

## **E. MCI TELECOMMUNICATIONS CORPORATION**

### **1. Competitive Need**

MCI maintains that the provision UNEs is essential to the development of facilities based competition in the local exchange market. According to MCI, combinations of network elements provided by ILECs will allow new entrants to construct, through the use of leased facilities in whole or in part, their own local exchange network from which they can offer local exchange service. MCI states that facilities based competition will evolve from combinations as traffic volumes change. MCI also states that it will substitute shared leased transport for dedicated leased transport and eventually its own dedicated transport. According to MCI, leased combinations afford CLECs the ability to reach beyond their own facilities, which are initially limited to urban areas, to serve customers in all areas of the state.

MCI suggests that the issue of combinations is much broader than just total combinations. Specifically, MCI wants the ability to combine elements such as loops and transport (with concentration equipment) to extend the reach of their networks. MCI claims that a facilities-based provider using network element combinations in conjunction with its own facilities can provide innovative service to consumers through differentiation of its products and services as well as price differentiation. In the opinion of MCI, combinations of network elements are considered necessary for facilities-based providers like MCI, to provide telecommunications services to their end-users. Accordingly, access to combinations of network elements must be provided by the Telco to CLECs in a reasonable and non-discriminatory manner.

Conversely, MCI notes that resale, while significantly easier than providing facilities-based local exchange service, is merely a re-billing of the Telco's retail services. In the opinion of MCI, resale results in a host of Telco clones offering basically the same products and services at similar prices. With resale, the CLEC has no ability to control its costs.

MCI proposes that, upon request, the ILEC be required to combine network elements for CLECs. MCI commits to paying all reasonable, forward-looking costs for the ILEC to perform any combinations. MCI considers its proposal to be efficient, cost-justified, and non-discriminatory. MCI asserts that the ILEC already has complete and unfettered access to all elements in its network; and therefore, requiring the ILEC to do any actual combining of those elements for CLECs, does not impose any additional type of work on the ILEC than it currently provides to itself. If additional work is required, MCI proposes that CLEC be responsible for the costs associated with this work.

Lastly, MCI claims that while its proposal is reasonable, it requires the Department to order the Telco to provide network element combinations to CLECs if local exchange competition is to be furthered. MCI Comments, pp. 4-8.

### **2. Statutory Authority**

MCI asserts that the issue before the Department is not whether CLECs can use combinations (either total combinations or other types of combinations) to provide local exchange service, but how CLECs should combine network elements leased from the incumbent provider. MCI states that the only reasonable and efficient way for CLECs to have access to network element combinations is for the ILEC to actually combine the elements (if there is any actual work to be done) and for the CLEC to pay the ILEC for the work performed (based on forward looking costs).

MCI maintains that the Department was granted broad authority to implement the pro-competitive goals of Public Act 94-83. According to MCI, Conn. Gen. Stat. §§ 16-247a and 16-247b provide sufficient legal basis for the Department to order the provision of unbundled element combinations. MCI encourages the Department to exercise its authority to promote the development of effective and sustainable local competition and require the Telco to combine network elements for CLECs subject to reasonable charges for the forward looking efficient costs it incurs to perform such combinations.

MCI also contends that Conn. Gen. Stat. § 16-247a sets forth expansive, pro-competitive goals for the provisioning of telecommunications services in Connecticut. Specifically, Conn. Gen. Stat. § 16-247a provides the Department with the authority to implement the broad scheme of pro-competitive actions to further telecommunications competition in Connecticut. Connecticut courts, according to MCI, have consistently held that underlying the enabling statute for the Department is a legislative intent to rely upon the Department to regulate and supervise public utilities and have found the Department's regulatory authority to be quite broad. In the opinion of MCI, the Department possesses sufficient authority to require the Telco to provide UNE combinations to CLECs. MCI urges the Department to acknowledge and affirm its legal authority and require the Telco to provide UNE combinations to CLECs as a matter of state law. MCI Comments, pp. 8-10.

### **3. Regulatory Constraint**

In the opinion of MCI, the Telco's unwillingness to voluntarily provide UNE combinations to CLECs, (even if the elements are already combined in its network) is indefensible. According to MCI, the Eighth Circuit Decision in no way prohibits the Telco from providing network element combinations to CLECs. MCI also argues that the Eighth Circuit decision does not preclude states from ordering such provisions by the ILEC. MCI argues that the authority of state regulatory agencies to adopt rules requiring ILECs to provide combinations of elements was not addressed in the Eighth Circuit's Decision. MCI notes that the Ohio Public Utility Commission, the Colorado Public Utility Commission and the Washington Utilities and Transportation Commission have individually concluded that the Eighth Circuit's decision does not preclude independent actions by state regulators. Additionally, MCI claims that Colorado and Washington have each concluded that nothing in the Eighth Circuit's decision precludes a state from requiring an ILEC to provide combinations as long as those requirements are consistent with relevant law. In support of its opinion, MCI refers to §§ 261(c) and 601(c) of the Telcom Act, which confers additional authority on a state agency.

MCI surmises that the Telco's position on this issue that it will not willingly provide such combinations until such time as it is ordered by the Department to make UNE combinations available to the CLECs. MCI further maintains that a Department order requiring the Telco to provide assembled bundled network elements would be consistent with the Telcom Act. According to MCI, nothing preempts the Department from requiring the Telco to combine network elements. MCI argues that the Department retains the authority under state law to order the Telco to provide UNE combinations, where requested; and, where elements are currently combined, to prohibit the Telco from disconnecting them. In so ordering, MCI believes that the Department will fulfill its duty to protect consumer interests, promote efficient and effective local competition, and prevent unreasonable discrimination. MCI also contends that action which furthers competition, such as ordering the provision of combined network elements, is clearly consistent with the underlying purposes of the Telcom Act. MCI Comments, pp. 10-16.

