ILECs could be expected to receive from a purchaser in a competitive market, see, e.g., Order ¶ 679, the Constitution does not entitle them to anything more.

### C. The Commission Acted Reasonably in Setting Default Proxy Prices

Movants' objections to the methodology used by the Commission to set interim proxy rates are baseless. Motion at 19. The Commission's decision to promulgate interim default rates and the method by which it calculated those rates were reasonable and reasoned. After outlining a detailed TELRIC methodology to be used by the states for setting prices, the Commission recognized that "it may not be possible for carriers to prepare, or for state commissions to review, economic cost studies within the statutory time frame for arbitration proceedings," and concluded that "it is critical for the near-term development of local competition to have proxies that provide an approximation of forward-looking economic costs and can be used by states almost immediately." Order ¶ 790. The Commission affirmatively "encourag[ed] states to have economic studies completed wherever feasible" so that use of proxy rates would be unnecessary. Order ¶ 791.

Not yet certain that any of the studies available to it accurately estimated TELRIC, the Commission opted to use a combination of the two nationwide cost models, the Hatfield 2.2 model and the Benchmark Cost Model (BCM), and the rates set by six states (Colorado, Connecticut, Florida, Illinois, Michigan, and Oregon) to create "hybrid cost proxies" to be used to price unbundled loops until the Commission promulgates proxies based on a TELRIC cost model or until the states complete their own economic cost studies. Order ¶ 794. The Commission's reliance on the available data is

especially reasonable in light of the limited purpose to be played by these proxy rates. "The best must not become the enemy of the good," MCI Telecommunications Corp. v. FCC, 712 F.2d 517, 535 (D.C. Cir. 1983) (quotations omitted), and that principle is particularly applicable here, where the Commission encouraged states to make their own determinations of specific prices for unbundled elements based on a better record, and where Congress required the Commission to issue comprehensive regulations within a strict six-month period.

The Commission explained exactly how it arrived at its hybrid proxy rates. Using the BCM and Hatfield 2.2 studies, the Commission calculated cost estimates for each of the 48 contiguous states and the District of Columbia, finding that "both these models are based on detailed engineering and demographic assumptions that vary among states, and that the outputs of these models represent sufficiently reasonable predictions of relative cost differences among states to be used . . . to set a proxy ceiling on unbundled loop prices for each state." Order ¶ 794. However, because the Commission had not yet determined whether "these model outputs by themselves necessarily represent accurate estimates of the absolute magnitude of loop costs," the Commission used the actual rates computed by the six states to create a "scaling factor." Id. The hybrid cost proxy for each state was then "computed as the simple average of the scaled cost estimates for the two models" for that state and adjusted upward by 5% as "a safety margin to ensure that the ceiling captures the variation in forward-looking economic costing prices on a state-by-state basis." Id.

To the extent that they are challenging the Commission's interim proxy rates themselves, movants' objections are premature. In setting these proxies, the Commission acted only to set interim default rates that "state commissions that have not completed forward looking economic cost studies may use in the interim . . . ." Order ¶ 790. Movants are free to raise their claims that actual cost studies produce prices higher than the Commission's default proxies with individual state commissions, and these state commissions are free to set different rates, provided that they utilize the TELRIC methodology properly adopted by the Commission. In Georgia, for example, the Public Service Commission recently priced unbundled loops at $14.22, which is approximately $2 less than the Commission's default proxy.[8/]

In any event, the Commission's default proxies for unbundled loops are consistent with the statutory standard -- and if anything are too high, not too low. The rates are comparable to, and in some instances higher than, rates set by state commissions. In Michigan, for example, the Commission's $15.27 proxy exceeds the state commission's $8.00-11.00 range. In Illinois, the Commission's proxy rate of $13.12 falls at the high end of the state's $4.59-14.45 range. The same is true with respect to Connecticut, where the Commission's proxy is $13.23 and the state range is $10.18-14.97, and Maryland, where the Commission's $13.36 proxy falls well within the state's $12.15-14.74 range. The Commission also calculated weighted averages for each state, and in four of the six states, the proxies exceed those averages. See Order ¶ 792-93.

