

policy implications of our decision, we sought workable criteria for identifying combinations of unbundled network elements that constitute resold services. Because of the complexity of the issue, however, we are now of the opinion that even the most detailed definition will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that our original decision on this issue should be modified to provide that the purchase and combination of unbundled network elements by AT&T to produce a service offering that is included in BellSouth's retail tariffs on the date of the Interconnection Agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that AT&T is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

The Commission further concludes that our original decision on the pricing of vertical services should be affirmed. Thus, when AT&T buys the switch at the unbundled element rate, it will receive vertical services at no additional charge, but when it buys combinations of elements to produce a BellSouth retail service, and thus comes under the resale pricing provisions, it must also pay the wholesale rate for vertical services, if those services are in the retail tariff on the effective date of the Agreement. Vertical services which are not in the retail tariff but which can be provided by the switch will be available at no additional charge.

ISSUE NO. 11: Must BellSouth provide AT&T with access to BellSouth's unused transmission media or dark fiber?

INITIAL COMMISSION DECISION

The Commission decided that dark fiber is not a telecommunications service. Further, the Commission decided that there was insufficient evidence to conclude that dark fiber is a network element. Therefore, BellSouth is not required to make dark fiber available to AT&T.

COMMENTS/OBJECTIONS

AT&T: AT&T states that the RAO erred in its conclusion that dark fiber is not a "telecommunications service," but AT&T's comments do not address the basis for its position in this particular regard. In addition, AT&T states that the RAO is also incorrect in its conclusion that the evidence of record is "insufficient" to support a finding that dark fiber qualifies as a "network element" within the meaning of the Act. AT&T argues that not a single witness disputed the telecommunications capability of dark fiber, and that the evidence is clear that BellSouth would not have invested in dark fiber if it lacked telecommunications capability. According to AT&T, nothing in the Act's definition of "network element" requires that dark fiber (or any other network element) be currently in use, or actively in use, in order to constitute a network element.

DISCUSSION

Only AT&T objected to the Commission's finding and conclusion that dark fiber is not a telecommunications service. AT&T, however, did not address the basis for why it evidently believes that the record supports a finding that dark fiber is a telecommunications service. Therefore, the Commission has no basis before it to reconsider its findings and conclusions that dark fiber is not a telecommunications service.

AT&T opines that the record is sufficient to support a finding and conclusion that dark fiber is a network element within the meaning of the Act. In particular, AT&T argues that the Commission should find and conclude that dark fiber is a network element because AT&T perceives that there was an absence of evidence in the record to dispute the telecommunications capability of dark fiber, whether it is currently or actively in use.

The Act defines "network element" as follows:

(29) NETWORK ELEMENT. —The term "network element" means 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 subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

As stated in the RAO, unused transmission media or dark fiber is cable that has no electronics connected to it and is not functioning as part of the telephone network. Consequently, the Commission is unconvinced that dark fiber qualifies as a network element.

AT&T did not cite any convincing evidence in the record to support its position that dark fiber is a facility or equipment used in the provision of a telecommunications service, thereby meeting the definition of network element under the plain language of the Act. AT&T contends that the mere capacity, i.e. potential of dark fiber to be used in the provision of a telecommunications service meets the definition of network element according to the Act; however, apparently, electronics must be added to dark fiber in order for dark fiber to possess telecommunications capabilities. Additionally, even with the addition of electronics to dark fiber, such facilities or equipment must be used in the provision of a telecommunications service. Therefore, AT&T's contentions in this regard are not convincing. Finally, as noted in the RAO, the FCC did not address and require the unbundling of the incumbent LECs' dark fiber but did state it would continue to review and revise its rule in this area as necessary.

CONCLUSIONS

The Commission concludes that AT&T has offered nothing new or compelling to persuade the Commission to change its original decision; hence, the Commission's original findings and conclusions on this issue are hereby affirmed.

ISSUE NO. 12: 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?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are \$151,103,000.

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth objected to the Commission's decision to apply a 90% avoided cost factor to Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses to calculate avoided costs for these accounts. BellSouth argued that actual avoided costs as determined by BellSouth upon internal review of its financial system should be reflected in the avoided cost analysis as the FCC's "preferred method" of making the avoided cost determination.

DISCUSSION

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. In the FCC Interconnection Order, the FCC provided that the 90% avoided factor represented a reasonable estimate of avoided costs for Accounts

6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses. The Commission view was that this avoided cost factor is reasonable, in addition, since the Company's proposed avoided costs reflected in its avoided cost study were derived internally and, therefore, not verifiable. BellSouth's avoided cost study represents BellSouth's estimate of its avoided costs, not actual avoided costs.

The Commission continues to believe that it is reasonable to apply a 90% avoided cost factor to Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses. The Commission further believes that it would be incorrect to reflect avoided costs for these accounts based on Company-generated avoided costs which are not verifiable and not actual avoided costs. The Company's avoided cost study simply represents BellSouth's estimate of its avoided costs, not actual avoided costs.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

ISSUE NO. 13: What are the appropriate wholesale rates for BellSouth to charge when a competitor purchases BellSouth's retail services for resale?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth's appropriate wholesale discount rates are 21.5% for residential services and 17.6% for business services.

