

and the end user to whom the call is terminated, then AT&T or MCI must either pay to use BellSouth's network, another carrier's network, or provide all of the network elements themselves.

We believe that BellSouth's network is designed using the network elements necessary to provide various services, not only for the local calling areas of its end users, but also to provide access to its entire service territory as well as outside of it. A new market entrant needs more than a loop and the local switching element to provide local service to an end user. Without access to or control of facilities between other end users, or access to the networks of other carriers, the new entrant would not be able to complete or pass on calls made by a significant number of its end users.

Based on the evidence in the record, and having concluded that a loop and local switching element are insufficient by themselves to recreate a BellSouth retail service, we also conclude that it is appropriate for us to leave it to the parties to negotiate what precisely does constitute the recreation of a BellSouth retail service. We note, without endorsement, the argument of AT&T and MCI that combinations of network elements alone serving an end user will not constitute the recreation of a BellSouth retail service and that it is necessary to put into the equation management competency and skills, quality of service, customer support, and marketing. We also recognize that it may well be the strategy of AT&T and MCI, as well as other ALECs, to provision local telecommunications services by means of network element combinations in ways that will distinguish their services from those of BellSouth in the marketplace. We choose, however, to impose no restrictions on these negotiations apart from our conclusion that something more than a loop and local switching element is necessary.

2. Non-recurring Charges

The issue presented is what are the appropriate non-recurring charges (NRCs) for the following combinations of network elements in the case of the migration of an existing BellSouth end user: 2-wire analog loop and port; 2-wire ISDN (Integrated Services Digital Network) loop and port; 4-wire analog loop and port; and 4-wire DS1 (Digital Bipolar Signal One) loop and port. As set forth in this part, we conclude that non-recurring charges are to be based on present technology and the work times required therewith to resolve fallout and to perform switch translations and, in certain cases, the activation of designed services.

Development of Nonrecurring Charges for the Migration of
an Existing BellSouth Customer Without Loop and Port
Separation

MCIm

Until we determine the appropriate NRCs for loop and port combinations for the migration of an existing BellSouth customer, MCIm asserts in its petition that the migration NRCs would be determined by adding the stand-alone rates for the loops and ports, which we established in Order No. PSC-96-1579-FOF-TP. This would result in NRCs as follows: \$178 for the 2-wire analog loop and port; \$394 for the 2-wire IDSN loop and port; \$179 for the 4-wire analog loop and port; and \$652 for the 4-wire DS1 loop and port. These NRCs are inappropriate, MCIm contends, because in each case, the process should entail less than two minutes to perform and cost less than \$1.49.⁴

MCIm witness Hyde filed cost studies based on the assumption that soft dial tone using DIP/DOP was deployed in the BellSouth network and that BellSouth would not disconnect the loop and port before furnishing the UNEs to MCIm. He states that his studies mirror BellSouth's filing in Georgia in Docket No. 7061-U, except that unnecessary functions are removed and BellSouth's proposed fallout rate is reduced from 20 per cent to three per cent.

MCIm witness Hyde assumes there will be fallout (rejection) resolution costs associated with the Local Carrier Service Center (LCSC) (JFC 2300). This center serves as the customer point of contact where orders containing errors are resolved. MCIm proposes an LCSC installation work time of 0.0075 hour based on three per cent of the orders falling out during the provisioning process. MCIm further assumes that each fallout episode takes an average time of 15 minutes to resolve. MCI only assigns LCSC installation work times to the initial combined loop and port. Witness Hyde argues that fallout resolution work time should only be applied to the first loop and port combinations, not additional ones, because BellSouth assumes fallout resolution on a per order, not per loop and port combination, basis. He further states that he proposes a three per cent fallout rate because BellSouth witness Stacy

⁴BellSouth currently charges \$1.49 to perform a PIC (Presubscribed Interexchange Carrier) change. A PIC change is the process by which telecommunications end users switch long distance providers. MCIm argues that the functions necessary to migrate a loop and port combination are essentially the same as performing a PIC change.

testified in the aforementioned Georgia docket that this is what BellSouth was currently experiencing. We note, however, that while witness Stacy stated that BellSouth has achieved a flow-through rate of approximately 97 per cent in certain exchanges for retail residential services, he added that after two years, it had not achieved flow-through at all for UNEs and he could not anticipate flow-through greater than 80% in the foreseeable future. Witness Hyde notes that Southwestern Bell reportedly experiences a current flow-through rate of 99 per cent with its service resale provisioning system and that it expects to achieve this rate for UNE provisioning as well.

MCIm also assumes "recent change" translation associated with the Recent Change Memory Administration Group (RCMAG) (JFC 4N1X). As we have noted, a "recent change" translation process for a loop and port combination simply involves reprogramming the switch to recognize that an ALEC is now the carrier for billing purposes. Witness Hyde states that the "recent change" translation job function would have to be manually performed today. He states, however, that in a forward-looking environment that function should be automated as is the case presently in the BellSouth network for ESSX [Electronic Switching System Extension] and some other functions.

MCIm's witness Hyde states that charges for ISDN and DS1 loop and port combinations are higher than for 2-wire and 4-wire analog loop and port combinations because these applications involve designed services, e.g., Circuit Provisioning Group (CPG), Account Customer Advocate Center (ACAC), and Special Services Installation and Maintenance (SSIM), where BellSouth provides not only dial tone as in "plain old telephone service" (POTS), but also data transmission capability.

AT&T

AT&T filed cost studies also based on the "recent change" process. AT&T's "recent change" process assumes only fallout resolution costs associated with the RCMAG job functions and assumes that the switch translations are electronically performed. AT&T's proposed NRCs are the same for each loop and port combination in issue.

AT&T witness Walsh proposes no LCSC installation work time because a "recent change" switch translation is all that is required, which he believes would be handled entirely by the RCMAG. AT&T witness Walsh states that AT&T's NRCM assumes efficient OSSs with 98 per cent of the fallout being electronically handled by the

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Provisioning Analyst Work Station (PAWS), or a similar OSS, involving only processing time. The remaining two per cent would require manual assistance by the RCMAG to deliver "recent change" translation instructions to the switch. The LCSC (JFC 2300) and the Connect & Test (JFC 2730) functions are not required with electronic ordering according to witness Walsh, and he estimates an average time of no more than seventeen and a half minutes for the RCMAG to resolve fallout conditions. Witness Walsh further states that cross-audits performed as a regular general maintenance routine can totally avoid synchronization problems that lead to much of the fallout. He states that the costs of such audits would be captured in recurring rates. Witness Walsh states that fallout in the LCSC can be automatically redirected to the ALEC for resolution. Although he states that LCSC activity is not required, he notes that the LCSC might occasionally call the ALEC in an effort to manually resolve a problem. In such a case, AT&T would assign fallout resolution cost only to the initial combined loop and port because AT&T considers the entire ordering process involving multiple combinations to be one order. For example, while an order might consist of several loop and port combinations, which would involve as many internal processes, AT&T would assign the work time only to the initial combination.