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[8/] See GA Order.

Despite their sweeping generalizations about the irrationality of the Commission's proxy rates, movants point to only one concrete example -- the rates for unbundled loops in Florida. Motion at 19-20. They are wrong in asserting that the discrepancy between the Commission's proxy rate for unbundled loops and the Florida commission's loop rate somehow demonstrates the unreasonableness of the Commission's methodology. As described above, the Commission relied on many studies, including the BCM and Hatfield studies to calculate its loop proxies; the Florida rates were used to calculate the Commission's scaling factor, but only after those rates were averaged with the rates of five other states. The Commission nowhere concluded, as movants assume, that Florida's rates accurately measured TELRIC. In fact, the reason why the Commission calculated its hybrid cost proxies in the manner it did was precisely because it believed that the states' methodologies were "not consistent in every detail with our TELRIC methodology," and that although those states "appear to have based their rates on forward-looking economic cost pricing principles, the actual rates that they approved appear to reflect other factors as well." Order ¶¶ 792, 794.

The likely explanation for the discrepancy between the Commission's default proxy and the rate set by the Florida commission is that the studies submitted by GTE in Florida did not comply with TSLRIC or TELRIC methodology. That GTE's estimate in Florida is higher than both the conservative estimate produced by the Hatfield model and the rates determined by other state commissions indicates that the problem is with GTE's estimate. GTE's own witness in that proceeding testified that GTE's studies were not true TSLRIC studies, but rather were an estimate of TSLRIC. See FPSC Order at 10-

11. As the Florida commission recognized, GTE provided very little support for its cost studies in that proceeding and the record does not reflect whether GTE's cost estimates were based on forward-looking costs or historical costs. See id. Of course, if GTE can establish that its cost study does comply with the TELRIC methodology, it can ask the Florida commission to establish rates higher than the Commission's proxy rates. GTE has in fact appealed the FPSC's order to the Florida Supreme Court. See GTE Florida Inc. v. Susan F. Clark, Florida Supreme Court Case No. 88,627. Moreover, MCI has sought arbitration in Florida of GTE's rates for unbundled network elements,[9] and the pricing of unbundled elements will also be addressed in that context. GTE's complaint is premature at best, and the Commission's order provides a complete remedy.

Movants' objections to the Commission's proxy rates for unbundled switching are similarly unpersuasive. Of course, these rates are merely interim proxies, and movants are free to demonstrate to state commissions that a proper pricing methodology requires a different rate. Moreover, noting that the forward-looking cost studies contained in the record estimated that the average cost of end-office switching ranges from 0.18 cents to 0.35 cents per minute of use, the Commission set a default range of 0.2 to 0.4 cents. Order ¶¶ 812, 815. Although the study submitted by GTE estimated the cost of routing traffic through end-office switches as 0.35 cents per minute of use, a figure that is squarely within the Commission's default range, Order ¶ 804, movants now challenge the default proxies. Motion at 21.

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[9] See MCI Petition for Arbitration (copy attached).

Their first objection, that the Commission's rates are flawed because the studies on which the Commission relied did not take into account the costs associated with the vertical features of the switch, is unfounded. The Hatfield and BCM models both use information on current switch prices. Because switch prices include the cost of the software needed to provide vertical features, the marginal cost of providing these features is virtually zero.[10/] Movants' claim that the Commission's proxy rates are arbitrary because the GTE cost study submitted in Florida measured only incremental costs and failed to allow for recovering overheads and fixed costs is similarly baseless. As described above, the Commission did not rely exclusively on GTE's Florida cost studies in setting its default proxies. The Hatfield model, for example, includes fixed costs associated with the switch and includes overheads in the 10% markup applied to network components.

