommunications service that [BellSouth] provides at retail to subscribers who are not telecommunications carriers."[9] 47 U.S.C. § 251(c)(4)(A). In its

[9] The only restriction on the foregoing is that a State commission may, consistent with regulations prescribed by the FCC, "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." 47 U.S.C. § 251(c)(4)(B).

petition, AT&T sought the full range of services required to be resold under the Federal Act, and, consistent with the Federal Act, the Commission Ordered:.

> that all existing retail services sold to non-telecommunications providers except those services which are presently grandfathered shall be made available for resale [by BellSouth]. This includes any discounted retail service, discounted package, and new service offerings as they become available.

Order, at 14.

Notwithstanding this unambiguous instruction and the express provisions of the Federal Act, BellSouth seeks clarification as to which services it is required to offer on a resale basis. More particularly, it seeks to remove additional services from the resale requirements. First, the Lifeline and Link Up services identified by BellSouth are discounted retail services. Given that the Order expressly requires the resale of any discounted retail service, BellSouth is required to provide Lifeline and Link Up at the wholesale rate established in the Order.

Similarly, contract service arrangements and special assemblies also are retail service offerings required to be made available at a wholesale discount. Allowing BellSouth to charge retail customers a lesser rate for these services, while not requiring a wholesale discount for such services will provide BellSouth with the pricing flexibility it needs to foreclose any meaningful competition and defeat one of the principal purposes of resale -- to provide marketplace discipline for BellSouth's pricing of monopoly services.

VI. MFS Fails to Provide Any Good Reason Why The Commission Should Reconsider It's Order

A. "Avoidable" v. "Will Be Avoided"

In an effort to overturn the well-reasoned discounts established in the Order, MFS asks this Commission to elevate form over substance through semantics. MFS argues that the Commission's occasional use of the word "avoidable" instead of the words "will be avoided" implies that the Commission has disregarded the requirements of the Federal Act. MFS is mistaken.

While the Commission could resolve this dispute simply by reissuing its Order and substituting the words "will be avoided" for avoidable, it is clear that the intent of the Commission was to follow the requirements and promote the purpose of the Federal Act. The Commission need not concern itself with hypothetical car accidents such as those presented by BellSouth to an AT&T witness or with BellSouth's semantic twisting of the statutory language. It is undisputed that the Federal Act requires a forward-looking view in determining which costs will be avoided in a wholesale environment and that the Federal Act did not vest the incumbent local exchange carrier with the right to determine what costs are to be avoided. Rather, the state commissions are to make such determinations. It is undisputed as well that the Federal Act was enacted to establish a freely competitive market for local exchange services. The Commission's evaluation of the appropriate wholesale discount was consistent with the Act and will foster local exchange competition.

B. The Commission Did Not Overestimate The Amount of Indirect Costs that Will Be Avoided

MFS, unlike BellSouth, does not appear to contend that no indirect costs will be avoided; rather, MFS contends that the Commission has overestimated the amount of such costs because it applied a factor at the high end of the range. The Commission, in its discretion, recognized that the ratio of indirect costs to direct costs varied from 30% to 50% and utilized a factor of 50% as the best measure of indirect costs which will be avoided in a competitive market for local exchange services. The Commission further characterized its decision as "conservative" given the small amount this presented when compared to the amount of costs BellSouth claimed were unavoidable.

Interestingly, however, MFS implicitly endorses the use of a multiplier when it argues that the Commission should simply have "split the difference" by adopting a factor of 40% rather than 50%. MFS Brief, at 6. Since MFS implicitly endorsed the general approach but failed to provide any evidence challenging either the multiplier used or the amount of indirect costs ultimately determined to be avoided. MFS' Motion also must fail.

With respect to joint and common costs, MFS fails in its brief to point to any category of such costs which will not be avoided as BellSouth loses customers to resellers. The claim that no joint or common costs of a monopolist will be avoided in a competitive environment – regardless of how many customers are lost – is ludicrous, ignoring both economics and common sense. Even MFS, which urges the Commission to revise its estimate of avoided indirect costs to account for expenses involved in

funding joint and common functions, offers no factual basis or constructive means for the Commission to do so. Accordingly, MFS' Motion must be denied on these grounds.

C. The Order Correctly Ignores The Additional Costs Of Providing Wholesale Services In Computing Costs Which Will Be Avoided In A Resale Environment

In testimony before the Commission, both BellSouth and AT&T agreed that additional costs which are incurred in the provision of wholesale services are not properly included in the computation of costs which will be avoided under the Federal Act. This position is based upon the express language contained in the statute which makes no provision for the offset of additional costs incurred ("netting") in the provision of wholesale services.