BellSouth Proposal

BellSouth witness Caldwell's non-recurring cost development is based on a collocation proposal that involves physically disconnecting the existing loop and switch port combination on BellSouth's network, with the ALEC recombining the elements at a physical collocation space. The AT&T and MCI cost studies are based, however, on a "switch as is" theory, that is to say, an existing connected customer is switched (migrated) without physical disconnection. Witness Caldwell contends that "switch as is" constitutes resale.

Under BellSouth's collocation proposal, witness Landry states that while loop and port combination orders would be submitted to BellSouth on one service request, BellSouth would separate the request into two separate service orders and process the request as if each element had been received as an individual order. He argues that the loop and port must be separated into two service orders, because the unbundled loop offerings are currently processed by access billing systems and the port offerings are processed by non-access billing systems.

BellSouth witness Varner states that there is no such thing as migration of a loop and port. Typically, he explains, migration

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involves moving the end user from one carrier to another. It is synonymous with "switch as is," it is pertinent only to a resale environment, and, therefore, he asserts, the NRCs for the loop and port combination should be priced at the resale rate.

BellSouth witness Caldwell identifies the work center activities, LCSC and ACAC for the port and LCSC, Network Services, and RCMAG for the loop, as necessarily involved migration activities, given the working assumption that the migration of an existing BellSouth customer to either MCI or AT&T can be accomplished without separating the loop and port combinations. While BellSouth witness Caldwell provides estimated values for these cost components, we note that BellSouth did not actually develop NRCs for migration as we have defined it in this proceeding. Asked to make a cost comparison of the loop and port ordered individually and in combination, witness Caldwell testifies that the only cost savings when a loop and port are ordered in combination rather than individually is a reduction in the ACAC work time.

The work activity associated with the ACAC (JFC 471X) is the coordination of the service turn-up and the turn-up testing. According to witness Caldwell, BellSouth's proposed fallout resolution costs associated with the LCSC (JFC 2300) are based on a fallout rate of 20 per cent, with a fallout resolution time of 15 minutes.

AT&T witness Walsh states that BellSouth's proposal assumes a disconnection and a reconnection. Witness Walsh states that for the reconnection, BellSouth requires a separate order for the loop and a separate order for the port. In this circumstance, witness Walsh explains that there is a charge to disconnect the loop and a charge to disconnect the port, and further charges to reconnect them. BellSouth also proposes to collect, up front, charges for future disconnection of these elements. Witness Walsh further states that BellSouth's OSSs are set up so that when a request involving a loop and port is received, they would assign the nearest loop and port. He argues that there is no reason why this cannot be done on one service order within BellSouth's present provisioning system.

Differing with witness Landry, MCI witness Hyde states that there is no technical reason why BellSouth cannot use the existing telephone number identifier for the loop so that it can be processed by non-access billing systems on the same service order with the port. We believe that BellSouth can use the same telephone number previously assigned to the loop without having to

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break apart the loop and port combinations for processing purposes. As we have noted, each of the agreements requires that currently combined elements remain connected. Therefore, we find that BellSouth shall be required to process each loop and port combination ordered on a single service order as one service order, without breaking apart the existing loop and port combination and thereby requiring AT&T or MCIm to recombine them at a collocation facility.

AT&T witness Falcone states that BellSouth's collocation proposal is inconsistent with the Act as interpreted by the Eighth Circuit. He notes that AT&T's "recent change" process for a loop and port combination only involves reprogramming the switch to recognize that an ALEC is now the carrier for billing purposes. According to witness Falcone, the switch records the customer's local and access usage data for billing purposes. Therefore, he argues, the cost associated with the migration of an existing BellSouth customer should only involve "processor time to reflect the change in who is serving the customer, and to activate different billing systems to reflect the use of unbundled network elements by the [A]LEC." Even with a collocation facility in place, witness Falcone states that AT&T is not going to win over many customers if they have to be told that they may be out of service during "cut over" for periods as extended as four hours.

In staff witness Young's review of the staff's audit of BellSouth's non-recurring cost study, she states that:

[Witness Caldwell's] schedules ... do not represent the migration of an existing BellSouth customer ... BellSouth's definition of migration is resale. It appears that the ... schedules assume that the loop and port have to be separated to be provided to the [ALEC].

Witness Young states that each BellSouth subject matter expert interviewed in the audit stated the BellSouth non-recurring cost study did not address migration.

Based on the evidence in the record, we conclude that BellSouth's collocation proposal is unnecessary for the migration of an existing BellSouth customer. We conclude further that BellSouth's proposal to break apart loop and port combinations that are currently connected, requiring AT&T or MCIm to establish a collocation facility where the unbundled loop and the unbundled port would be recombined, is in conflict with the terms of the

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parties' agreements and the Act as interpreted by the Eighth Circuit. Iowa Utilities Bd. I, 120 F.3d at 814. Moreover, we find that BellSouth's proposal does not address the migration of an existing BellSouth end user. Hence, we reject it.

Commission Approved Nonrecurring Charges for the Migration of an Existing BellSouth Customer Without Loop and Port Separation

We have found that BellSouth's NRC study does not address migration. MCIm's NRC study is based on today's technology. AT&T's NRC study is based on totally forward-looking, best-available technology. Based on the evidence in the record, we find it appropriate to base our approval of NRCs for the loop and port combinations in issue on today's technology. BellSouth's basis is inapplicable to migration and AT&T's basis is presently unrealistic.

Most of the evidence in this record related to fallout rates on which AT&T and MCIm rely is based on service resale. BellSouth's proposed fallout rate of 20 per cent is based on ordering individual UNEs, rather than combinations of UNEs. We note that this proceeding is specific to the migration of loop and port combinations already in place. We believe it is not reasonable to assume that fallout rates will improve markedly over the life of these agreements. Nevertheless, we believe on the basis of this record that the fallout rate for combination orders will be greater than the fallout rate for resale, but significantly less than the fallout rate for individual UNE orders. This assessment is based on the nature of each of the provisioning processes as developed in this record. MCIm proposes a three per cent fallout rate based on BellSouth-specific evidence that indicates that three per cent is the best fallout rate that can be obtained in the resale environment. Given the range of three per cent to 20 per cent, we find that a fallout rate of five per cent is reasonable for the migration of loop and port combination orders in which the elements are already combined, and we approve it.