### D. The Remaining Arguments Raised by GTE And SNET Are Insubstantial.

#### 1. The Order Does Not Result In Any "Evasion" Of Resale Category Limitations Or Access Charge Pricing Requirements.

According to movants, the Commission's decision to allow CLECs to "reassemble" unbundled elements to provide any telecommunications service amounts to an evasion of section 251's limitations on a CLEC requesting wholesale rates based on a

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[10/] As further evidence of the negligible nature of these costs, price cap carriers' sale of Basic Service Elements, which represent the interstate costs of vertical features, equal about 3.3 percent of the total switching costs sold under the Open Network Architecture tariffs.

service an ILEC sells exclusively to one category of customer and using that rate to serve another category of customer. Motion at 22-23. For the reasons previously explained by the Commission, this argument is meritless. Order ¶¶ 292-97. Congress itself made clear in section 251(c)(3) that CLECs purchasing unbundled elements to provide any "telecommunications service," and that the "incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Thus, by allowing carriers to combine unbundled network elements to provide any telecommunications service, the Commission acted consistently with the specific intent of Congress to increase competition and increase choices for consumers.[11/]

Nor is there any merit to the argument that the Order transgresses statutory limitations because it authorized changes in access charges before the Commission "undertakes comprehensive exchange access reforms." See Motion at 23. Section 251(g) does not impose any such straightjacket on the Commission. Section 251(g) merely states that ILECs shall continue to provide exchange access on pre-existing terms and conditions "until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission." In making specified changes in access charges, the Commission exercised its explicit authority under this subsection. The

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[11/] MCI does not agree with the Commission's treatment of access charges, but does agree that the Commission had sufficient authority to affect access charges in this proceeding. If anything, the Commission did not go far enough because it generally prevented interexchange carriers from obtaining unbundled network elements to provide interexchange services.

Commission plainly has the authority to alter any part of the existing access charge regime at any time after enactment of the 1996 Act. To the extent the Commission has done so, therefore, its actions were entirely within its delegated authority.

### 2. The Order Defines Wholesale Rates In A Manner Entirely Consistent With The Act.

Seizing on the occasional use of the word "avoidable" in the Commission's order, movants contend that the Commission has expanded the category of costs that should be deducted in determining wholesale rates beyond what Congress prescribed. Motion at 23. Movants do not, however, point to any specific category of cost that the Commission has improperly included within the category of avoided costs that should be deducted in determining wholesale rates under section 252(d)(3). The Commission's determination of which costs are avoided is entirely consistent with the language and purpose of this provision. See Order ¶ 911. Movants' challenge to the Commission's choice of words, but not its actions, is hardly a basis for relief on the merits, much less a stay.

### 3. Vertical Services Are Properly Defined As Unbundled Elements.

Movants also complain that the Order improperly defines unbundled elements to include their capability to provide "vertical services" offered to end users and "information" used by the ILEC to provide services, and make the wholly conclusory assertion that the Commission has thereby evaded the Act's pricing standards. Motion at 24. But section 3(45), 47 U.S.C. Section 153(45), specifically defined "network elements" to include not only the infrastructure used in the provision of

telecommunications service but also "features, functions, and capabilities that are provided by means of such facilities." Thus, the pricing methods generally applicable to network elements should apply to the specific items about which GTE and SNET now complain. The Order simply implemented the specific intent of Congress with respect to "features, functions, and capabilities." Movants make no claim, much less a showing, that "features, functions, and capabilities" used to provide vertical services can practicably be withheld from new entrants without adversely affecting "features, functions, and capabilities" in local switches used to provide other services. To the extent that movants contend that such elements and related information are proprietary in nature, they can seek relief under section 251(d)(2). See Order ¶¶ 277-88.

#### 4. The Order Does Not Require ILECs To Modify Their Network With Inadequate Compensation.

Movants make conclusory allegations that the Commission required ILECs to modify their networks to accommodate requests for interconnection without prescribing adequate methods of compensation, and claim that the Commission exceeded Congress' intent under section 251(c)(3). Motion at 24. But Congress specifically instructed that interconnection and access to unbundled elements be at "any technically feasible point." Thus, Congress itself determined that interconnection and access should not be limited to what the ILECs typically have provided in the past, and should be determined on a forward-looking basis. Again, therefore, it is clear that the Commission did no more than implement Congress' specific intent. Moreover, it would be discriminatory for an ILEC to modify its network to accommodate its own services but not those of its competitors, and the Commission's approach is essential to implement

the strict non-discrimination requirement in section 251(c). See Order ¶¶ 217-18, 225. Contrary to movants' claim that the Commission failed to prescribe adequate methods of compensation for network changes, the Commission specifically provided for recovery of these costs by ILECs. Order ¶¶ 225, 314.