#### **4. Shared Transport**

MCI maintains that shared transport is an UNE that the Telco is required to provide to CLECs pursuant to the Local Competition Order. According to MCI, the FCC determined that shared transport is a network element to which access must be provided by an ILEC. MCI also maintains that the Telco is required to provide shared transport to it because of the MCI/Telco interconnection agreement. MCI concludes that there should be no issue as to whether or not shared transport is a network element which the Telco must provide.

MCI notes, however, that the Telco has not offered to provide shared transport arguing that it is not obligated to provide it by terms of the Eighth Circuit decision. MCI claims that the Telco is against providing shared transport because of the FCC's attempt to redefine shared transport. MCI claims the FCC's requirement in the First Report and Order for an ILEC to offer requesting carriers access, on a shared basis, to the same interoffice transport facilities that the incumbent uses for its own traffic remains unaffected by the actions of the Eighth Circuit.

MCI rejects the Telco's position. According to MCI, the Eighth Circuit decision does not prohibit an ILEC from combining elements. MCI also argues that the Eighth Circuit decision in no way vacated the FCC's conclusion that an ILEC must provide shared transport. Finally, MCI notes that the FCC Third Report and Order clarifies its previous definition of the unbundled network element shared transport and did not redefine shared transport as a combination of elements.

MCI contends that the Telco should be required to provide shared transport as an unbundled element. According to MCI, if the Telco is not required to provide shared transport, CLECs will be forced to carry traffic over dedicated transport. In MCI's opinion, the prohibitive costs of dedicated transport would force CLECs to confine the development of their networks to urban, high-traffic areas and limit the benefits of competition to only large businesses. MCI Comments, pp. 18-20.

#### **F. SOUTHERN NEW ENGLAND TELEPHONE COMPANY**

##### **1. Competitive Need**

The Telco states that nothing more need be done to promote competition in Connecticut. Resale, according to the Telco, fulfills the shared facilities goal set for in Public Act 94-83 giving carriers access to the underlying infrastructure on a full service basis. Specifically, the Telco suggests that competition would not suffer if the Department were to refrain from requiring it to provide rebundled services. The Telco suggests that requiring it to rebundle UNEs might have the effect of hindering competition. Telco Comments, p. 10.

The Telco also argues that new entrants are provided by the Telcom Act three options for entering the market each with correspondingly different levels of risk to the entrant. Resale presents the least risk, while unbundled elements, (which are usually purchased in some combination for use with the carriers own facilities), represents a middle ground, but requires forecasting and engineering. The third option available to new entrants is complete self-provisioning, with interconnection to the ILECs' facilities. The Telcom Act, according to the Telco, did not provide any catchall provision obligating ILECs to provide any and all services that new entrants might find useful in advancing their market entry strategy. The Telco further asserts that the Telcom Act did not allow entrants to mix and match the most attractive features of the unbundled element and resale alternatives to obtain the benefits of TSLRIC-based rates of unbundled elements and the zero risk factor associated with resale. Telco Comments, p. 7.

The Telco contends that the UNE-Platform is identical to its resale offering and provides a comparative illustration to support its contention. The only distinction, according to the Telco, is the pricing scheme for each option. In particular, the resale offering being priced at its retail rate minus 17.8% avoided cost, while the UNE-Platform is priced at TSLRIC plus contribution to the Telco's joint and common costs. The only other significant difference, according to the Telco, is which carrier bills access charges, with the CLEC billing access for the UNE-Platform.

The Telco expresses the opinion that Congress, by pegging wholesale rates to existing retail rates, ensured that wholesale rates would include the same subsidies contained in the retail rates, thereby ensuring that new entrants buying resale would support universal service. According to the Telco, requiring it to offer rebundled UNEs to CLECs shifts the implicit subsidy the Telco receives today to MCI, AT&T and other CLECs, while leaving it with below cost services and no opportunity for full recovery of costs. Telco Comments, pp. 16-18.

The Telco maintains that the Department need not do anything more to further competition in Connecticut for several reasons. For example, the Telco notes that the Department has already required it to unbundle its local service network. The Department has also required the Telco to resell its noncompetitive and emerging competitive telecommunications services to CLECs. The Telco claims that the Department has previously found these two requirements to constitute a balanced approach to opening Connecticut's telecommunications marketplace. Therefore, the Telco concludes that the current approach to competition, with unbundling and resale requirements, enables CLECs to supplement their networks with UNEs and/or use the Telco's resale products to serve customers in areas where they do not have facilities. The Telco argues that a requirement that it rebundle UNEs will, defeat one of the

primary goals of Public Act 94-83, the development of a "network of networks." In the opinion of the Telco, a rebundling requirement would eviscerate any true facilities-based development, allowing CLECs to purchase the Telco's existing engineered network at forward-looking cost without the risk associated with capital investment. Telco Comments, pp. 12 and 13.

Further, the Telco asserts that mandating it to recombine UNEs could cause the Telco to replicate its current resale offering. The Telco argues that this requirement could effectively provide CLECs with the ability to selectively use resale and UNE combinations, (specifically the UNE-Platform), where it is most profitable to CLECs, placing all of the financial and competitive risk on the Telco. According to the Telco, the CLEC would not have to: worry about defining and designing its network requirements, engineer and build any facilities of its own, and not be concerned with the best way to combine individual facilities. The Telco maintains that CLECs must be able to do all of the above, without paying the wholesale rates applicable to resale under 47 U.S.C. § 251(c)(4), while at the same time, avoiding payment of access charges. Telco Comments, p. 16.