COMMENTS/OBJECTIONS

CUCA: CUCA objected to the Commission's decision concerning class-specific wholesale discount rates (residential rate and business rate). CUCA stated that the Commission erred by adopting class-specific wholesale discount rates without a detailed exploration of the appropriateness of the allocation process used to develop the class-specific resale discounts.

SPRINT: Sprint also objected to the Commission's decision concerning the wholesale discount rate. Sprint viewed the Commission's wholesale discount rate as an interim rate. Sprint recommended that the Commission establish permanent wholesale discount rates on the basis of each companies' actual avoided costs.

DISCUSSION

Concerning class-specific wholesale rates, the Commission view was that if the information is available, separate wholesale rates should be calculated for business and residential services. Since BellSouth's avoided cost study provided a basis for determining separate residential and business wholesale discount rates, the Commission believed that it was appropriate to use the information to calculate separate wholesale discount rates. Although neither the FCC Interconnection Order nor the Act mandates using separate wholesale discount rates, other state commissions across the country including California, New Hampshire, Georgia, Kentucky, and Florida have ordered separate wholesale discount rates for residential and business services.

The Commission continues to believe that it is appropriate to establish separate wholesale discount rates for both residential and business services since adequate information is available to make the calculation of separate wholesale discount rates.

Addressing Sprint's comments, the Commission in no way viewed the ordered wholesale discount rates as interim. The Commission did follow the basic methodology of the FCC Interconnection Order. However, the Commission did not order interim wholesale discount rates. The Commission prepared its own avoided cost analysis based on the entire record and established permanent wholesale discount rates which meet the requirements of the Act.

The Commission's position is that the RAO did not establish interim wholesale discount rates and that the wholesale discount rates do not have to be calculated based on BellSouth's estimation of its avoided costs.

CONCLUSIONS

Based on the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed. Further, the Commission notes that the Composite Agreement refers to prices for resold local services as interim. The Commission does not regard the wholesale discount rates established by the RAO to be interim rates. Therefore, the Commission directs the parties to remove the word "interim" from the Composite Agreement with reference to prices for resold local services.

ISSUE NO. 14: What is the appropriate price for each unbundled network element?

INITIAL COMMISSION DECISION

Regarding recurring charges, the Commission established interim rates, subject to true-up, for unbundled network elements based on consideration of AT&T's and

BellSouth's cost studies and the FCC's proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's total element long-run incremental cost-based (TELRIC-based) pricing methodology.

The rate established for the network interface device (NID) as an unbundled network element was the rate proposed by AT&T based on its cost study. AT&T's rate was the only NID rate in evidence. The FCC Interconnection Order did not provide a proxy for the NID.

The rates for operator systems services were based either on BellSouth's cost studies or the FCC's default proxies. Other recurring charges established for unbundled network elements were based on the FCC's default proxies.

The Commission did not establish nonrecurring charges for unbundled network elements in its RAO.

COMMENTS/OBJECTIONS

BELLSOUTH: After noting that the Commission did not establish nonrecurring charges for unbundled network elements in the RAO, BellSouth asserted that the only nonrecurring charges in the record for unbundled network elements were those proffered by BellSouth. BellSouth commented that AT&T, through its witness, Wayne Ellison, originally proposed nonrecurring charges for unbundled network elements but that those rates were withdrawn. In lieu thereof, witness Ellison advocated the use of costs derived through utilization of the Hatfield Model. As BellSouth pointed out, the Hatfield Model does not produce discrete nonrecurring charges. Rather, its nonrecurring costs, according to proponents of the Hatfield Model, are covered by the recurring rates that it produces.

CUCA: CUCA commented that the true-up mechanism¹ ". . . is a potentially troublesome development which may impair the near-term development of effectively competitive local exchange markets." CUCA asserted that the true-up mechanism will cause new entrants to hesitate to enter North Carolina local exchange markets utilizing a strategy based upon the purchase of unbundled network elements for fear that the cost of such a strategy cannot be currently ascertained. CUCA further contended that the use of a true-up is probably unlawful. Additionally, CUCA commented that the Commission can avoid the danger of carriers being harmed in the absence of a true-up provision by simply conducting the proceeding necessary to permit the adoption of appropriate prices for

¹ CUCA noted in its comments that the Commission also approved a similar true-up mechanism with respect to the interim prices established for a number of other services, including transport and termination services.

unbundled network elements and similar items expeditiously. In concluding its comments in this regard, CUCA stated that "[t]he potential benefits to certain affected parties from the availability of the 'true-up' mechanism simply do not outweigh the adverse impact of this device on the competitive process." Thereafter, CUCA asserted that the Commission should remove the true-up provision contained in the Recommended Arbitration Order from any final Order entered in this proceeding.

CAROLINA TELEPHONE AND CENTRAL TELEPHONE: These companies encouraged the Commission to expeditiously convene a generic cost proceeding to investigate the various costing methodologies to be proposed by interested parties and to determine the appropriate cost methodology to be used in developing permanent rates for unbundled network elements. Although the unbundled network element pricing sections of the FCC rules set forth in its First Report and Order in CC Docket No. 96-98 have been stayed by the Eight Federal Circuit Court of Appeals, the Act requires the permanent price of unbundled network elements to be based on the cost of providing the element. The Companies believe the RAO to be in compliance with the Act (and the FCC regulations) so long as the Commission moves quickly to determine the appropriate permanent rates and requires a true-up of the interim proxy rates at such time as the permanent rates are adopted.

