ORIGINAL


# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FAX (202) 424-7645
WWW.SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 973-0111 FAX (212) 891-9598

PATRICK J. DONOVAN
DIRECT DIAL (202) 424-7857
PJDONOVAN@SWIDLAW.COM


June 12, 2002

EX PARTE OR LATE FILED


RECEIVED

JUN 12 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY


**VIA COURIER**

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

***Ex Parte***
CC Docket Nos. 96-98, 98-147, 01-338, 02-33

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on June 11, 2002, Julia Strow, Vice President - Regulatory Affairs, Cbeyond Communications and the undersigned, met with Dorothy Attwood, Jeffrey Carlisle, Tom Navin, Scott Bergmann, Jeremy Miller, and Rob Tanner of the Wireline Competition Bureau. We described the terms and conditions under which Cbeyond has obtained EELs as new combinations of network elements in Georgia, Texas, and Colorado as described in the attached documents, which were provided at the meeting. We also stated that the Commission should appeal the recent D.C. Circuit decision remanding the *UNE Remand Order*.

Sincerely,

Patrick J. Donovan
Counsel for
Cbeyond Communications

cc: Dorothy Attwood
Jeffrey Carlisle
Scott Bergmann
Thomas Navin
Jeremy Miller
Rob Tanner

CBEYOND COMMUNICATIONS

I. Triennial Review

a. DC Circuit Court Ruling
b. FCC Analysis

II. New Combinations

a. Supreme Court Ruling
b. Best Practices
c. Cbeyond Experience

III. Audits

June 11, 2002

**DOCKET NO. 10692-U**

**ORDER**

**In re: Generic Proceeding to Establish Long-Term Pricing Policies For Unbundled Network Elements**

**BY THE COMMISSION:**

The Georgia Public Service Commission ("Commission") initiated this docket to establish long-term pricing policies for combinations of Unbundled Network Elements (UNEs) and to establish recurring and nonrecurring rates for particular combinations of UNEs.

## I. INTRODUCTION

### A. Background

On December 4, 1996, the Commission issued its Order on the AT&T Petition for Arbitration. In that Order, the Commission set interim rates for unbundled network elements (UNEs). The Commission stated in the AT&T Arbitration Order: "The Commission further rules that it shall conduct a generic proceeding to develop appropriate long-term pricing policies regarding recombination of unbundled capabilities." Docket 6801-U, AT&T Arbitration Order, p. 52.

On December 6, 1996, the Commission issued a Procedural and Scheduling Order to consider cost-based rates in Docket 7061-U, In Re: Review of Cost Studies, Methodologies, and Cost-Based Rates for Interconnection and Unbundling of BellSouth Telecommunications Services. The Commission issued its final order in that case on December 16, 1997 setting permanent rates for stand-alone UNEs. In its order, the Commission stated: "The Commission reaffirms its corollary decision in Docket 6801-U that it shall conduct a generic proceeding to develop long-term pricing policies regarding recombination of UNEs. . . . Indeed, the Commission notes that this proceeding is not, and was not intended to be the 'Generic Proceeding' to develop appropriate long-term pricing

policies regarding recombination of unbundled capabilities that was envisioned in the Commission's December 4, 1996 order ruling on Arbitration in docket 6801-U." Docket 7061-U, UNE Cost Order, pp. 48-49.

Various parties have continued to show an interest in this issue. For example, on April 10, 1998, AT&T filed a petition with this Commission to commence a generic proceeding to establish long-term pricing policies for UNEs. See Docket 9097-U. On January 23, 1999, MCIMetro Access Transmission Services, LLC, filed a complaint against BellSouth to obtain DS1 Loop - Transport combinations at UNE prices. See Docket 6865-U.

On January 25, 1999, the Supreme Court issued its decision in AT&T Corporation v. Iowa Utilities Board, 119 S.Ct. 721 (1999). This matter had come before the Supreme Court on writs of certiorari from the decision of the Eighth Circuit Court of Appeals which had vacated portions of the Federal Communications Commission's First Report and Order issued on August 8, 1996. Among other provisions, the Eighth Circuit had vacated FCC Rule 315(b) which prohibited ILECs from separating elements which are already combined. The Supreme Court reversed the Eighth Circuit on this issue, reinstating Rule 315(b). The Supreme Court affirmed the ruling of the Eighth Circuit that CLECs can provide local service relying solely on the elements in an incumbent's network. The Supreme Court ruled, however, that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbents must provide to CLECs. As a result, the Supreme Court vacated the FCC's Rule 319.

On September 15, 1999, the Federal Communications Commission (FCC) completed its reconsideration of Rule 319, adopting its Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Third Report and Order), Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98. The FCC's written order was released on November 5, 1999. In this Third Report and Order, the FCC revised, in light of the Supreme Court's order, the list of the network elements that ILEC must provide on an unbundled basis and issued a new Rule 319. The FCC ruled that the following elements must be unbundled: Loops, subloops, network interface device (NID), circuit switching, interoffice transmission facilities, signaling and call-related databases, and operations support systems (OSS). For circuit switching, the FCC ruled that Incumbent LECs must offer unbundled access to local circuit switching, except for switching used to serve business users with four or more lines in FCC access density zone 1 (the densest areas) in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link (EEL, a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport.). The FCC ruled that, pursuant to section 51.315(b) of the FCC's rules, incumbent LECs are required to provide access to combinations of loop, multiplexing/concentrating equipment and dedicated transport if they are currently combined. The FCC did not readdress whether an incumbent LEC must combine network elements that are not already combined in the network, because that issue is pending before the Eighth Circuit Court of Appeals. Finally, the FCC sought comment on the legal and policy bases for precluding requesting carriers from substituting dedicated transport for special access entrance facilities.

On November 24, 1999, the FCC issued a Supplemental Order to its Third Report and Order. In this Supplemental Order, the FCC modified its conclusion in paragraph 486 of the Third Report and Order to allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. Supplemental Order, ¶ 4. IXCs may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities, unless the IXC uses the combination "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." Id. at ¶ 5.