## 2. Statutory Authority

The Telco maintains that neither Connecticut state law nor the Telcom Act requires a telephone company to rebundle its unbundled network offerings. However, both Connecticut law and the Telcom Act require the Telco to unbundle its network which the Telco claims to have complied with. According to the Telco, the concept of rebundling was never contemplated under Public Act 94-83, nor was such a requirement ever espoused by any CLEC during implementation of that act as being necessary for the development of effective competition in Connecticut. The Telco contends that the legislative history of Public Act 94-83 very clearly shows that the law, while generally seeking to open up the local telecommunications market, included the Connecticut Legislature's desire to achieve this goal through focusing on facilities-based deployment of alternative networks.

The Telco supports making UNEs available to requesting CLECs so that they can utilize them in total, or in conjunction with network elements that they themselves provide, or obtain from other providers in order to create a service offering to their end users. Competition, according to the Telco, does not require the Department to order the provision of rebundled UNEs. Rather, competition, as envisioned by the Legislature and the Department, requires that the Telco not be ordered to rebundle its UNE offerings.

The Telco asserts that Conn. Gen. Stat. § 16-247b(b) does not provide a legal basis for ordering the provision of rebundled network elements. According to the Telco, there were absolutely no discussions concerning rebundling at the time Public Act 94-83 was passed. The Telco suggests that if rebundling were ever contemplated it would have been negotiated as part of the Stipulation adopted by the Department in its September 22, 1995 Decision in Docket No. 94-10-02, DPUC Investigation into the Unbundling of the Telco's Local Telecommunications Network. Telco Comments, pp. 11-14.

### **3. Regulatory Constraint**

The Telco maintains that while the Telcom Act made dramatic changes to the pre-competition landscape in the country as a whole, it also affirmed the proactive direction the Connecticut Legislature and the Department had chosen to bring telecommunications competition to Connecticut. The Telco concludes that a state order requiring the provision of rebundled network elements would be inconsistent with the Telcom Act. In the opinion of the Telco, the Eighth Circuit decision resolved the issue by affirming the dramatically different pricing standards set forth in the Telcom Act for resale and UNEs which would be lost if rebundling is ordered by the Department. According to the Telco, the Eighth Circuit ruling was limited because the only real option it foreclosed to competing carriers was the option to engage in rate arbitrage by purchasing what is tantamount to resold service at UNE-based rates. The Telco states that the Eighth Circuit Decision properly resolves the problem Congress intended to prevent.

The Telco asserts that a requirement to provide a rebundled network element platform giving CLECs a substantial, risk free discount on the Telco's local service offering over and above the current discount provided under resale provisions of the Telcom Act can not have been the intent of that act. In the opinion of the Telco, the Telcom Act requires that a CLEC using UNEs assume important responsibilities that resellers avoid by taking the Telco's finished resale services. Therefore, the Telco concludes that an order requiring it to rebundle UNEs would be inconsistent with the clear edicts of the Telcom Act. Telco Comments, p. 20.

### **4. Shared Transport**

The Telco claims that the provision of shared transport (common transport) as defined by the FCC, supplies the same transport and switching functionality as an ILEC rebundled network element platform. The Telco concludes that shared transport requires a combination of end office switching, tandem switching and interoffice transmission facilities, each of which is a separate UNE, that is afforded the same functionality as that provided by the Telco assembled UNE-P sought by CLECs. According to the Telco, shared transport involves provisioning of all its interoffice facilities and switching facilities as a combined whole, priced at cost-based rates. Therefore, shared transport not only provides the same primary functionality as the UNE-P, but it also obliterates the resale/UNE distinctions made in the Telcom Act in the same way as the UNE-P. Telco Comments, p. 21.

## **G. SPRINT COMMUNICATIONS COMPANY, INC.**

### **1. Competitive Need**

Sprint argues that the Department's policy goal of fostering competition in all telecommunications markets and economic efficiency demand that UNEs be made

available on a rebundled basis. Sprint maintains that the Telcom Act sought to bring broad-based competition to the telecommunications market by imposing, among other things, an obligation on ILECs to provide to any requesting carrier interconnection to their network at parity to themselves and their affiliates and on nondiscriminatory rates, terms and conditions. In the opinion of Sprint, a Department order requiring the provision of rebundled network elements assembled by a telephone company would be necessary to further competition in the provision of telephone exchange service or exchange access. According to Sprint, UNE-P is currently the only service delivery option available that permits CLECs to quickly, effectively and profitably compete with ILECs across all geographic areas and customer segments. Furthermore, Sprint argues that the offering of UNE-Ps significantly enhances the likelihood of facilities-based competition by providing CLECs with a ready path for a phased build-out of their own local service facilities. Sprint foresees little competition outside of major metropolitan areas and for most residential consumers and small businesses for the foreseeable future without UNE-P.

Sprint contends that the Telco has offered to only provide UNEs to CLECs and only on a physical collocation basis requiring them to recombine on their own. Sprint also contends that the Telco's refusal to recombine UNEs imposes added costs and burdens upon CLECs (including Sprint), to which the ILECs are not subject in providing the same service. In the opinion of Sprint, this strategy adversely impacts upon the CLECs' ability to enter the Connecticut local exchange market and seriously impedes the development of full and effective competition for telecommunications services in Connecticut. Sprint recommends that the Department adopt the UNE platform because it will:

- enable CLECs to offer competitive local exchange services to a broad range of customers;
- avoid disruptions of service that will necessarily result from CLECs running jumpers to UNEs in leased collocation space, and disconnecting and reconnecting jumpers upon change of local carriers;
- avoid costly leased collocation facilities;
- avoid unnecessary duplication of facilities;
- enable ILECs to extend ordering and provisioning capabilities to CLECs with minor modifications to their existing order entry systems;
- enable ILECs to maintain the integrity of their networks, related tracking systems and databases; and
- limit the need for additional administrative and system costs to handle network element combination orders and reduce the number of potential breakage and trouble points.