## II. MOVANTS HAVE NOT SHOWN IRREPARABLE HARM, AND THE EQUITIES WEIGH DECISIVELY AGAINST A STAY.

Quite apart from the merits of their claims, movants have utterly failed to present the kind of compelling equitable showing necessary to justify the extraordinary relief they seek. To begin with, movants have advanced no plausible claim that they will be injured absent a stay -- and certainly have failed to demonstrate irreparable injury. The simple fact is that prices will be set by state commissions pursuant to section 252, in proceedings where movants have every opportunity to raise the challenges they raise here (but in a concrete factual context with a meaningful opportunity to contest their factual assertsion) and to have those challenges fully adjudicated prior to the imposition of any particular price. Thus, movants will suffer no concrete harm if the Commission's Order goes into effect. In contrast, a stay of the Order would thwart the central objective of the 1996 Telecommunications Act. Congress imposed strict deadlines for implementing sections 251 and 252, and for the completion of state arbitrations under the Act for a reason: Congress wanted to bring about competition in the local telephone market as swiftly as possible.

Indeed, the very point of the provisions movants challenge is to hasten the advent of that competition. The Commission specifically found -- and movants nowhere dispute -- that "incumbent LECs have no economic incentive . . . to provide potential

competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services," and that "[t]he inequality of bargaining power between incumbents and new entrants militates in favor of" national rules. Order ¶ 55. Movants seek to block implementation of those rules precisely because they will bring more and faster competition, and thereby erode their monopoly power -- and for no other reason.

### A. Movants Will Suffer No Injury In The Absence of a Stay.

Movants do not -- and cannot -- plausibly claim that they are being injured by the direct operation of the Order's TELRIC pricing methodology or interim proxy rates. Those aspects of the Order are not self-executing commands that require movants to make interconnection or unbundled elements available to competitors at any particular price now. To the contrary, the actual prices that will govern movants will be determined by state commissions in individual proceedings under section 252. Movants have every right in those proceedings to attempt to show that the Commission's TELRIC methodology results in a noncompensatory price which would, if imposed, constitute a taking. See Order ¶ 739 ("Incumbent LECs may seek relief from the Commission's pricing methodology if they provide specific information to show that the pricing methodology, as applied to them, will result in confiscatory rates"). Should movants fail to persuade a state commission with such an argument, they have a right to review by a federal district court under section 252(e)(6). Similarly, the Commission's interim proxy rates do not apply of their own force. State commissions are not bound to implement those prices if a cost study consistent with the Commission's methodology shows the proxy rates to be incorrect. See Order ¶¶ 693, 767. Conversely, it is entirely possible

that the Commission's interim proxy rates will be more favorable to movants than rates generated by a proper TELRIC methodology, a result that would benefit movants.

Thus, until state commissions act in section 252 proceedings to set specific rates, movants' claims of injury remain entirely hypothetical. Precisely because movants have a forum available to them to contest the application of pricing methodologies and the outcomes of those methodologies, there is absolutely no basis for the claim that they will suffer irreparable injury now in the absence of a stay. None of the arguments movants raise now will be foreclosed to them in state proceedings. And movants will be under no legal compunction to charge a particular rate until they have had a full and fair opportunity in those proceedings to litigate its legality.[12/]

Furthermore, movants' main challenge is to the Commission's statutory authority address the pricing of interconnection and access in its implementing regulations under section 251(d)(1), but even if there were a serious question about the scope of the Commission's authority under this section, movants would suffer no irreparable injury without a stay. There is no question about the Commission's power to address these pricing issues after state commissions have acted. For example, as the Order effectively recognizes, pricing interconnection and access above TELRIC would constitute a barrier to entry with "the effect of prohibiting the ability of any entity to provide any . . . intrastate telecommunications service," and the Commission therefore has the express statutory authority, and indeed the obligation, to preempt any state ruling permitting

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[12/] Movants also point to geographic deaveraging as an artificial price advantage to new entrants, but, if default rates for unbundled elements or resold services require retail rate rebalancing, then ILECs are free to seek it from state commissions.