**B. Statement of Proceeding**

On May 18, 1999, the Commission issued its Procedural and Scheduling Order that set forth the scope of the hearing in this matter. The Scheduling Order stated that the purpose of this proceeding was to establish long-term pricing policies for combinations of Unbundled Network Elements (UNEs). The Scheduling Order stated that the Commission would set recurring and non-recurring rates for certain combinations of UNEs. In addition, it stated that the Commission would set pricing policies for combinations of UNEs generally. Finally, the Scheduling Order stated that the Commission would consider, and parties testimony should address, the following issues:

1. How should the recurring and nonrecurring charges for UNEs combinations be determined?

2. What are the appropriate recurring and nonrecurring charges for the following combinations:

    i. DS1 Loop - Transport combination
    ii. 2-wire analog loop-port combination

3. What other UNE combinations have CLECs requested from BellSouth and what are the appropriate recurring and nonrecurring charges for these combinations?

The Scheduling Order provided that any party submitting a cost study was required to provide comprehensive and complete work papers that fully disclosed and documented the process underlying the development of each of its economic costs, including the documentation of all judgments and methods used to establish every specific assumption employed in each cost study. The Scheduling Order required that the work papers clearly and logically represent all data used in developing each cost estimate, and be so comprehensive as to allow others initially unfamiliar with the studies to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions. The Scheduling Order required that the work papers be organized in such a manner as to clearly identify and document all source data and assumptions, including investment, expense, and demand data assumptions.

BellSouth and AT&T filed cost studies in this proceeding. BellSouth presented recurring and non-recurring cost studies which used basically the same methodology adopted by the Commission in its December 16, 1997 Order in Docket 7061-U. Most, but not all, of the adjustments that were ordered by the Commission in Docket 7061-U were incorporated into the new studies. AT&T presented the HAI Model 5.1 (HAI or Hatfield) for a limited number of the recurring costs and the AT&T and MCI Non-Recurring Cost Model for a limited number of the non-recurring costs. For those costs, not covered by its models, AT&T recommended that use BellSouth's cost studies with modifications.

In hearings commencing July 13, 1999, the Commission heard testimony from witnesses for AT&T Communications of the Southern States (AT&T), Inc., BellSouth Telecommunications, Inc. (BellSouth), the Competitive Telecommunications Association (Comptel), the United States Department of Defense and All Other Federal Executive Agencies (collectively referred to as DOD), Excel Telecommunications, Inc. (Excel), Intermedia Communications, Inc. (Intermedia), MCI WorldCom, Inc. (MCI WorldCom), Sprint Communications Company, L.P. (Sprint), and Qwest Communications (Qwest). After the conclusion of the hearings, the Commission received closing briefs from interested parties. In addition to receiving briefs from most of the parties sponsoring witnesses, the Commission received briefs from the Consumers' Utility Counsel Division (CUCD), ICG Telecom Group, Inc. (ICG), and NEXTLINK Georgia, Inc. (NEXTLINK).

As discussed above, on November 5, 1999, the FCC issued its Third Report and Order. On December 7, 1999, the Commission issued its Order Setting Briefing Schedule which allowed any interested parties to file briefs addressing the impact of the FCC's Third Report and Order on the issues in this case. The Commission received Briefs from AT&T, BellSouth, Certain Facilities-Based CLECs (Focal Communications Corp. of Georgia, ICG, Intermedia, and NEXTLINK), CUCD, KMC Telecom, Inc. and KMC Telecom II, Inc. (KMC), MCI, and Sprint.

## C. Jurisdiction

Under the Federal Telecommunications Act of 1996 (Federal Act), State Commissions are authorized to set rates and pricing policies for interconnection and access to unbundled elements. In addition to its jurisdiction of this matter pursuant to Sections 251 and 252 of the Federal Act, the Commission also has general authority and jurisdiction over the subject matter of this proceeding, conferred upon the Commission by Georgia's Telecommunications and Competition Development Act of 1995 (Georgia Act), O.C.G.A. §§46-5-160 *et seq.*, and generally O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23.

## II. FINDINGS AND CONCLUSIONS

### A. UNE Combinations Generally

Before determining the actual rates for any combinations of unbundled network elements, the Commission must address certain underlying issues. In particular, the Commission must determine the scope of BellSouth's obligation to provide combinations of UNEs and the applicable pricing standards that apply to combinations of UNEs.

#### 1. Rule 319 / Necessary and Impair Standard

In January 1999, the Supreme Court ruled that the FCC did not adequately consider the "necessary and impair" standard in determining which network elements incumbent LECs must provide to CLECs. As a result, the Supreme Court vacated the FCC's Rule 319. In the hearings held before this Commission, BellSouth argued that this Commission should consider the necessary and impair standard in making its determination. Since the hearing was held, the FCC has completed its reconsideration of Rule 319 and specified a national list of UNEs that ILECs must provide: Loops, subloops, network interface device (NID), circuit switching[1], interoffice transmission facilities, signaling and call-related databases, and operations support systems (OSS).

For UNEs on the national list, there is no need for this Commission to consider the necessary and impair standard since the FCC already made that determination. Indeed, the FCC stated that the goals of the Act would better be served if network elements are not removed from the national list on a state-by-state basis, at this time. The FCC order did recognize that state commissions are authorized to require incumbent LECs to unbundle additional elements as long as the obligations are consistent with the requirements of section 251. Accordingly, this Commission would apply the necessary and impair standard to the extent it considered a request to expand the unbundling requirements under the Federal Act. Since this Commission is not expanding the national list in this order, there is no need for this Commission to undertake such an analysis. Some CLECs have requested that the Commission define the enhanced extended link (EEL) as a UNE. Joint Supplemental Brief of Certain Facilities-Based CLECs, p. 7. The EEL is a UNE combination consisting of a loop, transport and a cross-connect. Like the FCC, the Commission declines to define the EEL itself as a UNE. Third Report and Order, ¶ 478. However, as discussed below, CLECs can obtain at UNE rates combinations of UNEs that BellSouth ordinarily combines in its network.

[1] For circuit switching, the FCC ruled that Incumbent LECs must offer unbundled access to local circuit switching, except for switching used to serve business users with four or more lines in FCC access density zone 1 in the top 50 Metropolitan Statistical Areas (MSAs), provided that the incumbent LEC provides non-discriminatory, cost-based access to the enhanced extended link.