Sprint maintains that a Department order to require provisioning of recombined UNEs to CLECs is sound economic policy and would promote competition. Sprint claims that current Telco practices impedes the ability of CLECs to enter the local exchange market in Connecticut thereby according an unfair and unwarranted competitive advantage over CLECs seeking competitive entry to Connecticut. Sprint Comments, pp. 3-6.

## 2. Statutory Authority

Sprint asserts that the recombination of UNEs serves the interests of CLECs, ILECs and Connecticut consumers by promoting the development of a competitive local exchange market while ensuring that service quality is maintained. Sprint offers the opinion that the Department must require UNEs be rebundled for CLECs in order to satisfy the Department's goals of fostering competition in the telecommunications market for the benefit of all Connecticut consumers in all geographic areas of the state. Sprint maintains that in the wake of the Eighth Circuit ruling, states retain the authority to issue orders requiring UNE combinations under applicable state law provisions. In the opinion of Sprint, the Department has the requisite authority to issue an order requiring the provision of rebundled network elements assembled by an ILEC. Sprint suggests that Conn. Gen. Stat. §§ 16-247a(4) and 16-247a(5) mandates Department action in the face of the Telco's unwillingness to provide rebundled UNEs. Sprint encourages the Department to issue such an order to promote competition in the provision of local exchange service and access.

Additionally, Sprint contends that current Telco policies on this issue are contrary to the goals enumerated by Public Act 94-83, constitute a barrier to entry, effectively foreclose interconnection through unbundled network elements and impose additional costs burdens upon CLECs. Sprint claims that the Telco is acting in a discriminatory manner and violating provisions of the state law. Sprint expresses the opinion that permitting the Telco to unbundle its network by physically separating its already combined network elements and then requiring Sprint to physically recombine them would increase its costs unnecessarily and impede its effective entry into the Connecticut local exchange market. Furthermore, Sprint argues that this approach is not one that the Department recognized or sought to implement with its prior rulings promoting competition in telecommunications.

Further, Sprint asserts that the Department has more than enough reason and authority to order rebundling. First, Sprint notes that Connecticut is not in the Eighth Circuit and, therefore, not technically subject to the its ruling. Second, an order requiring the provision of rebundled UNEs would be consistent with Part II of Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In the opinion of Sprint, the Telcom Act conveys to new entrants a right to combine UNEs for the purpose of offering finished services. Moreover, the Telcom Act recognizes a distinction between the roles of a state commission as an arbitrator enforcing federal law and as an arbitrator enforcing applicable state law. Finally, the Eighth Circuit's decision confirms the authority of the State of Connecticut to decide the issue of the combination of UNE's under the Telcom Act. Sprint Comments, pp. 6-10.

Moreover, Sprint indicates that a number of states have issued rulings in the wake of the Eighth Circuit's decision that they possess the authority to order the recombination of UNEs. Sprint notes as an example the Michigan Public Service Commission determination that nothing in the Telcom Act or in the Eighth Circuit's decision limited the authority of state regulatory commissions acting under state law to regulate UNE combinations. Sprint also notes that the Michigan Commission concluded that 47 U.S.C. § 252(e)(3) specifically preserves states' authority to establish and enforce additional requirements on market participants. Separately, Sprint maintains

that the Washington Utilities and Transportation Commission rejected the argument advanced by ILECs that the Eighth Circuit's construction of the Telcom Act limited the power of state commissions to require ILECs to provide combinations of UNEs to CLECs and ordered the ILEC to combine all elements from the NID to the switch. Finally, Sprint notes that the Colorado Public Utilities Commission has reached a similar conclusion to that of both Washington and Michigan. Sprint Comments, pp. 13-15.

### **3. Regulatory Constraint**

Sprint acknowledges that the Eighth Circuit decision invalidated a number of provisions of the FCC's Local Competition Order including those related to the pricing of UNEs and the ILEC's obligation to recombine UNEs. Sprint further maintains that the Eighth Circuit held that § 251(d)(3) of the Telcom Act does not require all state commission orders to be consistent with all of the FCC's regulations promulgated under § 251 of the Telcom Act. Sprint maintains that in that ruling, the Eighth Circuit overturned the FCC solely on the basis that the statutory language could not support the finding of a federal duty to combine UNEs. According to Sprint, the Eighth Circuit did not find such a duty inconsistent with the Telcom Act, just absent from it. Specifically, the Eighth Circuit did not reach the merits of whether rebundling furthered local exchange competition. Sprint Comments, pp. 12 and 13.

### **4. Shared Transport**

Sprint maintains that shared transport does not supply functionality equivalent to that of a rebundled network element platform assembled by an ILEC. Sprint states that shared transport is an integral component of the UNE-P; however, it is not a substitute for the UNE-P. Shared transport is, according to Sprint, just one element contained in the list of elements comprising the UNE platform. Sprint asserts that although shared transport is an essential piece of the UNE-P, (without shared transport, the UNE platform concept is inoperable), it will not serve as a substitute for the provision of recombined UNEs. Sprint also argues that provisioning shared transport can in no way replace the recombination of UNEs as a necessary option for CLECs. Accordingly, Sprint maintains that the Department must require that ILECs such as the Telco offer a recombined UNEs package which includes all network elements, including shared transport, to ensure that full and effective competition emerges in Connecticut. Sprint Comments, pp. 15 and 16.

## **H. WORLDCom, INC.**

### **1. Competitive Need**

WorldCom, Inc. (WorldCom) d/b/a Brooks Fiber Communications, concurs with AT&T and MCI that the Telco should be required to provide combinations of network elements at economic cost because it would promote competition in Connecticut, to the benefit of the state's local exchange customers. According to WorldCom, the ability to

use combinations of the Telco's network elements would greatly enhance WorldCom's ability to compete for local exchange customers outside of Hartford and Stamford where it currently has no facilities.