ILECs to use any different standard under section 253(a). As a result, any state commission action inconsistent with the pricing principles articulated in the Order would eventually be struck down. The only effect of staying the Order would be to prolong movants' ability to encourage state commissions to adopt prices inconsistent with the statutory requirements as interpreted by the Commission. Such delay would obviously disserve the public interest.

Unable to point to any real irreparable injury, movants are forced to rely on a series of second-order effects that purportedly flow from the Order. Chief among them, according to movants, is the likely effect the Order will have on the voluntary bargaining process Congress contemplated under section 252. Movants claim they will be irreparably injured because the Commission's order will set a benchmark for these negotiations, thereby depriving CLECs of any incentive to agree to rates or other terms and conditions less favorable than those that would result from a state commission's application of the Commission's Order. That, however, does not even amount to a plausible claim of injury. If consensual bargaining does not produce prices movants find acceptable, they are under no legal duty to agree to anything. Movants remain entirely free to refuse to enter into a voluntary agreement, and raise their arguments about prices in a section 252 arbitration proceeding.[13/]

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[13/] In fact, in arbitration proceedings after issuance of the Commission's Order, GTE continues to take the position that state commissions have exclusive power to determine prices for interconnection and unbundled elements, and it invites the California commission to set rates using a methodology inconsistent with TELRIC. Response of GTE California Incorporated (U-1002-C) to Application for Arbitration, at 5, 7, In the Matter of the Application of TCG for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish an Interconnetion Agreement with GTE

(continued...)

More fundamentally, movants' position -- that the rules have "stifl[ed]" or "deaden[ed]" negotiations, Motion at 27, 26 -- is fundamentally at odds with the rulemaking timetable imposed by the Act. By requiring the Commission to issue its regulations before the negotiation and arbitration processes were completed, Congress not only intended but ensured that the regulations would have an effect on the substance of negotiations. ILECs, unlike prospective competitors in the local exchange markets, have no incentive to accept a compromise in order to reach agreement rapidly, and, to the extent that the Commission's default pricing standards focus negotiations upon a narrower range of possible pricing terms, that effect is consistent with the Act's goal of expediting local competition. See Order ¶ 782. That some prospective entrants have wanted to wait until the Commission made its rules before entering an agreement, see Motion at 26-27, is attributable to the statutory timetable, not to the content of the rules. If competitive carriers' sensible desire to negotiate against the backdrop of the rules "corrupted" the negotiation process (Affidavit of Donald W. McLeod at 4, ¶ 10), then that "corruption" would have taken place regardless of the pricing standards adopted by the Commission.

Movants' remaining claims of irreparable injury -- which focus on loss of business and of "goodwill" -- are similarly meritless. The complete answer to these arguments is that movants will have every opportunity to convince state commissions (and then federal courts) -- in concrete adversarial proceedings -- that the prices which would allegedly bring about these harms are unlawfully low. In other words, it is not

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[13] (...continued)
California Incorporated, A. 96-08-013 (filed Aug. 29, 1996) (copy attached).

the Commission's order that will impose these so-called harms, but state commission decisions to impose particular prices. Thus, these arguments provide no basis for a stay of the Commission's order now.