2. Applicability of FCC Rules to Pricing UNE Combinations

In its First Report and Order, the FCC had required that prices for unbundled network elements be developed using the TELRIC methodology. The Eighth Circuit had vacated the FCC's pricing rules on the grounds that pricing was outside of the FCC's jurisdiction and was reserved for the states. The Supreme Court overturned the Eighth Circuit on this issue, ruling that the FCC had jurisdiction to design a pricing methodology that the States must use. Since it had determined that the FCC lacked the jurisdiction to require a particular pricing methodology, the Eighth Circuit never reached the issue of whether TELRIC complies with the Act. The Supreme Court remanded this issue back to the Eighth Circuit. The FCC's pricing rules have been reinstated by the Supreme Court and are currently in effect pending the Eighth Circuit's review of TELRIC.[2]

BellSouth had argued in this proceeding that while "the FCC was very specific to establish pricing rules for the provision of individual UNEs. The FCC did not establish pricing rules to govern the provision of currently combined UNEs." (Pre-filed Direct Testimony of Varner, p. 24). The Commission disagrees.

The FCC's pricing rules provide:

Rule 51.501 Scope.

(a) The rules in this subpart apply to the pricing of network elements, interconnection, and methods of obtaining access to unbundled network elements, including physical collocation and virtual collocation.
(b) As used in this subpart, the term "element" includes network elements, interconnection, and methods of obtaining access to unbundled elements.

Rule 51.503 General Pricing Standard.

(a) An incumbent LEC shall offer elements to requesting carriers at rates terms and conditions that are just, reasonable and nondiscriminatory.
(b) An incumbent LEC's rates for each element it offers . . . shall be established, at the election of the state commission-
    (1) pursuant to the forward-looking economic cost-based pricing methodology set forth in §§51.505 and 51.511 of this part; or
    (2) consistent with the proxy ceilings and ranges set forth in §51.513 of this part.
(c) The rates that an incumbent LEC assesses for elements shall not vary

2 As discussed below, the portion of the pricing rules which requires geographic deaveraging has been stayed by the FCC.

> on the basis of the class of customers served by the requesting carrier, or on the type of service that the requesting carrier purchasing such elements uses them to provide.

The rules clearly apply to the pricing of all network elements. Nowhere in the rules does the FCC imply that they apply only to network elements that are physically separated from other network elements. The rules do refer to "unbundled" elements; however, the Supreme Court specifically rejected BellSouth's argument that the term unbundled means physically separated:

> Nor are we persuaded by the incumbents' insistence that the phrase "on an unbundled basis" in §251(c)(3) means "physically separated." The dictionary definition of "unbundled" (and the only definition given, we might add) matches the FCC's interpretation of the word: "to give separate prices for equipment and supporting services." Webster's Ninth New Collegiate Dictionary 1283 (1985).

Iowa Board, (Emphasis added).

In its Third Report and Order, the FCC made it clear that it considered its pricing rules for UNEs to be applicable to combinations of UNEs. Third Report and Order ¶¶ 480 and 486. Based on the FCC's statements in its Third Report and Order, BellSouth has stated that "[w]hile the merits of the FCC's pricing rules are currently on appeal, BellSouth will provide currently combined network elements at cost-based rates in accordance with the FCC's TELRIC pricing rules." BellSouth's Brief on the Impact of the FCC's Third Report and Order, p. 8.

The Commission finds that the FCC pricing rules do apply to combinations of network elements.

3. Reasonable Profit

The cost model that BellSouth presented in this proceeding includes the return on equity which this Commission adopted in Docket 7061-U. Thus, the costs that the model generates includes as profit a reasonable return on BellSouth's investment. In addition to the costs plus profit generated by its cost model, however, BellSouth has argued that its rates should include an additional sum, which it refers to as a "reasonable profit." BellSouth argues that the "reasonable profit" for a 2-wire analog loop-port combination should be an additional recurring charge of $9.19. For a 4-wire DS1 loop-transport combination, BellSouth argues that it should be an additional $78.25. While BellSouth's cost models generate costs for other combinations, it has not recommended a rate or an amount of "reasonable profit" for them.

In Docket 7061-U, the Commission addressed the issue of the meaning of the term "reasonable profit" as it is used in 47 U.S.C. § 252(d)(1)(B). The Commission stated:

> The Commission does not accept BellSouth's assertion that the "reasonable profit" referred to in 47 U.S.C. § 252(d)(1)(B) means a profit over and above the cost including cost of capital. . . . [T]he Commission notes that BellSouth's interpretation would run counter to established pricing principles that the reasonable profit is incorporated within the concept of cost of capital.

Order in Docket 7061-U, p. 24. The Commission hereby reaffirms its finding in Docket 7061-U.

BellSouth argued that the best way to provide for a reasonable profit is to set the price of currently combined UNEs at the resale rate. BST's Brief, p. 24. While this Commission previously ruled that UNE combinations that replicate a retail service should be priced as resale, in light of the court decisions rejecting BellSouth's arguments that UNE combinations are, or should be treated as, resale, this position is no longer tenable. The Eighth Circuit rejected the ILEC argument that when a CLEC uses only leased network elements to provide a service that the wholesale rate should apply. Instead, the Eighth Circuit affirmed the FCC's "all elements" rule, ruling that even when a CLEC used only leased elements to provide service, the elements would be priced at the cost-based rates, not the wholesale rate. 120 F.3d at 814. The Supreme Court affirmed the Eighth Circuit's holding on the "all elements" rule. The Supreme Court went even further. When it reinstated Rule 315(b), the Court explicitly recognized that this rule would allow CLECs to lease a complete, preassembled network at cost-based rates (assuming the list of elements under Rule 319 was not changed). As the Court stated:

> Rule 315(b) forbids an incumbent to separate already-combined network elements before leasing them to a competitor. As they did in the Court of Appeals, the incumbents object to the effect of this rule when it is combined with others before us today. TELRIC allows an entrant to lease network elements based on forward-looking costs, Rule 319 subjects virtually all network elements to the unbundling requirement, and the all-elements rule allows requesting carriers to rely only on the incumbent's network in providing service. <u>When Rule 315(b) is added to these, a competitor can lease a complete, preassembled network at (allegedly very low) cost-based rates.</u>
>
> The incumbents argue that this result is totally inconsistent with the 1996 Act. They say that it not only eviscerates the distinction between resale and unbundled access, but that it also amounts to Government-sanctioned regulatory arbitrage. Currently, state laws require local phone rates to include a "universal service" subsidy. Business customers, for whom the cost of service is relatively low, are charged significantly above cost to subsidize service to rural and residential customers, for whom the cost of service is relatively high. Because this universal-service subsidy is built into retail rates, it is passed on to carriers who enter the market through the resale provision.