Having determined the fallout rate to be reasonably expected, we next determine the work time reasonably necessary to resolve the fallout. BellSouth and MCIm both estimate 15 minutes, and AT&T estimates 17 or 17.5 minutes. We give somewhat greater weight to BellSouth's estimate in light of its experience with fallout resolution. Accordingly, we find it reasonable to approve a fallout resolution time of 15 minutes.

BellSouth and MCI propose the same work time of 0.0250 hour for manually performing the switch translations for each loop and port combination. AT&T does not propose a work time for performing the actual switch translations because it believes this should be performed electronically. Upon consideration, we find 0.0250 hour to be reasonable for manually performing switch translations for each loop and port combination, except the 2-wire ISDN loop and port combination, and we therefore approve it. We find that a work time of 0.0667 hour for the 2-wire ISDN loop and port combination, as proposed by BellSouth, is reasonable, and, upon consideration, we approve it.

AT&T proposes the use of fully loaded labor rates based on a provider employing best available forward-looking technology. They fall below the BellSouth rates MCI proposes for use. In our belief, these are unrealistic and unsuitable for present purposes. MCI proposes the use of direct labor rates which are equal to BellSouth's partially loaded direct labor rates less consideration of shared and common costs and an allowance for profit. Upon consideration, we find that these rates are reasonable and we approve them for determining NRCs in this proceeding.

AT&T and MCI both argue that an up-front disconnection charge should not be imposed, but imposed rather at the actual time of disconnection. Upon consideration, we agree. Eliminating disconnection costs from up-front NRCs is a reasonable way to relieve some of the burden associated with high start-up (non-recurring) costs.

We agree with BellSouth and MCI that there are designed service activities associated with the ISDN and DS1 loop and port combinations. BellSouth, however, only provided estimated work times, assuming the migration of an existing BellSouth customer can be accomplished by means of the loop and port combinations at issue in this proceeding. AT&T does not propose to include designed service activity. Upon consideration, we find that MCI's proposed designed service work times are reasonable, and we approve the use of them for purposes of this proceeding.

We also find that in cases not involving designed services, where fallout does not occur, and when electronic "recent change" translation is available, the time to migrate an existing BellSouth customer to an ALEC, that is to say, changing the presubscribed local carrier (PLC) code, is equal to the time it takes BellSouth to migrate a customer to an IXC by changing the PIC code.

Upon review of the evidence in this record, we approve the non-recurring work times and direct labor rates shown in Table I for each loop and port combination in issue in this proceeding for the migration of an existing BellSouth customer to AT&T or MCIm without unbundling. We furthermore approve the resultant NRCs shown in Table II.

Table I
Commission-Approved
Non-recurring Work Times and Direct Labor Rates
for
Loop and Port Combinations

Function	JFC	Installation		Direct Labor Rate
		First	Add'l	
		(Hour)		
LCSC	2300	0.0125	0.0000	\$42.09
RCMAG ¹	4N1X	0.0250	0.0250	\$37.34
ACAC ²	471X	0.0019	0.0019	\$38.26
CPG ²	470X	0.0040	0.0000	\$36.25
SSIM ²	411X	0.0075	0.0050	\$42.96

¹For the 2-wire ISDN loop and port combination we approve an RCMAG work time of 0.0667 hour for first and additional installations.

²These functions are pertinent only to the DS1 4-wire loop and port combination.

Table II

Commission-Approved
Non-recurring Charges
for
Loop and Port Combinations

<u>Network Element Combination</u>	<u>First Installation</u>	<u>Additional Installations</u>
2-wire analog loop and port	\$1.4596	\$0.9335
2-wire ISDN loop and port	\$3.0167	\$2.4906
4-wire analog loop and port	\$1.4596	\$0.9335
4-wire DS1 loop and port	\$1.9995	\$1.2210

III. CONCLUSION

We have conducted this proceeding pursuant to the directives and criteria of Sections 251 and 252 of the Act. We believe that our decisions are consistent with the terms of Section 251, the provisions of the FCC's implementing rules, and the applicable provisions of Chapter 364, Florida Statutes.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that the specific findings set forth in this Order are approved in every respect. It is further

ORDERED that the provisions of the interconnection agreement entered into by MCImetro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., related to pricing of combinations of unbundled network elements are to be construed as set forth in Part II.B.1 of this Order. It is further

ORDERED that the provisions of the interconnection agreement entered into by MCImetro Access Transmission Services, Inc., and BellSouth Telecommunications, Inc., related to switched access

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usage data are to be construed as set forth in Part II.B.2 of this Order. It is further

ORDERED that the provisions of the interconnection agreement entered into by AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc., related to pricing of combinations of unbundled network elements are to be construed as set forth in Part II.C.1 of this Order. It is further

ORDERED that the provisions of the interconnection agreement entered into by AT&T Communications of the Southern States, Inc., and BellSouth Telecommunications, Inc., related to switched access usage data are to be construed as set forth in Part II.C.2 of this Order. It is further

ORDERED that non-recurring charges for 2-wire analog loop and port combinations; 2-wire ISDN loop and port combinations; 4-wire analog loop and port combinations; and 4-wire DS1 loop and port combinations are approved as set forth in Part II.D.2 of this Order. It is further

ORDERED that the parties to this proceeding shall be required to negotiate on their initiative what competitive local telecommunications services provisioned by means of unbundled access, if any, constitute the recreation of the incumbent local exchange carrier's retail service. It is further

ORDERED that the parties shall submit written agreements memorializing and implementing our decisions herein within thirty days of the issuance of this Order. It is further

ORDERED that the agreements shall be submitted for approval in accordance with Section 252(e)(2)(b) of the Telecommunications Act of 1996. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission, this 12th
day of June, 1998.

/s/ Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-850-413-6770.

(S E A L)

CJP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

Office of the Secretary

Service Date

December 1, 1997 BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<p>IN THE MATTER OF AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. PETITION FOR ARBITRATION PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996 OF THE RATES, TERMS, AND CONDITIONS OF INTERCONNECTION WITH U S WEST.</p>	<p>) CASE NO. USW-T-96- 15 ATT-T-96- 2 ORDER NO. 27236</p>
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This is an arbitration proceeding initiated by AT&T Communications of the Mountain States, Inc. (AT&T) under provisions of the federal Telecommunications Act of 1996 (Act). The Act was enacted by Congress to foster competition in local telecommunications service markets. It enables potential competitors to enter local markets in any of three ways: by purchasing unbundled network elements from the incumbent local exchange carrier (LEC), by reselling the incumbent LEC's retail services purchased at wholesale rates, or by constructing their own facilities.