DISCUSSION

CUCA's argument that the negative consequences of the true-up mechanism outweigh potential benefits is not persuasive. There might be some validity to the argument that the Commission's decision in this regard might potentially have an adverse effect on the advent of competition. However, the likelihood of occurrence of such a potentiality and the potential significance thereof do not appear to outweigh the obvious and very real benefits gained from the true-up provision, i.e., protecting carriers from irreparable harm.

In support of its position that the true-up mechanism is "probably unlawful", CUCA in its comments stated that "[n]othing in either 47 U.S.C. §252(d) or the now-stayed FCC rules providing for the use of proxy unbundled network element prices in any way suggests the appropriateness of such a 'true-up'." Further, CUCA stated that "[t]he absence of any statutory or regulatory provision for such a 'true-up' suggests that the Commission has no power to impose one." Contrary to CUCA's view, it would appear that the Commission clearly has such statutory authority, since the FCC in its Interconnection Order in addressing interim transport and termination rate levels stated that "[s]tates must adopt 'true-up' mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to arbitration."²

² See Paragraph 1066 of the FCC Interconnection Order.

CUCA's position that the Commission can avoid the danger of carriers being harmed in the absence of a true-up provision by simply conducting the proceeding necessary to permit the adoption of appropriate prices for unbundled network elements and similar items expeditiously is unreasonable and unrealistic in that it appears to ignore the immense scope and complexity of the issues to be resolved, the fact that the pricing provisions of the FCC Interconnection Order are now on appeal, and this Commission's resource limitations. Simply put, in the absence of a true-up, it does not now appear that the matters at issue in these proceedings involving rates for unbundled network elements can be finally resolved within a time frame that would prevent carriers from experiencing irreparable harm should the Commission later determine that the interim rates established by the RAOs were materially inappropriate.

The arbitrating parties submitted additional comments regarding the issue of nonrecurring charges in conjunction with the filing of the Composite Agreement. Therefore, this matter will be addressed further subsequently in that part of this Order dealing with unresolved issues related to the Composite Agreement.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that its original decision with respect to recurring charges for unbundled network elements and services, including true-up provisions, should be affirmed. Interim rates for nonrecurring unbundled network elements and services, subject to true-up provisions, will be addressed further subsequently.

ISSUE NO. 15: Is "bill and keep" an appropriate alternative to the terminating carrier charging TSLRIC rates?

INITIAL COMMISSION DECISION

The Commission determined that "bill and keep" is not an appropriate alternative at this time for transport and termination charges given the probable traffic and cost imbalances between BellSouth and AT&T.

COMMENTS/OBJECTIONS

SPRINT: It is Sprint's position that "bill and keep" is an appropriate alternative to each carrier charging its TSLRIC rates. Sprint points out that TA96, Section 252(d)(2)B)(1), authorizes state commissions to order carriers to use "bill and keep." Sprint only raised this issue in its objections to the BellSouth/AT&T RAO.

DISCUSSION

The Commission correctly stated the law on this issue in its RAO—that is, a state commission can provide for “bill and keep” if it determines that the traffic from one network to another is balanced and that the rates will be symmetrical. The Act does not require that a state commission impose “bill and keep.”

In the RAO, the Commission determined that “bill and keep” is not an appropriate alternative at this time for transport and termination charges given the probable cost and traffic imbalances between BellSouth and AT&T. Sprint has offered nothing to show that the Commission was in error in finding that there will be cost and/or traffic imbalances between BellSouth and AT&T. As Sprint has offered no argument, compelling or otherwise, on these two pivotal issues, Sprint’s objections should be overruled. The Act does not compel the use of “bill and keep” but only permits its use in certain circumstances.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 16: What is the appropriate price for certain support elements relating to interconnection and network elements?

INITIAL COMMISSION DECISION

The Commission established interim rates, subject to true-up, for support elements based on BellSouth’s tariffed rates, where such rates exist, pending resolution of the appeal of the FCC Interconnection Order and the establishment of final rates by this Commission. Where such rates could not be so established, the Commission required the arbitrating parties to renegotiate these issues.

COMMENTS/OBJECTIONS

CUCA: CUCA’s concerns and comments in this regard are the same as those presented under Issue No. 14 and need not be repeated here.

DISCUSSION

AT&T’s position in this regard essentially is that unbundled network elements and related support elements should be priced at total service long-run incremental cost (TSLRIC) or TELRIC. BellSouth’s position is that the pricing of support elements should be consistent with the pricing which it recommended that the Commission employ for unbundled network elements.

For reasons discussed under Issue No. 14, argument offered by CUCA in support of its positions in this regard is unpersuasive.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed.