While the inclusion of such costs may be more economically appealing to some, the Commission is without authority to re-write the Federal Act to compute avoided costs on a "net" basis. If Congress had intended for additional costs incurred to be included in the computation of costs which will be avoided it would have been a simple matter to include language expressly providing for such a calculation. Absent such language, the Commission is not authorized to consider any additional costs incurred in its calculation of avoided costs.

D. The Order Correctly Calculates Discounts Based Upon Class Of Service.

In determining the discounts to be provided to resellers of local exchange services, the Commission established different discounts based upon residential and business class services. However, parties to the docket conceded that the Commission's calculation based upon class of service was the only feasible method of calculating

wholesale discounts under the Federal Act. See, e.g., Tr. at 419. Apparently disappointed with the outcome of Commission's hearings, MFS now, for the first time, challenges the establishment of discounts on a class of service basis. As MFS failed to raise this challenge in the hearings, it cannot now complain of the Commission's decision.

E. No Long Term Commitments Should Be Required To Receive The Wholesale Discounts.

In its Order, the Commission established discounts and provided that "negotiated agreements may reflect additional discounts for longer terms." Order, at 8. The unambiguous language of the Order clearly reflects that the residential and business discounts established in the Order are *minimum* discounts. MFS' claim that the Order's discounts should be granted only in conjunction with long term contracts is merely the repackaging of its claim that the discounts are excessive and should be discounted by the Commission. This argument should be rejected.

VII. AT&T Joins in MFS' Request That The Commission Require Grandfathered Services To Be Provided To Resellers.

AT&T joins in MFS' request that the Commission reconsider the Order's removal of grandfathered services from the services which BellSouth is required to allow resellers to resell at a wholesale discount. As currently written, the Commission's Order does not allow a customer to choose a reseller for his or her local exchange service and retain the existing service, if that customer has a service which has been placed in grandfathered (or obsolete) status by BellSouth. This grants BellSouth a tremendous advantage given its ability to place customers of grandfathered services under long term contracts and to

continue to add to and enhance grandfathered services. Absent removal of the restriction prohibiting the resale of grandfathered services to customers who currently utilize them, BellSouth will possess the capability to end run the resale requirement.

This end run will occur by virtue of BellSouth's manipulation of the market by declaring certain services as "grandfathered" services. The best case to date involves BellSouth's "ESSX" services. Normally, a grandfathered service is one that is obsolete and being phased out because of technological improvements. Once a service has been grandfathered, the service is limited to existing arrangements and not subject to change, addition or modification -- in essence, the service "stays put." This assures that customers look to new service offerings to meet their ever changing needs.

BellSouth, however, has continued to modify or enhance its grandfathered ESSX services pending BellSouth's development of an attractive substitute for ESSX.[10] Moreover, BellSouth has entered into long term contracts with many ESSX customers. Thus, BellSouth is using its tariffing flexibility to enhance the "grandfathered" ESSX service in order to keep customers from moving to competitors' new services. Under the Commission's Order, this anticompetitive practice benefits BellSouth because customers of grandfathered services cannot maintain that service if they choose to move to a competitor for local exchange service.

[10] BellSouth has attempted to offer a substitute for ESSX called "MultiServ." BellSouth is in the process of revising its MultiServ offering. In the meantime, as indicated above, BellSouth is allowing ESSX customers to change, add to or modify their old ESSX service, thus minimizing the possibility that customers will migrate to new services to get their needs met.

Given BellSouth's ability to play with the rules for grandfathered services, resellers will be significantly disadvantaged unless customers can choose to move their local exchange service to a reseller *and* maintain their "grandfathered" service. BellSouth can no longer assert that grandfathered services are not robust offerings and that customers are never interested in retaining these services.[11] Competitors should be able to offer the same tariffed alternatives to any class of customers, including existing customers who are utilizing grandfathered services.

CONCLUSION

The Commission has thoroughly heard and determined this matter, conscientiously applied the law and evidence, and issued an Order beneficial to Georgia consumers and increased competition. BellSouth and MFS have failed to submit any new evidence or legal arguments which could not have been presented earlier with respect to all of the Commission's determinations. For the foregoing reasons, BellSouth's and MFS' Motions should be denied in their entirety except with respect to grandfathered services, which BellSouth should be required to provide to resellers.

Atlanta, Georgia
July 1, 1996.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.

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Roxanne Douglas

[11] AT&T is not seeking to resell grandfathered services on the open market. AT&T simply wants a customer to be able to choose to move to a competitor *and maintain the ability to continue to utilize its grandfathered service* until such time as the customer's contract expires or the customer decides to move to a completely different service.

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