The first two methods for a competitor's market entry can be accomplished only with an agreement between the competitor and the incumbent LEC, and even a facilities-based competitor may need an agreement to provide for the exchange of customer traffic. The Act establishes certain duties for telecommunications carriers to facilitate the reaching of an agreement and requires active negotiation by the parties to precede an arbitration to resolve disputed issues. 47 U.S.C. §§ 251, 252. If the parties are unable to negotiate a final agreement, either party may request arbitration by a state utilities commission to resolve the open issues. AT&T initiated this arbitration as part of its effort to negotiate an interconnection agreement with U S WEST Communications, Inc. (U S WEST), to enable AT&T to enter the local telecommunications market in Idaho.

PROCEDURAL BACKGROUND

The procedural history of this case is lengthy and is briefly summarized in Order No. 27050 issued by the Commission on July 17, 1997. The Commission appointed an arbitrator to resolve the disputed issues and facilitate the completion of an agreement by the parties. Following extensive discovery, the presentation of evidence at an arbitration hearing and the filing of post-hearing briefs, the arbitrator issued on March 24, 1997 a First Order Addressing Substantive Arbitration Issues (First Order). After more discussions, hearings and formal briefing, the arbitrator issued a Second Arbitration Order on June 9, 1997. The Commission then reviewed the record and the arbitrator's decisions and issued

Order No. 27050 "as the resolution by arbitration of disputed issues pursuant to Section 252(b) of the Telecommunications Act." Order No. 27050, p. 5.

The parties were unable, however, to reach agreement on some contract issues that had not been presented to the arbitrator. In addition, the United States Court of Appeals for the Eighth Circuit on July 18, 1997 issued its decision in an appeal challenging the authority of the Federal Communications Commission (FCC) to specify certain terms for interconnection agreements. *See Iowa Utilities Board v. Federal Communications Commission*, 120 F.3d 753 (8th Cir. 1997). The Court's decision potentially impacted several issues between U S WEST and AT&T. To resolve the remaining issues and consider the effect of the *Iowa Utilities Board* decision, the arbitrator participated in further discussions with the parties and accepted additional briefing. On August 26, 1997, the arbitrator filed a Third Arbitration Order. Finally, following the presentation of additional issues, the arbitrator filed a Fourth Arbitration Order on September 8, 1997. [The arbitrator provided facsimile copies of the Fourth Order to the parties on September 5, 1997, presumably so that any issues resulting from the Fourth Order could be included in the parties' petitions for review filed with the Commission on September 8, 1997.]

AT&T and U S WEST each filed a Petition for Review on September 8, 1997. Both Petitions requested review of issues decided in the four arbitration orders as well as our Order No. 27050. This, however, did not mark the end of the process to present the disputed issues to the Commission. As discussions for the interconnection agreement continued, the parties again could not agree on certain issues, mainly dealing with the price lists for services or products provided by U S WEST, and returned to the arbitrator for assistance. The arbitrator accordingly issued on October 6, 1997 his Fifth Arbitration Order. The Commission provided the parties an opportunity to raise issues for review based on the Fifth Order, and U S WEST filed a Supplemental Memorandum in Support of its Petition for Review on October 14, 1997.

This would have completed the presentation of issues for the Commission's review but for additional action, also occurring on October 14, 1997, by the Eighth Circuit Court of Appeals. The Court, granting petitions for review filed in the *Iowa Utilities Board* case, issued an amendment to its decision. The Court vacated an additional FCC rule relating to the purchase of unbundled network elements by a competitor LEC. Believing the amendment to the *Iowa Utilities Board* decision to be directly relevant to issues presented in this arbitration, U S WEST requested an opportunity to file an additional brief with the Commission, and AT&T requested an opportunity to respond. U S WEST thus on October 27, 1997, filed a Second Supplemental Memorandum in Support of its Petition for Review, and AT&T filed its Memorandum in Response on November 7, 1997.

Before we begin our discussion of particular issues, it is worthwhile to set forth the standards and policies that guide our review in this case. This is an arbitration rather than a full-scale adversarial proceeding brought to an administrative hearing before the Commission. This arbitration is brought after and in the midst of lengthy discussions by the parties to reach an agreement, and its purpose is to decide only those issues on which the parties are unable to reach an accommodation. In fact, although the issues presented in the arbitration are significant and numerous, many issues were voluntarily negotiated by the parties. The goal of this process is an interconnection agreement the parties are willing to sign.

The distinction between this arbitration and the usual adversarial proceeding is significant to the process for completing the case. For one, the usual appeal to the Idaho Supreme Court afforded by *Idaho Code* • 61-627 is not available, as the Act makes clear that a state court does not have

jurisdiction to review an interconnection agreement. *See* 47 U.S.C. • 252(e)(4). Rather than an appeal, any party aggrieved by approval of an interconnection agreement can file "an action in an appropriate federal district court to determine whether the agreement . . . meets the requirements of Section 251 and this section [Section 252]." 47 U.S.C. • 252(e)(6).

Our review of the issues is guided by the standards of Sections 251 and 252 of the Act, as well as rules promulgated by the FCC to implement the Act's goals. However, the terms of the Act do not and cannot dictate specific results in each of the hundreds or thousands of details and complex issues that make up an interconnection agreement. This is especially true in light of the *Iowa Utilities Board* decision that rejected some of the FCC rules that specified results for significant issues, including pricing of unbundled network elements and wholesale rates. Instead, the Act provides parameters outside of which terms of an interconnection agreement may not go. On individual issues, any of several results can be permissible under the Act and FCC regulations, and this arbitration will decide those issues if the parties cannot. Thus, the Act encourages the parties to voluntarily negotiate the terms of their agreement, but creates the arbitration process for the Commission to decide those issues, consistent with the terms of the Act and applicable regulations, on which the parties cannot or will not agree.

The nature and purpose of this arbitration and the requirements of the Act guide our resolution of the petitions for review. Because the goal is to provide terms for the completion of an agreement, we need not discuss issues on which the parties have agreed, or which have already been decided in a manner consistent with the Act and applicable regulations. We will address only those issues that remain open for decision or that may have been decided improperly in light of the Act, or where clarification will assist the parties' efforts to reach a final agreement.