> Carriers who purchase network elements at cost, however, avoid the subsidy altogether and can lure business customers away from incumbents by offering rates closer to cost. This, of course, would leave the incumbents holding the bag for universal service.
>
> As was the case for the all-elements rule, our remand of Rule 319 may render the incumbents' concern on this score academic. Moreover, §254 requires that universal-service subsidies be phased out, so whatever possibility of arbitrage remains will be only temporary. In any event, we cannot say that Rule 315(b) unreasonably interprets the statute.

Iowa Board, (Emphasis added).

While BellSouth proposed several other alternative theories which it claimed could be used to calculate its proposed "reasonable profit" of $9.19, no such calculation appears in the record. BellSouth merely makes a conclusory statement as to what its reasonable profit should be without any showing of how it arrived at the number. In addition, as discussed in the prior section, the FCC's UNE pricing rules apply to UNE combinations. BellSouth's "reasonable profit" proposals are contrary to FCC rules that prohibit the consideration of certain factors when setting rates:

> § 51.505(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:
> (1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's book of accounts.
> (2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609 of this part.
> (3) Opportunity costs. Opportunity costs include revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carrier that purchase elements.
> (4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

Based on the above, the Commission rejects BellSouth's so-called reasonable profit adjustment.

4. Currently Combines

FCC Rule 315 addressed combinations of unbundled network elements. Rule 315(b) provides:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent currently combines.

Emphasis added. BellSouth has interpreted the term "currently combines" as "currently combined." BellSouth defines the term to mean those elements "that are physically in a combined state as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes' basis. . . . Currently combined elements only include loops, ports, transport or other elements that are currently installed for the existing customer that the CLEC wishes to serve." BellSouth's Posthearing Brief, p. 9. The CLECs have interpreted the term to mean elements that are typically combined in the ILECs network, even if the particular elements being ordered are not actually combined at the time the order is placed.

When the Supreme Court reinstated Rule 315(b), it stated its understanding of the intent of the rule:

> The reality is that §251(c)(3) is ambiguous on whether leased network elements may or must be separated, and the rule the Commission has prescribed is entirely rational, finding its basis in §251(c)(3)'s nondiscrimination requirement. As the Commission explains, it is aimed at preventing incumbent LECs from "disconnect[ing] previously connected elements, over the objection of the requesting carrier, not for any productive reason, but just to impose wasteful reconnection costs on new entrants." Reply Brief for Federal Petitioners 23. It is true that Rule 315(b) could allow entrants access to an entire preassembled network. In the absence of Rule 315(b), however, incumbents could impose wasteful costs on even those carriers who requested less than the whole network. It is well within the bounds of the reasonable for the Commission to opt in favor of ensuring against an anticompetitive practice.

Iowa Board.

It appears clear that the Supreme Court believed that at least one major purpose of Rule 315(b) was to prevent the incumbent from ripping apart elements which were already connected to each other. The Commission agrees that at the very least, Rule 315(b) requires BellSouth to provide combinations of elements that are already physically connected to each other regardless of whether they are currently being used to serve a particular customer. The Supreme Court, however, did not state that it was reinstating Rule 315(b) only to the extent it prohibited incumbents from ripping apart elements currently physically connected to each other. It reinstated Rule 315(b) in its entirety, and it did so based on its interpretation of the nondiscrimination language of Section 251(c)(3). See Third Report and Order, ¶¶ 481 and 482.

Indeed, the Ninth Circuit Court of Appeals has recently ruled that it "necessarily follows from AT&T that requiring [the ILEC] to combine unbundled network elements is not inconsistent with the Act . . . the Act does not say or imply that network elements may only be leased in discrete parts." U.S. West Communications v. MFS Intelenet, Inc, 1999 WL 799082, *7 (9th Cir. Oct. 9, 1999). In response to U.S. West's argument that the Eighth Circuit's invalidation of FCC Rules 315(c)-(f) required the Ninth Circuit to conclude that a state commission's order requiring an ILEC to provide combinations violates the Act, the Ninth Circuit stated:

> The Supreme Court opinion . . . undermined the Eighth Circuit's rationale for invalidating this regulation. Although the Supreme Court did not directly review the Eighth Circuit's invalidation of § 51.315(c)-(f), its interpretation of 47 U.S.C. § 251(c)(3) demonstrates that the Eighth Circuit erred when it concluded that the regulation was inconsistent with the Act. We must follow the Supreme Court's reading of the Act despite the Eighth Circuit's prior invalidation of the nearly identical FCC regulation.

Id.

Rule 315(b), by its own terms, applies to elements that the incumbent "currently combines," not merely elements which are "currently combined." In the FCC's First Report and Order, the FCC stated that the proper reading of "currently combines" is "ordinarily combined within their network, in the manner which they are typically combined." First Report and Order, ¶ 296. In its Third Report and Order, the FCC stated that it was declining to address this argument at this time because the matter is currently pending before the Eighth Circuit. Third Report and Order, ¶ 479.[3] Accordingly, the only FCC interpretation of "currently combines" remains the literal one contained in the First Report and Order. The Commission finds that "currently combines" means ordinarily combined within the BellSouth network, in the manner which they are typically combined.[4] Thus, CLECs can order combinations of typically combined elements, even if the particular elements being ordered are not actually physically connected at the time the order is placed. However, in the event that the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision on this issue. The

---

3 While the FCC declined to address this argument again in its Third Report and Order, significantly the FCC did not disavow the position it took in the First Report and Order. BellSouth argues that "the FCC made clear that 'currently combined' elements are those elements physically combined as of the time the CLEC requests them and which can be converted to UNEs on a 'switch as is' or 'switch with changes basis." BellSouth's Brief on Impact of Third Report and Order, p. 5. The FCC, however, was not stating that Rule 51-315(b) is limited only to currently combined elements. Instead, the FCC was stating that since, at the least, Rule 51-315(b) includes currently combined elements, and since when a CLEC purchases special access the elements are currently combined, that even under the more restrictive "currently combined" interpretation, CLECs would be able to convert special access to loop-transport combinations at UNE rates. Third Report and Order ¶ 480.

4 BellSouth's argument that the cost studies it presented in this matter are based on its definition of "currently combined" is discussed below in Section II.B.4, below.

Commission further finds that the particular loop/port and loop/transport combinations at issue in this case are ordinarily combined in BellSouth's network.