UNRESOLVED ISSUES

ISSUE NO. 1: PROVISION OF ALL CONTRACT SERVICE ARRANGEMENT CONTRACTS TO AT&T

Contract Location: Part I, Section 25.5.2

AT&T's Position Papers, Item No. 1

BellSouth's Post-RAO Negotiations Report, Page 14

DISCUSSION

AT&T seeks to require that BellSouth provide AT&T with copies of all existing or future CSAs. BellSouth states that, if AT&T identifies a specific CSA, it will provide a copy of the CSA to AT&T. BellSouth noted that there appeared to be no supporting testimony on this particular subissue of CSAs. The Commission believes that it is unreasonable to require BellSouth to provide a list of all CSAs to AT&T. AT&T has already been given the right to resell CSAs; it should do its own marketing footwork to identify CSAs for which it wishes to compete.

CONCLUSIONS

The Commission concludes that BellSouth's proposed language should be adopted.

ISSUE NO. 2: SERVICE PARITY MEASURES

Contract Location: General Terms and Conditions, 12.1, 12.2, 12.3, Attachment 12

AT&T's Position Papers, Item No. 3

BellSouth's Post-RAO Negotiations Report, Page 7

DISCUSSION

AT&T presented specific performance standard language, which it characterized as a modification of its original proposal. BellSouth noted that the Commission had declined to enact specific performance standards in Finding of Fact No. 3 of the RAO. BellSouth said that it is willing to agree to the performance standards set out in Attachment 12, which provide for measurements rather than objectives, and to commit to providing AT&T with the quality of service it provides itself.

The Commission concluded that, in response to comments and objections, that the Commission's original decision in Finding of Fact No. 3 of the RAO should be affirmed.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution, provided that AT&T may elect to accept the language proposed by BellSouth or the parties may negotiate other mutually agreeable terms.

ISSUE NO. 3: FINANCIAL RESPONSIBILITY FOR UNBILLABLE AND UNCOLLECTIBLE REVENUES

Contract Location: Attachments 7 and 9; Sections 6.1, 6.2.1, 6.2.2, and 6.4.1 (Attachment 7) and Sections 2.2 and 2.3 (Attachment 9)

AT&T's Position Papers, Item No. 4

BellSouth's Post-RAO Negotiations Report, Pages 21-23, 25-26

DISCUSSION

AT&T and BellSouth state that they have agreed to most of the contract language related to this issue, but that the following four contract issues remain for resolution by the Commission:

(a) The first issue involves AT&T's inability to collect revenues from a customer because the customer usage data provided by BellSouth is inaccurate ("data errors"). AT&T proposes language which requires BellSouth to compensate AT&T for lost revenue resulting from data errors. BellSouth can subtract from this compensation any revenue BellSouth demonstrates it would have received for the services provided to AT&T but which cannot be billed due to such data errors. BellSouth agrees to reimburse AT&T only for AT&T's "net loss" resulting from data errors. The term "net loss" is defined by BellSouth as "the gross revenues to AT&T attributable to the recording failures less the costs that AT&T would have incurred but were avoided because of the recording failure."

(b) The second issue involves the loss of otherwise collectible revenues due to provisioning, maintenance, or signal routing errors caused by either party ("network errors"). AT&T proposes a reciprocal compensation provision which requires the party causing a network error to bear the liability for the revenue lost by the other party who is unable to bill or collect such revenue. BellSouth proposes that each party only reimburse the other party's net revenue loss.

(c) The third issue involves the standard to be applied in assessing responsibility for uncollectible or unbillable revenues caused by a third party's accidental or malicious alteration of network element or operational support system software. AT&T proposes that a party which has control over such elements should bear responsibility for any revenue loss resulting from a negligent or willful act or omission on its part. BellSouth states that this issue was not submitted for arbitration by AT&T and that there is no supporting testimony on this issue in the record. Therefore, BellSouth recommends that the Commission dismiss this issue as beyond the scope of this proceeding. If the issue is not so dismissed, BellSouth proposes a standard of liability based upon "gross negligence or willful act or omission" on the part of the responsible party.

(d) The fourth issue involves the standard to be applied in assessing responsibility for uncollectible or unbillable revenues resulting from the unauthorized attachment to loop facilities, such as clip-on fraud. AT&T proposes that BellSouth should be liable for any negligent or willful act or omission. BellSouth states that this issue was not submitted for arbitration by AT&T and that there is no supporting testimony on this issue in the record. Therefore, BellSouth recommends that the Commission dismiss this issue as beyond the scope of this proceeding. If the issue is not so dismissed, BellSouth proposes that its liability should be premised on "gross negligence or willful act or omission."

CONCLUSIONS

The Commission declines to decide these unresolved issues since they involve matters such as liability standards (negligence/gross negligence) and compensation levels (gross revenue losses/net revenue losses) which are best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 4: MEDIATION OF AIN SERVICES

Contract Location: Attachment 2, Section 12.2.10.1.1

AT&T's Position Papers, Item No. 14

BellSouth's Post-RAO Negotiations Report, Page 17

DISCUSSION

AT&T contends that BellSouth will not agree to provide parity when utilizing a mediation mechanism to access AIN services. AT&T asserts that its proposed language on mediation is consistent with the FCC's requirement that BellSouth provide the ability to use the service control point (SCP) in the same manner and via the same signaling links

as BellSouth provides itself. AT&T believes that its customers will experience greater post-dialing delay than BellSouth's customers.