A. ISSUES RAISED IN U S WEST'S PETITION FOR REVIEW

1. Unbundled Network Elements.

Prior to the arbitrator's Third Order, U S WEST argued that the Act prohibits what U S WEST refers to as "sham unbundling." This issue, listed as issue 25 in the First Order, is stated in that Order as follows:

U S WEST observes that the separate pricing methods that apply to access to network elements and to services bought for resale can produce inequitable and unsound results in the case where AT&T purchases access to and recombines U S WEST elements without adding its own physical network elements. Specifically, U S WEST considers it inappropriate to allow AT&T to buy access to U S WEST switching and loops at element rates that, when combined, produce a price that would be substantially below the price that AT&T would pay for U S WEST retail services that it resells.

First Order, p. 11.

U S WEST raised the issue again following the *Iowa Utilities Board* decision, and the arbitrator revisited the issue in the Third Order at page 8-10. The arbitrator concluded that "the Eighth Circuit's opinion does not fundamentally alter the right of AT&T to take from U S WEST elements in an unseparated fashion." Third Order, p. 9. U S WEST in its initial petition for review memorandum did not identify a particular contract term it believes must be changed, but asked the Commission to "bar the practice of sham unbundling, and . . . clarify that U S WEST need only provide network elements to AT&T on an unbundled basis." U S WEST Petition, p. 7.

The spotlight focused again on AT&T's ability to purchase unbundled network elements following the Eighth Circuit Court's amendment to its *Iowa Utilities Board* decision. The Court struck down an additional FCC regulation promulgated to clarify the duty of incumbent LECs to provide unbundled network elements to competitor providers. U S WEST argues in its last memorandum that it "cannot be required to recombine unbundled network elements for any [competitor] LEC," and contends that "the proposed interconnection agreement between AT&T and U S WEST must therefore be modified to delete any requirement that U S WEST provide elements in a combined state for AT&T." U S WEST Second Supplemental Memorandum, p. 3, 5. Thus, U S WEST's argument regarding what it terms "sham unbundling" has changed during the course of events. Initially, U S WEST argued that AT&T should not be permitted to purchase all network elements required to provide local service at unbundled rates and thereby avoid purchasing packaged services at presumably higher wholesale rates. U S WEST now contends that it cannot be required to provide *any* combined elements to AT&T, because the Act requires AT&T to recombine elements it purchases as unbundled network elements.

In its Responsive Memorandum, AT&T contends that neither Section 251(c)(3) nor the Eighth Circuit Court's decision restrict the ability of a competitor LEC to purchase unbundled elements and recombine them in order to provide service. AT&T also contends that "simply eliminating language regarding combinations as proposed by U S WEST will render the agreement fatally incomplete and create significant barriers to entry." AT&T Responsive Memorandum, p. 7. According to AT&T,

because the agreement in this case contemplated that U S WEST would provide elements in combination if requested by AT&T, the agreement contains no provisions for how U S WEST will uncombine, or how AT&T will combine, those elements. Further, it provides no information regarding exactly how AT&T will gain nondiscriminatory access to U S WEST's network to accomplish the combination of elements U S WEST chooses to separate. In addition, the agreement does not detail how customer outages and service quality concerns raised by the separation of elements will be eliminated or at least minimized.

AT&T Responsive Memorandum, p. 7.

AT&T also argues that state law can be applied to uphold the arbitrator's decision to prevent U S WEST from "tear[ing] apart its network elements so that new entrants must recombine them" and "to uphold the arbitrator's decision that U S WEST must provide AT&T combinations of network elements." AT&T Responsive Memorandum, p. 8, 11. AT&T asks the Commission to approve the arbitrator's decision on access to unbundled network elements. Alternatively, because U S WEST must provide nondiscriminatory access to its network so that AT&T can recombine network elements, AT&T contends "the parties must be given an opportunity to negotiate terms and conditions for combining elements, bring any unresolved issues to arbitration and have contract language reviewed and approved by this Commission." AT&T Responsive Memorandum, p. 11.

To resolve these issues regarding access to unbundled network elements, we turn to the provisions of the Act, as well as the clarifications provided by the *Iowa Utilities Board* decision. Section 251(c)(3) of the Act describes the duty of an incumbent LEC to provide unbundled access as follows:

The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, non discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and non discriminatory in accordance with the terms and conditions of the agreement and the requirements of

this section and section 252. An 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.

The *Iowa Utilities Board* decision rejected several FCC rules promulgated to implement the unbundling requirements of Section 251(c)(3). Initially, the Court vacated 47 C.F.R. • 51.315(c)-(f), FCC rules that required incumbent LECs to recombine network elements that are purchased by the competitor carrier on an unbundled basis. The Court noted that the last sentence of Section 251(c)(3) "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." *Iowa Utilities Board*, 120 F.3d at 813. In its amended decision, the Eighth Circuit Court also vacated 47 C.F.R. • 51.315(b), which provides that "except upon request, an incumbent LEC shall not separate requested network elements that the LEC currently combines."

The following requirements, stated in terms applicable to this case, are quite clearly enunciated by the Act and the *Iowa Utilities Board* decision: (1) U S WEST must provide to AT&T access to unbundled network elements; (2) AT&T can purchase any or all of the network elements it needs as unbundled elements; (3) U S WEST need not combine unbundled elements for AT&T, but U S WEST must provide the access AT&T needs to U S WEST's network in order to recombine the unbundled elements. Other than broadly defining the term "network elements" to be unbundled, the Act does not provide guidance to incumbent LECs in determining the points at which elements must be unbundled, and the FCC rule prohibiting the decombing of currently combined elements has been vacated. However, the Act does not *prohibit* the sale of unseparated components as part of unbundled network elements.

With these rules in mind, we turn to the arguments presented by U S WEST. The first has been fairly well answered by the Eighth Circuit Court of Appeals in its conclusion that the Act does not restrict a competitor LEC from purchasing whatever element it needs on an unbundled basis. The Eighth Circuit stated that "the plain language of subsection 251(c)(3) indicates that a requesting carrier may achieve the capability to provide telecommunications services completely through access to the unbundled elements of an incumbent LEC's network." *Iowa Utilities Board*, 120 F.3d at 814. The Court rejected the argument that the ability to select unbundled access over resale as the preferred route to enter the local telecommunications markets will nullify the resale provisions. The Court noted that "unbundled access has several disadvantages that preserve resale as a meaningful alternative." 120 F.3d at 815. For example, "with resale, a competing carrier can avoid expending valuable time and resources recombining unbundled network elements." *Id.* Thus, the initial "sham unbundling" argument made by U S WEST was directly rejected by the *Iowa Utilities Board* decision.