WorldCom states that if CLECs are not granted the ability to order combined elements from the Telco, competition in Connecticut will most likely be confined to those areas where CLECs have their own facilities. WorldCom maintains that if the Department does not place an affirmative obligation on the Telco to provide combinations of network elements at the request of a CLEC, customer choice of a local service provider in many areas of the state will be frustrated and delayed. Therefore, WorldCom urges the Department to require the Telco to provide network element combinations to CLECs in order to promote competition throughout the entire local exchange market in Connecticut. WorldCom Reply Comments, pp. 1 and 2.

## 2. Statutory Authority

WorldCom maintains that the Telco's obligations pertaining to combining network elements requires it to provide "reasonable, nondiscriminatory access to all equipment, facilities and services necessary to provide telecommunications services to customers." WorldCom agrees with MCI that combinations of network elements are "necessary" for facilities based providers "to provide telecommunications services to customers" who may be located off their networks. WorldCom concludes that under Conn. Gen. Stat. § 16-247b(b), the Department is clearly authorized to order the Telco to provide access to such combinations to CLECs in a reasonable and nondiscriminatory manner. WorldCom Reply Comments, p. 2.

## 3. Regulatory Constraint

WorldCom disagrees with the Telco's contention that the Eighth Circuit Decision and the Telcom Act prohibit the Department from ordering it to combine network elements. According to WorldCom, no question of state regulatory authority was at issue in the Eighth Circuit Decision. WorldCom argues that the section of the Eighth Circuit's ruling pertaining to network element combinations dealt only with a question of federal law, whether the FCC has the authority under the Telcom Act to require ILECs to provide network element combinations. WorldCom states that there are various sections of the Telcom Act that expressly acknowledge independent state authority to regulate telecommunications services.

In citing a recent decision of the Illinois Commerce Commission in Docket 96-0486/96-0569, Investigation into Forward Looking Cost Studies and Rates of Ameritech Illinois for Interconnection, Network Elements, Transport and Termination of Traffic; Illinois Bell Telephone Company: Proposed Rates, Terms and Conditions for Unbundled Network Elements, WorldCom argues that the Department should follow the Illinois Commission and reject the Telco's argument that a mandate to offer combined elements would replicate its resale offering and, allow CLECs to game the system. WorldCom contends that by ordering the Telco to provide CLECs with combined elements, the Department can provide end users with a wider variety of service offerings and price options.

Lastly, WorldCom disagrees with the Telco's argument that the availability of rebundled network elements would disrupt the proper flow of contributions to the universal service fund. WorldCom asserts that the availability of UNEs is antithetical to Universal Service Funding and that this argument failed before the Eighth Circuit and should not be successful here. WorldCom Reply Comments, pp. 2-4.

#### **4. Shared Transport**

WorldCom asserts that the FCC has already determined that shared transport is a network element that ILECs must provide. WorldCom argues that shared transport does not include the network interface device at the customer's premises, the loop or the entire switching function and is not equivalent in functionality to combinations of other elements and facilities that can be used to provide telecommunications service. WorldCom Reply Comments, p. 4.

### **IV. DEPARTMENT ANALYSIS**

#### **A. BACKGROUND**

The Department initiated this proceeding for the express purpose of resolving certain differences of opinion amongst the principal parties with regard to their respective roles and responsibilities in the provisioning and use of UNEs. Differences expressed by the parties on the subject stem, in part, from the fact that neither federal nor state law is sufficiently clear on the question of UNE combinations to satisfy the parties. The Department also considers the recent opinion rendered by the Eighth Circuit insufficient in resolving the matter satisfactorily to all concerned.

The Department's interest in this matter is relatively limited and is generally expressed by the four questions presented in the Scope of the Proceeding above. First, the Department sought to understand the relative importance of network element combinations to the development of competition in Connecticut. Second, the Department sought to determine what abilities it had to ensure such network element combinations would be available if such combinations were deemed to be needed and necessary to the development of competition.

The Department held no opinion on the specific subject of network element combinations at the time this proceeding was initiated. Accordingly, it sought comments from interested parties in developing a body of expert advice before rendering any opinion on the matter. A number of parties responded to the Department's request to participate in this proceeding providing Comments and Reply Comments on the subject as outlined by the Department in its Scope.

The Department has determined the information provided by the parties to be beneficial in its effort to understand: a) the combination issue; and b) the attendant effects of any position adopted regarding network element combinations. The Department is of the opinion that it now possesses considerably more and better information regarding the issue of network element combinations than at any time in the past, principally due to the efforts of parties to this proceeding.

**B. LEGAL AUTHORITY**

The threshold issue to examine is whether the Department has the authority to order recombination of elements by an incumbent local exchange provider. As recounted above, the FCC, in its Local Competition Order, required incumbent local exchange carriers (ILECs) to provide recombined elements to requesting CLECs. That Local Competition Order, through which the FCC intended to enable the states and the FCC to begin to implement sections 251 and 252 of the Telcom Act, became the subject of multi-jurisdiction litigation consolidated at the Eighth Circuit.<sup>3</sup> On July 18, 1997, the Eighth Circuit overturned several of the regulations promulgated by the FCC in its Order, including a subsection of 47 C.F.R. § 51.315 which required ILECs to combine network elements in any manner requested by a CLEC, with certain parameters. Iowa Utilities Board v. FCC, 120 F.3d 753. On October 14, 1997, at the request of parties to that litigation, the Eighth Circuit struck down additional subsections to § 51.315 which could have required ILECs to supply in a combined form unbundled network element service that already existed in combination. In doing so, the Eighth Circuit stated that:

Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled basis (as opposed to a combined) basis. Stated another way, § 251(c)(3) does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements) in order to offer competitive telecommunications services. To permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other. Accordingly, the Commission's rule, 47 C.F.R. § 51.315(b), which prohibits an incumbent LEC from separating elements that it may currently combine, is contrary to § 251(c)(3) because the rule would permit the new entrant access to the incumbent LEC's network elements on a bundled rather than an unbundled basis.