The arguments are insubstantial in any event. If the prices established by state commissions in section 252 proceedings comport with the Fifth Amendment, then the loss of revenue about which movants complain will be the entirely appropriate and expected result of the introduction of competition in the local market. In the (virtually inconceivable) event that state commissions set prices at levels so low as to be confiscatory, movants have a just compensation remedy under the Fifth Amendment. Furthermore, if the Commission's pricing standards are struck down, ILECs will be able to increase prices for interconnection, access, and resale, thus increasing the rates competing carriers charge their customers. Precisely because of what movants themselves describe as "the price sensitivity of demand for local service," Motion at 34, it would not then be difficult for ILECs to win back those customers whose rates will have just risen suddenly. Indeed, SNET itself argues that carriers who were enticed to enter the market by incorrect pricing "most likely will not be able to survive" correction of those rates if the Commission's rules are overturned. Declaration of Anne U. MacClintock at 15 ¶ 26. Finally, movants' arguments about the alleged loss of "goodwill" add nothing to their arguments about lost customers and revenue, and fail for the same reason.[14]

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[14] GTE chose not to mention that in at least four states (Illinois, Michigan, Ohio, Wisconsin, Iowa and Minnesota), it has sought an exemption as a rural telephone company. Nor did SNET inform the Commission of its request for a similar exemption (continued...)

### B. A Stay of the Commission's Order Would Harm Competitive Carriers.

A stay of the Commission's rules would unquestionably delay the entry of competitive carriers into the local exchange markets. Movants' contention that negotiations and arbitrations will proceed steadily while the rules are stayed is simply unrealistic. ILECs have no incentive to reach agreement, and, as movants implicitly acknowledge, Motion at 25-27, a stay of the rules would effectively tilt the negotiations in their favor at the expense of new entrants. Competitive carriers would then be faced with a choice between waiting to enter agreements until judicial review of the rules is complete, or entering agreements earlier but on less favorable terms than would be possible under the rules. If the regulations are finally upheld, competing carriers will never be able to recover the time lost while their entry into local exchange service was stalled. And, although new entrants might have remedies against ILECs for overcharges, litigation is costly and slow and itself constitutes a barrier to entry by increasing the investment required to compete.

Movants allege that they would be irreparably harmed by having to renegotiate agreements reached under the Commission's rules if the rules are ultimately struck down, see Motion at 30, but movants minimize the same renegotiation costs that would face competitive entrants if the rules are first stayed and then finally upheld. See Motion

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[14] (...continued)
in Connecticut. Although MCI considers these requests to meritless (and the Michigan commission denied GTE's request in that state, and the Connecticut commission denied SNET's request without prejudice), movants apparently believe that they have some validity. If granted, these requests would presumably eliminate any impact of the Order on movants in those states.

at 37-38. Those costs to competitive entrants would be significant. For example, all of the effort to develop prices under costing methodologies inconsistent with the Commission's standards will have been wasted, and competing carriers' investments in that process will have been irretrievably lost. In addition, competitors' entry into long distance will have been further delayed, thus permitting the ILECs to further entrench themselves to the detriment of prospective entrants.

### C. A Stay Would Injure The Public.

As movants point out, the Act "embodies a clear congressional judgment that the national interest favors the rapid and efficient introduction of competition in the local exchange." Motion at 39. A stay of the Commission's rules would hardly further that interest.

The Act mandated an implementation schedule for the Commission's regulations that ensured their applicability before the completion of negotiation and arbitration procedures. Thus, the Act contemplated that negotiations and arbitrations would take place in the context of the Commission's pro-competitive regulations. It does not further the purposes of the Act, nor is it in the public interest, to stay the Commission's rules and return negotiations to a state in which ILECs are without incentives to reach rapid agreement on fair pricing terms.

The uncertainty generated by a stay of the Commission's rules will further slow the pace of negotiations. Although movants refer to "the relatively brief period required to permit judicial review," Motion at 41, that period is likely to last several months. As

negotiations are stalled during that time, the public will continue to suffer from the lack of local competition that the Act seeks to relieve.

Moreover, state arbitrations under section 252 must be decided within fixed time limitations imposed by Congress. If a stay were granted, there would be no effective FCC order in place during the period in which those arbitrations must be concluded. Congress set up a timetable to ensure that the Commission provided guidance to states concerning implementation of the Act before the states were required to issue final arbitration orders. States have only four-to-five months to resolve arbitration petitions under the statutory timetable, see sections 252(b)(1) and (b)(4)(C), and they will undoubtedly benefit, as the Commission intended, from the Commission's guidance on the range of complex issues they must address. To grant a stay would inject confusion and uncertainty into an already difficult process.