BellSouth cites Finding of Fact No. 14, page 28 of the RAO, where the Commission concluded that BellSouth should not be required to allow interconnection of AT&T's related databases to BellSouth's signaling system until a mediated access mechanism has been developed. BellSouth argues that AT&T's additional contract language is beyond the scope of the RAO and that there is no testimony in the record to support this provision. Therefore, BellSouth concludes that the issue is beyond the scope of this proceeding pursuant to the Commission's October 15, 1996, Order and that the proposed language should be deleted.

In response to the objections to Finding of Fact No. 14 of the RAO, the Commission has concluded that the original decision should be affirmed so that BellSouth would not be required to route its traffic through a mediation device.

CONCLUSIONS

The Commission declines to adopt AT&T's proposed language.

ISSUE NO. 5: REBUNDLING OF NETWORK ELEMENTS

Contract Location: General Terms and Conditions, Section 1.A

AT&T's Position Papers, Item No. 15

BellSouth's Post-RAO Negotiations Report, Page 5

DISCUSSION

This issue is discussed at length in BellSouth's and AT&T's comments and objections to the RAO. BellSouth has now proposed specific language for inclusion in the Agreement:

AT&T may use one or more Network Elements to provide any feature, function, or capability, or service option that such Network Element is capable of providing or any feature, function, capability, or service option that is described in the technical references identified herein. When AT&T recombines unbundled 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 and offered under the same terms and conditions as BellSouth offers the service to its customers. For purposes of this Agreement, 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 offering that is the subject of a properly filed and approved BellSouth tariff.

Explaining its rationale and position, BellSouth states, as it does in its comments and objections to the RAO, that a resale presumption should apply in the case of a loop-switch combination and that a change in status should require the substitution of a substantive functionality or capability such as a loop or switch. AT&T refers to its objections, without further comment.

This issue is discussed in the Comments/Objections portion of this Order. Because we do not have sufficient understanding of what is meant by "functions, features and attributes of a retail offering," we did not use this language in our discussion. Instead, we concluded that the purchase and combination of unbundled network elements by AT&T to produce a service offering that is included in BellSouth's retail tariffs on the date of the Interconnection Agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that AT&T is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

CONCLUSIONS

The Commission concludes that this issue has been resolved as set forth above.

ISSUE NO. 6(a): AT&T'S REQUEST FOR A COMMON DUCT FOR EMERGENCIES

Contract Location: Attachment III, Section 3.4.10.3

AT&T Position Papers, Item No. 16

BellSouth's Post-RAO Negotiations Report, Page 18

DISCUSSION

AT&T proposes that there be a common emergency duct for use in emergency service restoration situations. AT&T also proposes a priority restoration schedule for emergency situations to restore service to the facilities impacting the greatest number of people. BellSouth has agreed to reserve space for itself and for other licensees, upon request, for use in emergencies and for maintenance, upon a one-year forecast and takes the position that such action is consistent with the Commission's decision regarding reservation of space. BellSouth argues that the common emergency duct proposed by AT&T raises questions and creates potential confusion about access to the common duct and priority of service restoration which could inappropriately complicate the response to emergencies. Notwithstanding BellSouth's foregoing objections, BellSouth is willing to permit AT&T to reserve a duct with other telecommunication carriers willing to enter into

such a sharing agreement. This issue was not submitted by AT&T in the initial arbitration proceeding.

CONCLUSIONS

The Commission concludes that AT&T's request for a common emergency duct exceeds the scope of this arbitration proceeding. The Commission also notes that BellSouth has agreed to allow AT&T to reserve a duct for itself for emergency purposes provided that AT&T agrees to offer to share this common emergency duct with other telecommunication carriers willing to enter into such a sharing agreement.

ISSUE NO. 6(b): AT&T'S REQUEST FOR SPACE IN MANHOLES FOR RACKING AND STORING OF CABLE AND FOR STORAGE OF EQUIPMENT

Contract Location: Attachment III, Section 3.10.2.2

AT&T Position Papers, Item No. 16

BellSouth's Post-RAO Negotiations Report, Page 20

DISCUSSION

AT&T seeks space in manholes for racking and storage of up to fifty (50) feet of cable and space for a reasonable amount of equipment necessary for installing and/or splicing fiber for a period not to exceed forty-eight (48) hours, where space is available. BellSouth is not opposed to the storage of fifty feet of cable, but it is opposed to the storage of equipment because it may interfere with entry and work in manholes by BellSouth or another licensee. Because of BellSouth's obligation to make AT&T's rights-of-way agreement available to all carriers, the effect of this provision would be multiplied. This issue was not submitted by AT&T in the initial arbitration proceeding.

The Commission believes that AT&T's request for space in manholes for the temporary storage of equipment for installing and/or splicing fiber exceeds the scope of this arbitration proceeding. As noted by BellSouth, MCI has already agreed to the language proposed by BellSouth. The Commission further notes that BellSouth has agreed to permit AT&T to store up to fifty feet of cable in manholes for purposes of cable installation and repair.

CONCLUSIONS

The Commission concludes that AT&T's request for space in manholes for racking and storage of cable and equipment exceeds the scope of this arbitration.