Iowa Utilities Board v. FCC, *Order on Petitions for Rehearing*.

Because the Eighth Circuit's ruling appears to have removed any requirement under the Telcom Act for an ILEC to offer rebundled network elements under Federal law, the Department's March 17, 1998 Request for Written Comments specifically requested argument on the authority to order recombination under state law.

The Department deemed questions related to independent state authority relevant because the Telcom Act contains certain savings clauses relative to existing and new state regulations and requirements:

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<sup>3</sup> The Department was a party to that proceeding.

(b) EXISTING STATE REGULATIONS- Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

(c) ADDITIONAL STATE REQUIREMENTS- Nothing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part.

Telcom Act, Section 261.

As participants to this proceeding are aware, the Connecticut General Assembly acted to remove the barriers to competition in its local markets with the passage of Public Act 94-83, which predated the February 8, 1996 passage of the Federal Telcom Act. Consequently, if the Department determines that Public Act 94-83 empowers it to require rebundling, the Section 261 savings clauses must still be satisfied.

The Department concludes that an order requiring a telephone company to recombine unbundled network elements, entered under state law, is necessary to further competition in the provision of telephone exchange service (for reasons discussed in detail below), and would not be inconsistent with Part II of Title II of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. The Eighth Circuit's ruling in Iowa Utilities Board addresses the ability of the FCC or states to order recombination based on the requirements of § 251(c)(3) of the Telcom Act, and foreclosed reliance on § 251(c)(3) as a source of authority to order recombinations. It did not consider whether independent authority exists under state law, as that question was not at issue.

### C. REBUNDLED ELEMENTS UNDER STATE LAW

The Department has posed four questions intended to solicit opinion from affected parties regarding the issues in question attempting to examine the relative value of any modification to network interconnection policies and practices previously adopted by the Department in Docket No. 94-07-01, The Vision for Connecticut's Telecommunications Infrastructure; Docket No. 94-07-04, DPUC Investigation into the Competitive Provision of Local Exchange Service in Connecticut; Docket No. 94-10-02, DPUC Investigation into the Unbundling of the Telco's Local Telecommunications Network; Docket No. 94-10-04, DPUC Investigation into Participative Architecture; Docket No. 95-06-17, Application of the Southern New England Telephone Company for Approval to Offer Unbundled Loops, Ports and Associated Interconnection Arrangements; Docket No. 96-09-22, DPUC Investigation Into The Southern New England Telephone Company Unbundled Loops, Ports and Associated Interconnection Arrangements and Universal Service Fund in Light of the Telecommunications Act of 1996; and Docket No. 97-04-10, Application of The Southern New England Telephone

Company For Approval of Total Service Long Run Incremental Cost Studies and Rates for Unbundled Network Elements.

At issue in this proceeding is whether the Department's network interconnection policies and practices adopted in the above referenced proceedings are sufficient to support the development of local exchange competition in Connecticut. The submissions tendered in this proceeding present divergent opinions on the subject depending upon the respective role of the sponsor in the Connecticut market (i.e., incumbent or prospective entrant) but generally present views consistent with those expressed by the respective party in prior Department proceedings addressing network interconnection.

Although it is based on the broader interconnection policies promulgated by the Department in the above referenced Dockets, this proceeding reflects the current status in the evolution of a competitive market. Submissions by the Parties strongly suggest that both the form and substance of local exchange competition will be substantially affected by the Department's decisions in this proceeding. Several Parties have suggested that the very idea of local exchange competition in the Connecticut market will, in large part, be determined by the outcome of this proceeding.

The Department does not necessarily agree with the magnitude of import suggested by some of the Parties' Comments. However, this proceeding represents the Department's commitment to ensuring that the competitive framework adopted over the past decade supports the development of efficient and effective competition in an evolving marketplace. The Department also considers the subjects addressed in this proceeding to be of such importance to the goal of competition that it has subjected each party's comments to careful reading and due consideration in the course of its review in this proceeding.

Some critics may characterize the need for further investigation of this subject as unnecessary given the general availability of the interpretations accorded the subject by the Eighth Circuit, the guidelines provided by the FCC in its past Decisions and Orders and the Decisions rendered by this Department in a number of prior proceedings. However, after reviewing those same Opinions, Orders and Decisions, the Department concluded that the combined efforts of the regulatory community and the judiciary to address specific interconnection issues were insufficient to satisfactorily resolve the issue of network element combinations and discharge it of the statutory responsibilities it holds to facilitate competition in Connecticut. Accordingly, the Department initiated this proceeding as a means to ensure that it has done everything possible to afford all interested parties a full and fair opportunity to compete in the Connecticut telecommunications market.

It is this full and fair opportunity to compete that is embodied in Public Act 94-83 and which guides the Department's actions in this proceeding. Indeed, the goals stated by the crafters of Public Act 94-83 best articulate the guideposts used by the Department when considering this issue. Those goals, contained in Conn. Gen. Stat. § 16-247a(a), encourage this Department to promote effective competition in the market for telecommunications services. To the extent that the availability of individual network elements, common transport and resale are insufficient to promote effective

competition, the Department views Conn. Gen. Stat. § 16-247b(b), which requires each telephone company to provide reasonable nondiscriminatory access to all equipment, facilities and services necessary, as a flexible tool to achieve the General Assembly's goals. No participant has criticized rebundling of network elements as unreasonable. Rather, rebundling has been criticized as being inconsistent with Federal law or not envisioned by the authors of Public Act 94-83.