U S WEST also argues too broadly the effect of the Eighth Circuit Court's amendment to the *Iowa Utilities Board* decision. U S WEST contends that the Court's rejection of the rule preventing an incumbent LEC from separating network elements that it currently combines means that the interconnection agreement cannot require U S WEST to provide *any* elements in a combined state to AT&T. The problem with U S WEST's argument is that it goes too far. If an incumbent LEC were actually prohibited from providing any combined components to a requesting carrier, the access to unbundled elements requirement would be so impractical as to become meaningless. U S WEST would be required to break down each network element into countless physical components, and also provide access to its network at innumerable points so that AT&T could reconstruct them. Fully implemented, this result would add tremendous financial and technical burdens to both companies to the extent that the unbundled access requirement of Section 251(c)(3) would never be realized.

We do not believe Congress, or the Eighth Circuit Court, had this result in mind for the unbundled access requirement. By rejecting 47 C.F.R. 51.315(b), the Court did no more than recognize the distinction between the incumbent LEC's duty under Section 251(c)(3) to provide access to unbundled network elements and its duty under Section 251(c)(4) to offer its retail services at wholesale rates. The FCC rule was "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," and thereby "obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4)." *Iowa Utilities Board*, 120 F.3d at _____. It does not necessarily follow from the Court's rejection of the rule that the Act prohibits a LEC from permitting components that necessarily comprise unbundled network elements from remaining in their unseparated state as part of an interconnection agreement. Requiring a competing LEC to recombine the elements it purchases on an unbundled basis is not the same as saying the incumbent LEC can never leave unseparated components in their combined state.

We have reviewed the arbitrator's Third Order regarding access to unbundled elements, as well as Attachment 3 to the draft interconnection agreement. Section 1.2.1 of Attachment 3 identifies the unbundled network elements U S WEST will provide to AT&T, and Section 1.2.2 makes it clear that AT&T has the burden to recombine the unbundled elements. These provisions are consistent with Section 251(c)(3). U S WEST in its Second Supplemental Memorandum does not identify particular elements that it believes are impermissibly combined, but only argues that the interconnection agreement should "be modified to delete any requirement that U S WEST provide elements in a combined state for AT&T." The Act does not require the sweeping prohibition requested by U S WEST, and without more particular identification of the component combinations U S WEST believes are impermissible, we will not disturb the arbitrator's decision regarding access to unbundled elements.

2. Shared Transport.

Local telephone calls are transmitted over facilities that are either dedicated or common. Common local transport, or shared transport, is an interoffice transmission path between an incumbent LEC's end offices that is shared by other carriers. Shared transport also means that the route of a call is not necessarily predetermined. Instead, "for each call, the LEC must use its own routing table to determine which trunks to use, depending on the call's destination and the current availability of circuits." U S WEST Second Supplemental Memorandum, p. 7. Because the LEC determines the most efficient route for each call at the time it is made, it is not necessary for the "requesting carrier to choose particular interoffice facilities or to specify the routing instructions for the call." U S WEST Petition, p. 7.

The arbitrator determined that "shared transport (between all U S WEST switches, but not between U S WEST and incumbent switches, or between U S WEST switches and serving wire centers) is an unbundled network element [and] should be included in the final agreement." Third Order, p. 11. U S WEST contends in its Petition for Review that shared transport is not, or should not be, available as an unbundled network element. U S WEST renews its argument in its Second Supplemental Memorandum, contending that the October 14, 1997 amendment to the *Iowa Utilities Board* decision supports its position. Because the transmission of a call requires access to several different network components, U S WEST argues that shared transport cannot itself be an unbundled network element.

U S WEST concedes, however, that FCC rules left undisturbed by the *Iowa Utilities Board* case require incumbent LECs to provide shared transport as an unbundled network element. *See*, FCC

Local Interconnection Order, CC Docket No. 96-98, • 439; FCC Third Order on Reconsideration, • 44. Also, although shared transport was not specifically discussed in the *Iowa Utilities Board* decision, the Court upheld the FCC's broad determination of network elements subject to unbundling requirements. *See, Iowa Utilities Board*, 120 F.3d at 808-09. ("We believe that the FCC determination that the term 'network element' includes all of the facilities and equipment that are used in the overall commercial offering of telecommunications is a reasonable conclusion and entitled to deference").

We find that providing shared transport as an unbundled network element is reasonable and consistent with the requirements of the Act. First, as we discussed in the previous section, Section 251(c)(3) does not prohibit the use of unseparated components in unbundled network elements. If it did, every unbundled element would necessarily be broken down into numerous physical components. In the case of shared transport, a breakdown into the smallest identifiable components would not be possible until after the call is made, because by definition the route of the call is not specified in advance. The practical effect of U S WEST's interpretation of 251(c)(3) would be to make shared transport unavailable to competing LECs. Indeed, U S WEST argues thatit "cannot be required to provide unbundled access to transmission facilities between end offices." U S WEST Second Supplemental Memorandum, p. 9.

Second, requiring AT&T to designate in advance the routes for its customers' calls would greatly increase AT&T's costs to provide service. The arbitrator found that "foreclosing AT&T's use of the U S WEST transport element in a manner such as U S WEST uses them itself would build into AT&T's operations a significant cost disadvantage." Third Order, p. 11. To implement the unbundled elements requirements and determine which network elements should be made available, the Act directs the FCC to consider whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." 47 U.S.C. 251(d)(2)(B). The FCC determined that the requesting carrier's ability to provide a service would be impaired "if the quality of the service the entrant can offer, absent access to the requested element, declines and/or the cost of providing the service rises." First Report and Order, • 285. The *Iowa Utilities Board* decision specifically upheld this standard for determining whether a network element should be made available to the competitor LEC:

If the quality of the service declines or the cost of providing the service rises as a result of a requesting carrier's inability to gain access to a network element, then the requesting carrier's ability to provide the service has been made worse. The FCC's interpretation of the "impairment" standard is reasonable, and we give it deference.

Iowa Utilities Board, 120 F.3d at 812 (citations omitted). By this standard, AT&T's ability to provide local telecommunications service is impaired if shared transport is not available as a network element. We thus find it appropriate that the interconnection agreement should make shared transport available to AT&T as an unbundled network element, and we approve the arbitrator's resolution of the shared transport issue.

3. Points of Interconnection.

Both U S WEST and AT&T request review of the arbitrator's decision regarding points of interconnection, i.e., those places where a competitor LEC can interconnect with the incumbent's network. The Act requires that an incumbent LEC provide interconnection with its network "at any technically feasible point within the carrier's network." 47 U.S.C. • 251(c)(2). The First and Second Orders authorize AT&T's interconnection at any technically feasible point, but also authorize the ADR

process to adjust interconnection cost responsibilities where U S WEST can demonstrate that a substantially more economical means for connecting at an equally effective point exists.