Based on the FCC's Third Report and Order, even if this Commission were to limit the definition of "currently combines" to the more restrictive "currently combined" interpretation, CLECs would still be able to obtain and use the same UNE combinations. The process of obtaining them would be more cumbersome, however, and would serve no purpose except to complicate the ordering process and impede competition. According to the FCC, CLECs can purchase services such as special access and resale even when the network elements supporting the underlying service are not physically connected at the time the service is ordered. At the point when the CLEC begins to receive such service, the underlying network elements are necessarily physically connected. The CLECs can then obtain such currently combined network elements as UNE combinations at UNE prices. Third Report and Order, ¶¶ 480, 486. The Commission finds that even assuming arguendo that "currently combines" means "currently combined," rather than go through the circuitous process of requiring the CLEC to submit two orders (e.g., one for special access followed by another to convert the special access to UNEs) to receive the UNE combination, the process should be streamlined to allows CLECs to place only one order for the UNE combination.

5. BellSouth's Proposed Restrictions

BellSouth had proposed in its testimony in this matter numerous restrictions on the use of UNE combinations. These proposed restrictions included:

- Combinations would be available for only two years, beginning only after BellSouth obtains Section 271 approval;

- Customers must be in service for six months before they may be served through a UNE combination;

- Combinations would only be available in the areas defined by BellSouth rate groups 2 and 5;

- Loop/Transport combinations must terminate on a CLEC circuit-switched, local voice switch;

- Loop/Transport combinations can only be used to provide local voice switched service.

- Loop/Transport combinations cannot be used by the entrant to provide special access service; and,

BellSouth's justification for proposing these restrictions was that they were necessary to create "the appropriate economic incentives." BellSouth's Posthearing Brief, p. 27. BellSouth also

stated that the restrictions were necessary "to ensure that the use of combinations does not stifle the growth of competition." Id. at 31.

As previously discussed, BellSouth is required by the Federal Act and the FCC's rules to allow CLECs to purchase combinations of UNEs. Further, the nondiscriminatory provisions of the Federal Act and the FCC's rules are applicable to such combinations. With a limited exception discussed below, BellSouth's proposed restrictions would violate the Federal Act and the FCC's rules.

Section 251(c)(3) of the Act establishes:

> The duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, nondiscriminatory access to network elements.

Emphasis Added. More specifically, FCC Rule 51.309(a) provides:

> An incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

Emphasis added. Accordingly, except as discussed below, the Commission rejects BellSouth's proposed restrictions on the use of UNE combinations.

One of BellSouth's proposed restrictions was that Loop/Transport combinations cannot be used by the entrant to provide special access service. On November 24, 1999, the FCC issued a Supplemental Order to its Third Report and Order. In this Supplemental Order, the FCC modified its conclusion in paragraph 486 of the Third Report and Order to now allow incumbent LECs to constrain the use of combinations of unbundled loops and transport network elements as a substitute for special access service. Supplemental Order, ¶ 4. IXCs may not convert special access services to combinations of unbundled loops and transport network elements, whether or not the IXCs self-provide entrance facilities, unless the IXC uses the combination "to provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer." Id. at ¶ 5. Accordingly, the Commission finds that in order for a CLECs to use a loop/transport combination to provide special access service, the CLEC must provide a significant amount of local exchange service over the combination. Such CLECs must "self-certify that they are providing a significant amount of local exchange service over combinations of unbundled loops and transport network elements" in order to convert special access facilities to UNE pricing. Id. at footnote 9. The FCC did not find it to be necessary for ILECs and requesting carriers to undertake auditing processes to monitor whether requesting carriers are using UNEs solely to provide exchange access service. Id. The Commission finds that BellSouth shall not make auditing a precondition to converting special access to UNEs; thus the conversion of facilities will not be delayed. The Commission finds, however, that BellSouth shall be allowed to audit CLEC records in order to verify the type of traffic

being transmitted over EELs. If, based on its audits, BellSouth concludes that a CLEC is not providing a significant amount of local exchange traffic over the facilities, BellSouth may file a complaint with this Commission.

6. Commercial Agreements

BellSouth has stated that it is willing to make certain UNE combinations available to CLECs through "Commercial Agreements." BellSouth claims that these commercial agreements are not subject to Commission review or approval. As explained in the prior sections, BellSouth has an obligation under the Act to provide elements that it currently combines to CLECs at cost-based rates. A review of the Commercial Agreements filed with the Commission in this matter indicates that the combinations provided under the Commercial Agreements include combinations of elements that BellSouth currently combines. In addition, the combinations provided under the Commercial Agreements include combinations that are analogous to services that could be purchased at resale rates or under an existing tariff.

All interconnection agreements must be submitted to the Commission for approval. Section 252(e)(1). For negotiated agreements, the primary purpose of this requirement is so that the Commission can insure that the agreement does not "discriminate against a telecommunications carrier not a party to the agreement" and to insure that "implementation of the agreement [is consistent] with the public interest." Section 252(e)(2)(a)(i) and (ii). Obviously, the Commission cannot fulfill its obligations if it cannot even look at the agreements.[5] Accordingly, the Commission finds that BellSouth's commercial agreements are subject to Commission review and approval.

**B. Cost Study Methodology and Major Assumptions**

Both BellSouth and AT&T filed cost studies in this proceeding. BellSouth presented recurring and non-recurring cost studies which used basically the same methodology adopted by the Commission in its December 16, 1997 Order in Docket 7061-U. Most, but not all, of the adjustments that were ordered by the Commission in Docket 7061-U were incorporated into the new studies. AT&T presented the HAI Model 5.1 for a limited number of the recurring costs and the AT&T and MCI Non-Recurring Cost Model for a limited number of the non-recurring costs. For those costs not covered by its models, AT&T recommended that use BellSouth's cost studies with modifications. Other parties to this proceeding have recommended that the Commission make various adjustments to the proffered models.

5 Certainly, BellSouth cannot seriously suggest that the Commission simply ignore allegations that BellSouth is giving more favorable rates to CLECs that agree not to invest in facilities in Georgia than to those that do invest in Georgia. This is particularly the case where, for all practical purposes, BellSouth is simply selling a UNE combination at a rate other than the cost-based rate or is providing a resale discount other than the avoided cost discount set by the Commission.

1. Openness and Documentation

The Scheduling Order provided that any party submitting a cost study was required to provide comprehensive and complete work papers that fully disclosed and documented the process underlying the development of each of its economic costs, including the documentation of all judgments and methods used to establish every specific assumption employed in each cost study. The Scheduling Order required that the work papers clearly and logically represent all data used in developing each cost estimate, and be so comprehensive as to allow others initially unfamiliar with the studies to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions. The Scheduling Order required that the work papers be organized in such a manner as to clearly identify and document all source data and assumptions, including investment, expense, and demand data assumptions.