Because the Department considers limited use of a recombined service as critical to the development of effective competition in rural and residential markets, the Department will direct the Telco and NYTel below to file a tariff for a recombined service that conforms with the definition adopted by the FCC in its First Report and Order.<sup>4</sup> The proposed tariff will be applicable only for use in serving residential customers and small business (nonPBX and nonCentrex) customers and will only be available for a period of five years from the date of effectiveness. At the end of five year period, the Department will undertake a review of the state of competition and determine the need for, and consequences associated with, extending such recombined UNEs for a period of not longer than three years.

The limited duration of this offering amplifies the public policy behind the Department's actions in this proceeding. While the Department sanctioned the use of resale under Public Act 94-83 before Federal law explicitly required its availability, it has always encouraged facilities-based competition in Connecticut. Because rebundled elements will be available for a limited duration, they will exist as a transitional mechanism toward facilities-based competition.

The Department emphasizes that the limited nature of this rebundled network element offering is designed to spur competition only in those telecommunications markets that currently experience less competition. Historic universal service policies have established a subsidy of local residential rates by local business rates and other services such as access, thereby creating artificially high local business rates. These policies have therefore stimulated facilities-based competition in high volume business services. Residential and small business local service, however, do not currently present the same incentives for facilities-based competition. Consequently, the Department has narrowly tailored the use of this offering. This Decision is consistent with past Decisions designed to promote competition in areas that may represent less attractive opportunities for CLECs. In prior proceedings the Department has applied certain obligations upon CLECs as a means to ensure the general public are afforded the benefits of competition and choice. One such obligation was the modified labor market area (MLMA) requirement ordered by the Department in its March 15, 1995 Decision Docket No. 94-07-03, DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity.

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<sup>4</sup> The Department undertook an exhaustive examination of Unbundled Network Elements in Docket No. 96-09-22. In that proceeding testimony strongly evidenced the importance of ILEC pricing to the provisioning choices employed by CLECs, and expressed concern about the lack of provisioning alternatives to the Telco infrastructure in rural areas and the high cost placed upon use of that infrastructure by the Telco.

With this Decision, the Department is sufficiently confident that facilities-based competition will emerge in Connecticut, that the Department has done all that it can do to stimulate interest in the residential and rural markets of Connecticut and that the obligations imposed upon the Telco in this Proceeding are reasonable, rational and requisite to the development of efficient and effective competition.

#### **D. EXTENDED LOOPS**

Lightpath proposed in this proceeding that loop-transport interconnection be considered, and cited Conn. Gen. Stat. § 16-247b(b) as authority to order the provisioning of such a service. As reiterated above in this Decision, the Department issued a limited Request for Written Comments which asked for comment on rebundled network elements alone. While extended loops may be conceptually similar to rebundled network elements, consideration of such a service is outside of the narrowly-defined scope of this proceeding reflected in the Request for Written Comments. The issue of extended loops will be entertained in Docket No. 98-02-27 Shared Transport as part of the Department's investigation of shared and dedicated transport issues.

#### **V. CONCLUSION AND ORDERS**

##### **A. CONCLUSION**

This proceeding has been initiated to resolve certain differences of opinion relative to the roles and responsibilities in the provisioning of UNEs. This proceeding represents the Department's commitment to ensure that the competitive framework adopted over the past decade supports the development of efficient and effective competition in an evolving marketplace.

Because the availability of a rebundled network element service to CLECs serving the residential and small business markets will promote effective competition, the Department will direct the Telco and NYTel to file a tariff for such a service that will be applicable only for use in serving those customers. The proposed tariff will be in effect for a limited five year period. The Department is confident that narrowly-tailored availability of this service will further the goals articulated by the General Assembly, and further concludes that such action is not precluded by Federal law.

##### **B. ORDERS**

For the following Orders, please submit an original and 12 copies of the requested material identified by Docket Number, Title and Order Number to the Executive Secretary.

1. No later than August 3, 1998, interested CLECs shall file with the Department five potential unbundled network element combinations that they require be tariffed for their provision of local exchange service.
2. No later than September 3, 1998, the Telco and NYTel shall file proposed

residential and small business tariffs with supporting information that conform with the requirements of the FCC in its Local Competition Order for the proposed network combinations requested by the CLECs in response to Order No. 1.

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DOCKET NO. 98-02-01 DPUC INVESTIGATION INTO REBUNDLING OF  
TELEPHONE COMPANY NETWORK ELEMENTS

This Decision is adopted by the following Commissioners:

Jack R. Goldberg

John W. Betkoski, III

Linda Kelly Arnold

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Department of Public Utility Control, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

\_\_\_\_\_  
Robert J. Murphy  
Executive Secretary  
Department of Public Utility Control

\_\_\_\_\_  
Date

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Motions of AT&T  
Communications of the Southern  
States, Inc., and MCI  
Telecommunications Corporation  
and MCI Metro Access Transmission  
Services, Inc., to compel  
BellSouth Telecommunications,  
Inc., to Comply with Order No.  
PSC-96-1579-FOF-TP and to set  
non-recurring charges for  
combinations of network elements  
with BellSouth  
Telecommunications, Inc.,  
pursuant to their agreement.

DOCKET NO. 971140-TP  
ORDER NO. PSC-98-0810-FOF-TP  
ISSUED: June 12, 1998

The following Commissioners participated in the disposition of  
this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
JOE GARCIA  
E. LEON JACOBS, JR.