ISSUE NO. 7: NONRECURRING AND RECURRING CHARGES FOR UNBUNDLED NETWORK ELEMENTS

Contract Location: Part II, Section 30.7

AT&T's Position Papers, Item No. 23

BellSouth's Post-RAO Negotiations Report, Page 15

DISCUSSION

AT&T's Position:

A. Nonrecurring Charges for Combined Unbundled Network Elements

AT&T argued that it should pay only those interconnection charges BellSouth actually incurs. Accordingly, AT&T's contract language would prohibit BellSouth from charging AT&T a fee for connecting two or more elements which BellSouth already connects to provide service to its own customers. According to AT&T because the elements are already connected, BellSouth will incur no connection expense. AT&T commented that its position in this regard is consistent with the FCC Interconnection Order, that unbundled elements already interconnected together do not have to be further unbundled unless requested by AT&T. Additionally, AT&T commented that, in a separate Composite Agreement provision, it has agreed to pay BellSouth the costs associated with making new interconnections. AT&T also commented that it understands the Commission Order to require BellSouth to file additional nonrecurring cost studies in support of the charges that should be incurred when AT&T combines BellSouth unbundled network elements that are already in place.

B. Nonrecurring Loop and Port Charges

AT&T argued that excessive nonrecurring charges present a significant barrier to competition and that the nonrecurring rates proposed by BellSouth are excessive. AT&T alleged that, in a Louisiana deposition (Deposition of Daonne Caldwell, Louisiana Docket No. U-22022, November 21, 1996, Volume II, pages 92-93) that followed the North Carolina arbitration hearing, BellSouth conceded that its nonrecurring cost studies overstated costs and that cost results for future studies would decrease dramatically. Therefore, AT&T contended that BellSouth's North Carolina cost studies should not be used to establish nonrecurring rates.

AT&T further argued that nonrecurring loop and port rates in fact may not be appropriate at all, given that the North Carolina RAO established recurring rates for those elements at maximum proxy levels. According to AT&T, because BellSouth's North Carolina costs are much lower than the maximum proxy rates, high recurring loop and port rates will permit BellSouth to recover any nonrecurring loop and port cost through recurring rates.

In concluding its comments in this regard, AT&T stated that, if the Commission finds nonrecurring rates appropriate, it should adopt AT&T's recommendation. AT&T stated that its proposal in this regard reflects BellSouth's North Carolina Agreement with ACSI for like or similar services where manual work effort is involved, but that such proposal provides for lower charges for those activities for which the only nonrecurring effort would consist of "software" changes such as changing the billing address. AT&T further stated that its lower rates are based upon an analysis of BellSouth's studies for similar activities in North Carolina and other states.

C. DS1 Digital Grade Loop

AT&T commented that BellSouth filed TSLRIC studies in North Carolina indicating a recurring cost per DS1 loop of approximately \$61.50, but that BellSouth proposed a recurring rate of \$238.00. AT&T requested that the Commission set the DS1 loop rate at \$65.00 to reflect BellSouth's costs. AT&T also requested that the nonrecurring rate for this item be set at \$300, based on an analysis of BellSouth's nonrecurring cost submission. AT&T argues that BellSouth's "submission" reflects costs much lower than BellSouth's proposed prices. Thus, AT&T requested that the Commission reject BellSouth's nonrecurring DS1 loop proposal.

BellSouth's Position:

BellSouth commented that this issue was not submitted by AT&T for arbitration and that it was unable to find any supporting testimony for same in the record. Accordingly, BellSouth argued that, pursuant to the Commission's October 15, 1996, Order at page 2, this issue is beyond the scope of this proceeding.

BellSouth further commented that AT&T's proposed prices would not allow BellSouth to recover its costs in provisioning the network element or a combination of network elements requested by AT&T. According to BellSouth, AT&T's proposal assumes that BellSouth's cost of providing a service to its own customers is the same as the cost of BellSouth providing unbundled network elements to AT&T in whatever form or fashion. BellSouth stated that such is not the case. BellSouth further stated that nonrecurring charges for provisioning unbundled network elements to AT&T should reflect the different underlying costs and that BellSouth's proposed nonrecurring charges reflect those costs. BellSouth also commented that its proposed nonrecurring charges comply with the Act.

BellSouth stated that the RAO did not specify what nonrecurring charges should be associated with the purchase of unbundled network elements and that the only nonrecurring charges contained in the evidence of record were those set forth by BellSouth witnesses. BellSouth pointed out that its proposed nonrecurring charge for the 4 Wire DS1 Digital Grade Loop mirrors the rate in BellSouth's North Carolina Access Tariff at Section E7.5.10. BellSouth stated that adoption of that rate as an interim rate is

consistent with the Commission's actions with respect to other prices, where the Commission ordered tariff rates.

The Prices Which Remain in Dispute

The prices which remain in dispute are presented in Table A below:

Table A
Schedule of AT&T And BellSouth Prices
Which Remain in Dispute

<u>Line No.</u>	<u>Description</u> (a)	<u>AT&T's Position</u> (b)	<u>BellSouth's Position</u> (c)
Unbundled Exchange Access Loops — Nonrecurring Charges			
1. 2.	2-Wire Analog ³	\$33.00 new install \$0.00 working loop	\$140.00 - First \$ 45.00 - Add'l
3. 4.	4-Wire Analog	\$33.00 new install \$0.00 working loop	\$140.00 - First \$ 45.00 - Add'l
5. 6.	2-Wire ADSL/HDSL	\$33.00 new install \$0.00 working loop ⁴	\$527.29 - First \$459.08 - Add'l
7. 8.	4-Wire HDSL	\$33.00 new install \$0.00 working loop	\$549.85 - First \$482.00 - Add'l
9. 10.	2-Wire ISDN	\$33.00 new install \$0.00 working loop	\$520.92 - First \$441.98 - Add'l

³ Includes the NID.