BellSouth contends that AT&T has failed to support the basic underpinnings of the HAI Model and has failed to submit the documentation required by the Scheduling Order. BellSouth's Posthearing Brief, pp. 40- 42.

PNR and Associates (PNR) generated data for AT&T that was used to create inputs to the HAI cost proxy model for AT&T. In essence, when customers cannot be located by a mailing address (e.g., a customer has a rural P.O. Box), PNR uses mathematical processes to place the customers in surrogate locations. The customers are grouped into "clusters." This grouping process is considered by PNR to be a proprietary process. The clusters are then reconfigured to "serving areas." This process is also considered to be proprietary.

These processes are relevant to the Hatfield model because Hatfield builds its hypothetical network to these "serving areas." Since loop length is a major cost driver, the distribution of customers can greatly affect the costs generate by a model. BellSouth sought access to the PNR processes and data to determine whether the model designs these serving areas in a way that reflects the way customers are actually distributed and, if it does not, whether this results in an understatement of the costs. As BellSouth has stated, however, "AT&T has not produced a single document, study, or report that in any way validates or verifies the geocoding and clustering work performed by PNR for purposes of Hatfield version 5.1, even though AT&T was specifically requested to do so by BellSouth." BellSouth's Posthearing Brief, pp. 40-41.

AT&T, not BellSouth, must carry the burden of proof in regards to the HAI model. It is AT&T's responsibility to demonstrate to this Commission that its model produces costs in a well-reasoned way based on data shown to be reliable. See Docket 5825-U, January 20, 2000 Order. As the Commission's Order in Docket 7061-U demonstrated, when adopting a cost model, the Commission must weigh various competing factors, including, but not limited to, openness. Order in Docket No. 7061, p. 16. The Commission finds that AT&T has not adequately supported the basic underpinnings of the Hatfield Model in this proceeding. The Commission finds that while some of the principles used in constructing the Hatfield model are useful to consider in evaluating

and in making adjustments to BellSouth's model, the Hatfield model itself has not been demonstrated to be a reliable method for computing the cost-based rates.

2. Conformance with TELRIC

CLECs have alleged that because the BellSouth models are premised on an assumption of the existing network configuration, while the FCC's pricing rules require the use of a "scorched node" network configuration, that the Commission should not use the BellSouth models. The Commission's options in this matter are limited to accepting or adjusting the competing models presented to it. As discussed in the prior section, from the standpoint of documentation in the record, AT&T's network configuration is essentially pulled out of thin air. In contrast, BellSouth's network configuration has verifiable underpinnings that have an objective basis. The Commission has previously approved the use of this model and has found it to be reliable, consistent, and accurate in computing forward-looking costs. The Commission finds that the costs generated by the BellSouth models, with the proper modifications and inputs, best reflect the forward-looking costs of UNE Combinations.

In addition, because HAI Model 5.1 and the AT&T and MCI Non-Recurring Cost Model only produce costs for a limited number of UNEs, even if the Commission were to approve the use of such models, the Commission would still have to use the BellSouth models for the remaining elements. Even without the openness problem discussed above, the Commission would not be inclined to use two completely different sets of methodologies to compute the costs of different UNE.

Most importantly, however, after reviewing the costs generated by the various models using different sets of inputs, the Commission is of the opinion that the decisions most effecting the costs generated are the inputs and adjustments used, rather than the choice of the basic model itself. As AT&T demonstrated, when BellSouth's recurring cost model is modified to include AT&T's proposed inputs, the cost generated for a 2-wire analog loop/port UNE combination, $11.94, is virtually identical to the HAI cost of $11.75. AT&T's Post hearing Brief, p. 19. Regardless of which model the Commission selected, the Commission would need to adjust the model and modify the inputs. The Commission has selected to use the BellSouth model and has made adjustments which reduce the costs generated by that model. However, even if the Commission were to choose the HAI model, it could not do so without modifications.[6] It appears that, after all the necessary adjustments were made, the costs ultimately produced by either model to would be very similar.

3. Geographic Deaveraging

Some parties in this proceeding have recommended that the Commission geographically deaverage UNE rates. See DOD Brief, pp. 8-10. In Docket No. 7061-U, the Commission found that

6 For example, while the Commission finds that the BellSouth model does not use enough IDLC, the HAI model's use of 100% GR-303 IDLC is also inappropriate.

it should not implement geographical deaveraging until it addressed universal service. At the time the Order in Docket 7061-U was issued, Rule 51.507, which required geographic deaveraging, had been stayed by the Eighth Circuit. While the Supreme Court's Iowa decision resulted in reinstating the FCC's pricing rules, the FCC itself subsequently stayed Rule 507. Since Rule 507 is stayed until this spring, the Commission currently has no obligation to set deaveraged UNE rates. The Commission intends to deaverage UNE rates at the appropriate time.

4. Nonrecurring Costs

Nonrecurring costs are one-time charges associated with UNEs. For example, costs associated primarily with the ordering and provisioning of UNEs are reflected as nonrecurring charges for such elements. In Docket 7061-U, the Commission approved the use of BellSouth's non-recurring cost model, subject to certain modifications. The Commission finds that the non-recurring costs generated by the BellSouth models best reflect the appropriate cost-based non-recurring charges. The key assumptions underlying the AT&T nonrecurring model are flawed; thus, the costs generated by that model are suspect. For example, the model assumes that BellSouth's current OSS can be transformed to permit a fallout rate of only 2 percent, even though BellSouth has not achieved that kind of flowthrough for its own orders. Further, it assumes that not a single CLEC order will require manual handling by BellSouth due to CLEC error. Finally, it is not consistent with the HAI model. Post-hearing Brief of BellSouth, pp. 42-45.