In their Petitions, U S WEST argues that it should have greater latitude to control points of interconnection based on considerations of economy or efficiency, while AT&T contends that these considerations have no role in determining technical feasibility for points of interconnection. Order No. 25070 approved the resolution of these positions in the First and Second Orders, and we again approve the arbitrator's decision relative to points of interconnection. The arbitrator provided for AT&T's interconnection at any technically feasible point, as Section 251(c)(2) requires, but also provided an opportunity for the parties to adjust the costs of a particular interconnection if U S WEST can demonstrate that an equally effective but more economical interconnection point exists. This practical result is consistent with the terms of Section 251(c)(2). See, *Iowa Utilities Board*, 120 F.3d at 810.

4. Physical Collocation.

U S WEST in its Petition argues that the arbitrator did not limit AT&T's ability to physically collocate equipment on U S WEST premises. Section 251(c)(6) places a duty on U S WEST to allow AT&T to physically collocate its equipment on the premises of U S WEST. U S WEST may provide virtual rather than physical collocation upon proof to the Commission "that physical collocation is not practical for technical reasons or because of space limitations."

We believe the resolution of this collocation issue in the First Order is consistent with the requirements of Section 251(c)(6), and we thus decline to disturb the arbitrator's resolution.

5. Non-Recurring Charges.

The Fifth Order resolved pricing issues for loop unbundling, collocation charges, and certain nonrecurring charges. U S WEST does not object to the arbitrator's resolution of the first two issues, but does dispute the resolution for non-recurring charges.

The nonrecurring charges at issue apply to the ordering and installation of loops, ports, and signaling links. This issue was presented late in the arbitration. The arbitrator in his Fifth Order reviewed the record for these nonrecurring charges, and concluded that U S WEST's evidence that the range of \$100 to \$500 for these charges was essentially un rebutted, but that AT&T's evidence that the costs were "close to nothing" was also essentially un rebutted. Fifth Order, p. 3. The arbitrator, unable to undertake his own independent review of the U S WEST cost studies without additional hearings, concluded that U S WEST "shall be entitled to charge 10 percent of the nonrecurring charges that its final price lists includes for loops, ports, and signaling links." Fifth Order, p. 5. However, the arbitrator also provided a means for the rates to be adjusted: "These charges shall be subject to true-ups retroactively to the commencement of service under the interconnection agreement, in the event that these charges are changed by later Idaho proceedings." *Id.*

It is evident in the Fifth Order that the arbitrator's substantial concerns about U S WEST's cost studies in support of nonrecurring charges left him unsatisfied that the evidence was reliable enough to finally determine the appropriate charges. Rather than delay the already lengthy proceedings any further, the arbitrator allowed the charges at amounts lower than requested by U S WEST and higher than argued by AT&T, and recognized that the amounts could be adjusted, and applied retroactively, in a subsequent proceeding. We find this to be an appropriate compromise solution for these charges.

and we approve this resolution for the interconnection agreement. If either party finds after AT&T begins providing service under the agreement that the approved amounts are inappropriate, the parties should renegotiate the charge amounts. Should good faith efforts to change the amounts prove unsuccessful, either party may resolve any remaining disagreement through the agreement's dispute resolution procedure, or as part of a proceeding subsequently filed with the Commission.

6. Other Issues.

U S WEST identifies other issues for review, some of which were decided in the Third and Fourth Orders, some of which were agreed to by the parties somewhat at variance to language in the First and Second Orders, and some of which are merely points of clarification. We have reviewed these additional issues and have determined that adjustments to the arbitrator's resolution are not necessary, other than to clarify certain contract requirements.

As matters of clarity, the following is provided to assist in preparation of the final agreement:

(a) Issue 46, interim number portability pricing, the reference to "gross revenues" at page 33, Second Order, to apportion number portability costs refers to all intrastate and interstate revenues generated within the state of Idaho. This issue is further discussed in the next section of the Order.

(b) Issue 63, Quality Standards. Incumbent LECs are not required by the Act "to provide its competitors with superior quality interconnection", or to provide to requesting carriers "superior quality access to network elements on demand." *Iowa Utilities Board*, 120 F.3d at 812-13. Accordingly, the contract need not require more of U S WEST than the Act requires.

We have reviewed each issue raised by U S WEST in its Petition for Review. The adjustments and clarifications we make in this Order are consistent with the requirements of the Act. The issues that we did not discuss or alter are determined by the Commission to be properly resolved by the arbitration process.

B. ISSUES RAISED IN AT&T'S PETITION FOR REVIEW

1. Costs and Rate Issues.

The first four issues identified in AT&T's Petition relate to costs and rates. AT&T contends (1) the Commission should vacate its adjustment to the wholesale rate, (2) that adjustments should be made to the approved costs of loop unbundling, loop unloading and loop conditioning, (3) that the Commission should adopt AT&T's collocation rates, and (4) that the Commission should not adopt the approved rates and prices for the entire three-year term of the interconnection agreement.

These issues all were decided in the Commission's review of the First and Second Orders, and we are not persuaded that adjustments should be made to the approved resolution. The record on these cost and price issues is complex, extremely detailed and lengthy, and the evidence could be construed to support various specific results, including those advocated by AT&T. It is clear in the First and Second Orders that the arbitrator carefully considered all the evidence presented in resolving these issues. The Commission did the same in making two adjustments to produce a better overall balance among the competing and conflicting arguments and evidence the parties presented on the issue of the wholesale discount. AT&T does not contend that the resolution of these issues is incompatible with the terms of the Act, and we thus decline to make adjustments regarding the resolution of these issues.

2. Number Portability Costs.

AT&T contends that the arbitration orders regarding cost allocations for implementing number portability are "inconsistent with the Act and the FCC's Number Portability Order." AT&T Petition, p. 20. The First Order provides that U S WEST and AT&T should "track their costs of providing interim number portability until a definitive method for allocating the cost is determined." First Order, p. 39. It is this allocation solution that AT&T contends is inconsistent with the Act and FCC requirements because it "is really not a standard at all." AT&T Petition, p. 20.

As AT&T concedes, however, the Second Order does contain a specific method for allocating number portability costs—"apportionment according to gross revenues of AT&T and U S WEST, less charges paid to other carriers." AT&T Petition, p. 17; Second Order, p. 33. AT&T nonetheless also objects to this approach as inconsistent with the methods recommended by the FCC.