⁴ AT&T's price list reflected these prices for 2- Wire ADSL only.

Table A
Schedule of AT&T And BellSouth Prices
Which Remain In Dispute — Continued

<u>Line No.</u>	<u>Description</u> (a)	<u>AT&T's Position</u> (b)	<u>BellSouth's Position</u> (c)
Unbundled Exchange Access Loops — Nonrecurring Charges (Continued)			
11. 12.	4-Wire DS1 Digital Grade Loop	\$300.00 new install \$ 0.00 working loop ⁵	\$837.92 - First \$494.19 - Add'l
Unbundled Exchange Access Loops — Recurring Charges			
13.	4-Wire DS1 Digital Grade Loop	\$ 65.00 ⁶	\$238.00
Unbundled Local Switching — Nonrecurring Charges			
14.	Unbundled Ports		
15.	2-Wire Analog	\$ 5.00	\$43.07 - First \$16.21 - Add'l
16. 17.	4-Wire Analog (coin)	\$ 5.00	\$43.34 - First \$17.26 - Add'l
18. 19.	2-Wire DID	\$50.00	\$50.00 - First \$18.00 - Add'l
20. 21.	4-Wire DID	\$60.00 ⁷	\$230.00 - First \$200.00 - Add'l

⁵ AT&T's price list reflected these prices for "DS1".

⁶ AT&T's price list reflected this price for "DS1".

⁷ AT&T's price list reflected this price for "DS1 DID".

Table A
Schedule of AT&T And BellSouth Prices
Which Remain In Dispute — Continued

<u>Line No.</u>	<u>Description</u> (a)	<u>AT&T's Position</u> (b)	<u>BellSouth's Position</u> (c)
Unbundled Local Switching — Nonrecurring Charges (Continued)			
22. 23.	2-Wire ISDN	\$50.00	\$101.62 - First \$ 76.28 - Add'l
24. 25.	4-Wire ISDN	\$75.00 ⁸	\$152.71 - First \$128.50 - Add'l

Specific Language Proposed For Inclusion In The Composite Agreement

AT&T proposed the following language for inclusion in the Composite Agreement in regard to the foregoing:

"30.7 BellSouth shall not charge AT&T an interconnection fee or demand other consideration for directly interconnecting any Network Element or Combination to any other Network Element or Combination provided by BellSouth to AT&T if BellSouth directly interconnects same two Network Elements or Combinations in providing any service to its own Customers or a BellSouth affiliate, including the use of intermediate devices, such as a digital signal cross connect panel, to perform such interconnection."

BellSouth proposed the following language in regard to the foregoing:

"30.7 BellSouth shall charge AT&T the rates set forth in Part IV when directly interconnecting any network element or combination to any other network element or combination. If BellSouth provides such service to an affiliate of BellSouth, that affiliate shall pay the same charges."

⁸ AT&T's price list reflected this price for "DS1 ISDN".

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes as follows:

Regarding the issue as to whether BellSouth should be permitted to charge AT&T a fee for connecting unbundled network elements that are already connected, the Commission concludes that it is not unreasonable for it to adopt, in essence, average nonrecurring interim rates, subject to true-up, that would apply to the provisioning of all elements without regard to whether the elements were already connected.

Regarding AT&T's understanding that the RAO requires BellSouth to file additional nonrecurring cost studies in support of the charges that should be incurred when AT&T combines BellSouth unbundled network elements that are already in place, the Commission concludes that the need for and the nature of such cost studies should be deferred to future proceedings establishing final rates for unbundled network elements and services once the appeal of the FCC Interconnection Order has been finally resolved.

With respect to the rates now in dispute, the Commission concludes that the rates set forth below in Table B should be established on an interim basis, subject to true-up, pending establishment of final rates by this Commission:

Table B
Schedule of Interim Rates

<u>Line No.</u>	<u>Description</u> (a)	<u>Price</u> (b)
Unbundled Exchange Access Loops — Nonrecurring Charges		
1. 2.	2-Wire Analog	\$ 86.50 - First \$ 27.80 - Add'l
3. 4.	4-Wire Analog	\$ 86.50 - First \$ 27.80 - Add'l
5. 6.	2-Wire ADSL/HDSL	\$280.15 - First \$243.91 - Add'l
7. 8.	4-Wire HDSL	\$291.43 - First \$255.46 - Add'l
9. 10.	2-Wire ISDN	\$276.96 - First \$234.99 - Add'l
11. 12.	4-Wire DS1 Digital Grade Loop	\$568.96 - First \$335.56 - Add'l
Unbundled Exchange Access Loops — Recurring Charges		
13.	4-Wire DS1 Digital Grade Loop	\$ 151.50