BellSouth has stated that its cost studies presented in this matter are based on its definition of "currently combined." Direct Testimony of Mr. Varner, p, 10; Direct Testimony of Ms. Caldwell, pp. 8, and 12-14. MCI WorldCom argued that the results of the BellSouth cost studies are not a result of the application of BellSouth's definition of currently combined; instead, they are the result of no longer assuming that elements must be physically separated and recombined in a collocation space. See Rebuttal Testimony of Mr. Wood, pp. 15-17. The Commission finds that BellSouth's recurring cost models are not impacted by BellSouth's definition of currently combined; and, as discussed elsewhere in this order, the Commission finds that, subject to certain modifications, the recurring rate for UNE combinations should be set using BellSouth's model. The Commission also finds that BellSouth's non-recurring cost models should be used to set the nonrecurring costs for those UNE combinations where the UNEs are currently in place. However, the non-recurring costs generated by BellSouth's model may be inappropriate for those UNE combinations where the elements are not, in fact, currently in place. The Commission finds, on an interim basis, that for those UNE combinations where the elements are not currently in place, the nonrecurring charge for such UNE combinations shall be the sum of the stand-alone NRCs of the UNEs which make up the combination. These interim rates shall be subject to true-up. Within 45 days of the date of this order, BellSouth shall file a cost study for nonrecurring charges for such new UNE combinations. The Commission shall conduct a review of the cost study.

## C. Input Assumptions

### 1. Inputs Set in Docket No. 7061-U.

In Docket 7061-U, the Commission adopted a pricing methodology and resulting cost-based rates for the unbundling of BellSouth's network elements. As part of that proceeding, the Commission made several findings regarding the appropriate model inputs to be used in determining UNE rates. The Commission has taken judicial notice of the administrative record in Docket 7061-U during the hearing in this matter. Tr. 1019.

Many of the model inputs that the Commission adopted in Docket 7061-U have already been incorporated into the model that BellSouth has filed in this proceeding. For example, BellSouth has used the Commission approved rate of return and the plant lives and depreciation rates as prescribed by the FCC for BellSouth's operations in Georgia. The Commission finds that, except as otherwise specified in this order, all input adjustments to the BellSouth model which the Commission made in Docket 7061-U shall be approved for purposes of this proceeding and shall be properly incorporated into BellSouth's model.

### 2. Loop Sample and the inclusion of ESSX

In Docket 7061-U, the Commission recognized that the length of loops and their types of construction are major cost drivers. Order in Docket 7061-U, p. 34. Thus, the Commission rejected BellSouth's omission of shorter business-type loops, including ESSX, because exclusion of these shorter loops would result in an overstatement of loop costs. Order in Docket 7061-U, pp. 36-37. In the cost study filed in this case, BellSouth incorporated PBX trunks in its loop sample, but did not incorporate ESSX Service loops. Tr. at 431. AT&T and MCI argue that the ESSX loops should be included. The Commission agrees that ESSX should be included in the loop sample. BellSouth currently combines the loop and port used to provide ESSX service and this UNE combination should be available for use by the CLEC to provide the customer with local service. Rebuttal Testimony of Mr. Don Wood, pp. 24-25.

Including ESSX loops results in two adjustments to the TELRIC Calculator. Adding in the ESSX loops results in a reduction of the average cost of business loops since ESSX loops tend to be shorter. Adding in the ESSX loops also increases the total number of business loops by 367,997 (Docket 7061-U, BellSouth's response to Staff's Third Data Request, Item No. STF-3-5), thus increasing the proportion of business loops to total loops. Since business loops are cheaper than residential loops, as the percentage of business loops increases, the average loop cost decreases. The Commission finds that adding ESSX loops requires modifying BellSouth's model to reflect 68% residential loops and 32% business loops. This adjustment would result in a $0.55 decrease to the 2-wire loop/port UNE combination price.

3. Integrated Digital Loop Carrier (IDLC)/GR-303 IDLC

BellSouth's model assumes that 49% of digital loop carrier (DLC) loops are served by IDLC. AT&T and MCI argue that BellSouth's model should be adjusted so that all DLC loops are served by IDLC. BellSouth counters by arguing that an assumption of 100% IDLC ignores the realities of network design since BellSouth states that it will continue to deploy universal DLC in its network for the foreseeable future. Tr. 346. While the Commission agrees that an assumption of 100% IDLC ignores the realities of network design, the Commission finds that the percentage of IDLC currently assumed by BellSouth is not forward-looking. The Commission finds that BellSouth's model should be adjusted to reflect 98% IDLC. This adjustment would result in a $0.71 decrease to the 2-wire loop/port UNE combination price.

AT&T also advocates that BellSouth's cost studies be adjusted so as to assume GR-303 for all IDLC loops. BellSouth states that currently less than 1% of its access lines are served by GR-303, while 99% are served on TR-008. BellSouth states that it still deploys TR-008 in its network and will continue to do so throughout the study period. Tr. at 336. Bellcore estimated that, in 1997, 16% of BellSouth's lines were GR303 capable digital loop carriers. Tr. 372. BellSouth's model assumes 0% GR-303. While GR-303 is the forward-looking technology, the Commission finds that the replacement of TR-008 will be too gradual to warrant modifying BellSouth cost study to assume 100% GR-303 at this time. On the other hand, since GR-303 is already being deployed on a limited basis by BellSouth and is the forward-looking technology, 0% is also inappropriate. Based on its review of the evidence, the Commission finds that BellSouth's model should be modified to reflect 20% GR-303. This would result in a $0.18 decrease to the 2-wire loop/port UNE combination price.[7]

4. Rate Design for Switch Features (Vertical Features)

In Commission Docket 7061-U, the Commission reaffirmed its earlier decision in the AT&T-BellSouth arbitration (Docket No. 6801-U), that there should be no additional, separate charges for switch features. The Commission found "that switch vertical features should not be priced separately as individual elements, but should instead be incorporated within the unbundled switch port element." Docket 7061-U, Order, p. 39. The Commission noticed this proceeding to determine pricing for UNE combinations, not to revisit its decision on vertical features. In any event, the Commission finds no reason to change its prior decision on this matter. Accordingly, the

7 AT&T had proposed an adjustment to the TELRIC Calculator to make up for the lack of using GR-303 in multiplexer inputs. See Rebuttal of Donovan, pp. 21-22. The adjustment, which assumes 100% GR-303, resulted in a reduction in the price of $0.91. Based on AT&T's reasoning, an assumption of 20% GR-303 results in a reduction of $0.18 (0.20 x 0.91 = 0.18).

Commission does not approve BellSouth's proposed additional costs for switch features. This would result in a $4.28 decrease to the 2-wire loop/port UNE combination price.

## D. Rates For Combinations of Network Elements

### 1. Electronic versus Manual Orders

BellSouth has proposed different non-recurring charges for electronic orders versus manual orders. It does not appear that any party has objected to separately pricing orders based on the type of order. More importantly, the Commission finds that manual orders are more expensive for BellSouth to process than electronic orders. Accordingly, the Commission approves BellSouth's proposal to price manual orders and electronic orders separately.