On the other side of the ledger, movants have acknowledged that, in the absence of a stay, competition under the Commission's rules will bring consumers lower prices for local exchange service. See Motion at 30. That is precisely the public benefit that Congress and the Commission intended.

## CONCLUSION

For all the foregoing reasons, the motion should be denied.

Respectfully submitted,

Anthony C. Epstein
Donald B. Verrilli, Jr.
Maureen F. Del Duca
Thomas D. Amrine
JENNER & BLOCK
601 Thirteenth Street, N.W.
Washington, D.C. 20005
(202) 639-6000

Lisa B. Smith
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2992

# Attachment I

COMMISSIONERS:

DAVID N. (DAVE) BAKER, CHAIRMAN
ROBERT B. (BOBBY) BAKER
MAC BARBER
BOB DURDEN
STAN WISE

DOCKET#_____
DOCUMENT#_____

TERRI M. LYNDALL
EXECUTIVE SECRETARY

Georgia Public Service Commission
244 WASHINGTON STREET, SW
ATLANTA, GEORGIA 30334-5701

(404)656-4501 OR 1(800)282-5813

RECEIVED
AUG 21 1996
EXECUTIVE SECRETARY
G.P.S.C.

**DOCKET NOs. 6415-U & 6537-U**

**IN RE :** **MFS Intelenet of Georgia, Inc. Petition for BellSouth Nondiscriminatory Unbundled Rates, Terms and Conditions; and**

**MCI Metro Petition to Establish Nondiscriminatory Rates, Terms and Conditions for the Unbundling of Local Loops.**

## INTERIM ORDER

RECEIVED
AUG 23 1996
LAW AND PUBLIC POLICY

APPEARANCES:

On behalf of the Commission Staff:

Nancy Gibson, Special Assistant Attorney General

On behalf of the Consumers' Utility Counsel Division:

Jim Hurt, Attorney
Bill Atkinson, Attorney

On behalf of AT&T of the Southern States:

Roxanne Douglas, Attorney
Roger Briney, Attorney

On behalf of BellSouth Telecommunications, Inc.:

William Ellenberg, Attorney
Nancy White, Attorney

On behalf of Cable Telephone Association of Georgia:

James Comerford, Attorney
Laura Nix, Attorney

On behalf of BellSouth Advertising & Publishing:
Michael S. Bradley, Attorney

On behalf of MCI Access Transmission Services, Inc.:

David Adelman, Attorney
Marsha Ward, Attorney

On behalf of Sprint Communications Company, L.P.:

Carolyn Tatum Roddy, Attorney

On behalf of MFS Communications, Inc.:

Richard Rindler, Attorney

On behalf of MediaOne, Inc.:

L. Craig Dowdy, Attorney

On behalf of Southern Directory Company, Inc.:

Newton Galloway, Attorney

On behalf of Cox Enterprises, Inc.:

Margaret Fernandez, Attorney

On behalf of Competitive Telecommunications Association:

John Stuckey, Jr., Attorney

On behalf of American Communications Services of Columbus, Inc.:

William E. Rice, Attorney

In its Administrative Session on August 20, 1996, the Commission was presented with Staff's Recommendation in the above referenced dockets.[1] The Commission voted to adopt the Staff's Recommendation by substitute motion with one modification.[2] The Staff's Recommendation, as modified and approved by the Commission, is attached hereto as Appendix "A" and is incorporated herein as part of the findings of facts and conclusions of law of this Interim Order.

This decision includes the issues set forth in MFS Intelenet's Petition filed with the Commission on January 23, 1996, and the unresolved issues that remained in the MCIMetro Petition filed on March 25, 1996.[3] The Commission finds and concludes that it is appropriate to issue this Interim Order so that the actions ordered and the impact of the determinations made herein may advance the progress of competition in the telecommunications industry. A final Order detailing the evidentiary basis upon which this Interim Order was decided will follow.