Table B
Schedule of Interim Rates — Continued

<u>Line No.</u>	<u>Description</u> (a)	<u>Prices</u> (b)
Unbundled Ports — Nonrecurring Charges		
14.	2-Wire Analog	\$ 24.04 - First \$ 9.05 - Add'l
15. 16.	4-Wire Analog (coin)	\$ 24.17 - First \$ 9.63 - Add'l
17. 18.	2-Wire DID	\$ 50.00 - First \$ 18.00 - Add'l
19. 20.	4-Wire DID	\$145.00 - First \$126.09 - Add'l
21. 22.	2-Wire ISDN	\$ 75.81 - First \$ 56.91 - Add'l
23.	4-Wire ISDN	\$113.86 - First \$ 95.80 - Add'l

ISSUE NO. 8: APPROPRIATE RATES FOR COLLECT, THIRD PARTY, AND CALLING CARD CALLS

Contract Location: Attachment 7 - Incollect/Outcollected Procedures, 9.1
AT&T's Position Papers, Item No. 28,
BellSouth's Post-RAO Negotiations Report, Page 24

DISCUSSION

The parties disagree on how to handle collect, third party, and calling card calls involving more than one carrier in a resale environment.

AT&T proposes that the carrier for the consumer originating the call be entitled to bill its rates for the call. According to AT&T, carriers in the access market have long adhered to this practice; most other ILEC's have agreed to originating carrier billing in the local exchange market; and BellSouth has agreed to the practice where the service has been provided through the use of unbundled network elements or AT&T's own facilities.

AT&T further stated that the Georgia Public Service Commission and the Florida Public Service Commission have ordered that AT&T's proposed language be adopted.

BellSouth commented that at page 57 of AT&T's Proposed Order, AT&T stated that this issue was no longer the subject of arbitration and therefore the Commission need not decide the issue. Therefore, BellSouth argues that this issue should not be arbitrated by the Commission.

BellSouth further stated, however, should the Commission elect to decide this issue, that its position was as follows: When AT&T's customer, via resold services, makes a third party or collect call to a BellSouth customer, AT&T is reselling BellSouth's operator services, therefore the BellSouth rate for the collect or third party call should apply. BellSouth agrees that if AT&T is providing the operator services function through selective routing and resale, the AT&T rates should apply.

AT&T's proposed language defines an Outcollect Message as follows:

"9.1 Outcollect Message -

"A message that originates on an AT&T line but bills, using AT&T's rates, to an end user served by another Local Service Provider."

BellSouth proposed the following language:

"9.1 Outcollect Message -

"A message that originates on an AT&T line that is provided via telecommunications services purchased for resale but bills, using BellSouth's rates, to an end-user served by another Local Service Provider.

"For facilities-based purposes, an outcollect message is a message that originates on an AT&T line where AT&T is providing the facilities, but bills, using AT&T's rates, to an end-user by another Local Service Provider."

The arbitrating parties have not stated or otherwise explained the reasoning underlying their positions on this issue. Therefore, the Commission is unable to evaluate the propriety of either party's position.

CONCLUSIONS

The Commission concludes that it is unable to arbitrate this issue due to insufficient evidence of record.

ISSUE 9(a): ENTITIES TO BE BOUND BY INTERCONNECTION AGREEMENT

Contract Location: General Terms and Conditions, Preface

AT&T's Position Papers, Item No. 29

BellSouth's Post-RAO Negotiations Report, Page 3

DISCUSSION

AT&T proposes that the Interconnection Agreement bind not only BellSouth but also its affiliates. Otherwise, AT&T argues, BellSouth can avoid meeting some of its obligations under TA96 simply by transferring or subcontracting certain services to an existing or newly created affiliate. Although AT&T did not identify this as an issue for arbitration, its petition included a proposed agreement with BellSouth and its affiliates, while BellSouth's response included a proposed agreement with BellSouth alone.

BellSouth contends that AT&T did not submit this issue for arbitration and did not offer supporting testimony for it. BellSouth further argues that Section 251 of TA96 requires the ILEC to negotiate an interconnection agreement with a requesting carrier and defines ILEC as the local exchange carrier that provided telephone service in an area on the date of enactment and was deemed to be a member of the exchange carrier association pursuant to FCC regulations or is a person or entity that after the date of enactment became a successor or assign of a member. This definition does not include BellSouth's present affiliates, but it does alleviate AT&T's concerns regarding the assignment or transfer of contractual obligations.

CONCLUSIONS

The Commission concludes that, consistent with TA96, BellSouth's affiliates are not parties to the Interconnection Agreement but are bound by it if they become successors or assigns of BellSouth's obligations under the Agreement.

ISSUE NO. 9(b): PROVISION OF CUSTOMER CREDIT HISTORY

Contract Location: General Terms and Conditions, Section 13

AT&T Position Papers, Item No. 29

BellSouth's Post-RAO Negotiations Report, Page 12

DISCUSSION

AT&T requests that BellSouth be directed to report certain customer payment history information, if available, to a credit bureau, so that AT&T and other new entrants will have the same information BellSouth has. Under AT&T's proposed contract language, AT&T commits to report credit information to credit bureaus in the same manner as BellSouth. BellSouth states that AT&T did not present this issue for arbitration or offer any supporting testimony for it, so it is beyond the scope of the proceeding. BellSouth further