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FINAL ORDER  
RESOLVING INTERCONNECTION AGREEMENT DISPUTES,  
ADDRESSING RETAIL SERVICE COMPOSITION,  
AND  
SETTING NON-RECURRING CHARGES

BY THE COMMISSION:

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ACRONYMS AND ABBREVIATIONS

ACAC	Account Customer Advocate Center
Act	47 U.S.C. § 1 <u>et seq.</u> , Communications Act of 1934 as amended by the Telecommunications Act 1996
AIN	Advanced Intelligence Network
ALEC	Alternative Local Exchange Carrier
AT&T	AT&T Communications of the Southern States, Inc.
BellSouth	BellSouth Telecommunications, Inc
CGI	Common Gateway Interface
CO	Central Office
CPG	Circuit Provisioning Group
DA	Directory Assistance
DS1	Digital Signal @ 1.544 Mbps/Digital Bipolar Signal One
Eighth Circuit	U.S. Court of Appeals for the Eighth Circuit
ESSX	Electronic Switching System Extension
FCC	Federal Communications Commission
ILEC	Incumbent Local Exchange Carrier
ISDN	Integrated Services Digital Network
IXC	Interexchange Carrier
JFC	Job Function Code

LCSC	Local Carrier Service Center
MCIm	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
NRC	Non-Recurring Charge
NRCM	Non-Recurring Cost Model
OSS	Operational Support System
PAWS	Provisioning Analyst Work Station
POTS	Plain Old Telephone System
RCMAG	Recent Change Memory Administration Group (Recent Change Line Translation Group)
SSIM	Special Services Installation Maintenance

#### I. BACKGROUND

On June 9, 1997, in Docket No. 960833-TP, AT&T Communications of the Southern States, Inc. (AT&T), filed a Motion to Compel Compliance of BellSouth Telecommunications, Inc. (BellSouth), with certain provisions of Order Nos. PSC-96-1579-FOF-TP, PSC-97-0298-FOF-TP, and PSC-97-0600-FOF-TP, and certain provisions of its interconnection agreement with BellSouth having to do with the provisioning and pricing of combinations of unbundled network elements (UNEs). On June 23, 1997, BellSouth filed a Response and Memorandum in Opposition to AT&T's Motion to Compel Compliance. On October 27, 1997, in Docket No. 960846-TP, MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., (MCIm) filed a similar Motion to Compel Compliance. On November 3, 1997, BellSouth filed a Response and Memorandum in Opposition to MCIm's Motion to Compel Compliance.

On August 28, 1997, MCIm filed a Petition to Set Non-Recurring Charges for Combinations of Network Elements, for which this docket was opened. BellSouth filed an Answer and Response on September 17, 1997. By Order No. PSC-97-1303-PCO-TP, issued October 21, 1997, this docket was consolidated with Docket Nos. 960757-TP, 960833-TP and 960846-TP for purposes of hearing.

At our Agenda Conference on December 2, 1997, we directed that the Motions to Compel Compliance be set for hearing. Accordingly in Order No. PSC-98-0090-PCO-TP, issued January 14, 1998, this docket, now embracing the Motions to Compel Compliance, was severed from Docket Nos. 960757-TP, 960833-TP and 960846-TP.

On March 9, 1998, we conducted an evidentiary hearing. Having considered the evidence presented at hearing, the posthearing briefs of the parties, and the recommendations of our staff, our decisions are set forth below with respect to the provisioning and pricing of network element combinations, the standard to be applied to determine whether a combination of network elements constitutes a recreation of an existing BellSouth retail service, the non-recurring charges for certain loop and port combinations, and the furnishing of switched access usage data.

## II. DECISIONS

### A. Introduction

The parties have placed in issue in this proceeding the meaning of provisions in their interconnection agreements concerning the pricing of network elements purchased in combinations and the furnishing of switched access usage data. The decisions we make below rest on the requirements of Section 251(c) of the Act, regulatory and court decisions implementing and interpreting Section 251(c), and general principles of contract construction.

#### 1. The Act

Section 251(c)(3) of the Act provides in part that "[a]n 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." Telecommunications service is defined in Section 3(a)(51) of the Act as the "offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used." Telecommunications is defined in Section 3(a)(48) as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." Network element is defined in Section 3(a)(45) as "a facility or equipment used in the provision of a telecommunications service," including "features, functions, and capabilities that are provided by means of such facility or equipment."

2. Federal Communications Commission

In its First Report and Order, FCC 96-325, released August 8, 1996, in CC Docket Nos. 96-98 and 95-185, the FCC rejected the argument of BellSouth and other local exchange carriers (LECs) that carriers should not be allowed to use unbundled elements exclusively to provide services that are available at resale, because to do so would make Section 251(c)(4), and its associated pricing provision, Section 252(d)(3), meaningless. The FCC, stated at ¶331 that:

We disagree with the premise that no carrier would consider entering local markets under the terms of section 251(c)(4) if it could use recombined network elements solely to offer the same or similar services that incumbents offer for resale. We believe that sections 251(c)(3) and 251(c)(4) present different opportunities, risks, and costs in connection with entry into local telephone markets, and that these differences will influence the entry strategies of potential competitors. We therefore find that it is unnecessary to impose a limitation on the ability of carriers to enter local markets under the terms of section 251(c)(3) in order to ensure that section 251(c)(4) retains functional validity as a means to enter local phone markets.

The FCC noted that, while Section 251(c)(3) entrants will have greater opportunities to differentiate their services to the benefit of consumers than Section 251(c)(4) entrants, they will face greater risks. The FCC postulated that this distinction in risk is likely to influence entry strategies.

3. Florida Public Service Commission

In Order No. PSC-96-1579-FOF-TP, we noted our concern with the FCC's interpretation of Section 251(c)(3). We stated at pages 37-38 that:

[s]pecifically, we are concerned that the FCC's interpretation could result in the resale rates we set being circumvented if the price of the same service created by combining unbundled elements is lower . . . .

Upon consideration, although we are concerned with the FCC's interpretation of