The Commission received a clear mandate from the Georgia General Assembly to, among other things, promote competition in the local exchange market.[4] Under the Georgia Act, all local exchange companies are required to allow reasonable interconnection with other certificated local exchange companies. The rates, terms and conditions must be negotiated in good faith and must not discriminate between providers.[5] If the parties are unable to negotiate reasonable, nondiscriminatory interconnection arrangements, the statute requires that "the Commission shall determine the reasonable rates, terms or conditions for the interconnection

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[1] Staff's Recommendation to the Commission was filed with the Commission and issued to all parties of record on August 15, 1996.

[2] By adopting the Chair's substitute motion, the Commission adopted the Staff's Recommendation with the only change being the deletion of the word "economically" from page 9 of Staff's recommendation, Issue # 4. See Transcript of Administrative Session on August 20, 1996, pages 4 - 22.

[3] On May 14, 1996, MCI and BST jointly filed a negotiated interconnection agreement with the Commission. The Agreement settled several of the disputed issues contained in MCI's Petition. The Commission issued an Order Approving Negotiated Interconnection Agreement pursuant to Section 252 of the Federal Telecommunications Act in Docket No. 6537-U on August 9, 1996.

[4] The Telecommunications and Competition Development Act of 1995, O.C.G.A. Section 46-5-164, et seq.(the "Georgia Act").

[5] O.C.G.A., Section 46-5-164(a), 46-5-164(b) (Michie Supp., 1996)

services."[6] The Commission is also empowered to require local exchange companies to provide additional interconnection services and unbundling as it deems appropriate.[7]

The Commission's scope of authority with respect to unbundled access and interconnection arrangements between telecommunications carriers was further defined by the passage of the federal Telecommunications Act of 1996 (the "Federal Act").[8] Under the Federal Act, the incumbent local exchange carrier has a duty to provide any telecommunications carrier with appropriate facilities and equipment for interconnection with the incumbent's network and provide unbundled access to the underlying network elements on a reasonable an nondiscriminatory basis. The basis for setting the prices for interconnection and network element charges was also determined by the Federal Act.[9]

On August 8, 1996, the Federal Communications Commission ("FCC") issued Order No. 96-325 on interconnection, resale and unbundling, among other things. Included in the Order are FCC Final Rules amending part 51 of Title 46 of the Code of Federal Regulations. The Commission issued an Order in these dockets taking official notice of the FCC action on August 13, 1996.[10] While the FCC established pricing methodologies and certain default prices that can be used on an interim basis, they are not binding on the decision reached on the record in this case.

By this Interim Order, the Commission fully complies with the letter and the spirit of the Federal Act, the Georgia Act, the FCC Order and the FCC Rules in an effort to transition the telecommunications industry within the State of Georgia to reflect a reliance on market based competition.

**WHEREFORE IT IS**

**ORDERED,** that the Commission adopts Staff's Recommendation, as modified by substitute motion at the Commission's Administrative Session on August 20, 1996 (Appendix "A").

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[6] O.C.G.A., Section 46-5-164(c) (Michie Supp., 1996)

[7] O.C.G.A., Section 46-5-164(g) (Michie Supp., 1996)

[8] Telecommunications Act of 1996, Pub. L. No. 104- 104, 110 Stat. 56 (1996) ( to be codified at 47 U.S.C., Section 151, et. seq.)

[9] Section 252(d)(1)

[10] Docket Nos. 6415-U & 6537-U: Order Taking Official Notice of FCC Action; August 13, 1996.

**ORDERED FURTHER,** that jurisdiction over this proceeding is expressly retained for the purpose of entering a final order or such further order or orders as the Commission may deem just and proper

**ORDERED FURTHER,** that a Motion for Reconsideration, Rehearing or Oral Argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

The above by action by the Commission in Administrative Session on August 20, 1996.

Terri M. Lyndall
Executive Secretary

Dave Baker
Chairman

Date 8/21/96

Date. 8/21/96