### 2. Pricing of Specific UNE Combinations

Based on the adjustments discussed above, the Commission hereby approves the recurring and non-recurring rates for certain combinations of UNEs.

*a. 2-wire loop/port UNE combination.*

The Commission has made the following adjustments to BellSouth's proposed rate for the 2-wire loop/port UNE combination:

| | | | |
|---|---|---|---|
| (i). | Eliminate Reasonable Profit Additive | | $9.19 |
| (ii). | Eliminate Vertical Feature Additive | $4.28 | |
| (iii). | Adjust for addition of ESSX loops | $0.55 | |
| (iv). | Adjust for use of 98% IDLC | $0.71 | |
| (v). | Adjust for use of 20% GR-303 | $0.18 | |

These adjustments result in a total recurring cost for 2-wire loop/port combination of $14.34. As discussed above, this combination (sometimes referred to as UNE-Platform or UNE-P) shall be available statewide and shall not be subject to the restrictions proposed by BellSouth in this matter.

As discussed above, the Commission finds that BellSouth's non-recurring cost model should be used to set the nonrecurring costs for those UNE combinations where the UNEs are currently in place. Accordingly, the nonrecurring cost for an existing 2-wire loop/port combination is $2.01 when ordered electronically. The non-recurring charges for additional orders and for manual orders for existing 2-wire loop/port combinations are set forth in Attachment A hereto.

The non-recurring costs generated by BellSouth's model may be inappropriate for those UNE-P combinations where the elements are not, in fact, currently in place. The Commission finds, on an interim basis, that for those UNE-P combinations where the elements are not currently in place,

the nonrecurring charge for such UNE combinations shall be the sum of the stand-alone NRCs of the UNEs which make up the combination. These interim rates shall be subject to true-up. Within 45 days of the date of this order, BellSouth shall file a cost study for nonrecurring charges for such UNE combination. The Commission shall conduct a review of the cost study.

*b. Loop/Transport Combinations.*

BellSouth computed recurring and non-recurring costs for various loop/transport combinations:

2-wire voice grade extended loop with DS1 Dedicated Interoffice Transport;
4-wire voice grade extended loop with DS1 Dedicated Interoffice Transport;
4-wire 56 or 64 kbps extended digital loop with Dedicated DS1 Interoffice Transport;
Extended 2-wire VG Dedicated Local Channel with Dedicated DS1 Interoffice Transport;
Extended 4-wire VG Dedicated Local Channel with Dedicated DS1 Interoffice Transport;
Extended 4-wire DS1 Digital Loop with Dedicated DS1 Interoffice Transport;
Extended 4-wire DS1 Digital Loop with Dedicated DS3 Interoffice Transport; and,
Extended DS1 Dedicated Local Channel with Dedicated DS3 Interoffice Transport.

As discussed above, BellSouth had proposed a "reasonable profit" additive of $78.25 for the 4-wire DS1 loop-transport combination, which the Commission has disallowed.

The Commission finds that BellSouth shall provide these loop/transport combinations to CLECs. These combinations shall be available statewide and shall not be subject to the restrictions proposed by BellSouth in this matter except as specifically set forth in this order. The recurring rates for such combinations, whether currently in place or new, are set forth in Attachment A. BellSouth's non-recurring cost models should be used to set the nonrecurring costs for those loop/transport combinations where the UNEs are currently in place. These non-recurring charges are set forth in Attachment A hereto.

On an interim basis, for those loop/transport combinations where the elements are not currently in place, the nonrecurring charge for such UNE combinations shall be the sum of the stand-alone NRCs of the UNEs which make up the combination. These interim rates shall be subject to true-up. Within 45 days of the date of this order, BellSouth shall file a cost study for nonrecurring charges for such new loop/transport combinations. The Commission shall conduct a review of the cost study.

3. Pricing of UNE Combinations Not Costed In This Proceeding

To the extent that CLECs seek to obtain other combinations of UNEs that BellSouth ordinarily combines in its network which have not been specifically priced by this Commission when purchased in combined form, the Commission finds that the CLEC can purchase such UNE

combinations at the sum of the stand-alone prices of the UNEs which make up the combination. If the CLEC is dissatisfied with using the sum of the stand-alone rates, the CLEC is free to pursue the bona fide request process with BellSouth to seek a different rate.

## III. CONCLUSION AND ORDERING PARAGRAPHS

The Commission finds and concludes that the rates, terms and conditions as discussed in the preceding sections of this Order should be adopted for the interconnection with and unbundling of BellSouth's telecommunications services in Georgia, pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and Georgia's Telecommunications and Competition Development Act of 1995.

**WHEREFORE IT IS ORDERED,** that all findings, conclusions, statements, and directives made by the Commission and contained in the foregoing sections of this Order are hereby adopted as findings of fact, conclusions of law, statements of regulatory policy, and orders of this Commission.

**ORDERED FURTHER,** the cost-based rates determined by the Commission in this Order are established as the rates for BellSouth's unbundled network elements. BellSouth shall submit such compliance filings as are necessary to reflect and implement the rates and policies established by this Order. BellSouth shall file a revised Statement of Generally Available Terms and Conditions (SGAT) reflecting and implementing the rates and policies established by this Order and reflecting the unbundling requirements of the FCC's Third Report and Order within thirty (30) days of the date of this Order.

**ORDERED FURTHER,** that, as set forth in the body of this Order, BellSouth shall file the cost studies for those loop/port and loop/transport combinations that are not currently in place within 45 days of the date of this Order.

**ORDERED FURTHER,** the Commission shall reevaluate the availability of UNEs every three years in a manner consistent with the Third Report and Order.

**ORDERED FURTHER,** that if the Eighth Circuit Court of Appeals determines that ILECs have no legal obligation to combine UNEs under the Federal Act, the Commission will reevaluate its decision with regard to the requirement that BellSouth provide combinations of typically combined elements where the particular elements being ordered are not actually physically connected at the time the order is placed. Further, this docket shall remain open in the event the FCC's rules are modified to mandate different requirements for Enhanced Extended Links.

**ORDERED FURTHER,** that a motion for reconsideration, rehearing, or oral argument or any other motion shall not stay the effective date of this Order, unless otherwise ordered by the Commission.

**ORDERED FURTHER,** that jurisdiction over these matters is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 1st day of February, 2000.

| | |
|---|---|
| Helen O'Leary<br>Executive Secretary | Bob Durden<br>Chairman |
| Date | Date |