We believe the Second Order's method of allocating number portability costs is consistent with recommendations of the FCC. The FCC specifically permits the use of gross revenues less payments to other carriers as an allocator. The Second Order provides that AT&T will pay number portability costs according to its share of gross revenues, less payments to other carriers (as compared with the same measure of U S WEST revenues). AT&T's Petition for Review recognizes that such a method is permitted by the FCC. Specifically, paragraph 136 of the FCC's July 2, 1996 First Report and Order and Further Notice of Proposed Rulemaking (CC Docket No. 95-116; RM 8535) cites MFS Illinois plans as one of those currently in use that satisfies the FCC's competitive neutrality criteria. That approach, as described in the FCC Order, appears to do exactly what the arbitrator did here; i.e., to apportion costs according to the gross revenues of the single incumbent and the single competitor involved in that situation.

We find that the Second Order's treatment of interim number portability costs is appropriate. To the extent, however, that the Second Order is unclear, the Commission makes it explicit that the share of costs that AT&T is required to pay for U S WEST's costs to make interim number portability available in Idaho is its gross revenues, less payments to other carriers, divided by the sum of its and U S WEST's gross revenues, less payments to other carriers.

Both AT&T and U S WEST note that the Second Order does not state explicitly whether the revenue base that is to be used to allocate number portability costs includes interstate revenues. Footnote 380 of the July 2, 1996 FCC Order addresses the issue of the costs to be included when gross revenues serve as the allocation basis. That footnote requires that the calculation of gross revenues meet two criteria—it must be limited to the revenues generated in the state involved and it must include intrastate and interstate revenues. Therefore, according to the FCC requirement, the AT&T and U S WEST gross revenues that are to be used to calculate the apportionment of interim number portability costs are the intrastate and interstate revenues generated in Idaho.

3. Possible Rebundling Charge.

AT&T argues that the provision in the First Order that contemplates an opportunity for U S WEST in the future "to propose for combined switching and loop element prices a surcharge that will promote facilities-based competition" is inappropriate. See, First Order, p. 14. AT&T contends that such a surcharge would violate terms of the Act.

The First and Second Orders, which were approved in Order No. 25070, do not authorize a surcharge for combining switch and loop elements. The arbitrator merely indicated that circumstances might develop where such a price surcharge could be appropriate. By approving the arbitrator's recommendation that U S WEST be afforded an opportunity to demonstrate the appropriateness of price adjustments under certain circumstances, the Commission was not indicating approval of any specific adjustment or surcharge. Accordingly, we do not find that any adjustment must be made regarding this issue.

4. Operating Support System Development and Implementation Costs.

At page 31-32 of its Petition, AT&T addresses an issue relating to costs for developing and implementing an operational support system (OSS). An OSS is a computer application that provides gateways for competitor LECs to access where necessary U S WEST's computer operating systems. AT&T contends that the agreement should only address OSS development costs for the Idaho jurisdiction, and requests that "it be made clear that only the Idaho proportionate share of the total gateway development costs . . . be considered in this arbitration agreement." AT&T Petition, p. 31.

We agree that this point can benefit from clarification. The agreement between U S WEST and AT&T, over which this Commission has jurisdiction, relates to services within Idaho. Accordingly, it is appropriate that the OSS costs covered by the agreement are limited to Idaho-specific costs and to the Idaho proportionate share of regional costs. The agreement should specify that the competing carrier's responsibility for OSS development and implementation costs is limited to the Idaho proportionate costs.

5. Other Issues.

(a) Issue 29—use of ADR process rather than BFR process.

AT&T asks clarification of the means to resolve disputes over existing tariff conditions or restrictions. AT&T Petition, p. 52. The First Order provides that tariff disputes will be resolved through a "Bona Fide Request" (BFR) process rather than an ADR process.

We believe an ADR process is better to resolve disputes over tariff conditions and restrictions, and the interconnection agreement should include this modification from the First Order.

(b) Issue 17-NID indemnification clause.

AT&T objects to the specific NID indemnification provisions required by the First Order, citing a conflict with the general indemnification language in another part of the agreement. There can be, however, a valid need for a separate indemnification provision for a specific circumstance, in which case the general provision would be controlled by the specific. The First Order addresses situations where AT&T must provide additional protectors to use the U S WEST NID. AT&T has the alternative of making a NID-to-NID connection, in which case the general indemnification clause would apply. Once AT&T chooses to make physical changes to the U S WEST NID, which it would presumably do to save costs, it is appropriate to assign to it the greater risks involved.

We have reviewed each of the issues raised by AT&T in its Petition for Review, and have discussed only those issues on which adjustment or clarification should be made. It is the Commission's

understanding that with this Order all disputed issues have been resolved by the arbitration process. The parties should be able to complete their final agreement and submit it to the Commission pursuant to 47 U.S.C. •252(c).

ORDER

IT IS HEREBY ORDERED that the five orders of the arbitrator, as modified or clarified by this Order or Order No. 27050, constitute the resolution by arbitration of disputed issues pursuant to Section 252(b) of the Telecommunications Act. This Order also resolves all issues raised by AT&T and U S WEST in their Petitions for Review.

THIS IS A FINAL ORDER ON ARBITRATION. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* • 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this day of December 1997.

DENNIS S. HANSEN, PRESIDENT

RALPH NELSON, COMMISSIONER

MARSHA H. SMITH, COMMISSIONER

ATTEST:

Myrna J. Walters

Commission Secretary

Vld/O:USW-T-96-15.ws3

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION REGARDING)
COMPLIANCE OF THE STATEMENT)
OF GENERALLY AVAILABLE TERMS)
OF BELLSOUTH)
TELECOMMUNICATIONS, INC. WITH)
SECTION 251 AND SECTION 252(D) OF)
THE TELECOMMUNICATIONS ACT OF)
1996)

CASE NO. 98-348

ORDER

On June 22, 1998, BellSouth Telecommunications, Inc. ("BellSouth") filed its updated Statement of Generally Available Terms ("SGAT"), with supporting documents, together with a request that the SGAT be approved by this Commission. By Order dated July 6, 1998, the Commission established this case to determine, pursuant to the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (the "Act"), at 47 U.S.C., § 252(f), whether the SGAT meets the requirements of 47 U.S.C., § 251 and 252(d) and relevant requirements of state law. The parties to Case No. 96-608¹ were also made parties to this proceeding and were invited to submit comments on the SGAT. Comments have been filed by e.spire Communications, Inc. ("e.spire"), MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively, "MCI"), Sprint Communications Company, L.P. ("Sprint"), AT&T

¹ Case No. 96-608, Investigation Concerning the Propriety of Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.